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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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## FORM 8-K

### Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **March 3, 2003**

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## MICROVISION, INC.

(Exact name of registrant as specified in its charter)

**Washington**  
(State or other jurisdiction of incorporation)

**0-21221**  
(Commission File Number)

**91-1600822**  
(IRS Employer Identification No.)

**19910 North Creek Parkway**  
**Bothell, Washington 98011**  
(Address of Principal Executive Office) (Zip Code)

Registrant's telephone number, including area code: **(425) 415-6847**

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#### Item 5. Other Events and Required FD Disclosure.

Microvision, Inc. has offered directly to certain investors an aggregate of 2,644,210 shares of its common stock, warrants to purchase an aggregate of 528,843 shares of its common stock, and the shares of its common stock issuable from time to time on exercise of the warrants. Each investor in this offering will receive a warrant to purchase that number of shares of Microvision's common stock equal to 20% of the number of shares of common stock purchased by such investor in this offering. The purchase price for each share of common stock is \$4.75. Each warrant is exercisable beginning on September 6, 2003, has an exercise price of \$6.50 per share and, unless otherwise extended in accordance with its terms, expires on March 5, 2008. The securities being offered are covered by the Company's Registration Statement on Form S-3 (Registration No. 333-102244). Microvision expects that delivery of the shares of common stock and warrants being offered (excluding any shares issuable upon exercise of the warrants) will be made to investors on or about March 5, 2003. The purpose of this Current Report is to file the Selling Agent Agreement with William Blair & Company, L.L.C., Letter Agreement with Olympus Securities LLC, Form of Warrant Agreement, Opinion on Legality of Securities, Form of Securities Purchase Agreement, and two other documents also being incorporated by reference in the Registration Statement on Form S-3.

#### Item 7. Financial Statements, Pro Forma Financial Information and Exhibits.

c) Exhibits.

- 1.2 Selling Agent Agreement with William Blair & Company, L.L.C. dated March 3, 2003
- 1.3 Letter Agreement with Olympus Securities LLC dated March 4, 2003
- 4.1 Form of Warrant Agreement
- 5.1 Opinion on Legality of Securities
- 10.1 Form of Securities Purchase Agreement
- 10.4 Exclusive License Agreement between the University of Washington and Microvision, Inc. dated March 3, 1994
- 10.24 Microvision Series 1 Stock Purchase Warrant, dated April 1, 1999, issued to Capital Ventures International
- 23.2 Consent of Ropes & Gray (see Exhibit 5.1)

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#### SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

By: /s/ Richard F. Rutkowski  
Richard F. Rutkowski  
*Chief Executive Officer*

Date: March 5, 2003

## SELLING AGENT AGREEMENT

THIS SELLING AGENT AGREEMENT (the "Agreement") is entered into as of this 3rd day of March, 2003 by and between Microvision, Inc., a Washington corporation (the "Company"), and William Blair & Company, L.L.C. (the "Selling Agent").

### RECITALS

WHEREAS, the Selling Agent is a broker-dealer registered with the Securities and Exchange Commission and a member of the National Association of Securities Dealers, Inc.

WHEREAS, the Company, pursuant to an engagement letter dated January 30, 2003 (the "Engagement Letter"), has retained the Selling Agent as its exclusive selling agent to provide assistance with the solicitation of purchasers of common stock of the Company ("Common Stock") and, if required by such purchasers and acceptable to the Company, warrants to acquire Common Stock ("Warrants"), and the Company and the Selling Agent wish to set forth the terms and conditions upon which such services will be provided in connection with a public offering of Common Stock and, if any, Warrants pursuant to a shelf registration of the Company.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties, each intending to be legally bound, hereby agree as follows:

1. Appointment of Selling Agent.

The Company hereby appoints the Selling Agent, and, on the basis of the Company's representations, warranties and covenants contained herein and subject to the terms and conditions set forth herein, the Selling Agent hereby accepts such appointment, as the exclusive agent of the Company for the purpose of using its reasonable best efforts to solicit offers to purchase shares of Common Stock (the "Shares") and Warrants, if any, having an aggregate public offering price of up to \$12,600,000 (Twelve Million Six Hundred Thousand Dollars) in a public offering (the "Offering") pursuant to the Company's Registration Statement on Form S-3 (File No. 333-102244), which was declared effective by the Securities and Exchange Commission (the "Commission") on February 12, 2003, and the Prospectus (as hereinafter defined). References herein to the term "Registration Statement" as of any date shall mean such effective registration statement, as amended or supplemented to such date, including all information and documents incorporated by reference therein as of such date. The term "Prospectus" as used herein shall mean the prospectus forming a part of the Registration Statement and the prospectus supplement relating to the Shares and, if applicable, Warrants and Warrant Shares, in the form first filed pursuant to Rule 424(b) under the Securities Act, as amended (the "Securities Act"), as further amended or supplemented at the relevant time, and shall include all information and documents incorporated by reference in such prospectus. The Selling Agent agrees that it will not contact any potential investor regarding a possible investment in the Shares without the prior written consent of the Company. The Selling Agent shall communicate to the Company each reasonable offer or indication of interest received by it to purchase Shares and Warrants. The Company shall have the sole right to accept offers to purchase the Shares and Warrants and may reject any such offer in whole or in part. In soliciting

offers to purchase the Shares and Warrants hereunder, the Selling Agent is acting solely as agent for the Company, and not as principal. The Selling Agent shall have no liability to the Company in the event any purchase of Shares and Warrants by a purchaser whose offer to purchase Shares and Warrants has been solicited by the Selling Agent and accepted by the Company is not consummated for any reason. Under no circumstances will the Selling Agent be obligated to purchase any Shares and/or Warrants for its own account.

2. Representations and Warranties. The Company hereby represents, warrants and agrees as follows:

- (a) The Company has been duly incorporated and has a valid existence and the authorization to transact business as a corporation under the laws of the State of Washington, with corporate power and authority to own its properties and conduct its business as described in the Prospectus, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, except for such jurisdictions wherein the failure to be so qualified and in good standing would not individually or in the aggregate have a material adverse effect on the business, results of operations or financial condition of the Company and its subsidiaries taken as a whole (a "Material Adverse Effect"); and each subsidiary of the Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of its jurisdiction of incorporation, with corporate power and authority to own its properties and conduct its business as described in the Prospectus, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, except for such jurisdictions wherein the failure to be so qualified and in good standing would not individually or in the aggregate have a Material Adverse Effect. Lumera Corporation, a Washington corporation ("Lumera"), is the Company's only subsidiary.
- (b) This Agreement has been duly authorized, executed and delivered by the Company, and the Securities Purchase Agreements (as defined below) and Warrants have been duly authorized, and will be duly executed and delivered, by the Company; and this Agreement, the Securities Purchase Agreements and the Warrants, when duly executed and delivered by the parties hereto or thereto, will constitute valid and legally binding instruments of the Company enforceable in accordance with their terms, except as enforcement hereof or thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization or similar laws or court decisions affecting enforcement of creditors' rights generally and except as enforcement hereof or thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).
- (c) The Shares have been duly authorized by the Company, and when issued and delivered by the Company against payment therefor as contemplated by the

Securities Purchase Agreements, the Shares will be validly issued, fully paid and nonassessable, and will conform to the description of the Common Stock contained in the Prospectus. The shares of Common Stock issuable upon exercise of any Warrants issued and delivered as contemplated hereby (the "Warrant Shares") have been duly authorized by the Company and enough Warrant Shares have been reserved by the Company for issuance upon exercise of the Warrants. Upon exercise in accordance with the Warrants, the Warrant Shares will be validly issued, fully paid and nonassessable and will conform to the description of the Common Stock contained in the Prospectus. The Warrants when issued and delivered by the Company as contemplated hereby will conform to the description of Company warrants contained in the Prospectus.

- (d) The execution and delivery of this Agreement do not, and the execution and delivery of the Securities Purchase Agreements and Warrants and the issuance and sale by the Company of the Shares, Warrants and Warrant Shares and the compliance by the Company with the terms hereof and thereof will not, (i) violate the Articles of Incorporation (as amended to date) of the Company or the By-Laws (as amended to date) of the Company, (ii) result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of their properties or assets are subject, or (iii) result in a violation of, or failure to be in compliance with, any applicable statute or any order, judgment, decree, rule or regulation of any court or governmental, regulatory or self-regulatory agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties or assets, except where such breach, violation, default or the failure to be in compliance would not individually or in the aggregate have

a Material Adverse Effect or adversely affect the ability of the Company to issue and sell the Shares, Warrants and Warrant Shares; and no consent, approval, authorization, order, registration, filing or qualification of or with any such court or governmental, regulatory or self-regulatory agency or body is required for the valid authorization, execution, delivery and performance by the Company of this Agreement, the Securities Purchase Agreements or the Warrants or the issuance of the Shares, Warrants or Warrant Shares, except for such consents, approvals, authorizations, registrations, filings or qualifications as may be required under the Securities Act or state securities or “blue sky” laws or have been or will be obtained or made in connection with the listing of the Shares and Warrant Shares on the Nasdaq National Market.

- (e) The Company meets the requirements for the use of Form S-3 under the Securities Act for the primary issuance of securities. The Registration Statement has been declared effective by the Commission and at the time it became effective, and as of the date hereof, the Registration Statement complied and complies with Rule 415 under the Securities Act. No stop order suspending the effectiveness of the Registration Statement has been issued and no proceeding for

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that purpose has been initiated or, to the Company’s knowledge, threatened by the Commission. On the effective date of the Registration Statement, the Registration Statement complied, on the date of the Prospectus, the Prospectus will comply, and at the Closing Date (as defined below), the Registration Statement and the Prospectus will comply, in all material respects with the applicable provisions of the Securities Act and the applicable rules and regulations of the Commission thereunder; on the effective date of the Registration Statement, the Registration Statement did not, on the date of the Prospectus, the Prospectus did not, and at the Closing Date, the Registration Statement and the Prospectus will not, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made (with respect to the Prospectus), not misleading; and when filed with the Commission, the documents incorporated by reference in the Registration Statement and the Prospectus, taken as a whole, complied or will comply in all material respects with the applicable provisions of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and the applicable rules and regulations of the Commission thereunder. There is no material document of a character required to be described in the Registration Statement or the Prospectus or to be filed as an exhibit to the Registration Statement that is not described or filed as required.

- (f) The consolidated financial statements and financial schedules of the Company included or incorporated by reference in the Registration Statement and the Prospectus have been prepared in conformity with generally accepted accounting principles (except, with respect to the unaudited consolidated financial statements, for the footnotes and subject to customary audit adjustments) applied on a consistent basis, are consistent in all material respects with the books and records of the Company, and accurately present in all material respects the consolidated financial position, results of operations and cash flow of the Company and its subsidiaries as of and for the periods covered thereby.
- (g) Neither the Company nor any of its subsidiaries has sustained since the respective dates of the latest audited financial statements included in the Registration Statement and Prospectus any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as disclosed in or contemplated by the Registration Statement and Prospectus; and, since the respective dates as of which information is given in the Registration Statement and Prospectus, there has not been any material change in the capital stock or long-term debt of the Company or any of its subsidiaries, the Company and its subsidiaries have not incurred any material liabilities or obligations, direct or contingent, nor entered into any material transactions not in the ordinary course of business and there has not been any material adverse change in or affecting the general affairs, management, financial position, stockholders’ equity or results of operations of the Company and its subsidiaries

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considered as a whole, otherwise than as disclosed in or contemplated by the Registration Statement and Prospectus.

- (h) Other than as disclosed in the Prospectus, there are no legal, governmental or regulatory proceedings pending to which the Company or any of its subsidiaries is a party or of which any material property of the Company or any of its subsidiaries is the subject which, taking into account the likelihood of the outcome, the damages or other relief sought and other relevant factors, would individually or in the aggregate reasonably be expected to have a Material Adverse Effect or adversely affect the ability of the Company to issue and sell the Shares, Warrants and Warrant Shares; to the best of the Company’s knowledge, no such proceedings are threatened or contemplated by governmental or regulatory authorities or threatened by others.
- (i) The Company and each of its subsidiaries have good and marketable title to all the real property and owns all other properties and assets, reflected as owned in the financial statements included in the Registration Statement and the Prospectus, subject to no lien, mortgage, pledge, charge or encumbrance of any kind except those, if any, reflected in such financial statements or which are not material to the Company and its subsidiaries taken as a whole. The Company and each of its subsidiaries hold their respective leased real and personal properties under valid and binding leases, except where the failure to do so would not reasonably be expected to individually or in the aggregate have a Material Adverse Effect.
- (j) The Company has filed all necessary federal and state income and franchise tax returns and has paid all taxes shown as due thereon, and there is no tax deficiency that has been, or to the knowledge of the Company might be, asserted against the Company or any of its properties or assets that would in the aggregate or individually reasonably be expected to have a Material Adverse Effect.
- (k) There are no holders of securities of the Company having preemptive rights to purchase Common Stock. There are no holders or beneficial owners of securities of the Company having rights to registration thereof whose securities have not been previously registered or who have not waived such rights with respect to the registration of the Company’s securities on the Registration Statement, except where the failure to obtain such waiver would not individually or in the aggregate reasonably be expected to have a Material Adverse Effect.
- (l) The Company has not taken and will not take any action that constitutes or is designed to cause or result, or which might reasonably be expected to cause or result, under the Exchange Act or otherwise, in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares.
- (m) Other than as disclosed in the Prospectus (but not including the disclosure under the captions “Risk Factors – We could face lawsuits related to our use of the

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scanned beam technology or other technologies. Defending these suits would be costly and time consuming. An adverse outcome in any such matters could limit our ability to commercialize our technology and products, our revenues, and increase our operating costs” and “Risk Factors – If we and our licensors are unable to obtain effective intellectual property protection for our products and technology, we may be unable to compete with other companies”), the Company together with its subsidiaries owns and possesses all right, title and interest in and to, or, to the Company’s knowledge, has duly licensed from third parties, all patents, patent rights, trade secrets, inventions, know-how, trademarks, trade names, copyrights, service marks and other proprietary rights (“Intellectual Property”) material to the business of the Company and each of its subsidiaries taken as a whole as currently conducted and as described in the

Prospectus. To the Company's knowledge and except as would not individually or in the aggregate have a Material Adverse Effect, there is no infringement or other violation by third parties of any of the Intellectual Property of the Company. Neither the Company nor any of its subsidiaries has received any notice of infringement or misappropriation from any third party that has not been resolved or disposed of and, to the Company's knowledge, neither the Company nor any of its subsidiaries has infringed or misappropriated the Intellectual Property of any third party, which infringement or misappropriation would individually or in the aggregate have a Material Adverse Effect. Further, there is no pending or, to the Company's knowledge and except as would not individually or in the aggregate have a Material Adverse Effect, threatened legal or administrative proceeding relating to patents and patent applications of the Company, other than proceedings initiated by the Company before the United States Patent and Trademark Office and the patent offices of certain foreign jurisdictions which are in the ordinary course of patent prosecution. To the Company's knowledge, the patent applications of the Company presently on file disclose patentable subject matter, and the Company is not aware of any inventorship challenges, any interference which has been declared or provoked, or any other material fact that (i) would preclude the issuance of patents with respect to such applications, or (ii) would lead such counsel to conclude that such patents, when issued, would not be valid and enforceable in accordance with applicable regulations.

- (n) Except as disclosed in the Prospectus, neither the Company nor any of its subsidiaries is in violation of any statute, any rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, "Environmental Laws"), owns or operates any real property contaminated with any substance that is subject to any Environmental Laws, is liable for any off-site disposal or contamination pursuant to any

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Environmental Laws, or is subject to any claim relating to any Environmental Laws, which violation, contamination, liability or claim would individually or in the aggregate have Material Adverse Effect; and the Company is not aware of any pending investigation which might lead to such a claim.

- (o) The conduct of the business of the Company and each of its subsidiaries is in compliance in all respects with applicable laws, rules and regulations of governmental and regulatory bodies, except where the failure to be in compliance would not individually or in the aggregate have a Material Adverse Effect.
- (p) The Company is not, and does not intend to conduct its business in a manner in which it would become, an "investment company" as defined in Section 3(a) of the Investment Company Act of 1940, as amended.
- (q) All offers and sales of the Company's capital stock prior to the date hereof were at all relevant times registered pursuant to the Securities Act or exempt from the registration requirements of the Securities Act and were duly registered with or the subject of an available exemption from the registration requirements of the applicable state securities or blue sky laws, except where the failure to do so would not individually or in the aggregate reasonably be expected to have a Material Adverse Effect.
- (r) The Company and its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurances that (i) material transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; and (iii) the recorded accounting for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company and its subsidiaries also maintain a system of disclosure controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms.
- (s) The Company has filed with the Nasdaq National Market a Notification of Listing of Additional Shares with respect to the Shares and Warrant Shares within the time period required by the rules of the Nasdaq National Market.

3. Covenants of the Company. The Company covenants and agrees that:

- (a) On or before the Closing Date, and to the extent known by the Company, after due inquiry, the Company will advise the Selling Agent promptly of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or of the institution of any proceedings for that purpose, or of any notification of the suspension of qualification of the Shares, Warrants or Warrant Shares for sale in any jurisdiction or the initiation or threatening of any

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proceedings for that purpose, and will also advise the Selling Agent promptly of any request of the Commission for amendment or supplement of the Registration Statement or the Prospectus or for additional information.

- (b) On or before the Closing Date, the Company will give the Selling Agent notice of its intention to file or prepare any post-effective amendment to the Registration Statement or any amendment or supplement to the Prospectus and will furnish the Selling Agent with copies of any such amendment or supplement a reasonable amount of time prior to such proposed filing or use, as the case may be, and will not file any such amendment or supplement to which the Selling Agent or its counsel shall reasonably object.
- (c) The Company will (i) file with the Commission the Prospectus in accordance with Rule 424(b) of the Securities Act and (ii) provide the Selling Agent and its counsel, without charge, with copies of the Prospectus, in such numbers as the Selling Agent and its counsel may reasonably request and enough time in advance such that the Prospectus can be delivered to purchasers of the Shares and Warrants by such time as is required by the federal securities laws. The Company will also deliver to the Selling Agent such number of copies of the Securities Purchase Agreement as the Selling Agent may reasonably request.
- (d) The Company shall use its reasonable best efforts to keep the Registration Statement with respect to the Warrant Shares in effect until the expiration date of the Warrants or such shorter period that will terminate when all the Warrants have been exercised and during such period shall use its reasonable best efforts to obtain the prompt withdrawal of any stop order suspending the effectiveness of the Registration Statement. If at any time after the Closing Date when a prospectus relating to the Shares, Warrants and Warrant Shares is required to be delivered under the Securities Act any event occurs as a result of which the Prospectus, including any amendments or supplements, would include an untrue statement of a material fact, or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, or if it is necessary at any time to amend the Prospectus, including any amendments or supplements thereto, to comply with the Securities Act, the Company promptly will advise the Selling Agent thereof and, subject to Section 3(b), will promptly prepare and file with the Commission an amendment or supplement that will correct such statement or omission or an amendment that will effect such compliance;
- (e) The Company will cooperate with the Selling Agent in qualifying or registering the Shares, Warrants and Warrant Shares for sale under the blue sky laws of such jurisdictions as the Selling Agent reasonably designates, and will continue such qualifications in effect so long as reasonably required for the distribution of the Shares, Warrants and Warrant Shares; provided, however, that the Company shall not be required to qualify as a foreign corporation or to file a general

- (f) The Company will use the net proceeds received by it from the sale of the Shares and any Warrants and the issuance of any Warrant Shares in the manner specified under the caption "Use of Proceeds" in the prospectus supplement relating to the Shares, Warrants and Warrant Shares that forms a part of the Prospectus.

