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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**  
**Pursuant to Section 13 or 15(d) of**  
**the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): September 9, 2004**

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**MICROVISION, INC.**

(Exact Name of Registrant as Specified in Charter)

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**Delaware**  
(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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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01 Entry into a Material Definitive Agreement.**

Microvision, Inc. (the "Company") entered into a Stock Purchase Agreement dated as of September 9, 2004 (the "Purchase Agreement") with Satellite Strategic Finance Associates, LLC providing for the sale of 10,000 shares of the Company's Series A Convertible Preferred Stock (the "Preferred Stock") and a warrant to purchase 361,795 shares of the Company's common stock (the "Warrant") for an aggregate purchase price of \$10,000,000. The Company issued the Preferred Stock and the Warrant on September 10, 2004 (the "Closing Date").

Based on the initial conversion price of \$6.91, the Preferred Stock is convertible into 1,447,178 shares of the Company's common stock (the "Common Stock"). The Preferred Stock is entitled to a dividend of 3.5% annually, payable quarterly. The dividend is payable in cash or registered Common Stock, at the election of the Company. The Preferred Stock matures on September 10, 2007, at which time it is payable in cash or registered Common Stock, at the election of the Company. The Company can elect to convert the Preferred Stock if the Common Stock price exceeds \$12.09.

The Warrant expires on September 10, 2009. The initial exercise price of the Warrant is \$8.16 per share.

The Company has also entered into a Registration Rights Agreement with respect to the shares of Common Stock issuable upon conversion of the Preferred Stock and exercise of the Warrant. The Company has agreed to file a registration statement with respect to such Common Stock.

The foregoing description is qualified in its entirety by the terms of the Company's Certificate of Designations, Preferences and Rights of the Preferred Stock, the Warrant, the Registration Rights Agreement and the Purchase Agreement attached hereto as Exhibits 3.1, 4.1, 10.1 and 10.2, respectively, which are each incorporated herein by reference. The Company issued a press release with respect to the issuance on September 10, 2004 which is attached hereto as Exhibit 99.1 hereto and is incorporated herein by reference.

**Item 3.02. Unregistered Sales of Equity Securities.**

The Company issued 10,000 shares of its Preferred Stock and the Warrant for an aggregate purchase price of \$10,000,000. The Securities were issued in a transaction not involving any public offering pursuant to Section 4(2) of the Securities Act of 1933, as amended. The terms of the issuance are described in Item 1.01 of this Report and are incorporated herein by reference.

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**Item 9.01. Financial Statements, Pro Forma Financial Information and Exhibits.**

*(c) Exhibits.*

- 3.1 Certificate of Designations, Preferences and Rights of the Series A Convertible Preferred Stock of Microvision, Inc.
- 4.1 Warrant to Purchase Common Stock of Microvision, Inc. issued September 10, 2004 to Satellite Strategic Finance Associates, LLC.
- 10.1 Registration Rights Agreement dated as of September 9, 2004 by and between Microvision, Inc. and Satellite Strategic Finance Associates, LLC.
- 10.2 Securities Purchase Agreement dated as of September 9, 2004 by and between Microvision, Inc. and Satellite Strategic Finance Associates, LLC.
- 99.1 Microvision, Inc. Press Release Regarding Issuance of 10,000 Shares of Series A Convertible Preferred Stock and a Warrant for an Aggregate Purchase Price of \$10,000,000.



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**EXHIBIT INDEX**

<u>Exhibit No.</u>	<u>Description</u>
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**CERTIFICATE OF DESIGNATIONS,  
PREFERENCES AND RIGHTS**

of the

**SERIES A CONVERTIBLE PREFERRED STOCK**

of

**MICROVISION, INC.**

**Pursuant to Section 151 of the  
Delaware General Corporation Law**

MICROVISION, INC., a Delaware corporation (the "Company"), hereby certifies that the following resolutions were adopted by the Board of Directors of the Company pursuant to the authority of the Board of Directors as required by Section 151 of the Delaware General Corporation Law.

RESOLVED, that pursuant to the authority granted to the Board of Directors in accordance with the provisions of the Company's Certificate of Incorporation, the Board of Directors hereby creates, authorizes and provides for the issuance of a series of the Company's previously authorized Preferred Stock, par value \$.001 per share (the "Preferred Stock"), and hereby states the designation and number of shares, and fixes the relative rights, preferences, privileges and restrictions thereof as follows:

1. DESIGNATION.

This series shall consist of ten thousand (10,000) shares of Preferred Stock and shall be designated the "Series A Convertible Preferred Stock" (the "Series A Preferred Stock"). The face amount of each share of Series A Preferred Stock (each, a "Preferred Share" and collectively, the "Preferred Shares") shall be One Thousand Dollars (\$1,000) (the "Stated Value").

2. CERTAIN DEFINITIONS.

"Bankruptcy Law" means Title 11, United States Code, and the Federal Rules of Bankruptcy Procedure, and any similar Federal or state law, rule or regulation providing for the relief of debtors.

"Board of Directors" or "Board" means the Company's Board of Directors, as constituted from time to time.

"Business Day" means any day other than a Saturday, a Sunday or a day on which the New York Stock Exchange or commercial banks located in New York City are authorized or permitted by law to close.

“Cap Amount” means 19.99% of the number of shares of Common Stock outstanding on the Closing Date (subject to proportionate adjustment upon a stock split, stock dividend or similar event).

“Certificate” means this Certificate of Designation.

“Change of Control” means the existence or occurrence of any of the following: (a) the sale, conveyance or disposition of all or substantially all of the assets of the Company; (b) the consolidation, merger or other business combination of the Company with or into any other entity, immediately following which the prior stockholders of the Company fail to own, directly or indirectly, at least fifty percent (50%) of the voting equity of the surviving entity; (c) a transaction or series of transactions in which any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) acquires more than fifty percent (50%) of the voting equity of the Company; and (e) the replacement of a majority of the Board of Directors with individuals who do not constitute Continuing Directors.

“Closing Date” has the meaning specified in the Securities Purchase Agreement.

“Common Stock” means the Company’s common stock, par value \$.001 per share.

“Common Stock Payment Condition” means each of the following events:

(i) the Registration Statement shall have been declared effective and be available to each Holder, and shall cover the number of Registrable Securities required by the Registration Rights Agreement, or all Registrable Securities may be sold by each Holder pursuant to Rule 144(k);

(ii) (x) the Common Stock shall be listed on the Nasdaq National Market, the Nasdaq Small Cap Market or the New York Stock Exchange and trading in the Common Stock on such market or exchange shall not then be suspended, (y) the Company shall then be in compliance, in all material respects, with each of the quantitative and qualitative listing standards and requirements (without regards to any specified compliance periods) of the Nasdaq National Market, the Nasdaq Small Cap Market or the New York Stock Exchange, as the case may be, and (z) the Company shall not have received any notice from the NASD or the New York Stock Exchange, as the case may be, that the Company may not be in such compliance which non-compliance has not been resolved to the satisfaction of the NASD or the New York Stock Exchange, as the case may be; and

(iii) a Fundamental Change shall not have occurred and be continuing.

“Continuing Director” means, on any date, a member of the Board of Directors who (i) was a member of such board on the Execution Date (as defined in the Securities Purchase Agreement) or (ii) was nominated or elected by at least a majority of the directors who were Continuing Directors at the time of such nomination or election or whose election to the Board of Directors was recommended or endorsed by at least a majority of the directors who were Continuing Directors at the time of such nomination or election.

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“Conversion Price” means \$6.91, subject to adjustment as provided herein.

“Debt” means, as to any Person at any time: (a) all indebtedness, liabilities and obligations of such Person; (b) all indebtedness, liabilities and obligations of such Person to pay the deferred purchase price of Property or services, except trade accounts payable of such Person arising in the ordinary course of business that are not past due by more than 90 days; (c) all capital lease obligations of such Person; (d) all Debt of others guaranteed by such Person; (e) all indebtedness, liabilities and obligations secured by a Lien existing on Property owned by such Person, whether or not the indebtedness, liabilities or obligations secured thereby have been assumed by such Person or are non-recourse to such Person; (f) all reimbursement obligations of such Person (whether contingent or otherwise) in respect of letters of credit, bankers’ acceptances, surety or other bonds and similar instruments; and (g) all indebtedness, liabilities and obligations of such Person to redeem or retire shares of capital stock of such Person.

“Default Interest Rate” means the lower of twelve percent (12%) per annum and the highest rate permitted by applicable law.

“Effective Date” means the date on which the Registration Statement is declared effective by the Securities and Exchange Commission.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Five (5) Day VWAP” means, as of a particular date, the average of each daily VWAP for the five (5) consecutive Trading Days occurring immediately prior to (but not including) such date. For the avoidance of doubt, the Five (5) Day VWAP shall be determined by calculating the daily VWAP for each of the five (5) Trading Days immediately preceding the relevant date, adding together all of the daily VWAPs for such five (5) Trading Day period, and dividing such sum by five (5).