4. Closing. The terms and conditions, including the purchase price and number of Shares and Warrants and exercise price of the Warrants, upon which the Shares and Warrants will be sold will be set forth in securities purchase agreements between the Company and the purchasers of the Shares and Warrants, substantially in the form of Appendix A attached hereto (the "Securities Purchase Agreements"). The closing of the purchase and sale of the Shares and Warrants shall be on such date set forth in the Securities Purchase Agreement (the "Closing Date") and, along with the obligations of the Selling Agent to solicit offers to purchase the Shares and Warrants pursuant to Section 1, shall be subject to the accuracy of the representations and warranties of the Company contained herein as of the date hereof and as of the Closing Date, the performance and observance by the Company of all its covenants and agreements contained herein and the following conditions:

- (a) Prior to the Closing Date, no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been instituted or shall be pending or, to the knowledge of the Company or the Selling Agent, shall be contemplated by the Commission.
- (b) The Prospectus containing the information concerning the public offering price and terms of the Shares and Warrants and price-related information shall have been transmitted to the Commission for filing pursuant to Rule 424(b) within the prescribed period.
- (c) Subsequent to the execution and delivery of this Agreement, there shall not have occurred any change, or any development involving a prospective change, in or affecting particularly the business, financial condition, properties or results of operations of the Company and its subsidiaries which, in the judgment of the Selling Agent, is material and adverse when taken as a whole and makes it impractical or inadvisable to proceed with the public offering or sale of the Shares and Warrants as contemplated hereby.
- (d) There shall have been furnished to the Selling on the Closing Date:
- (i) An opinion of Ropes & Gray, counsel for the Company, addressed to the Selling Agent and dated the Closing Date, to the effect that:

(1) the Company is duly incorporated and has a valid existence and the authorization to transact business under the laws of the State of Washington with corporate power and authority to own its properties and conduct its business as described in the Prospectus;

(2) Lumera is duly incorporated and has a valid existence and the authorization to transact business under the laws of the State of

Washington with corporate power and authority to own its properties and conduct its business as described in the Prospectus; and all of the issued shares of capital stock of Lumera held by the Company have been duly authorized and validly issued, and are fully paid and nonassessable;

(3) the authorized capital stock of the Company and Lumera outstanding as of the date hereof is as set forth in the Prospectus;

(4) the Shares have been duly authorized by the Company and, when issued and delivered by the Company against payment therefor in accordance with the terms of the Securities Purchase Agreements, will be validly issued, fully paid and nonassessable. The Warrant Shares have been duly authorized by the Company and, when issued by the Company upon exercise in accordance with the Warrants, the Warrant Shares will be validly issued, fully paid and nonassessable;

(5) this Agreement, the Securities Purchase Agreements and the Warrants have been duly authorized, executed and delivered by the Company; and the Warrants constitute legal, valid and binding instruments of the Company enforceable in accordance with their terms, except as enforcement thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or court decisions in effect from time to time which affect the rights of creditors and further in that the enforceability thereof may be limited by the application of general principles of equity;

(6) no authorizations or consents of, or filings with, any governmental or governmental regulatory entity are required to permit the Company to execute this Agreement, the Securities Purchase Agreements or the Warrants, or to issue and sell the Shares, Warrants or Warrant Shares (other than as have been obtained or made under the Securities Act, or are required under applicable state securities or "blue sky" laws, and other than with respect to the Warrant Shares, future filings required to be made under the Securities Act or the Exchange Act); and

(7) the execution of this Agreement, the Securities Purchase Agreements and the Warrants by the Company do not, and the issuance and sale by the Company of the Shares, the Warrants and the Warrant Shares will not (i) violate the Articles of Incorporation or By-laws of the Company, (ii) breach or result in a default under any agreement or instrument listed as an Exhibit to the Registration Statement, including Exhibits to any Exchange Act document or report incorporated by reference therein, or listed on Attachment A to the opinion; or (iii) violate any applicable law, rule or regulation of any federal governmental or governmental regulatory body having jurisdiction over the Company or Lumera, the Washington Business Corporation Act or any order, writ, injunction or decree specifically naming the Company or Lumera, except

that such counsel need express no opinion as to state securities or blue sky laws or as to compliance with the antifraud provisions of federal and state securities laws.

In addition, such counsel shall confirm that the Registration Statement became effective on February 12, 2003. Such counsel shall state that it does not know of the issuance of any stop order suspending the effectiveness of the Registration Statement by the Commission or of any proceeding for that purpose under the Securities Act.

Such counsel shall confirm that in the course of the preparation by the Company of the Prospectus, it has participated in discussions with representatives of the Selling Agent and those of the Company and its independent accountants, in which the business and affairs of the Company and the contents of the Registration Statement and the Prospectus were discussed. On the basis of information that such counsel has gained in the course of its representation of the Company in connection with its preparation of the Prospectus and such counsel's participation in the discussions referred to above, such counsel believes that the Registration Statement, as of its effective date, and the Prospectus, as of its date, complied as to

form in all material respects with the requirements of the Securities Act and the rules and regulations of the Commission thereunder and the documents incorporated by reference in the Prospectus when filed with the Commission complied as to form in all material respects with the requirements of the Exchange Act and the published rules and regulations of the Commission thereunder, and such counsel does not know of any legal or governmental proceeding to which the Company or Lumera is a party or to which any of its property is subject required to be described in the Prospectus which is not so described, nor of any contract or other document of a character required to be described in the Prospectus or to be filed as an exhibit to the Registration Statement which is not so described or filed. Further, based on such information and participation, nothing that has come to such counsel's attention has caused it to believe that as of the date of the Prospectus, the Registration Statement contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or that the Prospectus as of its date or as of the date hereof contained or contains any untrue statement of a material fact or omitted or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. Such counsel need express no opinion, however, as to the financial statements, including the notes and schedules thereto, or any other financial data set forth or referred to in the Registration Statement or the Prospectus.

Such counsel may state that the limitations inherent in the independent verification of factual matters and the nature of the determinations

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involved in its review are such that it does not assume any responsibility for the accuracy, completeness or fairness of the statements made or the information contained in the Registration Statement or Prospectus except for those made under the captions "Description of Securities — Common Stock" and "Description of Securities – Warrants" in the Prospectus, which, as of the date of the Prospectus, accurately summarize in all material respects the provisions of the documents referred to therein.

(ii) A certificate of the chief executive officer and the chief financial officer of the Company, dated the Closing Date, to the effect that:

(1) the representations and warranties of the Company set forth in Section 2 of this Agreement are true and correct as of the date of this Agreement and as of the Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to such Closing Date; and

(2) the Commission has not issued an order preventing or suspending the use of the Registration Statement or the Prospectus; no stop order suspending the effectiveness of the Registration Statement has been issued; and to the best knowledge of the respective signers, no proceedings for that purpose have been instituted or are pending or contemplated under the Securities Act.

Such certificate shall also include certification by the chief technological officer of the Company that the representations and warranties of the Company set forth in Section 2(m) of this Agreement are true and correct as of the date of this Agreement and as of the Closing Date.

(iii) At the time Securities Purchase Agreements are executed and also on the Closing Date, there shall be delivered to the Selling Agent a letter addressed to the Selling Agent, from PricewaterhouseCoopers LLP, independent accountants, the first letter to be dated the date of the Securities Purchase Agreements and the second letter to be dated the Closing Date, each in the form heretofore approved by Katten Muchin Zavis Rosenman, counsel for the Selling Agent.

(iv) Such further certificates and documents as the Selling Agent may reasonably request.

All such opinions, certificates, letters and documents shall be in compliance with the provisions hereof only if they are satisfactory to the Selling Agent and to Katten Muchin Zavis Rosenman, counsel for the Selling Agent, which approval shall not be unreasonably withheld.

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5. Compensation.

In consideration of the Selling Agent's execution of this Agreement and for the performance of its services hereunder, the Selling Agent shall receive from the Company, on the Closing Date in immediately available funds, a fee in an amount equal to (i) 6.0% of the aggregate public offering price of the Shares and Warrants issued and sold on the Closing Date up to and including an aggregate public offering price of \$10,000,000 and (ii) 5.0% of the amount, if any, of the aggregate public offering price of the Shares and Warrants issued and sold on the Closing Date in excess of \$10,000,000, except as otherwise provided in the Engagement Letter.

6. Payment of Expenses.

Whether or not the transactions contemplated hereunder are consummated or this Agreement becomes effective as to all of its provisions or is terminated, the Company agrees to pay (i) all costs, fees and expenses incurred in connection with the performance of the Company's obligations hereunder, including, without limiting the generality of the foregoing, all fees and expenses of legal counsel for the Company and of the Company's independent accountants, all costs and expenses incurred in connection with the preparation, printing, filing and distribution of any preliminary prospectus and the Prospectus, this Agreement and the Securities Purchase Agreements and all fees for listing the Shares and Warrant Shares on the Nasdaq National Market and (ii) all fees and expenses of the Company's transfer agent, printing of the certificates for the Shares and Warrant Shares, printing of the Warrants and all transfer taxes, if any, with respect to the sale and delivery of the Shares, Warrants and Warrant Shares. The Company will reimburse the Selling Agent for reasonable out-of-pocket expenses reasonably incurred by it in connection with its engagement hereunder, up to a limit of \$15,000. Such expenses of the Selling Agent in excess of \$15,000 will be reimbursed by the Company if and only if approved in advance by the Company. In addition, the Company will reimburse the Selling Agent for 50% of the reasonable fees and expenses of the Selling Agent's outside legal counsel. Reimbursement hereunder will be payable promptly upon submission by the Selling Agent of statements to the Company documented with support.

7. Indemnification.

(a) The Company agrees to indemnify and hold harmless the Selling Agent and each person, if any, who controls the Selling Agent within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act against any losses, claims, damages or liabilities, joint or several, to which such Selling Agent or such controlling person may become subject under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise (including in settlement of any litigation if such settlement is effected with the written consent of the Company), insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement, the prospectus set forth in the Registration Statement on the effective date or the Prospectus or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or

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necessary to make the statements therein not misleading; and will reimburse the Selling Agent and each such controlling person for any legal or other expenses reasonably incurred by the Selling Agent or such controlling person in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company will not be liable under this Section 7(a) to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, the prospectus set forth in the Registration Statement on the effective date or the Prospectus in reliance upon and in conformity with written information furnished to the Company by the Selling Agent specifically for use therein, it being understood and agreed that the only such information furnished by the Selling Agent consists of the information described in Section 7(b). The foregoing indemnity agreement with respect to the Prospectus shall not inure to the benefit of the Selling Agent or any person controlling such Selling Agent to the extent a copy of the Prospectus (as then amended or supplemented), if the Company has previously furnished copies to the Selling Agent on a timely basis to permit proper delivery on or prior to the Closing Date, was not sent or given by or on behalf of such Selling Agent to a person who purchased the Shares and Warrants from the Company and is asserting any such losses, claims, damages, liabilities or actions, if required by law so to have been delivered, at or prior to the written confirmation of the sale of the Shares to such person, and to the extent the Prospectus (as so amended or supplemented) would have cured the misstatement or omission giving rise to such losses, claims, damages or liabilities. In addition to its other obligations under this Section 7(a), the Company agrees that, as an interim measure during the pendency of any claim, action, investigation, inquiry or other proceeding arising out of or based upon any statement or omission, or any alleged statement or omission, described in this Section 7(a), for which the Company has agreed to provide indemnification, it will reimburse the Selling Agent on a monthly basis for all reasonable legal and other expenses incurred in connection with investigating or defending any such claim, action, investigation, inquiry or other proceeding, notwithstanding the absence of a judicial determination as to the propriety and enforceability of the Company's obligation to reimburse the Selling Agent for such expenses and the possibility that such payments might later be held to have been improper by a court of competent jurisdiction. This indemnity agreement will be in addition to any liability which the Company may otherwise have.

- (b) The Selling Agent will indemnify and hold harmless the Company, each of its directors, each of its officers who signed the Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, against any losses, claims, damages or liabilities to which the Company, or any such director, officer or controlling person may become subject under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise (including in settlement of any litigation, if such settlement is effected

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with the written consent of the Selling Agent), insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue or alleged untrue statement of any material fact contained in the Registration Statement, the prospectus set forth in the Registration Statement on the effective date or the Prospectus, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, the prospectus set forth in the Registration Statement on the effective date or the Prospectus in reliance upon and in conformity with information furnished to the Company by the Selling Agent specifically for use in the preparation thereof, it being understood and agreed that the only such information furnished by the Selling Agent consists of the second sentence in the first paragraph and the last sentence in the fifth paragraph under the caption "Plan of Distribution" in the prospectus supplement relating to the Shares, Warrants and Warrant Shares that forms a part of the Prospectus; and will reimburse any legal or other expenses reasonably incurred by the Company, or any such director, officer or controlling person in connection with investigating or defending any such loss, claim, damage, liability or action. In addition to its other obligations under this Section 7(b), for which the Selling Agent has agreed to provide indemnification, the Selling Agent agrees that, as an interim measure during the pendency of any claim, action, investigation, inquiry or other proceeding arising out of or based upon any statement or omission, or any alleged statement or omission, described in this Section 7(b), it will reimburse the Company on a monthly basis for all reasonable legal and other expenses incurred in connection with investigating or defending any such claim, action, investigation, inquiry or other proceeding, notwithstanding the absence of a judicial determination as to the propriety and enforceability of the Selling Agent's obligation to reimburse the Company for such expenses and the possibility that such payments might later be held to have been improper by a court of competent jurisdiction. This indemnity agreement will be in addition to any liability which the Selling Agent may otherwise have.

- (c) Promptly after receipt by an indemnified party under this Section of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section, notify the indemnifying party of the commencement thereof; but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party except to the extent that the indemnifying party was prejudiced by such failure to notify. In case any such action is brought against any indemnified party, and it notifies an indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate in, and, to the extent that it may wish, jointly with all other indemnifying parties similarly notified, to assume the defense thereof, with counsel chosen by the indemnifying party and reasonably satisfactory to such indemnified party;

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provided, however, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded there may be legal defenses available to it and/or other indemnified parties which are different or additional to those available to the indemnifying party or the indemnified and indemnifying parties have actual or potential conflicting interests which would make it inappropriate for the same counsel to represent both of them, the indemnified party or parties shall have the right to select separate counsel to assume such legal defense and otherwise to participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of its election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed such counsel in connection with the assumption of legal defense in accordance with the proviso to the next preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel, approved by the Selling Agent in the case of paragraph (a) and approved by the Company in the case of paragraph (b), representing all indemnified parties), or (ii) the indemnifying party shall not have employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the action or (iii) the indemnifying party has authorized the employment of counsel for the indemnified party at the expense of the indemnifying party. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability arising out of such proceeding.

- (d) If the indemnification provided for in this Section is unavailable to an indemnified party under paragraphs (a) or (b) hereof in respect of any losses, claims, damages or liabilities referred to therein, then each applicable indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received indemnifying party or parties on the one hand and the indemnified party or parties on the other hand from the offering of the Shares and Warrants or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the indemnifying party or parties on the one hand and the indemnified party or parties on the other hand in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The respective relative benefits received by the Company and the Selling Agent shall



be deemed to be in the same proportion in the case of the Company as the total price paid to the Company for the Shares and Warrants (net of the selling agent fee but before deducting expenses) and in the case of the Selling Agent as the selling agent fee received by it bears to the total of such amounts paid to the Company and received by the Selling Agent in each case as contemplated by the Prospectus. The relative fault of the Company and the Selling Agent shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Company or by the Selling Agent and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid or payable by a party as a result of the losses, claims, damages and liabilities referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim.

- (e) The Company and the Selling Agent agree that it would not be just and equitable if contribution pursuant to this Section were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph. Notwithstanding the provisions of this Section, Selling Agent shall not be required to contribute any amount in excess of the amount by which the total price at which the Shares and Warrants were offered to the public pursuant hereto and the Securities Purchase Agreements exceeds the amount of any damages which Selling Agent has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.
- (f) The provisions of this Section shall survive any termination of this Agreement.

8. Termination.

The Selling Agent's engagement hereunder shall terminate on March 31, 2003 and may be terminated by either the Company or the Selling Agent at any time, with or without cause, upon written notice to the other party; provided, however, that no such termination will affect (a) the Selling Agent's right to expense reimbursement under Section 6, the payment of any accrued and unpaid fees pursuant to Section 5 or the indemnification contemplated by Section 7 or (b) the post-termination rights and obligations of the parties set forth in the Engagement Letter.

9. Notices.

For the purposes of giving notices in connection with this Agreement, notices may be given by personal delivery, facsimile or overnight courier, effective upon receipt, to the following addresses and facsimiles for each party:

To the Company:	Microvision, Inc. 19910 North Creek Parkway Bothell, Washington 98011 Facsimile No.: (425) 415-6600 Attention: Chief Executive Officer Attention: General Counsel
With a copy to	Ropes & Gray One International Place Boston, Massachusetts 02110-2624 Facsimile No.: (617) 951-7050 Attention: Joel F. Freedman
To the Selling Agent:	William Blair & Company, L.L.C. 222 West Adams Street Chicago, Illinois 60606 Facsimile No.: (312) 368-9418 Attention: Legal Department
With a copy to:	Katten Muchin Zavis Rosenman 525 West Monroe Street Suite 1600 Chicago, Illinois 60661 Facsimile No.: (312) 902-1061 Attention: Adam R. Klein

10. Miscellaneous.

- (a) Entire Agreement; Modification. This Agreement and the Engagement Letter constitute the entire understanding between the parties regarding the subject matter of this Agreement and supercede any prior or contemporaneous oral or written agreements between the parties with respect to the subject matter hereof, and may be altered or changed only by written agreement of the parties. In consideration of the mutual covenants and agreements hereof, the Company and the Selling Agent hereby agree that the Engagement Letter shall no longer be deemed to incorporate the terms of the Indemnity Agreement dated January 30, 2003, which Indemnity Agreement is expressly superceded by this Agreement. No statement, inducement, representation, warranty or covenant with respect to the subject matter hereof by either party hereto, or by any agent or representative of either party hereto, that is not contained in this Agreement or the Engagement Letter shall be valid or relied upon by, or be binding between, the parties. To the extent any of the provisions herein conflict with the provisions in the Engagement Letter, the provisions herein shall govern.
- (b) Assignability. Neither the Company nor the Selling Agent may assign its rights or obligations under this Agreement without the prior written approval of the other party. This Agreement will be binding upon all permitted successors, assigns, or transferees of the parties.

- (c) Representations and Indemnities to Survive Delivery. The respective indemnities, agreements, representations, warranties and other statements of the Company and its officers, set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on

behalf of the Selling Agent or any of its partners, principals, members, officers or directors or any controlling persons, and will survive delivery of and payment for the Shares and Warrants sold hereunder.

- (d) Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving affect to the principals of conflicts of laws. The Company irrevocably submits to the jurisdiction of any state or federal court in the State of New York for the purpose of any litigation or proceeding arising out of this Agreement or the transactions contemplated hereby, which is brought by or against the Company. Each of the Company and the Selling Agent (and, to the extent permitted by law, on behalf of each party's equity holders and creditors) hereby knowingly, voluntarily and irrevocably waives any right it may have to a trial by jury in respect of any claim based upon, arising out of or in connection with this Agreement and the transactions contemplated hereby.
- (e) Counterparts. This Agreement may be executed in one or more counterparts, and if so executed shall together constitute a single instrument.
- (f) Headings. The headings and captions of this Agreement are inserted for convenience of reference only and shall not be deemed a part hereof or used in the construction or interpretation of this Agreement.

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

**MICROVISION, INC.**

By: /s/ Richard Rutkowski  
Name: Richard Rutkowski  
Title: Chief Executive Officer

**WILLIAM BLAIR & COMPANY, L.L.C.**

By: /s/ James P. Hickey  
Name: James P. Hickey  
Title: Principal

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March 4, 2003

Olympus Securities, LLC  
900 Third Avenue  
26<sup>th</sup> Floor  
New York, NY 10022  
Attn: James Carrazza, President

Dear Mr. Carrazza:

This letter will serve to document the fee arrangement between Microvision, Inc. (the "Company") and Olympus Securities, LLC ("Olympus") regarding Olympus' involvement in the proposed purchase of common stock and warrants by Vertical Ventures and Zimmer Lucas and their investors on March 5, 2003 (the "Transaction").

Upon closing and receipt of all funds of the Transaction, the Company will pay Olympus a fee in cash of \$225,000.

The Company agrees to indemnify Olympus and its directors, officers, shareholders, and employees (the "Indemnified Parties") from and against any claims, actions, suits, proceedings, damages, liabilities and expenses incurred by such Indemnified Party arising out of the Transaction and which is based upon third party claims of: (i) rights to participate in the Transaction; or (ii) rights of fees based upon the closing of the Transaction. Notwithstanding anything to the contrary contained herein, the Company's above indemnification obligations shall not apply to: (a) the gross negligence or willful misconduct of any Indemnified Party and (b) any claims for fees asserted by Vertical Ventures and Zimmer Lucas. Olympus agrees to indemnify and hold harmless the Company, its officers, directors, shareholders and employees from any claims for fees from Vertical Ventures and Zimmer Lucas, its agents or affiliates.

[The remainder of this page has been left intentionally blank.]