“Fundamental Change” means any of the following events or circumstances: (i) any representation or warranty of the Company set forth in the Securities Purchase Agreement, this Certificate or the other Transaction Documents fails to be true and correct in all respects as of the Closing Date and such failure has had or would reasonably be expected to have a Material Adverse Effect; (ii) the Company fails at any time to comply with or perform in all respects all of the agreements, obligations and conditions set forth in the Securities Purchase Agreement, this Certificate or the other Transaction Documents that are required to be complied with or performed by the Company and such failure has had or would reasonably be expected to have a Material Adverse Effect; (iii) a Change of Control occurs; or (iv) a Liquidation Event occurs or is publicly announced by the Company.

“Holder” means any holder of Preferred Shares.

“Junior Securities” means the Common Stock and all other capital stock of the Company that does not constitute Pari Passu Securities or Senior Securities.



“Liquidation Event” means:

(a) that the Company or any Subsidiary, pursuant to or under or within the meaning of any Bankruptcy Law: (i) commences a voluntary case or proceeding; (ii) consents to the entry of any order for relief against it in an involuntary case or proceeding or the commencement of any case against it; (iii) consents to the appointment of a Custodian of it or for any substantial part of its property; (iv) makes a general assignment for the benefit of its creditors; (v) files a petition in bankruptcy or answer or consent seeking reorganization or relief; or (vi) consents to the filing of such petition or the appointment of or taking possession by a Custodian; or

(b) that a court of competent jurisdiction has entered an order or decree under any Bankruptcy Law that: (i) is for relief against the Company or any Subsidiary, or adjudicates the Company or any Subsidiary to be insolvent or bankrupt; (ii) appoints a custodian or receiver for the Company or any Subsidiary, or for any substantial part of its property; or (iii) orders the winding up or liquidation of the Company or any Subsidiary, and such order or decree remains unstayed and in effect for at least sixty (60) days.

“Liquidation Preference” means, with respect to a Preferred Share, an amount equal to the Stated Value of such Preferred Share plus all accrued but unpaid Dividends thereon (whether or not such Dividends are earned or declared).

“Mandatory Conversion Conditions” means each of the following events:

(i) the Registration Statement shall have been declared effective and shall be available to the Holders, and shall cover the number of Registrable Securities required by the Registration Rights Agreement, or all Registrable Securities may be sold by the Holders pursuant to Rule 144(k);

(ii) (x) the Common Stock shall be listed on the Nasdaq National Market, the Nasdaq Small Cap Market or the New York Stock Exchange and trading in the Common Stock on such market or exchange shall not then be suspended, (y) the Company shall then be in compliance, in all material respects, with each of the quantitative and qualitative listing standards and requirements (without regards to any specified compliance periods) of the Nasdaq National Market, the Nasdaq Small Cap Market or the New York Stock Exchange, as the case may be, and (z) the Company shall not have received any notice from the NASD or the New York Stock Exchange, as the case may be, that the Company may not be in such compliance which non-compliance has not been resolved to the satisfaction of the NASD or the New York Stock Exchange, as the case may be;

(iii) a Fundamental Change shall not have occurred and be continuing; and

(iv) the VWAP shall be equal to at least one hundred seventy-five percent (175%) of the Conversion Price then in effect (subject to proportionate adjustment for stock splits, stock dividends and similar events).

“Market Price” means, as of a particular date, the average of each daily VWAP for the ten (10) consecutive Trading Days occurring immediately prior to (but not including) such date. For

the avoidance of doubt, the Market Price shall be determined by calculating the daily VWAP for each of the ten (10) Trading Days immediately preceding the relevant date, adding together all of the daily VWAPs for such ten (10) Trading Day period, and dividing such sum by ten (10).

“Material Adverse Effect” has the meaning specified in the Securities Purchase Agreement.

“Maturity Date” means the third (3<sup>rd</sup>) anniversary of the Closing Date.

“Outstanding Registrable Securities” means, at any time, all Registrable Securities that at such time are either issued and outstanding or issuable upon conversion of the Preferred Stock or exercise of the Warrants (without regard to any limitation on such conversion or exercise).

“Pari Passu Securities” means any securities ranking by their terms *pari passu* with the Series A Preferred Stock in respect of redemption or distribution upon liquidation.

“Permitted Senior Securities” means (i) Debt secured only by the stock of Lumera Corporation held by the Company, provided such Debt is non-recourse to the Company, and (ii) a working capital credit facility provided by a bank or other financial institution that is secured only by the Company’s accounts receivable and/or inventory.

“Preferred Stock” means the Company’s Series A Convertible Preferred Stock.

“Preferred Shares” means the shares of Preferred Stock issued pursuant to the Securities Purchase Agreement.

“Principal Market” means the principal securities exchange or market on which the Common Stock is listed or traded.

“Registrable Securities” means the Conversion Shares and the Warrant Shares, any other shares of Common Stock issuable pursuant to the terms of this Certificate or the Warrants, and any shares of common stock issued or issuable from time to time (with any adjustments) in replacement of, in exchange for or otherwise in respect of the Conversion Shares or the Warrant Shares; provided, however, that “Registrable Securities” shall not include any such shares that have been sold to the public pursuant to the Registration Statement or pursuant to Rule 144.

“Registration Rights Agreement” means the agreement, dated the date of the Securities Purchase Agreement, pursuant to which the Company has agreed to register the resale of shares of Common Stock issuable upon conversion of the Series A Preferred Stock or exercise of the Warrants.

“Registration Statement” has the meaning specified in the Registration Rights Agreement.

“Rule 144” means Rule 144 under the Securities Act.

“Securities Act” means the Securities Act of 1933, as amended.

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“Securities Purchase Agreement” means the agreement pursuant to which the Company is obligated to issue the Preferred Shares to the persons named therein.

“Senior Securities” means (i) any Debt issued or assumed by the Company and (ii) any securities of the Company which by their terms have a preference over the Series A Preferred Stock in respect of redemption or distribution upon liquidation.

“Stated Value” means \$1,000, subject to proportionate adjustment in the event of a stock split or similar event.

“Stockholder Approval” means the affirmative vote of the holders of a majority of the votes cast at a meeting of stockholders approving the issuance of Common Stock in excess of the Cap Amount.

“Subsidiary” means, with respect to the Company, any corporation or other entity of which at least a majority of the outstanding shares of stock or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors (or Persons performing similar functions) of such corporation or entity (irrespective of whether or not at the time, in the case of a corporation, stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by the Company or one or more of its Subsidiaries or by the Company and one or more of its Subsidiaries.

“Trading Day” means any day on which the Common Stock is purchased and sold on the Principal Market.

“VWAP” on a Trading Day means the volume weighted average price of the Common Stock for such Trading Day as reported by Bloomberg Financial Markets or, if Bloomberg Financial Markets is not then reporting such prices, by a comparable reporting service of national reputation selected by the Holders and reasonably satisfactory to the Company. If the VWAP cannot be calculated for the Common Stock on such Trading Day on any of the foregoing bases, then the Company shall submit such calculation to an independent investment banking firm of national reputation reasonably acceptable to the Holders, and shall cause such investment banking firm to perform such determination and notify the Company and the Holders of the results of determination no later than two (2) Business Days from the time such calculation was submitted to it by the Company. All such determinations shall be appropriately adjusted for any stock dividend, stock split or other similar transaction during such period.

“Warrants” means the warrants issued by the Company pursuant to the Securities Purchase Agreement.

All definitions contained in this Certificate are equally applicable to the singular and plural forms of the terms defined. The words “hereof”, “herein” and “hereunder” and words of similar import referring to this Certificate refer to this Certificate as a whole and not to any particular provision of this Certificate.

3. PRIORITY IN LIQUIDATION.

Upon the occurrence of a Liquidation Event, no distribution shall be made to the holders of any shares of Junior Securities unless each Holder shall have received the Liquidation Preference with respect to each Preferred Share then held by such Holder. In the event that, upon the occurrence of a Liquidation Event, the assets available for distribution to the Holders and the holders of Pari Passu Securities are insufficient to pay the Liquidation Preference with respect to all of the outstanding Preferred Shares and the preferential amounts payable to such holders, the entire assets of the Company shall be distributed ratably among the Preferred Shares and the shares of such Pari Passu Securities in proportion to the ratio that the preferential amount payable on each such share (which shall be the Liquidation Preference in the case of a Preferred Share) bears to the aggregate preferential amount payable on all such shares.

4. DIVIDENDS.

(a) Dividend Rate. Each Holder shall be entitled to receive, to the extent permitted by applicable law, in preference to the payment of any dividend on any class or series of Junior Securities, cumulative dividends ("Dividends") on each Preferred Share in an amount equal to, on an annualized basis, the Stated Value of such Preferred Share ~~times~~ three and one-half percent (3.5%). Dividends shall accrue, whether or not earned or declared, on each Preferred Share from the Closing Date through the earlier to occur of (A) the date on which such Preferred Share matures and (B) the redemption or conversion of such Preferred Share in accordance with the terms hereof. Accrued Dividends on a Preferred Share shall be payable quarterly in arrears on each January 1, April 1, July 1, and October 1 of each calendar year following the Closing Date, commencing on October 1, 2004, and on the Maturity Date for such Preferred Share (each, a "Dividend Payment Date"). Dividends shall be computed on the basis of a 365-day year for the actual number of days elapsed.

(b) Dividend Payments. The Company shall pay Dividends in cash by wire transfer of immediately available funds; provided, however, that the Company may elect, subject to the satisfaction of all of the Common Stock Payment Conditions in accordance with paragraph (c) below, to pay Dividends in shares of Common Stock (the "Common Stock Dividend Option"). Dividends that are due in cash and which are not paid within five (5) Business Days of the applicable Dividend Payment Date shall bear interest until paid at the Default Interest Rate.

(c) Conditions to Dividend Payment in Common Stock. The Company shall be entitled to exercise the Common Stock Dividend Option with respect to a Dividend Payment Date only if, on such date and on each of the ten (10) Trading Days immediately preceding such date, all of the Common Stock Payment Conditions are satisfied in full. In the event that any Common Stock Payment Condition is not satisfied as of the applicable Dividend Payment Date and each such Trading Day, the Company shall not be permitted to exercise the Common Stock Dividend Option and must pay all amounts due on such Dividend Payment Date in cash by wire transfer of immediately available funds.

(d) Common Stock Dividend Notice. In order to exercise the Common Stock Dividend Option with respect to a Dividend Payment Date, the Company must deliver, on or before the thirtieth (30<sup>th</sup>) calendar day immediately prior to such date, written notice to each Holder stating that the

Company wishes to exercise such option (a "Common Stock Dividend Notice"). If the Company wishes to exercise the Common Stock Dividend Option with respect to any Dividends due on a Dividend Payment Date, it must do so with respect to all (but not less than all) of such Dividends. A Common Stock Dividend Notice, once delivered by the Company, shall be irrevocable. In the event that the Company does not deliver a Common Stock Dividend Notice on or before such thirtieth day, the Company will be deemed to have elected to pay the related Dividend in cash.

(e) Delivery of Shares. On or before the third (3<sup>rd</sup>) Business Day following a Dividend Payment Date with respect to which the Company has validly exercised the Common Stock Dividend Option (each a "Common Stock Dividend Delivery Date"), the Company must deliver to each Holder a number of shares of Common Stock equal to (A) the amount of Dividends payable with respect to such Holder's Preferred Shares divided by (B) the Market Price in effect on such date times ninety-five percent (95%). The Company must deliver such shares of Common Stock to such Holder in accordance with the provisions of paragraph 5(d) below, with the Common Stock Dividend Delivery Date being deemed the Delivery Date, and in the event of the Company's failure to effect such delivery on the applicable Delivery Date therefor (determined in accordance with paragraph 5(d)), such Holder shall have the remedies specified in paragraph 5(e) below.

#### 5. CONVERSION.

(a) Right to Convert. Each Holder shall have the right to convert, at any time and from time to time after the Closing Date, all or any part of the Preferred Shares held by such Holder into such number of fully paid and non-assessable shares ("Conversion Shares") of the Common Stock as is determined in accordance with the terms hereof (a "Conversion").

(b) Conversion Notice. In order to convert Preferred Shares, a Holder shall send to the Company by facsimile transmission, at any time prior to 6:00 p.m., eastern time, on the Business Day on which such Holder wishes to effect such Conversion (the "Conversion Date"), (i) a notice of conversion, in substantially the form of Exhibit A hereto (a "Conversion Notice"), stating the number of Preferred Shares to be converted, the amount of Dividends accrued (but remaining unpaid) thereon, and a calculation of the number of shares of Common Stock issuable upon such Conversion and (ii) a copy of the certificate or certificates representing the Preferred Shares being converted. The Holder shall thereafter send the original of the Conversion Notice and of such certificate or certificates to the Company. The Company shall issue a new certificate for Preferred Shares to the Holder in the event that less than all of the Preferred Shares represented by a certificate are converted; provided, however, that the failure of the Company to deliver such new certificate shall not affect the right of the Holder to submit a further Conversion Notice with respect to such Preferred Shares and, in any such case, the Holder shall be deemed to have submitted the original of such new certificate at the time that it submits such further Conversion Notice. Except as otherwise provided herein, upon delivery of a Conversion Notice by a Holder in accordance with the terms hereof, such Holder shall, as of the applicable Conversion Date, be deemed for all purposes to be the record owner of the Common Stock to which such Conversion Notice relates. In the case of a dispute between the Company and a Holder as to the calculation of the Conversion Price or the number of Conversion Shares issuable upon a Conversion (including without limitation the calculation of any adjustment to the Conversion Price pursuant to Section 8 below), the Company shall issue to such Holder the number of Conversion Shares that are not disputed within the time periods specified in paragraph 5(d) below and shall submit the disputed calculations to a certified public accounting firm of national reputation (other than the Company's

regularly retained accountants) within three (3) Business Days following the Company's receipt of such Holder's Conversion Notice. The Company shall cause such accountant to calculate the Conversion Price as provided herein and to notify the Company and such Holder of the results in writing no later than three (3) Business Days following the day on which such accountant received the disputed calculations (the "Dispute Procedure"). Such accountant's calculation shall be deemed conclusive absent manifest error. The fees of any such accountant shall be borne by the party whose calculations were most at variance with those of such accountant.

(c) Number of Conversion Shares. The number of Conversion Shares to be delivered by the Company pursuant to a Conversion shall be determined by dividing (i) the aggregate Liquidation Preference of the Preferred Shares to be converted by (ii) the Conversion Price in effect on the applicable Conversion Date.

(d) Delivery of Conversion Shares. Upon receipt of a fax copy of a Conversion Notice from a Holder, the Company shall, no later than the close of business on the third (3rd) Business Day following the date on which the Company receives the Conversion Notice by facsimile transmission pursuant to paragraph 5(b), above (the "Delivery Date"), issue and deliver or caused to be delivered to such Holder the number of Conversion Shares determined pursuant to paragraph 5(c) above provided, however, that any Conversion Shares that are the subject of a Dispute Procedure shall be delivered no later than the close of business on the third (3rd) Business Day following the determination made pursuant thereto. The Company shall effect delivery of Conversion Shares to such Holder by, as long as Company's transfer agent ("Transfer Agent") participates in the Depository Trust Company ("DTC") Fast Automated Securities Transfer program ("FAST"), crediting the account of such Holder or its nominee at DTC (as specified in the applicable Conversion Notice) with the number of Conversion Shares required to be delivered, no later than the close of business on such Delivery Date. In the event that the Transfer Agent is not a participant in FAST or the Conversion Shares are not eligible for FAST, or if a Holder so specifies in a Conversion Notice or otherwise in writing on or before the Conversion Date, the Company shall effect delivery of Conversion Shares by delivering to such Holder or its nominee physical certificates representing such Conversion Shares, no later than the close of business on such Delivery Date. If any Conversion would create a fractional Conversion Share, such fractional Conversion Share shall be disregarded and the number of Conversion Shares issuable upon such Conversion, in the aggregate, shall be the next closest number of Conversion Shares. Conversion Shares delivered to a Holder shall not contain any restrictive legend as long as the resale of such Conversion Shares (x) has been or will be made (as certified in writing by such Holder to the Company, in a Conversion Notice or otherwise) pursuant to an effective Registration Statement (as defined in the Registration Rights Agreement), (y) has been made pursuant to Rule 144, or (z) may be made pursuant to Rule 144(k) or any successor rule or provision.

(e) Failure to Deliver Conversion Shares.

(i) In the event that, for any reason, a Holder has not received certificates representing the number of Conversion Shares specified in the applicable Conversion Notice, without any restrictive legend in the circumstances described in clause (x), (y) or (z) of paragraph 5(d) above, on or before the Delivery Date therefor (a "Conversion Default"), and such failure to deliver certificates continues for two (2) Business Days following the delivery of written notice thereof from such Holder (such second Business Day being referred to herein as the "Conversion Default Date"), the

Company shall pay to such Holder payments ("Conversion Default Payments") in the amount of (A) "N" multiplied by (B) the aggregate Liquidation Preference of the Preferred Shares which are the subject of such Conversion Default multiplied by (C) one percent (1%), where "N" equals the number of days elapsed between the Conversion Default Date and the date on which all of the certificates representing such Conversion Shares (without any restrictive legend in the circumstances described in clause (x), (y) or (z) of paragraph 5(d) above) are issued and delivered to such Holder. Amounts payable hereunder shall be paid to the Holder in immediately available funds on or before the fifth (5th) Business Day of the calendar month immediately following the calendar month in which such amounts have accrued.