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If this fee arrangement is acceptable to you, please countersign the one copy of this letter and return it to the Company in the enclosed prepaid return envelope.

Yours very truly,

/s/ Richard Rutkowski  
Richard Rutkowski  
Chief Executive Officer

RAR:pml  
Enclosures

Acknowledged and Agreed:

OLYMPUS SECURITIES, LLC

By: /s/ James Carrazza  
James Carrazza, President

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## WARRANT AGREEMENT

THIS WARRANT AGREEMENT is dated March 5, 2003, between Microvision, Inc., a Washington corporation (the "Company") and the Company, acting as warrant agent (in such capacity, the "Warrant Agent").

WHEREAS, the Company proposes to issue warrants (collectively, the "Warrants") to acquire up to 528,843 shares, subject to adjustment as provided herein, of common stock, no par value ("Common Stock"), of the Company (collectively, the "Warrant Shares");

WHEREAS, each Warrant shall represent the right to purchase from the Company, at an initial price of \$6.50 per share (the "Exercise Price"), the number of shares specified on the certificates evidencing the Warrants (the "Warrant Certificates"); and

WHEREAS, the Company is willing to serve as Warrant Agent in connection with the issuance of Warrant Certificates and the other matters as provided herein.

NOW, THEREFORE, in consideration of the foregoing and for the purpose of defining the terms and provisions of the Warrants and the respective rights and obligations thereunder of the Company, the Warrant Agent and the record holders from time to time of the Warrants (the "Holders"), the parties hereby agree as follows:

1. *Definitions.* For the purposes hereof, the following terms shall have the following meanings:

"Business Day" means any day except Saturday, Sunday and any day which shall be a federal legal holiday in the United States or a day on which banking institutions in the State of Washington are authorized or required by law or other government action to close.

"Date of Exercise" means the date on which the Holder shall have delivered to the Company (i) a Warrant Certificate, (ii) the Form of Election to Purchase attached thereto (with the Warrant Exercise Log attached to it), appropriately completed and duly signed, and (iii) payment of the Exercise Price in accordance with Section 12 for the number of Warrant Shares so indicated by the Holder to be purchased.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Expiration Date" means March 5, 2008, subject to the extension provisions in Section 13.

"Market Price" of a share of Common Stock on any date shall mean, (i) if the shares of Common Stock are traded on the Nasdaq National Market or Nasdaq SmallCap Market, the last bid price reported on that date; (ii) if the shares of Common Stock are no longer quoted on Nasdaq and are listed on any national securities exchange, the last sale price of the Common stock reported by such exchange on that date; (iii) if the shares of Common Stock are not quoted on a any such market or listed on any such exchange and the shares of Common Stock are traded in the over-the-counter market, the last price reported on such day by the OTC Bulletin Board or

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the Bulletin Board Exchange; (iv) if the shares of Common Stock are not quoted on a any such market, listed on any such exchange or quoted on the OTC Bulletin Board or the Bulletin Board Exchange, then the last price quoted on such day in the over-the-counter market as reported by the National Quotation Bureau Incorporated (or any similar organization or agency succeeding its functions of reporting prices); or (v) if none of clauses (i)-(iv) are applicable, then as determined, in good faith, by the Board of Directors of the Company.

"Person" means a corporation, association, partnership, limited liability corporation, organization, business, individual, government or political subdivision thereof or governmental agency.

"Trading Day" means (i) a day on which the shares of Common Stock are traded on the Nasdaq National Market, Nasdaq SmallCap Market, New York Stock Exchange or American Stock Exchange on which the shares of Common Stock are then listed or quoted, or (ii) if the shares of Common Stock are not listed on a any such exchange or market, a day on which the shares of Common Stock are traded in the over-the-counter market, as reported by the OTC Bulletin Board or the Bulletin Board Exchange, or (iii) if the shares of Common Stock are not quoted on the OTC Bulletin Board or the Bulletin Board Exchange, a day on which the shares of Common Stock are quoted in the over-the-counter market as reported by the National Quotation Bureau Incorporated (or any similar organization or agency succeeding its functions of reporting prices); provided, that in the event that the shares of Common Stock are not listed or quoted as set forth in clause (i), (ii) or (iii) hereof, then Trading Day shall mean a Business Day.

2. *Form of Warrant Certificates.* The Warrant Certificates shall be issued in registered form only as definitive Warrant Certificates and shall be substantially in the form attached hereto as Exhibit A, shall be dated the date of issuance thereof (whether upon initial issuance, register of transfer, exchange or replacement) and shall bear such legends and endorsements typed, stamped, printed, lithographed or engraved thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Agreement.

3. *Execution and Delivery of Warrant Certificates.* Warrant Certificates evidencing Warrants to purchase the number of shares of Common Stock specified on each Warrant Certificate shall be executed, on or after the date of this Agreement, by the Company and delivered to the Warrant Agent for countersignature, and the Warrant Agent shall thereupon countersign and deliver such Warrant Certificates to the purchasers thereof on or about the date of issuance. The Warrant Agent is hereby authorized to countersign and deliver Warrant Certificates as required by this Section 3. The Warrant Certificates shall be manually countersigned by the Warrant Agent and shall not be valid for any purpose unless so countersigned.

4. *Registration of Warrant.* The Company shall register each Warrant Certificate delivered by the Warrant Agent to a Holder, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the Holder thereof from time to time. The Company may deem and treat the registered Holder of each Warrant Certificate as the absolute owner of the Warrants represented thereby for the purpose of any exercise thereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

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5. *Registration of Transfers.* The Company shall register the transfer of any portion of a Warrant Certificate in the Warrant Register, upon surrender of the Warrant Certificate, with the Form of Assignment attached thereto duly completed and signed, to the Company at its address specified herein. Upon any such registration or transfer, a new Warrant Certificate substantially in the form attached hereto as Exhibit A (any such new Warrant Certificate, a "New Warrant Certificate"), evidencing the portion of the Warrant Certificate so transferred shall be issued to the transferee and a New Warrant Certificate evidencing the remaining portion of the Warrant Certificate not so transferred, if any, shall be issued to the transferring Holder. The delivery of the New Warrant Certificate by the Company to the transferee thereof shall be deemed to constitute acceptance by such transferee of all of the rights and obligations of a holder of a Warrant Certificate.

6. *Term of Warrants.* Warrants shall be exercisable by the registered Holder at any time and from time to time on or after September 6, 2003 to and including the Expiration Date. At 5:00 p.m., Seattle time on the Expiration Date, any portion of a Warrant not exercised prior thereto shall be and become void and of no value.

7. *Exercise of Warrants and Delivery of Warrant Shares.* A registered Holder may exercise the Warrants if there is a then effective registration statement covering the issuance of the Warrant Shares. Otherwise, a registered Holder may only exercise the Warrants after making customary representations requested by the Company regarding investment intent and accredited status, and agreeing to customary transfer restrictions requested by the Company to ensure compliance by the Company with applicable securities laws. At such times, and upon such representations and agreements, if applicable, upon surrender of a Warrant Certificate and delivery of the Form of Election to Purchase (with the Warrant Shares Exercise Log attached) to the Company at its address for notice set forth in Section 16, and upon payment of the Exercise Price multiplied by the number of Warrant Shares that the Holder intends to purchase thereunder (which must be a whole number) in accordance with Section 12 (the "Aggregate Exercise Price"), the Company shall promptly issue and deliver to the Holder a certificate for the Warrant Shares issuable upon such exercise. Any Person so designated by the Holder to receive Warrant Shares shall be deemed to have become holder of record of such Warrant Shares as of the Date of Exercise of the relevant Warrant Certificate. For so long as there is a then effective registration statement covering the issuance of the Warrant Shares, the Warrant Shares shall be issued free of all restrictive legends, and the Company shall, upon request of the Holder, if available, use commercially reasonable efforts to deliver Warrant Shares hereunder electronically through the Depository Trust Corporation or another established clearing corporation performing similar functions. If there is not a then effective registration statement covering the issuance of the Warrant Shares, the Warrant Shares shall be issued in certificated form and include customary legends regarding transfer restrictions deemed appropriate by the Company. If fewer than all Warrant Shares issuable upon exercise of the relevant Warrant Certificate are purchased on such Date of Exercise, then the Company will execute and deliver to the Holder or its assigns a New Warrant Certificate (dated the date thereof) evidencing the unexercised portion of the relevant Warrant Certificate.

8. *Charges, Taxes and Expenses.* Issuance and delivery of certificates for Warrant Shares shall be made without charge to the Holder for any issue or transfer tax, or transfer agent fee in respect of the issuance of such certificates, all of which taxes shall be paid by the

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Company; provided, however, that the Company shall not be obligated to pay any tax which may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or Warrants in a name other than that of the Holder. The Holder shall be responsible for all other tax liabilities that may arise as a result of holding or transferring any Warrant Certificate or receiving Warrant Shares upon exercise thereof.

9. *Replacement of Warrant Certificate.* If any Warrant Certificate is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof, or in lieu of and substitution for such Warrant Certificate, a New Warrant Certificate, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and customary and reasonable indemnity, if requested. Applicants for a New Warrant Certificate under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Company may prescribe.

10. *Reservation of Warrant Shares.* The Company covenants that it will at all times reserve and keep available out of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of all outstanding Warrants as herein provided, the number of Warrant Shares which are then issuable and deliverable upon the exercise of all outstanding Warrants (taking into account the adjustments and restrictions of Section 11). The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price in accordance with the terms hereof, be duly and validly authorized and issued, and be fully paid and nonassessable.

11. *Certain Adjustments.* The Exercise Price and number of Warrant Shares issuable upon exercise of each Warrant then outstanding are subject to adjustment from time to time as set forth in this Section 11.

(a) *Stock Dividends and Splits.* If the Company, (i) pays a stock dividend on its Common Stock, (ii) subdivides outstanding shares of Common Stock into a greater number of shares, or (iii) combines outstanding shares of Common Stock into a lesser number of shares, then in each such case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of shareholders entitled to receive such dividend, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination.

(b) *Extraordinary Transactions.* If, (i) the Company effects any merger or consolidation of the Company with or into another Person, (ii) the Company effects any sale of all or substantially all of its assets in one or a series of related transactions, (iii) any tender offer or exchange offer by the Company is completed pursuant to which holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, or (iv) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, an "Extraordinary Transaction"), then each

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Holder's Warrants will become the right thereafter to receive, upon exercise of his or her Warrants, the same amount and kind of securities, cash or property as such Holder would have been entitled to receive upon the occurrence of such Extraordinary Transaction if it had been, immediately prior to such Extraordinary Transaction, the holder of the number of Warrant Shares then issuable upon exercise in full of the relevant Warrant (the "Alternate Consideration") in lieu of Common Stock. The aggregate Exercise Price for each Warrant will not be affected by any such Extraordinary Transaction, but the Company shall apportion such aggregate Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in an Extraordinary Transaction, then each Holder, to the extent practicable, shall be given the same choice as to the Alternate Consideration it receives upon any exercise of his or her Warrant following such Extraordinary Transaction. In addition, at the request of each Holder, upon surrender of such Holder's Warrant, any successor to the Company or surviving entity in such Extraordinary Transaction shall issue to such Holder a new warrant consistent with the foregoing provisions and evidencing the Holder's right to purchase the Alternate Consideration for the aggregate Exercise Price upon exercise thereof. Each Warrant (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Extraordinary Transaction.

(c) *Number of Warrant Shares.* Simultaneously with any adjustment to the Exercise Price pursuant to paragraphs (a) or (b) of this Section, the number of Warrant Shares that may be purchased upon exercise of each Warrant shall be increased or decreased proportionately, as the case may be, so that after such adjustment the aggregate Exercise Price payable hereunder for the adjusted number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

(d) *Calculations.* All calculations under this Section 11 shall be made to the nearest cent or the nearest 1/100th of a share, as applicable.

(e) *Notice of Adjustments.* Upon the occurrence of each adjustment pursuant to this Section 11, the Company at its expense will promptly calculate such adjustment in accordance with the terms of this Agreement and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number of Warrant Shares or type of Alternate Consideration issuable upon exercise of each Warrant (as applicable), describing the transactions giving rise to such adjustments and showing in detail the facts upon which such adjustment is based. The Company will promptly deliver to each Holder who makes a request in writing, a copy of each such certificate.

(f) *Notice of Corporate Events.* If the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock (other than a dividend payable solely in shares of Common Stock) or (ii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then the Company shall deliver to each Holder a notice describing the material terms and conditions of such dividend, distribution or transaction. Notwithstanding anything to the

contrary in this Section 11(f), the failure to deliver any notice under this Section 11(f) or any defect therein shall not affect the validity of the corporate action required to be described in such notice. Until the exercise of its, his or her Warrant or any portion of such Warrant, a Holder shall not have nor exercise any rights by virtue of ownership of a Warrant as a shareholder of the Company (including without limitation the

right to notification of shareholder meetings or the right to receive any notice or other communication concerning the business and affairs of the Company other than as provided in this Section 11(f)).

12. *Payment of Exercise Price.* The Holder shall pay the Aggregate Exercise Price by wire transfer of immediately available funds, pursuant to wire instructions sent by the Company at the written request of the Holder.

13. *Black-out Period.* The Company shall use its reasonable best efforts to keep a registration statement with respect to the issuance of the Warrant Shares in effect until the Expiration Date or such shorter period that will terminate when all the Warrants have been exercised, and during such time period shall use reasonable best efforts to obtain the prompt withdrawal of any stop order suspending the effectiveness of any such registration statement. Notwithstanding the foregoing, the Company shall not be required to amend or supplement any registration statement, any related prospectus or any document incorporated by reference therein. At any time during which the Warrant Shares are included in a then-effective registration statement, the Company may suspend the ability of the Holders to exercise Warrants in any manner contemplated by this Agreement, for a reasonable period or periods (a "Black-out Period"), in the event that (i) an event occurs and is continuing as a result of a which the registration statement including the Warrant Shares, any related prospectus or any document incorporated therein by reference as then amended or supplement would, in the Company's good faith judgment, contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which the were made, not misleading, and (ii)(A) the Company determined in its good faith judgment that the disclosure of such event at such time would be to the detriment of the business, operations or prospects of the Company or (B) the disclosure otherwise relates to a business transaction which has not yet been publicly disclosed. Notwithstanding the foregoing provisions of this Section 13, (i) if a Black-out Period is in effect on the Expiration Date, then the Expiration Date shall be extended for the number of calendar days covered by such Black-out Period (but in no event more than ten (10) days beyond the end of such Black-Out Period) and (ii) (A) the aggregate number of days covered by Black-out Periods shall not exceed ninety (90) in a particular calendar year and (B) a Black-out Period may not be in effect for more than thirty (30) consecutive days.

14. *No Fractional Shares.* No fractional shares will be issued in connection with any exercise of a Warrant. In lieu of any fractional shares which would otherwise be issuable, the Company shall pay cash equal to the product of such fraction multiplied by the Market Price on the Date of Exercise.

15. *Exchange Act Filings.* The Holder agrees and acknowledges that it shall have sole responsibility for making any applicable filings with the U.S. Securities and Exchange Commission pursuant to Sections 13 and 16 of the Exchange Act as a result of its acquisition of any Warrant and the Warrant Shares and any future retention or transfer thereof.

16. *Notices.* Any and all notices or other communications or deliveries hereunder (including without limitation any Exercise Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section prior to 5:00 p.m. (Seattle time) on a Trading Day, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section on a day that is not a Trading Day or later than 5:00 p.m. (Seattle time) on any Trading

Day, (iii) the Trading Day following the date of mailing, if sent by nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. The addresses for such communications shall be:

*if to the Company:* Microvision, Inc.  
19910 North Creek Parkway  
Bothell, Washington, 98011-3008  
Attn: Chief Financial Officer  
Facsimile No.: (425) 481-6795

*if to the Holder:* to the address or facsimile number appearing on the Warrant Register or such other address or facsimile number as the Holder may provide to the Company in accordance with this Section 16.

17. *Warrant Agent.*

(a) The Company and the Warrant Agent hereby agree that the Warrant Agent will serve as an agent of the Company as set forth in this Agreement.

(b) The Warrant Agent shall not by any act hereunder be deemed to make any representation as to validity or authorization of the Warrants or the Warrant Certificates (except as to its countersignature thereon) or of any securities or other property delivered upon exercise of any Warrant, or as to the number or kind or amount of securities or other property deliverable upon exercise of any Warrant or the correctness of the representations of the Company made in such certificates that the Warrant Agent receives.

(c) The Warrant Agent shall not have any duty to calculate or determine any required adjustments with respect to the Exercise Price or the kind and amount of securities or other property receivable by Holders upon the exercise of Warrants, nor to determine the accuracy or correctness of any such calculation.

(d) The Warrant Agent shall not (i) be liable for any recital or statement of fact contained herein or in the Warrant Certificates or for any action taken, suffered or omitted by it in good faith in the belief that any Warrant Certificate or any other document or any signature is genuine or properly authorized, (ii) be responsible for any failure by the Company to comply with any of its obligations contained in this Agreement or in the Warrant Certificates, (iii) be liable for any act or omission in connection with this Agreement except for its own gross negligence or willful misconduct or (iv) have any responsibility to determine whether a transfer of a Warrant complies with applicable securities laws.

(e) The Warrant Agent is hereby authorized to accept instructions with respect to the performance of its duties hereunder from the Chief Executive Officer, the President, any Vice President, the Treasurer, or the Secretary or any Assistant Secretary of the Company and to apply to any such officer for written instructions (which will then be promptly given) and the Warrant Agent shall not be liable for any action taken or suffered to be taken by it in good faith in accordance with the instructions of any such officer, except for its own gross negligence or willful misconduct, but in its discretion the Warrant Agent may in lieu thereof accept other

(f) The Warrant Agent may exercise any of the rights and powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys, agents or employees, provided reasonable care has been exercised in the selection and in the continued employment of any persons. The Warrant Agent shall not be under any obligation or duty to institute, appear in or defend any action, suit or legal proceeding in respect hereof, unless first indemnified to its satisfaction. The Warrant Agent shall promptly notify the Company in writing of any claim made or action, suit or proceeding instituted against or arising out of or in connection with this Agreement.

(g) The Company will take such action as may reasonably be required by the Warrant Agent in order to enable it to carry out or perform its duties under this Agreement.

(h) The Warrant Agent shall act solely as agent of the Company hereunder. The Warrant Agent shall only be liable for the failure to perform such duties as are specifically set forth herein.

(i) The Warrant Agent may consult with legal counsel satisfactory to it (who may be legal counsel for the Company), and the Warrant Agent shall incur no liability or responsibility to the Company or to any Holder for any action taken, suffered or omitted by it in good faith in accordance with the opinion or advice of such counsel.

(j) The Company agrees to pay to the Warrant Agent compensation for all services rendered by the Warrant Agent hereunder as the Company and the Warrant Agent may agree from time to time, and to reimburse the Warrant Agent for reasonable expenses incurred in connection with the execution and administration of this Agreement (including the reasonable compensation and expenses of its counsel), and further agrees to indemnify the Warrant Agent for, and hold it harmless against, any loss, liability or expense incurred without gross negligence, bad faith or willful misconduct on its part, arising out of or in connection with the acceptance and administration of this Agreement.

(k) The Warrant Agent, and any shareholder, director, officer or employee of the Warrant Agent, may buy, sell or deal in any of the Warrants or other securities of the Company or its Affiliates or become pecuniarily interested in transactions in which the Company or its Affiliates may be interested, or contract with or lend money to the Company or its Affiliates or otherwise act as fully and freely as though it were not the Warrant Agent under this Agreement. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other Person.

(l) No resignation or removal of the Warrant Agent and no appointment of a successor warrant agent shall become effective until the acceptance of appointment by the successor warrant agent as provided herein. The Warrant Agent may resign its duties and be discharged from all further duties and liability hereunder (except liability arising as a result of the Warrant Agent's own gross negligence or willful misconduct) after giving written notice to the Company. The Company may remove the Warrant Agent upon written notice, and the Warrant Agent shall thereupon in like manner be discharged from all further duties and liabilities hereunder, except as aforesaid. The Warrant Agent shall, at the Company's expense, cause to be mailed (by first class

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mail, postage prepaid) to each Holder of a Warrant at such Holder's last address as shown on the register of the Company maintained by the Warrant Agent a copy of said notice of resignation or notice of removal, as the case may be. Upon such resignation or removal, the Company shall appoint in writing a new warrant agent. If the Company fails to do so within a period of 30 days after it has been notified in writing of such resignation by the resigning Warrant Agent or after such removal, then the resigning Warrant Agent or the Holder of any Warrant may apply to any court of competent jurisdiction for the appointment of a new warrant agent. After acceptance in writing of such appointment by the new warrant agent, it shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named herein as the Warrant Agent. Not later than the effective date of any such appointment, the Company shall give notice thereof to the resigning or removed Warrant Agent. Failure to give any notice provided for in this Section 17(l), however, or any defect therein, shall not affect the legality or validity of the resignation of the Warrant Agent or the appointment of a new warrant agent, as the case may be.