(ii) In the event of a Conversion Default, a Holder may, upon written notice to the Company, regain on the date of such notice the rights of such Holder under the Preferred Shares that are the subject of such Conversion Default. In such event, such Holder shall retain all of such Holder's rights and remedies with respect to the Company's failure to deliver such Conversion Shares (including without limitation the right to receive the cash payments specified in paragraph (e)(i) above); provided, however, that such cash payments shall cease to accrue on and after the date of such notice (without affecting such Holder's right to receive cash payments that have accrued prior to such date).

(iii) The Holders' rights and remedies hereunder are cumulative, and no right or remedy is exclusive of any other. In addition to any other remedies provided herein, each Holder shall have the right to pursue actual damages for the Company's failure to issue and deliver Conversion Shares on the applicable Delivery Date, including, without limitation, damages relating to any purchase of shares of Common Stock by or on behalf of such Holder in order to make delivery on a sale effected in anticipation of receiving Conversion Shares, such damages to be in an amount equal to (A) the aggregate amount paid by such Holder for the shares of Common Stock so purchased minus (B) the aggregate amount received by such Holder upon the sale of such Conversion Shares, and such Holder shall have the right to pursue all other remedies available to it at law or in equity (including, without limitation, a decree of specific performance and/or injunctive relief).

#### 6. MATURITY OF PREFERRED SHARES.

(a) Payment at Maturity. On the Maturity Date, the Company shall pay to each Holder the aggregate Liquidation Preference for such Holder's Preferred Shares that are outstanding on such date. Such payment shall be made in cash by wire transfer of immediately available funds; provided, however, that the Company may elect, subject to the satisfaction of all of the Common Stock Payment Conditions, to pay such Liquidation Preference in shares of Common Stock (the "Common Stock Maturity Payment Option"). Any amount of cash that is due on the Maturity Date and which is not paid within five (5) Business Days of such date shall bear interest until paid at the Default Interest Rate.

(b) Common Stock Payment Conditions. The Company shall not be entitled to exercise the Common Stock Maturity Payment Option unless, on the Maturity Date and on each of the twenty (20) Trading Days immediately preceding such date, all of the Common Stock Payment Conditions are satisfied in full. In the event that any Common Stock Payment Condition is not satisfied as of the applicable Maturity Date and each such Trading Day, the Company shall not be permitted to exercise the Common Stock Maturity Payment Option (regardless of whether the Company has delivered a Common Stock Option Notice (as defined below)) and must pay all amounts due on such Maturity Date in cash by wire transfer of immediately available funds.

(c) Common Stock Option Notice. In order to exercise the Common Stock Maturity Payment Option with respect to the Maturity Date, the Company must deliver, on or before the thirtieth (30<sup>th</sup>) calendar day immediately prior to such date, written notice to each Holder stating that the Company wishes to exercise such option (a Common Stock Option Notice). If the Company wishes to exercise the Common Stock Maturity Payment Option, it must do so with respect to all (but not less than all) of the Preferred Shares then outstanding. A Common Stock Option Notice, once delivered by the Company, shall be irrevocable. In the event that the Company does not deliver a Common Stock Option Notice on or before such thirtieth day, the Company will be deemed to have elected to pay the related Liquidation Preference in cash.

(d) Delivery of Shares. On or before the third (3<sup>rd</sup>) Business Day following the Maturity Date, and provided that Company has validly exercised the Common Stock Maturity Payment Option in accordance with the terms hereof (each a "Common Stock Option Delivery Date"), the Company shall deliver to each Holder a number of shares of Common Stock equal to (A) the Liquidation Preference of such Holder's Preferred Shares outstanding on the Maturity Date divided by (B) the Market Price in effect on such date times ninety-five percent (95%). The Company must deliver such shares of Common Stock to such Holder in accordance with the provisions of paragraph 5(d) above, with the Common Stock Option Delivery Date being deemed the Delivery Date, and in the event of the Company's failure to effect such delivery on the applicable Delivery Date therefor (calculated in accordance with paragraph 5(d)), such Holder shall have the remedies specified in paragraph 5(e) above.

7. CONVERSION LIMITATIONS. In no event shall a Holder be permitted to convert any Preferred Shares to the extent that, upon the Conversion of such Preferred Shares, either:

(a) the number of shares of Common Stock beneficially owned by such Holder (other than shares of Common Stock issuable upon conversion of such Preferred Shares or which would otherwise be deemed beneficially owned except for being subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 7), when added to the number of shares of Common Stock issuable upon the Conversion of such Preferred Shares, would exceed 4.99% of the number of shares of Common Stock then issued and outstanding. As used herein, beneficial ownership shall be determined in accordance with Section 13(d) of the Exchange Act and the rules thereunder. To the extent that the limitation contained in this paragraph applies (and without limiting any rights the Company may otherwise have), the Company may rely on the Holder's determination of whether Preferred Shares are convertible pursuant to the terms hereof, the Company having no obligation whatsoever to verify or confirm the accuracy of such determination, and the submission of a Conversion Notice by the Holder shall be deemed to be the Holder's representation that the Preferred Shares specified therein are convertible pursuant to the terms hereof. Nothing contained herein shall be deemed to restrict the right of a Holder to convert Preferred Shares at such time as the Conversion thereof will not violate the provisions of this paragraph. The limitation contained in this paragraph shall cease to apply to a Holder (x) upon sixty (60) days' prior written notice from such Holder to the Company, (y) immediately upon written notice from such Holder to the Company at any time after the public announcement or other disclosure of a Major Transaction (as defined below) or a Change of Control and (z) on the Maturity Date; nor shall such limitation apply in the event of a Mandatory Conversion (as defined below), in which event the provisions of Section 9 shall apply; or



(b) unless Stockholder Approval has been obtained, the number of Conversion Shares that such Holder would receive upon such Conversion, when added to (i) the number of Conversion Shares previously received by such Holder pursuant to the provisions of this Certificate plus (ii) the number of Warrant Shares previously received by such Holder pursuant to such Holder's Warrant, would exceed the product of (A) the Cap Amount multiplied by (B) a fraction, the numerator of which is the aggregate Stated Value of the Preferred Shares purchased by such Investor and the denominator of which is the aggregate Stated Value of all Preferred Shares purchased by the Investors (such product, the "Allocation Amount"). In the event that any Investor shall sell or otherwise transfer any of such Investor's Preferred Shares, the shares of Common Stock constituting such transferring Investor's Allocation Amount shall be allocated between the transferring Investor and transferee *pro rata* in proportion to the Stated Value of the Preferred Shares transferred to such transferee and the Stated Value of the Preferred Shares retained by such transferring Investor. In the event that any Investor shall convert all of such Investor's Preferred Shares and exercise all of such Investor's Warrant into a number of Conversion Shares and Warrant Shares that, in the aggregate, is less than such Investor's Allocation Amount, then the difference between such Investor's Allocation Amount and the number of Conversion Shares and Warrant Shares actually issued to such Investor shall be allocated to the remaining Investors on a *pro rata* basis in proportion to number of Registrable Securities then issuable to each Investor. In the event that, at any time, the sum of (i) the number of Conversion Shares issuable under the Preferred Shares owned by a Holder (without regard to any restrictions on such issuance contained in this Certificate) plus (ii) the number of Warrant Shares issuable upon exercise of the Warrant owned by such Holder (without regard to any restrictions on such exercise contained in the Warrants), plus (iii) the number of Conversion Shares and Warrant Shares previously issued to such Holder, exceeds ninety percent (90%) of such Holder's Allocation Amount, the Company shall, upon the written request of such Holder, hold as promptly as reasonably practicable a special meeting of its stockholders for the purpose of obtaining, and use its best efforts to obtain, Stockholder Approval. In the event that the Company does not obtain Stockholder Approval at such meeting, the Company shall continue to use its best efforts to seek such approval as soon as practicable after such meeting but no less frequently than annually thereafter.

8. ADJUSTMENTS TO CONVERSION PRICE. The Conversion Price shall be subject to adjustment from time to time as provided in this Section 8. In the event that any adjustment of the Conversion Price required herein results in a fraction of a cent, the Conversion Price shall be rounded up or down to the nearest cent.

(a) Subdivision or Combination of Common Stock. If the Company, at any time after the Execution Date (as defined in the Securities Purchase Agreement), subdivides (by any stock split, stock dividend, recapitalization, reorganization, reclassification or otherwise) the outstanding shares of Common Stock into a greater number of shares, then after the date of record for effecting such subdivision, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Company, at any time after the Closing Date, combines (by reverse stock split, recapitalization, reorganization, reclassification or otherwise) the outstanding shares of Common Stock into a smaller number of shares, then, after the date of record for effecting such combination, the Conversion Price in effect immediately prior to such combination will be proportionately increased.

(b) Distributions. If the Company shall declare or make any distribution of cash or any other assets (or rights to acquire such assets) to holders of Common Stock, as a partial liquidating dividend or otherwise, including without limitation any dividend or distribution to the Company's stockholders in shares (or rights to acquire shares) of capital stock of a subsidiary (a "Distribution"), the Company shall deliver written notice of such Distribution (a "Distribution Notice") to each Holder at least thirty (30) days prior to the earlier to occur of (i) the record date for determining stockholders entitled to such Distribution (the "Record Date") and (ii) the date on which such Distribution is made (the "Distribution Date"). The earlier to occur of the Record Date and the Distribution Date is referred to herein as the "Determination Date". In the Distribution Notice to a Holder, the Company must indicate whether the Company has elected (A) to deliver to such Holder the same amount and type of assets being distributed in such Distribution as though the Holder were a holder on the Determination Date thereof of a number of shares of Common Stock into which the Preferred Shares held by such Holder are convertible as of such Determination Date (such number of shares to be determined at the Conversion Price then in effect and without giving effect to any limitations on such conversion) or (B) to reduce the Conversion Price as of the Determination Date thereof by an amount equal to the fair market value of the assets to be distributed divided by the number of shares of Common Stock as to which such Distribution is to be made, such fair market value to be reasonably determined in good faith by the independent members of the Company's Board of Directors. If the Company does not notify the Holders of its election pursuant to the preceding sentence within two (2) Business Days following the date on which the Company publicly announces a Distribution, the Company shall be deemed to have elected clause (A) of the preceding sentence.

(c) Dilutive Issuances.

(i) Adjustment Upon Dilutive Issuance. If, at any time after the Closing Date, the Company issues or sells or, pursuant to subparagraph (iii) of this paragraph (c), is deemed to have issued or sold, any shares of Common Stock for per share consideration less than the Conversion Price on the date of such issuance or sale (or deemed issuance or sale) (a "Dilutive Issuance"), then the Conversion Price shall be adjusted as follows:

(A) If such Dilutive Issuance occurs prior to the Effective Date, then effective immediately upon the Dilutive Issuance, the Conversion Price shall be adjusted so as to equal the value of the consideration received or receivable by the Company (on a per share basis) for the additional shares of Common Stock so issued, sold or deemed issued or sold in such Dilutive Issuance (which, in the case of a deemed issuance or sale, shall be calculated in accordance with subparagraph (iii) below).

(B) If such Dilutive Issuance occurs on or after the Effective Date, then effective immediately upon the Dilutive Issuance, the Conversion Price shall be adjusted so as to equal an amount determined by multiplying such Conversion Price by the following fraction:

$$\frac{N_0 + N_1}{N_0 + N_2}$$

where:

$N_0$  = the number of shares of Common Stock outstanding immediately prior to the issuance, sale or deemed issuance or sale of such additional shares of Common Stock in such Dilutive Issuance (without taking into account any shares of Common Stock issuable upon conversion, exchange or exercise of any securities or other instruments which are convertible into or exercisable or exchangeable for Common Stock (“Convertible Securities”) or options, warrants or other rights to purchase or subscribe for Common Stock or Convertible Securities (“Purchase Rights”) other than shares of Common Stock issuable under the Preferred Shares and the Warrants, which shall be taken into account in determining such number);

$N_1$  = the number of shares of Common Stock which the aggregate consideration, if any, received or receivable by the Company for the total number of such additional shares of Common Stock so issued, sold or deemed issued or sold in such Dilutive Issuance (which, in the case of a deemed issuance or sale, shall be calculated in accordance with subparagraph (iii) below) would purchase at the Conversion Price in effect immediately prior to such Dilutive Issuance; and

$N_2$  = the number of such additional shares of Common Stock so issued, sold or deemed issued or sold in such Dilutive Issuance.

Notwithstanding the foregoing, no adjustment shall be made pursuant to paragraph (A) or (B) above if such adjustment would result in an increase in the Conversion Price.

(ii) Adjustment Upon Below Market Issuance. If, at any time after the Closing Date, the Company issues or sells, or in accordance with subparagraph (iii) of this paragraph (c), is deemed to have issued or sold, any shares of Common Stock for a consideration per share less than an amount equal to 95% of the Five (5) Day VWAP on the date of such issuance or sale (or deemed issuance or sale) (a “Below Market Issuance”), then effective immediately upon the Below Market Issuance, the Conversion Price shall be adjusted so as to equal an amount determined by multiplying such Conversion Price by the following fraction:

$$\frac{N_0 + N_1}{N_0 + N_2}$$

where:

$N_0$  = the number of shares of Common Stock outstanding immediately prior to the issuance, sale or deemed issuance or sale of such additional

shares of Common Stock in such Below Market Issuance (without taking into account any shares of Common Stock issuable upon conversion, exchange or exercise of any Convertible Securities or Purchase Rights, other than shares of Common Stock issuable under the Preferred Shares and the Warrants, which shall be taken into account in determining such number);

$N_1$  = the number of shares of Common Stock which the aggregate consideration, if any, received or receivable by the Company for the total number of such additional shares of Common Stock so issued, sold or deemed issued or sold in such Below Market Issuance (which, in the case of a deemed issuance or sale, shall be calculated in accordance with subparagraph (iii) below) would purchase at the Five (5) Day VWAP in effect on the date of such Below Market Issuance; and

$N_2$  = the number of such additional shares of Common Stock so issued, sold or deemed issued or sold in such Below Market Issuance.

Notwithstanding the foregoing, no adjustment shall be made pursuant to this paragraph (c)(ii) if such adjustment would result in an increase in the Conversion Price. In the event that the Company effects an issuance that is both a Dilutive Issuance and a Below Market Issuance, the Conversion Price will be adjusted to the lower of the prices calculated pursuant to subparagraphs (i) and (ii) of this paragraph (c).

(iii) Effect On Conversion Price Of Certain Events. For purposes of determining the adjusted Conversion Price under subparagraph (i) or (ii) of this paragraph (c), the following will be applicable:

(A) Issuance of Purchase Rights. If the Company issues or sells any Purchase Rights, whether or not immediately exercisable, and the price per share for which Common Stock is issuable upon the exercise of such Purchase Rights (and the price of any conversion of Convertible Securities, if applicable) is less than either or both of the Conversion Price and an amount equal to 95% of the Five (5) Day VWAP in effect on the date of issuance or sale of such Purchase Rights, then the maximum total number of shares of Common Stock issuable upon the exercise of all such Purchase Rights (assuming full conversion, exercise or exchange of Convertible Securities, if applicable) shall, as of the date of the issuance or sale of such Purchase Rights, 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 Purchase Rights" shall be determined by dividing (x) the total amount, if any, received or receivable by the Company as consideration for the issuance or sale of all such Purchase Rights, plus the minimum aggregate amount of additional consideration, if any, payable to the Company upon the exercise of all such Purchase Rights, plus, in the case of Convertible Securities issuable upon the exercise of such Purchase Rights, the minimum aggregate amount of additional consideration payable upon the conversion, exercise or exchange thereof (determined in accordance with the calculation method set forth in subparagraph (iii)(B) below) at the time such Convertible Securities first become convertible, exercisable or

exchangeable, by (y) the maximum total number of shares of Common Stock issuable upon the exercise of all such Purchase Rights (assuming full conversion, exercise or exchange of Convertible Securities, if applicable). No further adjustment to the Conversion Price shall be made upon the actual issuance of such Common Stock upon the exercise of such Purchase Rights or upon the conversion, exercise or exchange of Convertible Securities issuable upon exercise of such Purchase Rights.