(m) Any corporation into which the Warrant Agent or any new warrant agent may be merged or any corporation resulting from any consolidation to which the Warrant Agent or any new warrant agent shall be a party or any corporation to which the Warrant Agent transfers substantially all of its corporate trust business shall be a successor Warrant Agent under this Agreement without any further act, provided that such corporation (i) would be eligible for appointment as successor to the Warrant Agent under the provisions of Section 17(l) or (ii) is a wholly owned subsidiary of the Warrant Agent. Any such successor Warrant Agent shall promptly cause notice of its succession as Warrant Agent to be mailed (by first class mail, postage prepaid) to each Holder in accordance with Section 16.

#### 18. *Miscellaneous.*

(a) *Successors and Assigns.* This Agreement shall be binding on and inure to the benefit of the Company, the Warrant Agent and the Holders, and their respective successors and assigns. Subject to the preceding sentence, nothing in this Agreement shall be construed to give to any Person other than the Company, the Warrant Agent and the Holders any legal or equitable right, remedy or cause of action under this Agreement.

(b) *Amendments and Waivers.* The Company may, without the consent of the Holders, by supplemental agreement or otherwise, (i) make any changes or corrections in this Agreement that are required to cure any ambiguity or to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein or (ii) add to the covenants and agreements of the Company for the benefit of the Holders, or surrender any rights or power reserved to or conferred upon the Company in this Agreement; provided that, in the case of (i) or (ii), such changes or corrections shall not adversely affect the interests of Holders of then outstanding Warrants in any material respect. The Company may, with the consent, in writing or at a meeting, of the Holders of outstanding Warrants exercisable for two-thirds of the Warrant Shares, amend in any way, by supplemental agreement or otherwise, this Agreement and/or all of the outstanding Warrant Certificates; provided, however, that no such amendment shall adversely affect any Holder differently than it affects all other Holders, unless such Holder consents thereto. The Warrant Agent shall at the request of the Company, and without need of independent inquiry as to whether such supplemental agreement is permitted by the terms of this Section 18(b), join with the Company in the execution and delivery of any such supplemental agreements, but shall not be required to join in such execution and delivery for such

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supplemental agreement to become effective.

(c) *Choice of Law, etc.* All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Washington, without regard to the principles of conflicts of law thereof. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. If either party shall commence an action or proceeding to enforce any provisions of this Agreement, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

(d) *Interpretation.* The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

(e) *Severability.* In case any one or more of the provisions of this Agreement shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt in good faith to agree upon a valid and

enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Agreement.

[The remainder of this page has been left intentionally blank.]

IN WITNESS WHEREOF, the parties has caused this Agreement to be duly executed by its authorized officer as of the date first indicated above.

MICROVISION, INC.

By: \_\_\_\_\_  
Name: Richard Rutkowski  
Title: Chief Executive Officer

MICROVISION, INC., in its capacity as Warrant Agent

By: \_\_\_\_\_  
Name: Richard Raisig  
Title: Chief Financial Officer

Exhibit A

EXERCISABLE ON OR AFTER SEPTEMBER 6, 2003  
AND ON OR BEFORE THE EXPIRATION DATE

No.		Warrant to Purchase	Shares
	Warrant Certificate		

WARRANTS TO ACQUIRE COMMON STOCK OF MICROVISION, INC.

This Warrant Certificate certifies that, \_\_\_\_\_, or registered assigns, is the registered holder of a Warrant (the "Warrant") to acquire from Microvision, Inc., a Washington corporation (the "Company"), the number of fully paid and non-assessable shares of Common Stock, no par value, of the Company (the "Common Stock") specified above for consideration equal to the Exercise Price (as defined in the Warrant Agreement) per share of Common Stock. The Exercise Price and number of shares of Common Stock and/or type of securities or property issuable upon exercise of the Warrant are subject to adjustment upon the occurrence of certain events as set forth in the Warrant Agreement. The Warrant evidenced by this Warrant Certificate shall not be exercisable after and shall terminate and become void as of 5:00 P.M., Seattle time, on the Expiration Date.

The Warrant evidenced by this Warrant Certificate is part of a duly authorized issue of warrants expiring on the Expiration Date entitling the Holder hereof to receive shares of Common Stock, no par value, of the Company (the "Common Stock"), and is issued or to be issued pursuant to a Warrant Agreement dated March 5, 2003 (the "Warrant Agreement"), duly executed and delivered by the Company to the Company, as warrant agent (the "Warrant Agent", which term includes any successor Warrant Agent under the Warrant Agreement), which Warrant Agreement is hereby incorporated by reference in and made a part of this instrument and is hereby referred to for a description of the rights, limitation of rights, obligations, duties and immunities thereunder of the Warrant Agent, the Company and the Holders ("Holders" meaning, from time to time, the registered holders of the warrant issued thereunder). To the extent any provisions of this Warrant Certificate conflicts with any provision of the Warrant Agreement, the provisions of the Warrant Agreement shall apply. A copy of the Warrant Agreement may be obtained by the Holder hereof upon written request to the Company at 19910 North Creek Parkway, Bothell, Washington, 98011, Attention: General Counsel. Capitalized terms not defined herein have the meanings ascribed thereto in the Warrant Agreement.

This Warrant may be exercised, in whole or in part, at any time on or after September 6, 2003 and on or before the Expiration Date, subject to the terms of the Warrant Agreement including, but not limited to, Section 13 thereof, by surrendering this Warrant Certificate, with the Form of Election to Purchase set forth hereon properly completed and executed, together with payment of the Aggregate Exercise Price in accordance with Section 12 of the Warrant Agreement. Each exercise must be for a whole number of Warrant Shares. In the event that

upon any exercise of the Warrant evidenced hereby the number of shares of Common Stock acquired shall be less than the total number of shares of Common Stock which may be purchased pursuant to this Warrant, there shall be issued to the Holder hereof or such Holder's assignee a new Warrant Certificate evidencing the unexercised portion of this Warrant.

The Warrant Agreement provides that upon the occurrence of certain events the Exercise Price set forth on this Warrant Certificate may, subject to certain conditions, be adjusted, and that upon the occurrence of certain events the number of shares of Common Stock and/or the type of securities or other property issuable upon the exercise of this Warrant shall be adjusted. No fractions of a share of Common Stock will be issued upon the exercise of this Warrant, but the Company will pay the cash value thereof determined as provided in the Warrant Agreement.

Warrant Certificates, when surrendered at the office of the Warrant Agent by the registered Holder thereof in person or by such Holder's legal representative or attorney duly appointed and authorized in writing, may be exchanged, in the manner and subject to the limitations provided in the Warrant Agreement, but without payment of any service charge, for another Warrant Certificate or Warrant Certificates of like tenor evidencing in the aggregate the right to purchase a like number of Warrant Shares.

Each taker and holder of this Warrant Certificate, by taking or holding the same, consents and agrees that the holder of this Warrant Certificate when duly endorsed in blank may be treated by the Company, the Warrant Agent and all other persons dealing with this Warrant Certificate as the absolute owner hereof for any purpose and as the person entitled to exercise the rights represented hereby or the person entitled to the transfer hereof on the register of the Company maintained by the Warrant Agent, any notice to the contrary notwithstanding, provided that until such transfer on such register, the Company and the Warrant Agent may treat the registered Holder hereof as the owner for all purposes.

This Warrant does not entitle any Holder to any of the rights of a shareholder of the Company.



This Warrant Certificate and the Warrant Agreement are subject to amendment as provided in the Warrant Agreement.

This Warrant Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by the Warrant Agent.

[The remainder of this page has been left intentionally blank.]

IN WITNESS WHEREOF, the undersigned have caused this Certificate to be executed as of the date set forth below.

MICROVISION, INC.

By: \_\_\_\_\_  
Name: Richard Rutkowski  
Title: Chief Executive Officer

DATED: March \_\_\_\_\_, 2003

Countersigned:  
MICROVISION, INC.,  
as Warrant Agent

By: \_\_\_\_\_  
Name: Richard Raisig  
Title: Chief Financial Officer

FORM OF ELECTION TO PURCHASE

To Microvision, Inc.:

In accordance with the Warrant Certificate enclosed with this Form of Election to Purchase, the undersigned hereby irrevocably elects to exercise the Warrant with respect to \_\_\_\_\_ Warrant Shares in accordance with the terms of the Warrant Agreement, and has sent via wire transfer to the account the Company the amount of \$ \_\_\_\_\_ in immediately available funds, which sum represents the Aggregate Exercise Price (as defined in the Warrant Agreement) for the number of shares of Common Stock to which this Form of Election to Purchase relates, together with any applicable taxes payable by the undersigned pursuant to the Warrant.

The undersigned requests that certificates for the shares of Common Stock issuable upon this exercise be issued in the name of

Name:  
Address:

Social Security or Tax I.D. No.:

Warrant Shares Exercise Log

Date	Number of Warrant Shares Available to be Exercised	Number of Warrant Shares Exercised	Number of Warrant Shares Remaining to be Exercised

FORM OF ASSIGNMENT

[To be completed and signed only upon transfer of Warrant]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the right represented by the within Warrant Certificate to purchase \_\_\_\_\_ shares of Common Stock of Microvision, Inc. to which the within Warrant Certificate relates and appoints \_\_\_\_\_ attorney to transfer said right on the books of Microvision, Inc. with full power of substitution in the premises.

Dated: \_\_\_\_\_,

(Signature must conform in all respects to name of holder as specified on the front page of the Warrant Certificate)

In the presence of:

March 5, 2003

Microvision, Inc.  
19910 North Creek Parkway  
Bothell, WA 98011

Ladies and Gentlemen:

This opinion is furnished to you in connection with the Registration Statement on Form S-3 (File No. 333-102244) (the "Registration Statement"), including all the prospectus supplements and prospectus filed on March 5, 2003 pursuant to Rule 424(b) promulgated under the Securities Act of 1933 (the "Act") that is part of the Registration Statement (collectively, the "Prospectus"), filed by Microvision, Inc., a Washington corporation (the "Company"), with the Securities and Exchange Commission under the Act, for the registration of shares (the "Shares") of the Company's common stock, no par value (the "Common Stock"), warrants exercisable for Common Stock (the "Warrants"), and Common Stock issuable upon exercise of the Warrants (the "Warrant Shares," and collectively with the Shares and the Warrants, the "Securities").

We have acted as counsel for the Company in connection with the issuance of the Securities. For purposes of this opinion, we have examined and relied upon such documents, records, certificates and other instruments as we have deemed necessary.

The opinions expressed below are limited to the Washington Business Corporation Act.

Based upon and subject to the foregoing, we are of the opinion that (i) the Shares have been duly authorized by the Company and, when issued and delivered by the Company against payment therefore in accordance with the terms of the Securities Purchase Agreements dated March 3, 2003 between the Company and the purchasers of the Shares and Warrants (the "Securities Purchase Agreements"), will be validly issued, fully paid and nonassessable, (ii) the Warrants have been duly authorized and, when issued and delivered by the Company in accordance with the terms of the Securities Purchase Agreements, will be validly issued, and (iii) the Warrant Shares have been duly authorized by the Company and, when issued and delivered by the Company upon exercise in accordance with the Warrants, the Warrant Shares will be validly issued, fully paid and nonassessable.

We hereby consent to your filing this opinion as an exhibit to the Registration Statement and to the use of our name therein and in the Prospectus under the caption "Legal Matters."

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This opinion may be used only in connection with the offer and sale of the Securities while the Registration Statement is in effect.

Very truly yours,

/s/ Ropes & Gray

Ropes & Gray

## SECURITIES PURCHASE AGREEMENT

SECURITIES PURCHASE AGREEMENT (this "Agreement"), dated as of March 3, 2003, by and between Microvision, Inc., a Washington corporation (the "Company"), and the investor named on the signature page hereof (the "Investor").

## WITNESSETH

WHEREAS, the Company has filed with the Securities and Exchange Commission (the "Commission") the Registration Statement (as defined below) relating to the offer and sale from time to time of the Company's securities, including shares of its Common Stock, no par value ("Common Stock"), and warrants to purchase shares of Common Stock;

WHEREAS, the Company is offering for sale shares of Common Stock (the "Offered Shares") and warrants to purchase shares of Common Stock ("Offered Warrants") under a warrant agreement and certificate, in substantially the form attached hereto as Exhibit A, pursuant to the Registration Statement; and

WHEREAS, the Investor desires to purchase from the Company Offered Shares and Offered Warrants on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the recitals (which are deemed to be a part of this Agreement), mutual covenants, representations, warranties and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. As used herein, the following terms have the meanings indicated:

"Person" shall mean any individual, partnership, limited liability company, joint venture, firm, corporation, association, trust or other enterprise or any government or political subdivision or any agency, department or instrumentality thereof.

"Prospectus" shall mean the prospectus forming a part of the Registration Statement and the prospectus supplement relating to the Offered Shares, Offered Warrants, and shares of Common Stock issuable upon exercise of the Offered Warrants, in the form first filed pursuant to Rule 424(b) under the Securities Act, as amended (the "Securities Act"), as further amended or supplemented at the relevant time, and shall include all information and documents incorporated by reference in such prospectus.

"Registration Statement" shall mean the registration statement on Form S-3 (File No. 333-102244), including a prospectus, relating to the offer and sale of certain of the Company's securities, including its Common Stock and warrants, which was declared effective by the Commission on February 12, 2003. References herein to the term "Registration Statement" as of any date shall mean such effective registration statement, as amended or supplemented to such date, including all information and documents incorporated by reference therein as of such date.

2. Purchase of Common Stock. Subject and pursuant to the terms and conditions set forth in this Agreement, the Company agrees that it will issue and sell to the Investor and the

Investor agrees that it will purchase from the Company (i) the number of Offered Shares set forth on Schedule I attached hereto (the "Investor Shares") and (ii) Offered Warrants ("Investor Warrants") to purchase the number of shares of Common Stock set forth on Schedule I attached hereto (the "Warrant Shares") at an exercise price per Warrant Share set forth on Schedule I hereto. The aggregate purchase price for the Investor Shares and Investor Warrants (excluding proceeds received upon exercise of the Investor Warrants) (the "Aggregate Purchase Price") and the purchase price per Investor Share and accompanying Investor Warrant is set forth on Schedule I hereto. The closing of the purchase and sale of the Investor Shares and Investor Warrants will be on the date and at the time set forth on Schedule I hereto, or such other date or time as the parties may agree upon in writing (the "Closing").

3. Deliveries at Closing

- (a) Deliveries by the Investor. At the Closing, the Investor shall deliver to the Company the Aggregate Purchase Price by wire transfer of immediately available funds to an account designated by the Company as set forth on Schedule I hereto, which funds will be delivered to the Company in consideration of the Investor Shares and Investor Warrants issued at the Closing.
- (b) Deliveries by the Company. At the Closing, the Company shall deliver to the Investor the Investor Shares through The Depository Trust Company DWAC system to the account that the Investor has specified in writing to the Company and the Investor Warrants in the name of the Investor (or a nominee designated in writing by the Investor).

4. Representations, Warranties, Covenants and Agreements.

(a) Investor Representations, Warranties and Covenants. The Investor represents, warrants and agrees as follows:

- (1) The Investor has received and reviewed copies of the Registration Statement and the Prospectus, including all documents and information incorporated by reference therein and amendments thereto, and understands that no Person has been authorized to give any information or to make any representations that were not contained in the Registration Statement and the Prospectus, and the Investor has not relied on any such other information or representations in making a decision to purchase the Investor Shares. The Investor hereby consents to receiving delivery of the Registration Statement and the Prospectus, including all documents and information incorporated by reference therein and amendments thereto, by electronic mail. The Investor understands that an investment in the Company involves a high degree of risk for the reasons, among others, set forth under the captions "RISK FACTORS" in the Prospectus.
- (2) The Investor acknowledges that it has sole responsibility for its own due diligence investigation and its own investment decision, and that in connection with its investigation of the accuracy of the information contained or incorporated by reference in the Registration Statement and

the Prospectus and its investment decision, the Investor has not relied on any representation or information not set forth in this Agreement, the Registration Statement or the Prospectus, on the selling agent (William Blair & Company, L.L.C.) or any Person affiliated with the selling agent, or the Company or on the fact that any other Person has decided to invest in the Offered Shares.

- (3) The execution and delivery of this Agreement by the Investor and the performance of this Agreement and the consummation by the Investor of the transactions contemplated hereby have been duly authorized by all necessary (corporate, partnership or limited liability in the case of a corporation, partnership or limited liability company) action of the Investor, and this Agreement, when duly executed and delivered by the Investor, will

constitute a valid and legally binding instrument, enforceable in accordance with its terms against the Investor, except as enforcement hereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization or similar laws or court decisions affecting enforcement of creditors' rights generally and except as enforcement hereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

- (4) No state, federal or foreign regulatory approvals, permits, licenses or consents or other contractual or legal obligations are required for the Investor to enter into this Agreement or purchase the Investor Shares.

(b) Company Representations, Warranties and Covenants. The Company hereby represents, warrants and agrees as follows:

- (1) The Company has been duly incorporated and has a valid existence and the authorization to transact business as a corporation under the laws of the State of Washington, with corporate power and authority to own its properties and conduct its business as described in the Prospectus, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, except for such jurisdictions wherein the failure to be so qualified and in good standing would not individually or in the aggregate have a material adverse effect on the business, results of operations or financial condition of the Company and its subsidiaries taken as a whole (a "Material Adverse Effect"); and each subsidiary of the Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of its jurisdiction of incorporation, with corporate power and authority to own its properties and conduct its business as described in the Prospectus, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, except for such jurisdictions wherein the failure to be so qualified and in good standing would not individually or in the aggregate have a Material Adverse

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Effect. Lumera Corporation, a Washington corporation ("Lumera"), is the Company's only subsidiary.

- (2) This Agreement has been duly authorized, executed and delivered by the Company, and the Investor Warrants have been duly authorized, and will be duly executed and delivered, by the Company; and this Agreement and the Investor Warrants, when duly executed and delivered by the parties hereto or thereto, will constitute valid and legally binding instruments of the Company enforceable in accordance with their terms, except as enforcement hereof or thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization or similar laws or court decisions affecting enforcement of creditors' rights generally and except as enforcement hereof or thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).
- (3) The Investor Shares have been duly authorized by the Company, and when issued and delivered by the Company against payment therefor as contemplated by this Agreement, the Investor Shares will be validly issued, fully paid and nonassessable, and will conform to the description of the Common Stock contained in the Prospectus. The Warrant Shares have been duly authorized by the Company and enough Warrant Shares have been reserved by the Company for issuance upon exercise of the Investor Warrants. Upon exercise in accordance with the Investor Warrants, the Warrant Shares will be validly issued, fully paid and nonassessable and will conform to the description of the Common Stock contained in the Prospectus. The Investor Warrants when issued and delivered by the Company as contemplated hereby will conform to the description of Company warrants contained in the Prospectus.
- (4) The execution and delivery of this Agreement do not, and the execution and delivery of the Investor Warrants and the issuance and sale by the Company of the Investor Shares, Investor Warrants and Warrant Shares and the compliance by the Company with the terms hereof and thereof will not, (i) violate the Articles of Incorporation (as amended to date) of the Company or the By-Laws (as amended to date) of the Company, (ii) result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of their properties or assets are subject, or (iii) result in a violation of, or failure to be in compliance with, any applicable statute or any order, judgment, decree, rule or regulation of any court or governmental, regulatory or self-regulatory agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties or assets, except where such breach, violation, default or the failure to be in compliance would not individually or in the aggregate have a Material Adverse Effect or adversely affect the ability of the Company to issue and sell the Investor Shares, Investor Warrants and Warrant Shares; and no consent, approval, authorization, order, registration, filing or qualification of or with any such court or governmental, regulatory or

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self-regulatory agency or body is required for the valid authorization, execution, delivery and performance by the Company of this Agreement or the Investor Warrants or the issuance of the Investor Shares, Investor Warrants or Warrant Shares, except for such consents, approvals, authorizations, registrations, filings or qualifications as may be required under the Securities Act or state securities or "blue sky" laws or have been or will be obtained or made in connection with the listing of the Investor Shares and Warrant Shares on the Nasdaq National Market.