(B) Issuance of Convertible Securities. If the Company issues or sells any Convertible Securities, whether or not immediately convertible, exercisable or exchangeable, and the price per share for which Common Stock is issuable upon such conversion, exercise or exchange is less than either or both of the Conversion Price and an amount equal to 95% of the Five (5) Day VWAP in effect on the date of issuance or sale of such Convertible Securities, then the maximum total number of shares of Common Stock issuable upon the conversion, exercise or exchange of all such Convertible Securities shall, as of the date of the issuance or sale of such Convertible Securities, be deemed to be outstanding and to have been issued and sold by the Company for such price per share. If the Convertible Securities so issued or sold do not have a fluctuating conversion or exercise price or exchange ratio, then for the purposes of the immediately preceding sentence, the “price per share for which Common Stock is issuable upon such conversion, exercise or exchange” shall be determined by dividing (x) 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 conversion, exercise or exchange thereof (determined in accordance with the calculation method set forth in this subparagraph (iii)(B)) at the time such Convertible Securities first become convertible, exercisable or exchangeable, by (y) the maximum total number of shares of Common Stock issuable upon the exercise, conversion or exchange of all such Convertible Securities. If the Convertible Securities so issued or sold have a fluctuating conversion or exercise price or exchange ratio (a “Variable Rate Convertible Security”) (provided, however, that if the conversion or exercise price or exchange ratio of a Convertible Security may fluctuate solely as a result of provisions designed to protect against dilution, such Convertible Security shall not be deemed to be a Variable Rate Convertible Security), then for purposes of the first sentence of this subparagraph (B), the “price per share for which Common Stock is issuable upon such conversion, exercise or exchange” 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 Variable Rate Convertible Security have been satisfied) if the conversion price of such Variable Rate Convertible Security on the date of issuance or sale thereof were seventy-five percent (75%) of the actual conversion price on such date (the “Assumed Variable Market Price”), and, further, if the conversion price of such Variable Rate Convertible Security 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 paragraph (c) with respect to any Variable Rate Convertible Security, the Conversion Price in effect at such time shall be readjusted to equal the Conversion Price which would have resulted if the Assumed Variable Market Price at the time of issuance of the Variable Rate Convertible Security had been seventy-five percent (75%) of the actual conversion price of such Variable Rate Convertible Security existing at the time of the adjustment required by this sentence. No further adjustment to the Conversion Price shall be made upon the actual issuance of such Common Stock upon conversion, exercise or exchange of such Convertible Securities.

(C) Change in Option Price or Conversion Rate. If, following an adjustment to the Conversion Price upon the issuance of Purchase Rights or Convertible Securities pursuant to a Dilutive Issuance or a Below Market Issuance, there is a change at any time in (x) the amount of additional consideration payable to the Company upon the exercise of any Purchase Rights; (y) the amount of additional consideration, if any, payable to the Company upon the conversion, exercise or exchange of any Convertible Securities; or (z) 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), then in any such case, the Conversion Price in effect at the time of such change shall be readjusted to the Conversion Price which would have been in effect at such time had such Purchase Rights or Convertible Securities still outstanding provided for such changed additional consideration or changed conversion, exercise or exchange rate, as the case may be, at the time initially issued or sold.

(D) Calculation of Consideration Received. If any Common Stock, Purchase Rights or Convertible Securities are issued or sold for cash, the consideration received therefor will be the amount received by the Company therefor. In case any Common Stock, Purchase Rights or Convertible Securities are issued or sold for a consideration part or all of which shall be other than cash, including in the case of a strategic or similar arrangement in which the other entity will provide services to the Company, purchase services from the Company or otherwise provide intangible consideration to the Company, the amount of the consideration other than cash received by the Company (including the net present value of the consideration other than cash expected by the Company for the provided or purchased services) shall be the fair market value of such consideration, except where such consideration consists of publicly traded securities, in which case the amount of consideration received by the Company will be the Market Price thereof on the date of receipt. In case any Common Stock, Purchase Rights 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, Purchase Rights or Convertible Securities, as the case may be. Notwithstanding anything else herein to the contrary, if Common Stock, Purchase Rights or Convertible Securities are issued or sold in conjunction with each other as part of a single transaction or in a series of related transactions, a Holder may elect to determine the amount of consideration deemed to be received by the Company therefor by deducting the fair value of any type of securities (the "Disregarded Securities") issued or sold in such transaction or series of transactions. If a Holder makes an election pursuant to the immediately preceding sentence, no adjustment to the Conversion Price shall be made pursuant to this paragraph (c) for the issuance of the Disregarded Securities or upon any conversion, exercise or exchange thereof. The independent members of the Company's Board of Directors shall calculate reasonably and in good faith, using standard commercial valuation methods appropriate for valuing such assets, the fair market value of any consideration other than cash or securities.

(E) Issuances Without Consideration Pursuant to Existing Securities. If the Company issues (or becomes obligated to issue) shares of Common Stock pursuant to any anti-dilution or similar adjustments (other than as a result of stock splits, stock dividends and the like) contained in any Convertible Securities or Purchase Rights outstanding as of the date hereof, then all shares of Common Stock so issued shall be deemed to have been issued for no consideration.

(iv) Exceptions To Adjustment Of Conversion Price. Notwithstanding the foregoing, no adjustment to the Conversion Price shall be made pursuant to this paragraph (c) upon the issuance of any Excluded Securities. For purposes hereof, "Excluded Securities" means (A) securities purchased under the Securities Purchase Agreement; (B) securities issued upon conversion of the Preferred Shares or exercise of the Warrants; (C) shares of Common Stock issuable or issued to (x) employees or directors from time to time either directly or upon the exercise of options, in such case granted or to be granted by the Board of Directors pursuant to one or more stock option plans or restricted stock plans or stock purchase plans in effect as of the Closing Date or approved by the independent members of the Board of Directors or by the Company's stockholders, or (y) consultants, either directly or pursuant to warrants to purchase Common Stock that are outstanding on the date hereof or issued hereafter, provided such issuances are approved by the Board of Directors or by the Company's stockholders; (D) except as required by paragraph (c)(iii)(E) above, shares of Common Stock issued in connection with any Convertible Securities or Purchase Rights outstanding on the date hereof; (E) shares of Common Stock issued to a Person in connection with a joint venture, strategic alliance or other commercial relationship with such Person relating to the operation of the Company's business and not for the purpose of raising equity capital; and (F) securities issued with respect to which the holders of a majority of the Preferred Shares consent that no such adjustment shall be made as a result of such issuance.

(v) Notice Of Adjustments. Upon the occurrence of an adjustment to the Conversion Price pursuant to this paragraph (c) or any change in the number or type of stock, securities and/or other property issuable upon conversion of the Preferred Shares, the Company, at its expense, shall promptly compute such adjustment or readjustment or change and prepare and furnish to each Holder a notice (an "Adjustment Notice") setting forth such adjustment or readjustment or change and showing in detail the facts upon which such adjustment or readjustment or change is based and shall, on or before the time that it delivers an Adjustment Notice, publicly disclose the contents thereof. The failure of the Company to deliver an Adjustment Notice shall not affect the validity of any such adjustment.

(d) Major Transactions. In the event of a merger, consolidation, business combination, tender offer, exchange of shares, recapitalization, reorganization, redemption or other similar event, as a result of which shares of Common Stock shall be changed into the same or a different number of shares of the same or another class or classes of stock or securities or other assets of the Company or another entity or the Company shall sell all or substantially all of its assets (each of the foregoing being a "Major Transaction"), the Company will give each Holder at least ten (10) Trading Days' written notice prior to the earlier of (I) the closing or effectiveness of such Major Transaction and (II) the record date for the receipt of such shares of stock or securities or other assets, and (i) each Holder shall be permitted to convert the Preferred Shares held by such Holder in whole or in part at any time prior to the record date for the receipt of such consideration and shall be entitled to receive, for each share of Common Stock issuable to such Holder upon such exercise, the

same per share consideration payable to the other holders of Common Stock in connection with such Major Transaction, and (ii) if and to the extent that a Holder retains any Preferred Shares following such record date, the Company will cause the surviving or, in the event of a sale of assets, purchasing entity, as a condition precedent to such Major Transaction, to assume the obligations of the Company with respect to the Series A Preferred Stock, with such adjustments to the Conversion Price and the securities covered hereby as may be reasonably determined in good faith by the Board of Directors to be necessary in order to preserve the economic benefits of the Series A Preferred Stock to such Holder.

(e) Adjustments: Additional Shares, Securities or Assets. In the event that at any time, as a result of an adjustment made pursuant to this Section 8, each Holder shall, upon conversion of such Holder's Preferred Shares, become entitled to receive securities or assets (other than Common Stock) then, wherever appropriate, all references herein to shares of Common Stock shall be deemed to refer to and include such shares and/or other securities or assets; and thereafter the number of such shares and/or other securities or assets shall be subject to adjustment from time to time in a manner and upon terms as nearly equivalent as practicable to the provisions of this Section 8.

#### 9. MANDATORY CONVERSION.

(a) Mandatory Conversion. In the event that, at any time following the Closing Date, all of the Mandatory Conversion Conditions are satisfied on each of ten (10) Trading Days (which need not be consecutive) occurring during any period of thirty (30) consecutive Trading Days (a "Mandatory Conversion Period"), the Company shall have the right to require Conversion of the Preferred Shares then outstanding (a "Mandatory Conversion") in accordance with paragraph (b) below. In the event of a Mandatory Conversion, the Company and the Holder shall follow the procedures for Conversion and the delivery of Conversion Shares set forth in Section 5 above, with the Mandatory Conversion Date (as defined below) deemed to be the Conversion Date for purposes of Section 5 and, in the event of the Company's failure to effect such delivery on the applicable Delivery Date therefor (determined in accordance with paragraph 5(d)), such Holder shall have the remedies specified in paragraph 5(e) hereof.