- (5) The Company meets the requirements for the use of Form S-3 under the Securities Act for the primary issuance of securities. The Registration Statement has been declared effective by the Commission and at the time it became effective, and as of the date hereof, the Registration Statement complied and complies with Rule 415 under the Securities Act. No stop order suspending the effectiveness of the Registration Statement has been issued and no proceeding for that purpose has been initiated or, to the Company's knowledge, threatened by the Commission. On the effective date of the Registration Statement, the Registration Statement complied, on the date of the Prospectus, the Prospectus will comply, and at the date of the Closing, the Registration Statement and the Prospectus will comply, in all material respects with the applicable provisions of the Securities Act and the applicable rules and regulations of the Commission thereunder; on the effective date of the Registration Statement, the Registration Statement did not, on the date of the Prospectus, the Prospectus did not, and at the date of the Closing, the Registration Statement and the Prospectus will not, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made (with respect to the Prospectus), not misleading; and when filed with the Commission, the documents incorporated by reference in the Registration Statement and the Prospectus, taken as a whole, complied or will comply in all material respects with the applicable provisions of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the applicable rules and regulations of the Commission thereunder. There is no material document of a character required to be described in the Registration Statement or the Prospectus or to be filed as an exhibit to the Registration Statement that is not described or filed as required.
- (6) The consolidated financial statements and financial schedules of the Company included or incorporated by reference in the Registration Statement and the Prospectus have been prepared in conformity with generally accepted accounting principles (except, with respect to the unaudited consolidated financial statements, for the footnotes and subject to customary audit adjustments) applied on a consistent basis, are consistent in all material respects with the books and records of the Company, and accurately present in all material respects the consolidated financial position, results of operations and cash flow of the Company and its subsidiaries as of and for the periods covered thereby.

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- (7) Neither the Company nor any of its subsidiaries has sustained since the respective dates of the latest audited financial statements included in the Registration Statement and Prospectus any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as disclosed in or contemplated by the Registration Statement and Prospectus; and, since the respective dates as of which information is given in the Registration Statement and Prospectus, there has not been any material change in the capital stock or long-term debt of the Company or any of its subsidiaries, the Company and its subsidiaries have not incurred any material liabilities or obligations, direct or contingent, nor entered into any material transactions not in the ordinary course of business and there has not been any material adverse change in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Company and its subsidiaries considered as a whole, otherwise than as disclosed in or contemplated by the Registration Statement and Prospectus.
- (8) Other than as disclosed in the Prospectus, there are no legal, governmental or regulatory proceedings pending to which the Company or any of its subsidiaries is a party or of which any material property of the Company or any of its subsidiaries is the subject which, taking into account the likelihood of the outcome, the damages or other relief sought and other relevant factors, would individually or in the aggregate reasonably be expected to have a Material Adverse Effect or adversely affect the ability of the Company to issue and sell the Investor Shares, Investor Warrants and Warrant Shares; to the best of the Company's knowledge, no such proceedings are threatened or contemplated by governmental or regulatory authorities or threatened by others.
- (9) The Company and each of its subsidiaries have good and marketable title to all the real property and owns all other properties and assets, reflected as owned in the financial statements included in the Registration Statement and the Prospectus, subject to no lien, mortgage, pledge, charge or encumbrance of any kind except those, if any, reflected in such financial statements or which are not material to the Company and its subsidiaries taken as a whole. The Company and each of its subsidiaries hold their respective leased real and personal properties under valid and binding leases, except where the failure to do so would not reasonably be expected to individually or in the aggregate have a Material Adverse Effect.
- (10) The Company has filed all necessary federal and state income and franchise tax returns and has paid all taxes shown as due thereon, and there is no tax deficiency that has been, or to the knowledge of the Company might be, asserted against the Company or any of its properties or assets that would in the aggregate or individually reasonably be expected to have a Material Adverse Effect.

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- (11) There are no holders of securities of the Company having preemptive rights to purchase Common Stock. There are no holders or beneficial owners of securities of the Company having rights to registration thereof whose securities have not been previously registered or who have not waived such rights with respect to the registration of the Company's securities on the Registration Statement, except where the failure to obtain such waiver would not individually or in the aggregate reasonably be expected to have a Material Adverse Effect.
- (12) The Company has not taken and will not take any action that constitutes or is designed to cause or result, or which might reasonably be expected to cause or result, under the Exchange Act or otherwise, in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Offered Shares.
- (13) Other than as disclosed in the Prospectus (but not including the disclosure under the captions "Risk Factors – We could face lawsuits related to our use of the scanned beam technology or other technologies. Defending these suits would be costly and time consuming. An adverse outcome in any such matters could limit our ability to commercialize our technology and products, our revenues, and increase our operating costs" and "Risk Factors – If we and our licensors are unable to obtain effective intellectual property protection for our products and technology, we may be unable to compete with other companies"), the Company together with its subsidiaries owns and possesses all right, title and interest in and to, or, to the Company's knowledge, has duly licensed from third parties, all patents, patent rights, trade secrets, inventions, know-how, trademarks, trade names, copyrights, service marks and other proprietary rights ("Intellectual Property") material to the business of the Company and each of its subsidiaries taken as a whole as currently conducted and as described in the Prospectus. To the Company's knowledge and except as would not individually or in the aggregate have a Material Adverse Effect, there is no infringement or other violation by third parties of any of the Intellectual Property of the Company. Neither the Company nor any of its subsidiaries has received any notice of infringement or misappropriation from any third party that has not been resolved or disposed of and, to the Company's knowledge, neither the Company nor any of its subsidiaries has infringed or misappropriated the Intellectual Property of any third party, which infringement or misappropriation would individually or in the aggregate have a Material Adverse Effect. Further, there is no pending or, to the Company's knowledge and except as would not individually or in the aggregate have a Material Adverse Effect, threatened action, suit, proceeding or claim by governmental authorities or others that the Company is infringing a patent, and there is no pending or, to the Company's knowledge and except as would not individually or in the aggregate have a Material Adverse Effect, threatened legal or administrative proceeding relating to patents and patent applications of the Company, other than proceedings initiated by the Company before the United States Patent and Trademark Office and the patent offices of certain foreign jurisdictions which are in the ordinary course of patent prosecution. To the Company's knowledge, the patent applications

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of the Company presently on file disclose patentable subject matter, and the Company is not aware of any inventorship challenges, any interference which has been declared or provoked, or any other material fact that (i) would preclude the issuance of patents with respect to such applications, or (ii) would lead such counsel to conclude that such patents, when issued, would not be valid and enforceable in accordance with applicable regulations.

- (14) Except as disclosed in the Prospectus, neither the Company nor any of its subsidiaries is in violation of any statute, any rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, the "Environmental Laws"), owns or operates any real property contaminated with any substance that is subject to any Environmental Laws, is liable for any off-site disposal or contamination pursuant to any Environmental Laws, or is subject to any claim relating to any Environmental Laws, which violation, contamination, liability or claim would individually or in the aggregate have Material Adverse Effect; and the Company is not aware of any pending investigation which might lead to such a claim.
- (15) The conduct of the business of the Company and each of its subsidiaries is in compliance in all respects with applicable laws, rules and regulations of governmental and regulatory bodies, except where the failure to be in compliance would not individually or in the aggregate have a Material Adverse Effect.
- (16) The Company is not, and does not intend to conduct its business in a manner in which it would become, an "investment company" as defined in

- (17) All offers and sales of the Company's capital stock prior to the date hereof were at all relevant times registered pursuant to the Securities Act or exempt from the registration requirements of the Securities Act and were duly registered with or the subject of an available exemption from the registration requirements of the applicable state securities or blue sky laws, except where the failure to do so would not individually or in the aggregate reasonably be expected to have a Material Adverse Effect.
- (18) The Company and its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurances that (i) material transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; and (iii) the recorded accounting for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company and its subsidiaries also maintain a system of disclosure controls and procedures designed to ensure that information required to be disclosed

by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms.

- (19) The Company has filed with the Nasdaq National Market a Notification of Listing of Additional Shares with respect to the Investor Shares and Warrant Shares within the time period required by the rules of the Nasdaq National Market.
- (20) The Company will indemnify and hold harmless the Investor against and in respect of any claim for brokerage or other commissions relating to this Agreement, based in any way on agreements, arrangements or understandings made or claimed to have been made by the Company with any third party, including William Blair & Company, L.L.C.
- (21) Neither the Company nor, to the Company's knowledge, any other Person acting on its behalf has provided the Investor or its agents or counsel with any information that the Company believes constitutes material, non-public information.
5. Conditions. The obligation of the Investor to purchase and acquire the Investor Shares hereunder shall be subject to the condition that all representations and warranties and other statements of the Company shall be true and correct as of and on each of the date of this Agreement and the date of the Closing, the condition that the Company shall have performed all of its obligations hereunder theretofore to be performed, and the following additional conditions:
- (a) The Prospectus shall have been filed with the Commission pursuant to Rule 424(b) under the Securities Act within the applicable time period prescribed for such filing, no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the Commission, and the Investor shall have received the Prospectus in accordance with the federal securities laws.
- (b) The Company shall have performed all of its obligations set forth in the Selling Agent Agreement, dated as of March 3, 2003, by and between the Company and William Blair & Company, L.L.C., required to be performed by the Company thereunder on or prior to the Closing.
6. Miscellaneous.
- (a) Fees and Expenses. Each of the parties hereto shall be responsible for their own expenses incurred in connection with the transactions contemplated hereby.
- (b) Binding Agreement; Assignment. This Agreement shall be binding upon, and shall inure solely to the benefit of, each of the parties hereto, and each of their respective heirs, executors, administrators, successors and permitted assigns, and no other person shall acquire or have any right under or by virtue of this Agreement. The Investor may not assign any of its rights or obligations

hereunder to any other person or entity without the prior written consent of the Company.

- (c) Entire Agreement. This Agreement, including Schedule I hereto, constitutes the entire understanding between the parties hereto with respect to the subject matter hereof and may be amended only by written execution by both parties. Upon execution by the Company and the Investor, this Agreement shall be binding on both parties hereto.
- (d) Consent To Jurisdiction. THIS AGREEMENT SHALL BE ENFORCED, GOVERNED AND CONSTRUED IN ALL RESPECTS IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS CONFLICTS OF LAWS PRINCIPLES. FURTHERMORE, THE INVESTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE FEDERAL OR STATE COURTS LOCATED IN THE STATE OF NEW YORK IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH OF THE COMPANY AND THE INVESTOR (AND, TO THE EXTENT PERMITTED BY LAW, ON BEHALF OF ITS AND THEIR EQUITY HOLDERS AND CREDITORS) HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED UPON, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY.
- (e) Notices. All notices, requests, consents and other communication hereunder shall be in writing, shall be mailed by first class registered or certified mail, or nationally recognized overnight express courier postage prepaid, and shall be deemed given when so mailed and shall be delivered as addressed as follows:

if to the Company, to:  
Microvision, Inc.  
19910 North Creek Parkway  
Bothell, WA 98011-3008  
Attn: Chief Executive Officer and General Counsel

with a copy mailed to:

Ropes & Gray

One International Place  
Boston, MA 02110-2624  
Attn: Joel F. Freedman

or to such other Person at such other place as the Company shall designate to the Investor in writing; and if to the Investor, at its address as set forth at the end of this Agreement, or at such other address or addresses as may have been furnished to the Company in writing.

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- (f) Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one in the same agreement.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Microvision, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted and agreed to as of the date  
first above written:

\_\_\_\_\_  
Name of Investor (Print)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Nominee (name in which Investor Shares and Investor Warrants are to be registered, if different than name of Investor): \_\_\_\_\_

Address of Nominee: \_\_\_\_\_

Taxpayer ID. Number: \_\_\_\_\_  
(if acquired in the name of a nominee, the taxpayer ID. number of such nominee)

Broker: \_\_\_\_\_  
Broker Contact Name: \_\_\_\_\_  
Broker Contact Telephone: \_\_\_\_\_  
Broker Contact Facsimile: \_\_\_\_\_  
Broker Contact E-mail Address: \_\_\_\_\_

DTC account number: \_\_\_\_\_

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**EXHIBIT A**

**Form of Warrant Agreement and Certificate**

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**SCHEDULE I**  
**to**  
**Securities Purchase Agreement**

Name of Investor: \_\_\_\_\_

Aggregate Purchase Price: \_\_\_\_\_

Number of Offered Shares to be Purchased by Investor: \_\_\_\_\_

Purchase Price Per Share of Common Stock and Accompanying Warrant: \_\_\_\_\_

Number of Warrant Shares: \_\_\_\_\_

Per Share Exercise Price: \_\_\_\_\_



Date and Time of Closing: March 5, 2003 at 10 :00 a.m., Eastern Standard Time

**WIRE INSTRUCTIONS**

Aggregate Purchase Price to be wired to:

The Commerce Bank of Washington  
601 Union Street, Suite 3600  
Seattle, WA 98101

Account Name:	Microvision, Inc.
Account Number:	001130420
ABA Routing Number:	125008013

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## EXCLUSIVE LICENSE AGREEMENT

Between

The University of Washington

and

MICRO VISION, INC.

This AGREEMENT is entered into as of the 3<sup>rd</sup> day of March, 1994 (hereinafter the "EFFECTIVE DATE" by and between the University of Washington, a public institution of higher education with offices at Seattle, Washington 98195, hereinafter referred to as "UW" and MICRO VISION, INC. having a place of business at 6500 Columbia Center 701 Fifth Avenue Seattle, WA 98104-7003 (hereinafter "MICRO VISION").

Whereas, UW has sole ownership of UW PROPRIETARY MATTER (defined below) deriving from development of a HALO Display ("HALO", and further referenced as "UW INVENTION"; below) and thus is the sole licensor of LICENSED SUBJECT MATTER (defined below);

WHEREAS, UW desires that the HALO be used as soon as possible in the public interest, and to this end desires to transfer the HALO to a company capable of commercially exploiting the HALO.

WHEREAS, MICRO VISION desires, for the purpose of commercial exploitation, to acquire a license to certain UW PATENT rights in and to the HALO and to receive certain TECHNICAL INFORMATION relating to the HALO.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, and conditions set forth below, UW and MICRO VISION agree as follows:

**1.0 Definitions**

1.1 Terms defined in this Article, and parenthetically defined elsewhere in this AGREEMENT, shall throughout this AGREEMENT have the meaning provided. Defined terms may be used in the singular or in the plural, as sense shall require. Terms defined in this Article and throughout this AGREEMENT will be printed in capital letters for ease of reference.

1.2 "PARTIES" means UW (as the Licensor hereto) and MICRO VISION (as the Licensee hereto), including AFFILIATES, successors or assigns as permitted by this AGREEMENT, and "PARTY" means either one of them as the context where such term is used indicates.

1.3 "AFFILIATE" means any corporation, company, new startup company, or other business entity (including any joint venture, partnership, form of association or otherwise) and directly or indirectly controlling, controlled by, or under common control with MICRO VISION; "control" of an entity for purposes of this definition shall

mean having the right to direct or to appoint or remove a majority or more of the members of the board of directors (or their equivalent) or management (including the president, chairman of the board, or general or managing partner as applicable) of said entity, by contract, agreement, provisions in the applicable articles or bylaws, ownership of or holding rights to vote sufficient numbers of voting shares, securities or other rights entitled to vote for, appoint, or remove the same, or having such right to so direct or appoint the same by applicable law.

1.4 "This AGREEMENT" means this License Agreement as amended in writing by the PARTIES from time to time.

1.5 "EFFECTIVE DATE" means the date referenced in the Preamble above. The EFFECTIVE DATE takes effect upon signature of this AGREEMENT by the PARTIES hereto.

1.6 "TECHNICAL INFORMATION" shall mean any technical facts, data, or advice, written or oral (in the form of information contained in UW PATENTS and UW PATENT applications, reports, letters, drawings, specifications, testing procedures, training and operational manuals, bills of materials, photographs and the like) relating to the HALO and owned or in the possession of UW.

1.7 "UW INVENTION" means the "HALO Display" as described and disclosed in UW's Office of Technology Transfer (OTT) file #02-94-11.

1.8 "UW PATENTS" means all U.S. and foreign utility and design Patents and Patent applications (including any divisionals, continuations, continuations in part, reexaminations, extensions, renewals, or reissues thereof), design registrations, utility models and similar rights and applications therefore as part of the HALO Display.

1.9 "COPYRIGHTS" means all registered and unregistered statutory copyright rights and applications for registration thereof and all common law COPYRIGHTS.

1.10 "UW PROPRIETARY MATTER" means any combination of COPYRIGHTABLE or COPYRIGHTED work, UW INVENTIONS, UW PATENTS, and TECHNICAL INFORMATION.

1.11 "LICENSED SUBJECT MATTER" shall mean any subject matter, including but not limited to products and processes, covered in whole or in part by the UW PROPRIETARY MATTER for the FIELD OF USE specified below and in the TERRITORY in which said subject matter is made, used, or sold; and any product incorporating any TECHNICAL INFORMATION.

1.12 "FIELD OF USE" shall mean all possible uses for the HALO technology.

1.13 "TERRITORY" shall mean world wide territory.

1.14 "CONFIDENTIAL INFORMATION" means confidential information or data disclosed to a PARTY (the "RECEIVING PARTY") in connection with HALO by the other PARTY (or, with respect to MICRO VISION, by its AFFILIATE) (the "DISCLOSING PARTY"), including without limitation trade secrets, algorithms, processes, formulae, programming,

product specifications and procedures of operation, and all records, models, prototypes, other media containing or disclosing such information or data, except any such information that (i) is already or becomes generally available to the public free from any confidentiality obligations through no breach of any confidentiality obligation under this AGREEMENT by the RECEIVING PARTY (provided, however, that information shall not be deemed generally available to the public merely because any part of that information is embodied in general disclosures or because individual features or components, or a combination thereof, are now or become generally available to the public), (ii) is already known by the RECEIVING PARTY (or, with respect to MICRO VISION, by its AFFILIATE), without any confidentiality obligation to the DISCLOSING PARTY, prior to receipt from the DISCLOSING PARTY, (iii) is independently developed by the RECEIVING PARTY (or, with respect to MICRO VISION, by its AFFILIATE), without use of CONFIDENTIAL INFORMATION of the DISCLOSING PARTY, (iv) is independently disclosed to the RECEIVING PARTY (or, with respect to MICRO VISION, to its AFFILIATE) by a source other than the DISCLOSING PARTY which source is under no obligation to maintain the confidentiality thereof (provided that the RECEIVING PARTY shall not disclose any such information regardless of the source if the RECEIVING PARTY knows or has reason to know that such information should be kept confidential), or (v) is required by a court or governmental agency to be disclosed to it by the RECEIVING PARTY (or, with respect to MICRO VISION, by its AFFILIATE) in connection with any proceeding over which such agency or authority has jurisdiction, provided that the RECEIVING PARTY (or, with respect to MICRO VISION, its AFFILIATE) shall use its best efforts to obtain confidential treatment of such information by the court or agency and shall accompany its disclosure to the court or agency with written notice of the DISCLOSING PARTY's proprietary rights therein.

## **2.0 Grant**

2.1 UW hereby grants to MICRO VISION, and MICRO VISION accepts, an exclusive license, with the right to sublicense during the term of exclusivity, to make, use, and sell LICENSED SUBJECT MATTER in the TERRITORY and for the FIELD OF USE.

2.2 The license granted above is subject to a reserved non-exclusive license in UW and the Washington Technology Center (a state institution headquartered on the UW Campus) to make, have made, and use products, processes, or other subject matter covered by UW PROPRIETARY MATTER for non-commercial research and instructional purposes in all fields of use.

## **3.0 Sublicensing**

3.1 During the term of exclusivity of the license granted in this AGREEMENT, MICRO VISION shall have the right to grant sublicenses to UW PROPRIETARY MATTER in the FIELD OF USE and for the TERRITORY without any additional compensation due to UW beyond the compensation set forth in Article 7 for the license granted under this AGREEMENT.

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3.2 Any and all sublicenses in and to UW PROPRIETARY MATTER granted by MICRO VISION shall not be subject to prior approval of UW.

3.3 MICRO VISION agrees, at the request of UW, to forward to UW a list of any and all sublicensees pertaining to UW PROPRIETARY MATTER.

## **4.0 TECHNICAL INFORMATION**

4.1 UW agrees to disclose to MICRO VISION any other TECHNICAL INFORMATION, whether confidential or non-confidential, not obtained by UW under conditions of confidentiality to others, in UW's possession as of the EFFECTIVE DATE or during the term of this AGREEMENT that in UW's judgment is necessary or valuable to the commercial exploitation of LICENSED SUBJECT MATTER.