(b) Mandatory Conversion Notice. In order to effect a Mandatory Conversion hereunder, the Company must deliver to each Holder written notice thereof (a "Mandatory Conversion Notice") on or before 5:00 p.m. (eastern time) on or before the Trading Day immediately following the last Trading Day of the Mandatory Conversion Period, and the Mandatory Conversion shall be effective on the fifth (5<sup>th</sup>) Trading Day following delivery of such Mandatory Conversion Notice (such fifth (5<sup>th</sup>) Trading Day being the "Mandatory Conversion Date"). Notwithstanding the foregoing, and without limiting or modifying in any way the requirements of paragraph 9(a) above, the Company shall not have the right to require Conversion of the Preferred Shares, unless each of the Mandatory Conversion Conditions (other than the Mandatory Conversion Condition with respect to the VWAP) is satisfied on each Trading Day of the Mandatory Conversion Period and each Trading Day thereafter through the Mandatory Conversion Date. Notwithstanding the delivery by the Company of a Mandatory Conversion Notice, nothing contained herein shall be deemed to limit in any way (i) the right of a Holder to convert such Holder's Preferred Shares prior to the Mandatory Conversion Date or (ii) the availability of any and all rights and remedies that are provided to a Holder under this Certificate, including without limitation in the event that the



Company fails to deliver Conversion Shares upon a Mandatory Conversion as required by the terms of Sections 9(a) and 5 hereof. The Mandatory Conversion Notice shall specify the aggregate Liquidation Preference for the Preferred Shares that are subject to the Mandatory Conversion, provided that the aggregate number of Preferred Shares subject to a Mandatory Conversion shall be allocated to the Holders on a *pro rata* basis in accordance with the number of Preferred Shares held by each Holder.

(c) Limitation on Number of Shares subject to Mandatory Conversion. Notwithstanding anything contained herein to the contrary, the Company shall not have the right to effect a Mandatory Conversion hereunder with respect to a Holder's Preferred Shares to the extent that any such conversion would result in the issuance by the Company to such Holder, during the period of sixty consecutive calendar days ending on (and including) the Mandatory Conversion Date, of a number of shares of Common Stock (including all shares of Common Stock issued pursuant to conversions effected in accordance with Section 5 hereof during such sixty day period) that exceeds 4.99% of the number of shares of Common Stock outstanding on the Mandatory Conversion Date.

(d) Subsequent Mandatory Conversion. In the event that the Mandatory Conversion of a Holder's Preferred Shares is limited pursuant to paragraph (c), above, then the Company shall effect such additional Mandatory Conversions (each, a "Subsequent Mandatory Conversion") as are necessary to effect the Mandatory Conversion of the remainder of such Holder's Preferred Shares, each such Subsequent Mandatory Conversion to be effective twenty (20) Trading Days following the immediately preceding Mandatory Conversion or Subsequent Mandatory Conversion (as the case may be); provided, that the Mandatory Conversion Conditions need not be satisfied with respect to any such Subsequent Mandatory Conversion; and provided further, that the limitations set forth in paragraph (c) above and in Section 7(b) shall apply to each such Subsequent Mandatory Conversion, but the limitations set forth in Section 7(a) shall not apply to any such Subsequent Mandatory Conversion.

#### 10. REDEMPTION.

(a) Mandatory Redemption. In the event that a Fundamental Change occurs, each Holder shall have the right to require the Company to redeem all or any portion of the Preferred Shares held by such Holder (a "Mandatory Redemption") at the Mandatory Redemption Price (as defined below). In order to exercise its right to effect a Mandatory Redemption, a Holder must deliver a written notice (a "Mandatory Redemption Notice") to the Company at any time on or before 6:00 p.m. (eastern time) on the third (3<sup>rd</sup>) Business Day following the Business Day on which the Fundamental Change to which such Mandatory Redemption Notice relates is no longer continuing. The Mandatory Redemption Notice shall specify the effective date of such Mandatory Redemption (the "Mandatory Redemption Date") and the number of such shares to be redeemed.

(b) Mandatory Redemption Price. The "Mandatory Redemption Price" shall be equal to the Stated Value of the Preferred Shares being redeemed times one hundred one percent (101%) plus (y) accrued and unpaid Dividends thereon; provided, however, that in the event that the Fundamental Change giving rise to the Holder's right to effect a Mandatory Redemption is related to a Conversion Default (whether occurring under Section 4, 5, 6 or 9 hereof), then the "Mandatory Redemption Price" shall be equal to the greater of (i) (x) the Stated Value of the Preferred Shares being redeemed times one hundred one percent (101%) plus (y) accrued and unpaid Dividends thereon and (ii) the Liquidation Preference for such Preferred Shares divided by the Conversion Price times the Market Price in effect on the Mandatory Redemption Date.

(c) Payment of Mandatory Redemption Price.

(i) The Company shall pay the Mandatory Redemption Price to the Holder exercising its right to redemption on the later to occur of (A) the fifth (5th) Business Day following the Mandatory Redemption Date and (B) the date on which the Preferred Shares being redeemed are delivered by the Investor to the Company for cancellation (the "Mandatory Redemption Payment Date").

(ii) If Company fails to pay the Mandatory Redemption Price to a Holder on or before the Mandatory Redemption Date, such Holder shall be entitled to interest thereon, from and after the Mandatory Redemption Payment Date until the Mandatory Redemption Price has been paid in full, at an annual rate equal to the Default Interest Rate.

11. MISCELLANEOUS.

(a) Transfer of Preferred Shares. Upon notice to the Company (except that no such notice shall be required in the case of a pledge), a Holder may sell, transfer, assign, pledge or otherwise dispose of all or any portion of the Preferred Shares to any person or entity as long as such transaction is the subject of an effective registration statement under the Securities Act or is exempt from registration thereunder and otherwise is made in accordance with the terms of the Securities Purchase Agreement. From and after the date of any such sale or transfer, the transferee thereof shall be deemed to be a Holder. Upon any such sale or transfer, the Company shall, promptly following the return of the certificate or certificates representing the Preferred Shares that are the subject of such sale or transfer, issue and deliver to such transferee a new certificate in the name of such transferee.

(b) Notices. Any notice, demand or request required or permitted to be given by the Company or an Investor pursuant to the terms of this Agreement shall be in writing and shall be deemed delivered (i) when delivered personally or by verifiable facsimile transmission, unless such delivery is made on a day that is not a Business Day, in which case such delivery will be deemed to be made on the next succeeding Business Day, (ii) on the next Business Day after timely delivery to an overnight courier and (iii) on the Business Day actually received if deposited in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid), addressed as follows:

*If to the Company:*

Microvision, Inc.  
19910 North Creek Parkway  
Bothell, WA 98011  
Attn: General Counsel  
Tel: (425) 415-6847  
Fax: (425) 415-6795

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*with a copy to:*

Ropes & Gray LLP  
One International Place  
Boston, MA 02110  
Attn: Joel F. Freedman  
Tel: (617) 951-7000  
Fax: (617) 951-7050

and if to any Holder, to such address for such Holder as shall be designated by such Holder in writing to the Company.

(c) Lost or Stolen Certificate. Upon receipt by the Company of evidence of the loss, theft, destruction or mutilation of a certificate representing a Holder's Preferred Shares, and (in the case of loss, theft or destruction) of indemnity or security reasonably satisfactory to the Company and the Transfer Agent, and upon surrender and cancellation of such certificate if mutilated, the Company shall execute and deliver to such Holder a new certificate identical in all material respects to the original certificate.

(d) No Voting Rights. Except as provided by applicable law and paragraph 11(g) below, the Holders of the Preferred Shares shall have no voting rights with respect to the business, management or affairs of the Company; provided that the Company shall provide each Holder with prior notification of each meeting of stockholders (and copies of proxy statements and other information sent to such stockholders in their capacity as stockholders).

(e) Remedies. The remedies provided to a Holder in this Certificate shall be cumulative and in addition to all other remedies available to such Holder under this Certificate or under any Transaction Document (as defined in the Securities Purchase Agreement), at law or in equity (including without limitation a decree of specific performance and/or other injunctive relief). No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy and nothing contained herein shall limit such Holder's right to pursue actual damages for any failure by the Company to comply with the terms of this Certificate. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder hereof and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a material breach by it of its obligations hereunder will cause irreparable harm to the Holders and that the remedy at law for any such breach may be inadequate. The Company agrees, in the event of any such breach or threatened breach, each Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any breach.

(f) Failure or Delay not Waiver. No failure or delay on the part of a Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude any other or further exercise thereof or of any other right, power or privilege.