4.2 MICRO VISION agrees to keep any TECHNICAL INFORMATION received from UW and identified by UW as confidential under conditions of strict secrecy and to use the same degree of care MICRO VISION would for its own confidential TECHNICAL INFORMATION, but no less than reasonable care, to protect UW's confidential TECHNICAL INFORMATION from disclosure to unauthorized third parties.

## **5.0 Diligence**

5.1 MICRO VISION, during the term of this AGREEMENT, shall utilize its best efforts in proceeding with the development, manufacture, sale, and other commercial exploitation of UW PROPRIETARY MATTER, and in creating a supply and demand for LICENSED SUBJECT MATTER.

## **6.0 INVENTIONS, Patent Prosecution and Cost Recovery**

6.1 MICRO VISION shall pay all reasonable costs associated with the filing and prosecution of any UW PATENT application which it has properly requested UW to make. MICRO VISION agrees to pay invoices for such fees and costs submitted by UW within sixty (60) days of receipt of any such invoice from UW.

6.2 MICRO VISION hereby requests UW, pursuant to Paragraph 6.1 of this Agreement, to proceed with drafting and filing a patent application for the HALO Display. UW hereby agrees to take diligent efforts to file such a patent application within Six (6) months from the EFFECTIVE DATE hereof.

6.3 UW, in consultation with MICRO VISION, shall have the overall control of the selection of counsel, preparation, filing, prosecution and maintenance, of any applications for UW PATENTS or COPYRIGHT registrations for UW PROPRIETARY MATTERS, and examinations thereof, of any validity, opposition or re-examination proceedings related thereto, and of the settlement or disposition of all matters related thereto (including the renewal, defense or assertion thereof); UW shall have no liability or obligation to MICRO VISION with respect to its exercise of discretion or handling of such matters, except to make such reports and respond to MICRO VISION'S comments or requests, as may be appropriate. UW and Micro Vision agree to meet and confer prior

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to the selection of any invention disclosure, filing of new patents or other material patenting decisions.

6.4 UW shall keep MICRO VISION informed of the status of any and all UW PATENTS and UW PATENT applications comprising UW'S PATENTS, and shall provide MICRO VISION with the opportunity to advise UW on courses of action respecting the filing of UW PATENT applications relating to the UW INVENTION, prosecution of UW PATENT applications, and management of UW PATENTS.

6.5 In the event that MICRO VISION determines that it does not desire to reimburse UW, or fails for any reason to reimburse UW for UW PATENT fees incurred under Paragraph 6.1 above, it will promptly notify UW of its decision and UW shall thereafter have the sole and exclusive right to file and/or maintain any such UW PATENT and/or UW PATENT application, either foreign or domestic, at its own expense; and, any UW PATENT issued or issuing therefrom shall not be included among THE LICENSED SUBJECT MATTER. MICRO VISION and UW agree to cooperate in filing UW PATENT applications in UW's name on any such UW INVENTION and/or improvement where MICRO VISION declines to proceed in its own name and at its own expense.

## **7.0 Licensing Fees**

7.1 In consideration for the grant of this License, MICRO VISION agrees to pay to UW a non-refundable license issue fee of Twenty Five Thousand Dollars (\$25,000) due and payable as of the EFFECTIVE DATE.

7.2 In further consideration for the grant of this License, MICRO VISION agrees to pay the following non-refundable payments of cash and equity in MICRO VISION, based upon patent milestone dates of the items recited below:

a. On filing a, or, if there is more than one, on filing the first HALO Display patent application, MICRO VISION agrees to pay to UW Seventy Five Thousand Dollars (\$75,000) and grant equity to UW of One Hundred Thousand (100,000) shares of stock in MICRO VISION. MICRO VISION'S obligation under this Paragraph 7.2 (a) extends only to the first such HALO Display patent application to be filed, even though multiple applications may be filed. MICRO VISION agrees to issue the stock in the name of UW and in the name of the inventor of HALO as follows:

UW	Twenty Thousand Shares (20,000)
Thomas A. Furness III	Eighty Thousand Shares (80,000)

b. On issuance of a, or, if there is more than, the first to issue HALO Display patent application, MICRO VISION agrees to pay One Hundred Thousand Dollars (\$100,000) and grant equity of Two Hundred Thousand shares of stock in MICRO VISION. MICRO VISION'S obligation under this Paragraph 7.2 (b) extends only to the first such HALO Display patent application to be issued, even though multiple applications may be issued. MICRO VISION agrees to issue the stock in the name of UW and in the name of the inventor of HALO as follows:

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UW	Forty Thousand Shares (40,000)
Thomas A. Furness III	One Hundred Sixty Thousand Shares (160,000)

7.3 All payments required under this AGREEMENT shall be made in U.S. dollars by check or money order payable to the University of Washington, and delivered to UW as specified in this AGREEMENT; or, if so directed in writing by UW, in such currency, form, and to such account as UW may designate.

#### **8.0 Term and Termination of Exclusivity**

8.1 The term for the exclusive license to UW PROPRIETARY MATTER shall extend from the EFFECTIVE DATE of this AGREEMENT to thirty (30) days written notice by UW for cause. Cause shall only exist if MICRO VISION fails to pay licensing fees identified in Paragraph 7 above or fails to reimburse for patent prosecution costs as identified in Paragraph 6 above. UW's option to terminate exclusivity shall be in addition to any and all other legal remedies which UW may have for the enforcement of any and all terms hereof, and does not in any way limit any other legal remedy UW may have.

8.2 Upon expiration or termination of exclusivity:

- the license granted herein shall become non-exclusive and shall remain in effect for the duration of this AGREEMENT;
- MICRO VISION shall have no further right to grant sublicenses;
- MICRO VISION shall no longer have first right to bring suit for infringement of UW PROPRIETARY MATTER; and
- MICRO VISION shall have no further obligation to reimburse UW for any fees or costs incurred by UW after expiration or termination of exclusivity and related to UW PROPRIETARY MATTER .

#### **9.0 Term and Termination of AGREEMENT**

9.1 The term of this AGREEMENT shall commence on the EFFECTIVE DATE and shall continue until the last of UW PROPRIETARY MATTER expires, unless sooner terminated in accordance with the provisions set forth in this AGREEMENT.

9.2 Upon failure of UW or MICRO VISION to cure a material breach of this AGREEMENT within thirty (30) days after a written demand for performance, the notifying PARTY shall have the right at any time to terminate this AGREEMENT by written notice to the other PARTY.

9.3 MICRO VISION shall have a right to terminate this AGREEMENT with or without cause, upon ninety (90) days prior written notice to UW.

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9.4 In the event that no UW PATENTS covering LICENSED SUBJECT MATTER have been filed within Five (5) years from the EFFECTIVE DATE, or, if filed, that no UW PATENTS remain pending in or issued from any country's patent office, then following Five Years from the EFFECTIVE DATE either PARTY may terminate this AGREEMENT following ninety (90) days written notice of such intent to terminate to the other PARTY.

9.5 The provisions under which this AGREEMENT may be terminated shall be in addition to any and all other legal remedies which either PARTY may have for the enforcement of any and all terms hereof, and do not in any way limit any other legal remedy such PARTY may have.

9.6 Termination of this AGREEMENT shall terminate all rights and licenses granted to MICRO VISION relating to UW PROPRIETARY MATTER.

9.7 Termination by UW or MICRO VISION under the options set forth in this AGREEMENT shall not relieve MICRO VISION from any financial obligation to UW accruing prior to or after termination or from performing according to any and all other provisions of this AGREEMENT expressly agreed to survive termination.

9.8 In the event that there remain no valid, enforceable, and infringed UW PROPRIETARY MATTER covering LICENSED SUBJECT MATTER, then following termination MICRO VISION and any sublicensees shall have no further obligation to pay royalties thereon or to account to UW therefore.

#### **10.0 Notices**

10.1 Any notice or other communication required or permitted to be given by either PARTY hereto shall be deemed to have been properly given and be effective upon the date of delivery if delivered in writing to the respective addresses set forth below, or to such other address as either PARTY shall designate by written notice given to the other PARTY. If notice or other communication is given by facsimile transmission, said notice shall be confirmed by prompt delivery of the hardcopy original.

Address and Telephone:

**For UW****For Confidentiality, Patenting or Licensing Matters:**

The University of Washington  
Office of Technology Transfer  
Mail Stop JD-50  
Seattle, WA 98195

**Physical Address:**

1107 N.E. 45<sup>th</sup> Street N.E.  
Suite 200  
Seattle, WA 98105

**For Technical Matters:**

The Human Interface Technology Laboratory  
Washington Technology Center  
Mail Stop FJ-15  
Seattle, WA 98195

**For MICRO VISION, INC.**

MICRO VISION, Inc.  
6500 Columbia Center  
701 Fifth Avenue  
Seattle, WA 98104-7003

(206) 587-3780

Attn: Mr. David Hunter, Executive Vice President

w/copy Mr. James Biagi  
Monahan & Robinson, P.S.  
6500 Columbia Center  
701 Fifth Avenue  
Seattle, WA 98104-7003  
(206) 587-5700

**11.0 Patent Marketing**

11.1 MICRO VISION shall mark, and shall require any sublicensee to mark, any and all material forms of LICENSED SUBJECT MATTER or packaging pertaining thereto made and sold by MICRO VISION (and/or by its sublicensees) with an appropriate patent marking identifying the pendency of any U.S. patent application and/or any issued U.S. or foreign patent forming any part of UW PROPRIETARY MATTER.

**12.0 Patent Infringement**

12.1 Each PARTY shall promptly inform the other PARTY of any alleged infringement of UW PROPRIETARY MATTER by a third party, and provide any available evidence thereof.

12.2 Subject to Paragraph 12.6 below, during the term of exclusivity of the license granted hereunder, MICRO VISION shall have the first right to settle any alleged infringement of UW PROPRIETARY MATTER by securing cessation of the infringement, instituting suit against the infringer, or entering into a sublicensing agreement in and to relevant UW PATENTS in UW PROPRIETARY MATTER. To enjoy said first right, MICRO VISION must initiate bona fide action to settle any alleged infringement within ninety (90) days of learning of said infringement. After MICRO VISION has recovered its reasonable attorney's fees and other expenses directly related to any action, suit, or settlement for infringement of UW PROPRIETARY MATTER, UW and MICRO VISION shall divide any remaining damages, awards, or settlement proceeds in the following manner:

UW	Forty percent (40%)
MICRO VISION	Sixty percent (60%)

provided, however, any payment by an alleged infringer as consideration for the grant of a sublicense shall be handled according to the royalty provisions for sublicense set forth in this AGREEMENT.

12.3 If MICRO VISION chooses to institute suit against an alleged infringer during the term of exclusivity as provided in this AGREEMENT, MICRO VISION may do so in UW's name (if required by law, otherwise, in MICRO VISION'S name) but at MICRO VISION'S sole expense, and UW shall, but at MICRO VISION'S expense for UW's direct associated expenses, fully and promptly cooperate and assist MICRO VISION in connection with any such suit. Any and all damages, awards, or settlement proceeds arising from such a MICRO VISION-initiated action shall be MICRO VISION'S.

12.4 If MICRO VISION fails, within ninety (90) days of learning of an alleged infringement, to secure cessation of the infringement, institute suit against the infringer, or provide to UW satisfactory evidence that MICRO VISION is engaged in bona fide negotiation for the acceptance by infringer of a sublicense in and to relevant UW PATENTS in UW PROPRIETARY MATTER, UW upon written notice to MICRO VISION may assume full right and responsibility to secure cessation of the infringement, institute suit against the infringer, or secure acceptance of a sublicense from MICRO VISION in and to relevant UW PATENTS in UW PROPRIETARY MATTER, approval for which sublicense MICRO VISION shall not unreasonably withhold.

12.5 If UW in accordance with the terms and conditions of this AGREEMENT chooses to institute suit against an alleged infringer, UW may bring such suit in its own name (or, if required by law, in its and MICRO VISION's name) and at its own expense, and MICRO VISION shall, but at UW's expense for MICRO VISION'S direct associated expenses, fully and promptly cooperate and assist UW in connection with any such suit. Any and all damages, awards, or settlement proceeds arising from such a UW-initiated action shall be UW's.

12.6 Neither MICRO VISION nor UW is obligated under this AGREEMENT to institute a suit against an alleged infringer of UW PROPRIETARY MATTER.

12.7 Prior to making a claim of infringement or commencing any litigation regarding infringement as provided for in this Article, MICRO VISION shall obtain prior approval of UW, and such approval of UW shall not be unreasonably withheld. Prior to settling a claim of infringement or settling any litigation regarding infringement as provided for in this Article, MICRO VISION shall obtain prior approval of UW, and such approval of UW shall not be unreasonably withheld.

**13.0 Patent Validity**

13.1 If any claim challenging the validity or enforceability of any of LICENSED SUBJECT MATTER shall be brought against MICRO VISION, MICRO VISION shall promptly notify UW. UW, at its option, shall have the right, within thirty (30) days after notification by MICRO VISION of such action, to intervene and take over the sole defense of the claim at UW's expense.

13.2 If MICRO VISION challenges the validity or enforceability of any of UW PATENTS, MICRO VISION agrees not to suspend any payments due UW until such time as that UW PATENT is determined to be invalid or unenforceable by final judgment of a court of competent jurisdiction from which no appeal can be or is taken.

#### **14.0 Use of Names**

- 14.1 UW and MICRO VISION each agree that they will not use the name, trademark, or other identifier of the other for any advertising, promotion, publicity or commercially related purposes except;
- a) with advance written approval of the other PARTY;
  - b) to the extent required by UW Boards, UW Committees, UW policies and procedures or by law, UW may indicate that this AGREEMENT exists, may disclose the terms of the AGREEMENT and may use the names The University of Washington, or MICRO VISION solely to describe the relationship between the UW and MICRO VISION established by this AGREEMENT; or
  - c) to the extent required by law and in a form previously approved in writing by the UW, MICRO VISION may indicate in any investment offering (public or private), including but not limited to sub-licensing, co-development, etc. circulated by MICRO VISION that this AGREEMENT exists, may disclose the terms of this AGREEMENT, and may use the names the University of Washington solely to describe the relationship between the UW and MICRO VISION established by this AGREEMENT.
- 14.2 UW and MICRO VISION each agree that they will not use the name, trademark, or other identifier of the other for any advertising, promotion, or other commercially related purpose except as provided for above or except upon advance written notice and approval to the other PARTY.

#### **15.0 Representations and Warranties**

- 15.1 UW represents and warrants that it has the right to grant the license in and to UW PATENTS and disclose the TECHNICAL INFORMATION set forth in this AGREEMENT.
- 15.2 UW represents that Ms. Margaret Wagner Dahl is authorized to sign this AGREEMENT on behalf of UW.
- 15.3 MICRO VISION represents that Mr. David Hunter and Mr. Caisey Harlinton are authorized to sign THIS AGREEMENT on behalf of MICRO VISION.
- 15.4 Nothing in this AGREEMENT shall be construed as

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- a) A representation or warranty by UW as to the patentability, validity, scope, or usefulness of any of UW's PROPRIETARY MATTER; or
  - b) A representation or warranty by UW that anything made, used, sold, or otherwise disposed of under any license granted in this AGREEMENT is or will be free from infringement of patents or other proprietary rights of third parties;
  - c) an obligation to bring or prosecute actions or suits against third parties for infringement.
- 15.5 MICRO VISION represents that it is a company formed to further develop the HALO Display into a commercially viable product, and that it is and will take good faith efforts towards that end. MICRO VISION understands UW's concerns regarding the competitive atmosphere for products having applications similar to those of the HALO Display, and agrees with UW's concerns regarding the potential for a licensee to "buy out" the rights of a licensor in order to keep a product OFF the market to thereby benefit another's product. To this end, MICRO VISION specifically represents and warrants that at no time will it take actions intended to defeat, delay, suspend, or otherwise prevent the HALO Display from attaining commercial viability as soon as reasonably possible.
- 15.6 Except as expressly set forth in this AGREEMENT, UW MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF ANY UW PROPRIETARY MATTER OR ANY LICENSED SUBJECT MATTER WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER RIGHTS. UW MAKES NO REPRESENTATIONS AS TO THE USEFULNESS OF UW INVENTION(S); IF MICRO VISION CHOOSES TO EXPLOIT IT IN ANY MANNER WHATSOEVER, MICRO VISION DOES SO AT ITS OWN RISK.

#### **16.0 Indemnification**

- 16.1 The PARTIES mutually agree to indemnify, hold harmless and defend the other's officers, inventors, employees, students, and agents, against any and all claims, suits, losses, damages, costs, fees and expenses resulting from or arising out of exercise of this AGREEMENT including, but not limited to, any damages, losses or liabilities whatsoever with respect to death or injury to any person and damage to any property arising from the possession, use, or operation of LICENSED SUBJECT MATTER by MICRO VISION or its sub-licensees or any customers, users, or others affected by LICENSED SUBJECT MATTER in any manner whatsoever. This indemnification clause shall survive the termination of this AGREEMENT.

#### **17.0 Applicable Laws**

- 17.1 MICRO VISION agrees to abide by all applicable federal, state, and local laws and regulations pertaining to the management and commercial deployment of LICENSED SUBJECT MATTER under this AGREEMENT.

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- 17.2 MICRO VISION understands that UW is subject to United States laws and federal regulations, including the export of technical data, computer software, laboratory prototypes and other commodities (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979), and that UW's obligations hereunder are contingent upon compliance with applicable United States laws and regulations, including those for export control. The transfer of certain TECHNICAL INFORMATION and LICENSED SUBJECT MATTER may require a license from a cognizant agency of the United States Government and/or written assurances by MICRO VISION that MICRO VISION shall not transfer data or commodities to certain foreign countries without prior approval of an appropriate agency of the United States Government. UW neither represents that an export license shall not be required, nor that, if required, it shall be issued.

- 17.3 The rights and obligations of the PARTIES under this AGREEMENT shall be governed by and construed in accordance with the laws of the State of Washington, and, at the option of UW, venue of the legal or equitable action shall lie in King County, the State of Washington. MICRO VISION hereby accepts the venue and jurisdiction of the Federal District Court of Western Washington or King County Superior Court located in Seattle, Washington, at UW's option.

#### **18.0 Resolution of Disputes**

- 18.1 MICRO VISION and UW agree that, in the event of a dispute between them arising from, concerning, or in any way related to this AGREEMENT, the PARTIES

shall undertake good faith efforts to resolve the matter amicably between themselves.

18.2 In the event an action is commenced to enforce a PARTY'S rights under this AGREEMENT, the prevailing PARTY in such action shall be entitled to recover its reasonable costs and attorney's fees.

**19.0 General**

19.1 If any provision of this AGREEMENT shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be in any way affected or impaired thereby.

19.2 No provision of this AGREEMENT shall be deemed to have been waived by any act of or acquiescence on the part of either PARTY. A waiver may only occur in writing signed by an authorized representative of the PARTY waiving the particular provision involved. No waiver of any provision of this AGREEMENT shall constitute waiver of any other provision or of the same provision on any other occasion.

19.3 No amendment or modification hereof shall be valid or binding upon the parties unless it is made in writing, cites this AGREEMENT, and signed by duly authorized representatives of UW and MICRO VISION.

19.4 This AGREEMENT constitutes the entire agreement between the PARTIES and, supersedes all previous representations, understandings, or agreements, oral or written, between the PARTIES with respect to the subject matter hereof. The headings in this AGREEMENT are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this AGREEMENT.

19.5 The PARTIES agree that the relationship between the PARTIES established by this AGREEMENT does not constitute a partnership, joint venture, agency, or a contract of employment between them.

19.6 Neither PARTY may transfer or assign its rights or obligation under this AGREEMENT, except as provided herein or with the written consent of the other PARTY. This AGREEMENT shall inure to the benefit of and be binding upon each of the PARTIES hereto and their respective permitted successors and assigns.

IN WITNESS WHEREOF, UW and MICRO VISION have executed this AGREEMENT, in duplicate originals but collectively evidencing only a single contract, by their respective duly authorized officers, on the dates hereinafter written.

**For MICRO VISION, INC.**

By: /s/ David Hunter  
Name: David Hunter  
Title: Executive Vice President

Date: \_\_\_\_\_

By: /s/ Caisey Harlington  
Name: Caisey Harlington  
Title: Executive Vice President and  
Secretary, Treasurer

Date: \_\_\_\_\_

**The University of Washington**

By: /s/ Margaret Wagner Dahl  
Name: Margaret Wagner Dahl  
Title: Acting Director, Office of  
Technology Transfer

Date: 3/3/94

VOID AFTER 5:00 P.M., NEW YORK CITY TIME,  
ON APRIL 1, 2004

THIS WARRANT AND THE SHARES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER JURISDICTION. THE SECURITIES REPRESENTED HEREBY MAY NOT BE OFFERED OR SOLD IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER APPLICABLE SECURITIES LAWS UNLESS OFFERED, SOLD OR TRANSFERRED PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THOSE LAWS.

Right to Purchase 145,495 Shares  
of Common Stock, no par value per share

Date: April 1, 1999

**MICROVISION, INC.  
SERIES 1 STOCK PURCHASE WARRANT**

THIS CERTIFIES THAT, for value received, Capital Ventures International, or its registered assigns, is entitled to purchase from MICROVISION, INC., a corporation organized under the laws of the State of Washington (the "**Company**"), at any time or from time to time during the period specified in Section 2 hereof, One Hundred and Forty Five Thousand Four Hundred and Ninety Five (145,495) fully paid and nonassessable shares of the Company's common stock, no par value per share (the "**Common Stock**"), at an exercise price per share (the "**Exercise Price**") equal to \$19.05225. The number of shares of Common Stock purchasable hereunder (the "**Warrant Shares**") and the Exercise Price are subject to adjustment as provided in Section 4 hereof. The term "**Warrants**" means this Warrant, the other Series 1 Warrants (the "**Series 1 Warrants**") and the Series 2 Warrants of the Company issued pursuant to that certain Securities Purchase Agreement, dated as of April 1, 1999, by and among the Company and the other signatories thereto (the "**Securities Purchase Agreement**").

This Warrant is subject to the following terms, provisions and conditions:

1. **Manner of Exercise; Issuance of Certificates; Payment for Shares** Subject to the provisions hereof, including, without limitation, the limitations contained in Section 7 hereof, this Warrant may be exercised at any time during the Exercise Period (as defined below) by the holder hereof, in whole or in part, by the surrender of this Warrant, together with a completed exercise agreement in the form attached hereto (the "**Exercise Agreement**"), to the Company by 11:59 p.m. New York time on any business day at the Company's principal executive offices (or such other office or agency of the Company as it may designate by notice to the holder hereof) and upon (i) payment to the Company in cash, by certified or official bank check or by wire transfer for the account of the Company, of the Exercise Price for the Warrant Shares specified in the Exercise Agreement or (ii) if the holder is permitted to effect a Cashless Exercise (as defined in Section 11(c) hereof) pursuant to Section 11(c) hereof, delivery to the Company of a written notice of an election to effect a Cashless Exercise for the Warrant Shares specified in the Exercise Agreement. The Warrant Shares so purchased shall be deemed to be issued to the holder hereof or such holder's designee, as the record owner of such shares, as of the close of business on the date on which this Warrant shall have been surrendered and the completed Exercise Agreement shall have been delivered and payment shall have been made for such shares as set forth above or, if such day is not a business day, on the next succeeding business day. The Warrant Shares so purchased, representing the aggregate number of shares specified in the Exercise Agreement, shall be delivered to the holder hereof within a reasonable time, not exceeding two business days, after this Warrant shall have been so exercised (the "**Deliver Period**"). If the Company's transfer agent is participating in the Depository Trust Company ("**DTC**") Fast Automated Securities Transfer program, and so long as the certificates therefor do not bear a legend and the holder is not obligated to return such certificate for the placement of a legend thereon, the Company shall cause its transfer agent to electronically transmit the Warrant Shares so purchased to the holder by crediting the account of the holder or its nominee with DTC through its Deposit Withdrawal Agent Commission system ("**DTC Transfer**"). If the aforementioned conditions to a DTC Transfer are not satisfied, the Company shall deliver to the holder physical certificates representing the Warrant Shares so purchased. Further, the holder may instruct the Company to deliver to the holder physical certificates representing the Warrant Shares so purchased in lieu of delivering such shares by way of DTC Transfer. Any certificates so delivered shall be in such denominations as may be requested by the holder hereof, shall be registered in the name of such holder or such other name as shall be designated by such holder and, following the date on which the Warrant Shares have been registered under the Securities Act pursuant to that certain Registration Rights Agreement, dated as of April 1, 1999, by and between the Company and the other signatories thereto (the "**Registration Rights Agreement**") or otherwise may be sold by the holder pursuant to Rule 144 promulgated under the Securities Act (or a successor rule), shall not bear any restrictive legend. If this Warrant shall have been exercised only in part, then, unless this Warrant has expired, the Company shall, as its expense, at the time of delivery of such certificates, deliver to the holder a new Warrant representing the number of shares with respect to which this Warrant shall not then have been exercised.

If, at any time during the Exercise Period, a holder of this Warrant submits this Warrant, an Exercise Agreement and payment to the Company of the Exercise Price for each of the Warrant Shares specified in the Exercise Agreement, and the Company fails for any reason to deliver, on or prior to the third business day following the expiration of the Delivery Period for such exercise, the number of shares of Common Stock to which the holder is entitled upon such exercise (an "**Exercise**

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**Default**"), then the Company shall pay to the holder payments ("**Exercise Default Payments**") for an Exercise Default in the amount of (a) (N/365), multiplied by (b) the amount by which the Market Price (as defined in Section 4(1) hereof) on the date the Exercise Agreement giving rise to the Exercise Default is transmitted in accordance with this Section 1 (the "**Exercise Default Date**") exceeds the Exercise Price in respect of such Warrant Shares, multiplied by (c) the number of shares of Common Stock the Company failed to so deliver in such Exercise Default, multiplied by (d) .24, where N = the number of days from the Exercise Default Date to the date that the Company effects the full exercise of this Warrant which gave rise to the Exercise Default. The accrued Exercise Default Payment for each calendar month shall be paid in cash or shall be convertible into Common Stock (subject to the limitations on the Company's ability to issue such shares set forth in Rule 4460(i) of the National Association of Securities Dealers or any successor rule), at the holder's option, as follows:

- (a) In the event the holder elects to take such payment in cash, cash payment shall be made to holder by the fifth day of the month following the month in which it has accrued; and
- (b) In the event the holder elects to take such payment in Common Stock, the holder may convert such payment amount into Common Stock at a conversion price equal to the lower of the Exercise Price or the Market Price (as defined in Section 4(1)) (as in effect at the time of conversion) at any time after the fifth day of the month following the month in which it has accrued, which shares of Common Stock shall be delivered within two (2) business days thereafter.

Nothing herein shall limit the holder's right to pursue actual damages for the Company's failure to maintain a sufficient number of authorized shares of Common Stock as required pursuant to the terms of Section 3(b) hereof or to otherwise issue shares of Common Stock upon exercise of this Warrant in accordance with the terms hereof, and the holder shall have the right to pursue all remedies available at law or in equity (including a decree of specific performance and/or injunctive relief).

2. **Period of Exercise.** This Warrant may be exercised at any time or from time to time during the period (the "**Exercise Period**") beginning on (a) the date



hereof and ending (b) at 5:00 p.m., New York City time, on the fifth annual anniversary of the date of original issuance hereof.

3. Certain Agreements of the Company. The Company hereby covenants and agrees as follows:

(a) Shares to be Fully Paid. All Warrant Shares will, upon issuance in accordance with the terms of this Warrant, be validly issued, fully paid and nonassessable and free from all taxes, liens, claims and encumbrances.

(b) Reservation of Shares. During the period (the “**Investment Period**”) beginning on the Closing Date and ending upon the expiration of the Exercise Period, the Company shall at all times have authorized, and reserved for the purpose of issuance upon exercise of this Warrant, a sufficient number of shares of Common Stock to provide for the exercise in full of this Warrant (without giving effect to the limitations on exercise set forth in Section 7(g) hereof).

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(c) Listing. The Company has secured the listing of the shares of Common Stock issuable upon exercise of this Warrant upon each national securities exchange or automated quotation system, if any, upon which shares of Common Stock are then listed or become listed (subject to official notice of issuance upon exercise of this Warrant) and shall maintain, so long as any other shares of Common Stock shall be so listed, such listing of all shares of Common Stock from time to time issuable upon the exercise of this Warrant; and the Company shall so list on each national securities exchange or automated quotation system, as the case may be, and shall maintain such listing of, any other shares of capital stock of the Company issuable upon the exercise of this Warrant if and so long as any shares of the same class shall be listed on such national securities exchange or automated quotation system.

(d) Certain Actions Prohibited. The Company will not, by amendment of its charter or through any reorganization, transfer of assets, consolidation, merger, dissolution, issuance or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed by it hereunder, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in the taking of all such action as may reasonably be requested by the holder of this Warrant in order to protect the economic benefit inuring to the holder hereof and the exercise privilege of the holder of this Warrant against dilution or other impairment, consistent with the tenor and purpose of this Warrant. Without limiting the generality of the foregoing, the Company (i) will not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, and (ii) will take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant.

(e) Successors and Assigns. This Warrant will be binding upon any entity succeeding to the Company by merger, consolidation, or acquisition of all or substantially all of the Company’s assets.

(f) Blue Sky Laws. The Company shall, on or before the date of issuance of any Warrant Shares, take such actions as the Company shall reasonably determine are necessary to qualify the Warrant Shares for, or obtain exemption for the Warrant Shares for, sale to the holder of this Warrant upon the exercise hereof under applicable securities or “blue sky” laws of the states of the United States, and shall provide evidence of any such action so taken to the holder of this Warrant prior to such date; provided, however, that the Company shall not be required to qualify as a foreign corporation or file a general consent to service of process in any such jurisdiction.

4. Antidilution Provisions. During the Investment Period, the Exercise Price and the number of Warrant Shares issuable hereunder shall be subject to adjustment from time to time as provided in this Section 4.

In the event that any adjustment of the Exercise Price as required herein results in a fraction of a cent, such Exercise Price shall be rounded up or down to the nearest cent.

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(a) Adjustment of Exercise Price. Except as otherwise provided in Sections 4(b)(vi), 4(c) and 4(e) hereof, if and whenever during the Investment Period the Company issues or sells, or in accordance with Section 4(b) hereof is deemed to have issued or sold, any shares of Common Stock for no consideration or for a consideration per share less than the Market Price (as hereinafter defined) on the date of issuance (a “**Dilutive Issuance**”), then effective immediately upon the Dilutive Issuance, the Exercise Price will be adjusted in accordance with the following formula:

$$E' = E \quad \times \quad \frac{O + P/M}{\text{CSDO}}$$

Where:

E' = the adjusted Exercise Price;  
E = the then current Exercise Price;  
M = the then current Market Price (as defined in Section 4(1)(ii));  
O = the number of shares of Common Stock outstanding immediately prior to the Dilutive Issuance;  
P = the aggregate consideration, calculated as set forth in Section 4(b) hereof, received by the Company upon such Dilutive Issuance; and  
CSDO = the total number of shares of Common Stock Deemed Outstanding (as defined in Section 4(1)(i) immediately after the Dilutive Issuance.

(b) Effect on Exercise Price of Certain Events. For purposes of determining the adjusted Exercise Price under Section 4(a) hereof, the following will be applicable:

(i) Issuance of Rights or Options. If the Company in any manner issues or grants any warrants, rights or options, whether or not immediately exercisable, to subscribe for or to purchase Common Stock or other securities exercisable, convertible into or exchangeable for Common Stock (“**Convertible Securities**”) (such warrants, rights and options to purchase Common Stock or Convertible Securities are hereinafter referred to as “**Options**”) and the price per share for which Common Stock is issuable upon the exercise of such Options is less than the Market Price in effect on the date of issuance of such Options (“**Below Market Options**”), then the maximum total number of shares of Common Stock issuable upon the exercise of all such Below Market Options (assuming full exercise, conversion or exchange of Convertible Securities, if applicable) will, as of the date of the issuance or grant of such Below Market Options, be deemed to be outstanding and to have been issued and sold by the Company for such price per share. For purposes of the preceding sentence, the “price per share for which Common Stock is issuable upon the exercise of such Below Market Options” is determined by dividing (i) the total amount, if any, received or receivable by the Company as consideration for the issuance or granting of all such Below Market Options, plus the minimum aggregate amount of additional consideration, if any, payable to the Company upon the exercise of all such Below Market Options, plus, in the case of Convertible Securities issuable upon the exercise of such Below Market Options, the minimum aggregate amount of additional consideration payable upon the exercise, conversion or exchange thereof at the time such Convertible Securities first become exercisable, convertible or exchangeable, by (ii) the maximum total number of shares of Common Stock issuable upon the exercise of all such Below Market Options (assuming

full conversion of Convertible Securities, if applicable). No further adjustment to the Exercise Price will be made upon the actual issuance of such Common Stock upon the exercise of such Below Market Options or upon the exercise, conversion or exchange of Convertible Securities issuable upon exercise of such Below Market Options.

(ii) Issuance of Convertible Securities.

(A) If the Company in any manner issues or sells any Convertible Securities, whether or not immediately exercisable, convertible or exchangeable (other than where the same are issuable upon the exercise of Options) and the price per share for which Common Stock is issuable upon such exercise, conversion or exchange (as determined pursuant to Section 4(b)(ii)(B) if applicable) is less than the Market Price in effect on the date of issuance of such Convertible Securities, then the maximum total number of shares of Common Stock issuable upon the exercise, conversion or exchange of all such Convertible Securities will, as of the date of the issuance of such Convertible Securities, be deemed to be outstanding and to have been issued and sold by the Company for such price per share. For the purposes of the preceding sentence, the "price per share for which Common Stock is issuable upon such exercise, conversion or exchange" is determined by dividing (i) the total amount, if any, received or receivable by the Company as consideration for the issuance or sale of all such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Company upon the exercise, conversion or exchange thereof at the time such Convertible Securities first become exercisable, convertible or exchangeable, by (ii) the maximum total number of shares of Common Stock issuable upon the exercise, conversion or exchange of all such Convertible Securities. No further adjustment to the Exercise Price will be made upon the actual issuance of such Common Stock upon exercise, conversion or exchange of such Convertible Securities.

(B) If the Company in any manner issues or sells any Convertible Securities with a fluctuating conversion or exercise price or exchange ratio (a "**Variable Rate Convertible Security**"), then the "price per share for which Common Stock is issuable upon such exercise, conversion or exchange" for purposes of the calculation contemplated by Section 4(b)(ii)(A) shall be deemed to be the lowest price per share which would be applicable (assuming all holding period and other conditions to any discounts contained in such Convertible Security have been satisfied) if the Market Price on the date of issuance of such Convertible Security was 75% of the Market Price on such date (the "**Assumed Variable Market Price**"). Further, if the Market Price at any time or times thereafter is less than or equal to the Assumed Variable Market Price last used for making any adjustment under this Section 4 with respect to any Variable Rate Convertible Security, the Exercise Price in effect at such time shall be readjusted to equal the Exercise Price which would have resulted if the Assumed Variable Market Price at the time of issuance of the Variable Rate Convertible Security had been 75% of the Market Price existing at the time of the adjustment required by this sentence.

(iii) Change in Option Price or Conversion Rate. If there is a change at any time in (i) the amount of additional consideration payable to the Company upon the exercise of any Options; (ii) the amount of additional consideration, if any, payable to the Company upon the exercise, conversion or exchange of any Convertible Securities; or (iii) the rate at which any

Convertible Securities are convertible into, or exercisable or exchangeable for, Common Stock (in each such case, other than under or by reason of provisions designed to protect against dilution), the Exercise Price in effect at the time of such change will be readjusted to the Exercise Price which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed additional consideration or changed conversion rate, as the case may be, at the time initially granted, issued or sold.

(iv) Treatment of Expired Options and Unexercised Convertible Securities. If, in any case, the total number of shares of Common Stock issuable upon exercise of any Option or upon exercise, conversion or exchange of any Convertible Securities is not, in fact, issued and the rights to exercise such Option or to exercise, convert or exchange such Convertible Securities shall have expired or terminated, the Exercise Price then in effect will be readjusted to the Exercise Price which would have been in effect at the time of such expiration or termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such expiration or termination (other than in respect of the actual number of shares of Common Stock issued upon exercise or conversion thereof), never been issued.

(v) Calculation of Consideration Received. If any Common Stock, Options or Convertible Securities are issued, granted or sold for cash, the consideration received therefor for purposes of this Warrant will be the amount received by the Company therefor, before deduction of reasonable commissions, underwriting discounts or allowances or other reasonable expenses paid or incurred by the Company in connection with such issuance, grant or sale. In case any Common Stock, Options or Convertible Securities are issued or sold for a consideration part or all of which shall be other than cash, the amount of the consideration other than cash received by the Company will be the fair market value of such consideration, except where such consideration consists of securities, in which case the amount of consideration received by the Company will be the Market Price thereof as of the date of receipt. In case any Common Stock, Options or Convertible Securities are issued in connection with any merger or consolidation in which the Company is the surviving corporation, the amount of consideration therefor will be deemed to be the fair market value of such portion of the net assets and business of the non-surviving corporation as is attributable to such Common Stock, Options or Convertible Securities, as the case may be. The fair market value of any consideration other than cash or securities will be determined in good faith by an investment banker or other appropriate expert of national reputation selected by the Company and reasonably acceptable to the holder hereof, with the costs of such appraisal to be borne by the Company.

(vi) Exceptions to Adjustment of Exercise Price. No adjustment to the Exercise Price will be made (i) upon the exercise of any warrants, options or convertible securities issued and outstanding on the Closing Date and set forth on Schedule 4(c) of the Securities Purchase Agreement in accordance with the terms of such securities as of such date; provided, however, that an adjustment to the Exercise Price will be made if, and to the extent that, the exercise price or conversion price of such outstanding warrants, options or convertible securities is reduced by the Company in accordance with the terms of such securities (other than a reduction in connection with a recapitalization, reclassification, stock split, stock dividend or the like as provided therein) or otherwise; (ii) upon the issuance of any securities reserved for contingent issuance as set forth on

Schedule 4(c) of the Securities Purchase Agreement, and upon the exercise or conversion of such securities in accordance with the terms thereof; (iii) upon the grant or exercise of any stock or options which may hereafter be granted or exercised under any employee benefit plan, stock option plan or stock purchase plan of the Company now existing or to be implemented in the future, so long as the grant of such stock or options is approved in accordance with the terms of any such plan and the Company's usual and customary approval procedures with respect thereto; (iv) upon the issuance of any Common Stock or Warrants in accordance with the terms of the Securities Purchase Agreement; (v) upon exercise of the Warrants; (vi) upon the issuance or exercise of any Common Stock, warrants, options, convertible securities or any combination of the foregoing, which are issued in connection with an underwritten primary public offering for the account of the Company, so long as the underwriting agreement with respect thereto contains only usual and customary terms and provisions and so long as the underwriting discounts and commissions in connection with such public offering are not in excess of what is usual and customary in connection with a public offering of comparable size with respect to like securities of a company, the common stock of which is registered under the Securities Exchange Act of 1934, as amended; provided, however, that the exception to the adjustment of the Exercise Price set forth in this clause (vi) shall not be applicable if a Variable Rate Convertible Security is issued in connection with such underwritten primary public offering; or (vii) upon the issuance or exercise of any Common Stock, warrants, options, convertible securities or any combination of the foregoing, which are issued on or after the six (6) month anniversary of the Closing Date in connection with the Company's receipt of an aggregate of up to five million dollars (\$5,000,000) of private financing during any twelve month period, so long as the

Deemed Discount (as defined below) associated with the securities, assets and other consideration, if any, issued or granted by the Company in connection with such financing is not greater than 15% of the gross proceeds to the Company of such financing (an “**Excepted Financing**”); provided, however, that any financing in which a Variable Rate Convertible Security is issued or in which the Deemed Discount is in excess of 15% shall not be an Excepted Financing. For purposes of this Section 4(b)(vi), “**Deemed Discount**” shall mean the quotient obtained by dividing (I) the amount by which (A) the sum of (x) the value of the securities, assets and any other consideration, if any, issued or granted by the Company in connection with the Excepted Financing, taking into account, with respect to securities, stated discounts, liquidation preferences, conversion features, look-back mechanisms, warrant coverage and any other feature representing value, plus (y) the amount of any cash consideration from the Company to an investor in such Excepted Financing or such investor’s affiliates in connection with the provision of such Excepted Financing exceeds (B) the gross proceeds to the Company of the Excepted Financing, by (II) the gross proceeds to the Company of the Excepted Financing. The Company shall calculate, using commercial valuation methods appropriate for valuing such securities, assets or other items of consideration, the Deemed Discount within five (5) business days after the closing of the Excepted Financing; provided, however, that if the holder of this Warrant does not agree to such calculation within three (3) business days after receipt thereof (and the details in respect thereto), then the Deemed Discount shall be determined in good faith by an investment banker or other appropriate expert of national reputation selected by the Company and reasonably acceptable to the holder of this Warrant, with the costs of such determination to be borne by the Company. For the avoidance of doubt, if the gross proceeds to the Company in an Excepted Financing exceed five million dollars (\$5,000,000), then the Exercise Price shall be adjusted pursuant to this Section 4 based on the issuance of the pro-rata amount and type of securities issued in such Excepted Financing in respect of such excess.

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(c) Subdivision or Combination of Common Stock. If the Company, at any time during the Investment Period, subdivides (by any stock split, stock dividend, recapitalization, reorganization, reclassification or otherwise) its shares of Common Stock into a greater number of shares, then, after the date of record for effecting such subdivision, the Exercise Price in effect immediately prior to such subdivision will be proportionately reduced. If the Company, at any time during the Investment Period, combines (by reverse stock split, recapitalization, reorganization, reclassification or otherwise) its shares of Common Stock into a smaller number of shares, then, after the date of record for effecting such combination, the Exercise Price in effect immediately prior to such combination will be proportionately increased.

(d) Adjustment in Number of Shares. Upon each adjustment of the Exercise Price pursuant to the provisions of this Section 4, the number of shares of Common Stock issuable upon exercise of this Warrant shall be increased or decreased to equal the quotient obtained by dividing (i) the product of (A) the Exercise Price in effect immediately prior to such adjustment, multiplied by (B) the number of shares of Common Stock issuable upon exercise of this Warrant immediately prior to such adjustment, by (ii) the adjusted Exercise Price.

(e) Consolidation, Merger or Sale. In case of any consolidation of the Company with, or merger of the Company into, any other entity, or in case of any sale or conveyance of all or substantially all of the assets of the Company other than in connection with a plan of complete liquidation of the Company at any time during the Investment Period, then as a condition of such consolidation, merger or sale or conveyance, adequate provision will be made whereby the holder of this Warrant will have the right to acquire and receive upon exercise of this Warrant in lieu of the shares of Common Stock immediately theretofore acquirable upon the exercise of this Warrant, such shares of stock, securities, cash or assets as may be issued or payable with respect to or in exchange for the number of shares of Common Stock immediately theretofore acquirable and receivable upon exercise of this Warrant had such consolidation, merger or sale or conveyance not taken place. In any such case, the Company will make appropriate provision to insure that the provisions of this Section 4 will thereafter be applicable as nearly as may be in relation to any shares of stock or securities thereafter deliverable upon the exercise of this Warrant. The Company will not effect any consolidation, merger or sale or conveyance unless prior to the consummation thereof, the successor entity (if other than the Company) assumes by written instrument the obligations under this Warrant and the obligations to deliver to the holder of this Warrant such shares of stock, securities or assets as, in accordance with the foregoing provisions, the holder may be entitled to acquire. Notwithstanding the foregoing, in the event of any consolidation of the Company with, or merger of the Company into, any other entity, or the sale or conveyance of all or substantially all of the assets of the Company, at any time during the Investment Period, the holder of the Warrant shall, at its option, have the right to receive, in connection with such transaction, cash consideration equal to the fair value of this Warrant as determined in accordance with customary valuation methodology used in the investment banking industry.

(f) Distribution of Assets. In case the Company shall declare or make any distribution of its assets (or rights to acquire its assets) to holders of Common Stock as a partial liquidating dividend, stock repurchase, by way of return of capital or otherwise (including any dividend or distribution to the Company’s shareholders of cash or shares (or rights to acquire shares)

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of capital stock of a subsidiary) (a “**Distribution**”), at any time during the Investment Period, then, upon exercise of this Warrant for the purchase of any or all of the shares of Common Stock subject hereto, the holder of this Warrant shall be entitled to receive its pro-rata amount of such assets (or such rights) as would have been payable to the holder had such holder been the holder of such shares of Common Stock on the record date for the determination of shareholders entitled to such Distribution.

(g) Notice of Adjustment. Upon the occurrence of any event which requires any adjustment of the Exercise Price, then, and in each such case, the Company shall give notice thereof to the holder of this Warrant, which notice shall state the Exercise Price resulting from such adjustment and the increase or decrease in the number of Warrant Shares issuable upon exercise of this Warrant, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based. Such calculation shall be certified by the chief financial officer of the Company.

(h) Minimum Adjustment of Exercise Price. No adjustment of the Exercise Price shall be made in an amount of less than 1% of the Exercise Price in effect at the time such adjustment is otherwise required to be made, but any such lesser adjustment shall be carried forward and shall be made at the time and together with the next subsequent adjustment which, together with any adjustments so carried forward, shall amount to not less than 1% of such Exercise Price.

(i) No Fractional Shares. No fractional shares of Common Stock are to be issued upon the exercise of this Warrant, but the Company shall pay a cash adjustment in respect of any fractional share which would otherwise be issuable in an amount equal to the same fraction of the Market Price of a share of Common Stock on the date of such exercise.

(j) Other Notices. In case at any time:

(i) the Company shall declare any dividend upon the Common Stock payable in shares of stock of any class or make any other distribution (other than dividends or distributions payable in cash out of retained earnings consistent with the Company’s past practices with respect to declaring dividends and making distributions) to the holders of the Common Stock;

(ii) the Company shall offer for subscription pro rata to the holders of the Common Stock any additional shares of stock of any class or other rights;

(iii) there shall be any capital reorganization of the Company, or reclassification of the Common Stock, or consolidation or merger of the Company with or into, or sale of all or substantially all of its assets to, another corporation or entity; or

(iv) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Company;

then, in each such case, the Company shall give to the holder of this Warrant (a) notice of the date or estimated date on which the books of the Company shall close or a record shall be taken for

determining the holders of Common Stock entitled to receive any such dividend, distribution, or subscription rights or for determining the holders of Common Stock entitled to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up and (b) in the case of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up, notice of the date (or, if not then known, a reasonable estimate thereof by the Company) when the same shall take place. Such notice shall also specify the date on which the holders of Common Stock shall be entitled to receive such dividend, distribution, or subscription rights or to exchange their Common Stock for stock or other securities or property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation, or winding-up, as the case may be. Such notice shall be given at least thirty (30) days prior to the record date or the date on which the Company's books are closed in respect thereto. Failure to give any such notice or any defect therein shall not affect the validity of the proceedings referred to in clauses (i), (ii), (iii) and (iv) above. Notwithstanding the foregoing, the Company shall publicly disclose the substance of any notice delivered hereunder prior to delivery of such notice to the holder of this Warrant.

(k) Certain Events. If, at any time during the Investment Period, any event occurs of the type contemplated by the adjustment provisions of this Section 4 but not expressly provided for by such provisions, the Company will give notice of such event as provided in Section 4(g) hereof, and the Company's Board of Directors will make an appropriate adjustment in the Exercise Price and the number of shares of Common Stock acquirable upon exercise of this Warrant so that the rights of the holder shall be neither enhanced nor diminished by such event.

(l) Certain Definitions.

(i) **"Common Stock Deemed Outstanding"** shall mean the number of shares of Common Stock actually outstanding, plus (x) in the case of any adjustment required by Section 4(a) resulting from the issuance of any Options, the maximum total number of shares of Common Stock issuable upon the exercise of the Options for which the adjustment is required (including any Common Stock issuable upon the conversion of Convertible Securities issuable upon the exercise of such Options), and (y) in the case of any adjustment required by Section 4(a) resulting from the issuance of any Convertible Securities, the maximum total number of shares of Common Stock issuable upon the exercise, conversion or exchange of the Convertible Securities for which the adjustment is required, as of the date of issuance of such Convertible Securities, if any.

(ii) **"Market Price,"** as of any date, (i) means the average of the closing bid prices of the shares of Common Stock as reported on The Nasdaq National Market ("**Nasdaq**") by Bloomberg Financial Markets ("**Bloomberg**") for the five consecutive trading days immediately preceding such date, or (ii) if Nasdaq is not the principal trading market for the shares of Common Stock, the average of the last reported bid prices as reported by Bloomberg on the principal trading market for the Common Stock during the same period, or, if there is no bid price for such period, the last reported sales price as reported by Bloomberg for such period, or (iii) if market value cannot be calculated as of such date on any of the foregoing bases, the Market Price shall be the average fair market value as reasonably determined by an investment banking firm selected by the Company and reasonably acceptable to the holder, with the cost of the appraisal to be borne by the Company. The

manner of determining the Market Price of the Common Stock set forth in the foregoing definition shall apply with respect to any other security in respect of which a determination as to market value must be made hereunder.

(iii) **"Common Stock,"** for purposes of this Section 4, includes the Common Stock and any additional class of stock of the Company having no preference as to dividends or distributions on liquidation, provided that the shares purchasable pursuant to this Warrant shall include only Common Stock in respect of which this Warrant is exercisable, or shares resulting from any subdivision or combination of such Common Stock, or in the case of any reorganization, reclassification, consolidation, merger, or sale of the character referred to in Section 4(e) hereof, the stock or other securities or property provided for in such Section.

5. Issue Tax. The issuance of certificates for Warrant Shares upon the exercise of this Warrant shall be made without charge to the holder of this Warrant or such shares for any issuance tax or other costs in respect thereof, provided that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than the holder of this Warrant.

6. No Rights or Liabilities as a Shareholder. This Warrant shall not entitle the holder hereof to any voting rights or other rights as a shareholder of the Company. No provision of this Warrant, in the absence of affirmative action by the holder hereof to purchase Warrant Shares, and no mere enumeration herein of the rights or privileges of the holder hereof, shall give rise to any liability of such holder for the Exercise Price or as a shareholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

7. Transfer, Exchange, Redemption and Replacement of Warrant.

(a) Restriction on Transfer. This Warrant and the rights granted to the holder hereof are transferable, in whole or in part, upon surrender of this Warrant, together with a properly executed assignment in the form attached hereto, at the office or agency of the Company referred to in Section 7(e) below, *provided, however,* that any transfer or assignment shall be subject to the conditions set forth in Sections 7(f) and 7(g) hereof and to the provisions of Sections 3(e) and 3(f) of the Securities Purchase Agreement. Until due presentment for registration of transfer on the books of the Company, the Company may treat the registered holder hereof as the owner and holder hereof for all purposes, and the Company shall not be affected by any notice to the contrary. Notwithstanding anything to the contrary contained herein, the registration rights described in Section 8 hereof are assignable only in accordance with the provisions of the Registration Rights Agreement.

(b) Warrant Exchangeable for Different Denominations. This Warrant is exchangeable, upon the surrender hereof by the holder hereof at the office or agency of the Company referred to in Section 7(e) below, for new Series 1 Warrants of like tenor of different denominations representing in the aggregate the right to purchase the number of shares of Common Stock which may be purchased hereunder, each of such new Series 1 Warrants to represent the right to purchase such number of shares as shall be designated by the holder hereof at the time of such surrender.

(c) Replacement of Warrant. Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction, or mutilation of this Warrant and, in the case of any such loss, theft, or destruction, upon delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company, or, in the case of any such mutilation, upon surrender and cancellation of this Warrant, the Company, at its expense, will execute and deliver, in lieu thereof, a new Warrant of like tenor.

(d) Cancellation; Payment of Expenses. Upon the surrender of this Warrant in connection with any transfer, exchange, or replacement as provided in this Section 7, this Warrant shall be promptly canceled by the Company. The Company shall pay all taxes (other than securities transfer taxes) and all other expenses (other than legal expenses, if any, incurred by the Holder or transferees) and charges payable in connection with the preparation, execution, and delivery of Series 1 Warrants pursuant to this Section 7. The Company shall indemnify and reimburse the holder of this Warrant for all losses and damages arising as a result of or related to any breach by the Company of the terms of this Warrant, including costs and expenses (including legal fees) incurred by such holder in connection with the enforcement of its rights

hereunder.

(e) Warrant Register. The Company shall maintain, at its principal executive offices (or such other office or agency of the Company as it may designate by notice to the holder hereof), a register for this Warrant, in which the Company shall record the name and address of the person in whose name this Warrant has been issued, as well as the name and address of each transferee and each prior owner of this Warrant.

(f) Exercise or Transfer Without Registration. If, at the time of the surrender of this Warrant in connection with any exercise, transfer, or exchange of this Warrant, this Warrant (or, in the case of any exercise, the Warrant Shares issuable hereunder), shall not be registered under the Securities Act and under applicable state securities or blue sky laws, the Company may require, as a condition of allowing such exercise, transfer, or exchange, (i) that the holder or transferee of this Warrant, as the case may be, furnish to the Company a written opinion of counsel (which opinion shall be in form, substance and scope customary for opinions of counsel in comparable transactions) to the effect that such exercise, transfer, or exchange may be made without registration under the Securities Act and under applicable state securities or blue sky laws, (ii) that the holder or transferee execute and deliver to the Company an investment letter in form and substance reasonably acceptable to the Company and (iii) that the transferee be an “**accredited investor**” as defined in Rule 501(a) promulgated under the Securities Act; *provided* that no such opinion, letter, or status as an “accredited investor” shall be required in connection with a transfer pursuant to Rule 144 under the Securities Act.

(g) Additional Restrictions on Exercise or Transfer. Notwithstanding anything contained herein to the contrary, this Warrant shall not be exercisable by a holder hereof to the extent (but only to the extent) that (a) the number of shares of Common Stock beneficially owned by such holder and its affiliates (other than shares of Common Stock which may be deemed beneficially owned through the ownership of the unexercised portion of the Warrants or the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein) and (b) the number of shares of Common

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Stock issuable upon exercise of the Warrants (or portion thereof) with respect to which the determination described herein is being made, would result in beneficial ownership by such holder and its affiliates of more than 9.99% of the outstanding shares of Common Stock. To the extent the above limitation applies, the determination of whether and to what extent this Warrant shall be exercisable with respect to other securities owned by such holder shall be in the sole discretion of the holder and submission of this Warrant for full or partial exercise shall be deemed to be the holder’s determination of whether and the extent to which this Warrant is exercisable, in each case subject to such aggregate percentage limitation. No prior inability to exercise the Warrants pursuant to this Section shall have any effect on the applicability of the provisions of this Section with respect to any subsequent determination of exercisability. For purposes of the immediately preceding sentence, beneficial ownership shall be determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended, and Regulation 13D-G thereunder, except as otherwise provided in clause (a) hereof. The restrictions contained in this Section 7(g) may not be amended without the consent of the holder of this Warrant and the holders of a majority of the Company’s then outstanding Common Stock.

8. Registration Rights. The initial holder of this Warrant (and certain assignees thereof) is entitled to the benefit of such registration rights in respect of the Warrant Shares as are set forth in the Registration Rights Agreement, including the right to assign such rights to certain assignees, as set forth therein.

9. Notices. Any notices required or permitted to be given under the terms of this Warrant shall be sent by certified or registered mail (return receipt requested) or delivered personally or by courier or by confirmed teletype, and shall be effective five days after being placed in the mail, if mailed, or upon receipt or refusal of receipt, if delivered personally or by courier, or by confirmed teletype, in each case addressed to a party. The addresses for such communications shall be:

If to the Company:

Microvision, Inc.  
2203 Airport Way South, Suite 100  
Seattle, Washington 98134  
Telephone No.: (206) 623-7055  
Facsimile No.: (206) 623-5961  
Attention: Richard Raisig

If to the holder, at such address as such holder shall have provided in writing to the Company, or at such other address as such holder furnishes by notice given in accordance with this Section 9.

10. Governing Law; Jurisdiction. This Warrant shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed in the State of New York. The Company irrevocably consents to the jurisdiction of the United States federal courts and state courts located in New York, New York in any suit or proceeding based on or arising under this Warrant and irrevocably agrees that all claims in respect of such suit or

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proceeding may be determined in such courts. The Company irrevocably waives any objection to the laying of venue and the defense of an inconvenient forum to the maintenance of such suit or proceeding. The Company further agrees that service of process upon the Company mailed by certified or registered mail to the address set forth in Section 9 shall be deemed in every respect effective service of process upon the Company in any suit or proceeding. Nothing herein shall affect the holder’s right to serve process in any other manner permitted by law. The Company agrees that a final non-appealable judgment in any such suit or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on such judgment or in any other lawful manner.

11. Miscellaneous.

(a) Amendments. Except as provided in Section 7(g) hereof, this Warrant and any provision hereof may only be amended by an instrument in writing signed by the Company and the holder hereof.

(b) Descriptive Headings. The descriptive headings of the several Sections of this Warrant are inserted for purposes of reference only, and shall not affect the meaning or construction of any of the provisions hereof.

(c) Cashless Exercise. Notwithstanding anything to the contrary contained in this Warrant, if the resale of the Warrant Shares by the holder is not then registered pursuant to an effective registration statement under the Securities Act, this Warrant may be exercised at any time or from time to time during the Exercise Period, by presentation and surrender of this Warrant to the Company at its principal executive offices with a written notice of the holder’s intention to effect a cashless exercise, including a calculation of the number of shares of Common Stock to be issued upon such exercise in accordance with the terms hereof (a “**Cashless Exercise**”). In the event of a Cashless Exercise, in lieu of paying the Exercise Price in cash, the holder shall surrender this Warrant for that number of shares of Common Stock determined by multiplying (i) the number of Warrant Shares to which it would otherwise be entitled by (ii) a fraction, the numerator of which shall be the difference between the last reported sale price per share of the Common Stock on the date of exercise (as reported on the Nasdaq National Market, or if not so reported, as reported on the principle United States securities market on which the Common Stock is then traded) and the Exercise Price, and the denominator of which shall be such last reported sale price per share of Common Stock.

(d) Business Day. For purposes of this Warrant, the term "business day" means any day, other than a Saturday or Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law, regulation or executive order to close.

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IN WITNESS WHEREOF, the Company has caused this Warrant to be signed by its duly authorized officer.

MICROVISION, INC.

By: /s/ Richard A Raisig

Name: RICHARD A RAISIG

Title: CFO/VP OPERATIONS

**FORM OF EXERCISE AGREEMENT**

**(To be Executed by the Holder in order to Exercise the Warrant)**

To: MICROVISION, INC.  
2203 Airport Way South, Suite 100  
Seattle, Washington 98134  
Facsimile No.: (206) 623-5961  
Attn: Richard Raisig

The undersigned hereby irrevocably exercises the right to purchase \_\_\_\_\_ shares of the Common Stock of MICROVISION, INC., a corporation organized under the laws of the State of Washington (the "**Company**"), evidenced by the attached Warrant and herewith makes payment of the Exercise Price with respect to such shares in full, all in accordance with the conditions and provisions of said Warrant.

The undersigned agrees not to offer, sell, transfer or otherwise dispose of any Common Stock obtained on exercise of the Warrant, except under circumstances that will not result in a violation of the Securities Act of 1933, as amended, or any state securities laws.

- The undersigned requests that the Company cause its transfer agent to electronically transmit the Common Stock issuable pursuant to this Exercise Agreement to the account of the undersigned or its nominee (which is \_\_\_\_\_) with DTC through its Deposit Withdrawal Agent Commission System ("**DTC Transfer**").
- In lieu of receiving the shares of Common Stock issuable pursuant to this Exercise Agreement by way of DTC Transfer, the undersigned hereby requests that the Company cause its transfer agent to issue and deliver to the undersigned physical certificates representing such shares of Common Stock.

The undersigned requests that a Warrant representing any unexercised portion hereof be issued, pursuant to the Warrant, in the name of the Holder and delivered to the undersigned at the address set forth below:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Holder

\_\_\_\_\_  
Name of Holder (Print)

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

**FORM OF ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers all the rights of the undersigned under the attached Warrant, with respect to the number of shares of Common Stock covered thereby set forth hereinbelow, to:

<u>Name of Assignee</u>	<u>Address</u>	<u>No of Shares</u>
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\_\_\_\_\_ and hereby irrevocably constitutes and appoints \_\_\_\_\_ as agent and attorney-in-fact to transfer said Warrant on the books of the within-named corporation, with full power of substitution in the premises.

Dated: \_\_\_\_\_,

In the presence of \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_  
Title of Signing Officer or Agent (if any): \_\_\_\_\_

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

Note: The above signature should correspond exactly with the name on the face of the within Warrant.