(g) Protective Provisions. So long as shares of Series A Preferred Stock are outstanding, the Company shall not, without first obtaining the written approval of the Holders of a majority of the outstanding shares of Series A Preferred Stock:

(i) alter, change, modify or amend (x) the terms of the Series A Preferred Stock in any way or (y) the terms of any other capital stock of the Company so as to affect adversely the Series A Preferred Stock;

(ii) create any new class or series of capital stock having a preference over the Series A Preferred Stock as to redemption or distribution of assets upon a Liquidation Event or any other liquidation, dissolution or winding up of the Company;

(iii) create any new class or series of capital stock ranking *pari passu* with the Series A Preferred Stock as to redemption or distribution of assets upon a Liquidation Event or any other liquidation, dissolution or winding up of the Company, or issue shares of any such capital stock, except to the extent that the aggregate amount payable to the holders of such *Pari Passu* Securities upon a Liquidation Event or any other liquidation, dissolution or winding up of the Company does not exceed the aggregate Stated Value of the Preferred Shares; provided, however, that the restriction set forth in this clause (iii) shall terminate upon the six (6) month anniversary of the Closing Date;

(iv) increase the authorized number of shares of Series A Preferred Stock;

(v) re-issue any shares of Series A Preferred Stock which have been converted or redeemed in accordance with the terms hereof;

(vi) issue any Senior Securities; provided, that the Company may issue Permitted Senior Securities; and provided further, that the restriction set forth in this clause (vi) shall terminate upon the six (6) month anniversary of the Closing Date;

(vii) purchase, redeem or otherwise acquire for value, or declare, pay or make any provision for any dividend or distribution with respect to Junior Securities, other than the repurchase of shares of Common Stock from employees upon the termination of such employees' employment or the payment of cash in lieu of fractional shares in the event of a stock split, stock dividend, reverse stock split or similar transaction; or

(viii) issue any Series A Preferred Stock except pursuant to the terms of the Securities Purchase Agreement.

In the event that the Holders of a majority of the outstanding shares of Series A Preferred Stock agree to allow the Company to alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock pursuant to the terms hereof, then the Company will deliver notice of such approved change to the holders of the Series A Preferred Stock that did not agree to such alteration or change (the "Dissenting Holders") and the Dissenting Holders shall have the right for a period of ten (10) Trading Days following such delivery to convert their Preferred Shares pursuant to the terms hereof as they existed prior to such alteration or change, or to continue to hold such Preferred Shares. No such change shall be effective to the extent that, by its terms, such change applies to less than all of the shares of Series A Preferred Stock then outstanding.

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IN WITNESS WHEREOF, the Company has executed this Certificate as of the 9<sup>th</sup> day of September, 2004.

MICROVISION, INC.

By:           /s/ Richard F. Rutkowski          

Name: Richard F. Rutkowski  
Title: Chief Executive Officer

NOTICE OF CONVERSION

The undersigned hereby elects to convert shares of Series A Convertible Preferred Stock (the "Preferred Stock"), represented by stock certificate No(s) \_\_\_\_\_ (the "Preferred Stock Certificates"), into shares of common stock ("Common Stock") of MICROVISION, INC. according to the terms and conditions of the Certificate of Designation relating to the Preferred Stock (the "Certificate of Designation"), as of the date written below. Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Certificate of Designation.

Date of Conversion: \_\_\_\_\_

Stated Value of Preferred Stock to be Converted: \_\_\_\_\_

Amount of Accrued Dividends: \_\_\_\_\_

Applicable Conversion Price: \_\_\_\_\_

Number of Shares of Common Stock to be Issued: \_\_\_\_\_

Name of Holder: \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_

Name:

Title:

Holder Requests Delivery to be made (check one)

- By Delivery of Physical Certificates to the Above Address
- Through Depository Trust Corporation  
(Account \_\_\_\_\_)

THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAW, AND MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS A REGISTRATION STATEMENT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS SHALL BE EFFECTIVE WITH RESPECT THERETO, OR AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS IS AVAILABLE IN CONNECTION WITH SUCH OFFER, SALE OR TRANSFER. SUBJECT TO COMPLIANCE WITH THE REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT MAY BE PLEDGED OR HYPOTHECATED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY THIS WARRANT OR ANY OF THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT.

WARRANT  
TO PURCHASE COMMON STOCK  
OF  
MICROVISION, INC.

Issue Date: September 10, 2004

Warrant No. 76

THIS CERTIFIES that SATELLITE STRATEGIC FINANCE ASSOCIATES, LLC or any subsequent holder hereof (the "Holder"), has the right to purchase from MICROVISION, INC., a Delaware corporation (the "Company"), upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, up to 361,795 fully paid and nonassessable shares of the Company's common stock, par value \$0.001 per share (the "Common Stock"), subject to adjustment as provided herein, at a price per share equal to the Exercise Price (as defined below), at any time and from time to time beginning on the date on which this Warrant is originally issued (the "Issue Date") and ending at 6:00 p.m., eastern time, on the date that is the fifth (5) anniversary of the Issue Date (or, if such date is not a Business Day, on the Business Day immediately following such date) (the "Expiration Date"). This Warrant is issued pursuant to a Securities Purchase Agreement, dated as of September 9, 2004 (the "Securities Purchase Agreement"). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Securities Purchase Agreement.

1. Exercise.

(a) Right to Exercise; Exercise Price. The Holder shall have the right to exercise this Warrant at any time and from time to time during the period beginning on the Issue Date and ending on the Expiration Date as to all or any part of the shares of Common Stock covered hereby (the "Warrant Shares"). The "Exercise Price" for each Warrant Share purchased by the Holder upon the exercise of this Warrant shall be equal to \$8.16, subject to adjustment for the events specified in Section 6 below.

(b) Exercise Notice. In order to exercise this Warrant, the Holder shall send to the Company by facsimile transmission, at any time prior to 6:00 p.m., eastern time, on the Business Day on which the Holder wishes to effect such exercise (the "Exercise Date"), (i) a notice of exercise in substantially the form attached hereto as Exhibit A (the "Exercise Notice"), and (ii) a copy of the original Warrant, and, in the case of a Cash Exercise (as defined below), the Holder shall pay the Exercise Price to the Company by wire transfer. The Exercise Notice shall state the name or names in which the shares of Common Stock that are issuable on such exercise shall be issued. In the case of a dispute between the Company and the Holder as to the calculation of the Exercise Price or the number of Warrant Shares issuable hereunder (including, without limitation, the calculation of any adjustment pursuant to Section 6 below), the Company shall issue to the Holder the number of Warrant Shares that are not disputed within the time periods specified in Section 2 below and shall submit the disputed calculations to a certified public accounting firm of national reputation (other than the Company's regularly retained accountants) within three (3) Business Days following the Company's receipt of the Holder's Exercise Notice. The Company shall cause such accountant to calculate the Exercise Price and/or the number of Warrant Shares issuable hereunder and to notify the Company and the Holder of the results in writing no later than three (3) Business Days following the day on which such accountant received the disputed calculations (the "Dispute Procedure"). Such accountant's calculation shall be deemed conclusive absent manifest error. The fees of any such accountant shall be borne by the party whose calculations were most at variance with those of such accountant.

(c) Holder of Record. The Holder shall, for all purposes, be deemed to have become the holder of record of the Warrant Shares specified in an Exercise Notice on the related Exercise Date, irrespective of the date of delivery of such Warrant Shares. Except as specifically provided herein, nothing in this Warrant shall be construed as conferring upon the Holder hereof any rights as a stockholder of the Company prior to the Exercise Date.

(d) Cancellation of Warrant. This Warrant shall be canceled upon its exercise in full and, if this Warrant is exercised in part, the Company shall, at the time that it delivers Warrant Shares to the Holder pursuant to such exercise as provided herein, issue a new warrant, and deliver to the Holder a certificate representing such new warrant, with terms identical in all respects to this Warrant (except that such new warrant shall be exercisable into the number of shares of Common Stock with respect to which this Warrant shall remain unexercised); *provided, however*, that the Holder shall be entitled to exercise all or any portion of such new warrant at any time following the time at which this Warrant is exercised, regardless of whether the Company has actually issued such new warrant or delivered to the Holder a certificate therefor.



2. Delivery of Warrant Shares Upon Exercise. Upon receipt of an Exercise Notice pursuant to Section 1 above, the Company shall, (A) in the case of a Cash Exercise, no later than the close of business on the later to occur of (i) the third (3rd) Business Day following the related Exercise Date and (ii) such later date on which the Company shall have received payment of the Exercise Price, (B) in the case of a Cashless Exercise (as defined below), no later than the close of business on the third (3rd) Business Day following the related Exercise Date, and (C) with respect to Warrant Shares that are the subject of a Dispute Procedure, the close of business on the third (3rd) Business Day following the determination made pursuant to Section 1(b) (each of the dates specified in (A), (B) or (C) being referred to as a "Delivery Date"), issue and deliver or caused to be delivered to the Holder the number of Warrant Shares as shall be determined as provided herein. As long as the Company's transfer agent ("Transfer Agent") participates in the Depository Trust Company ("DTC") Fast Automated Securities Transfer program ("FAST"), and except as otherwise provided in the next following sentence of this Section 2, the Company shall effect delivery of Warrant Shares to the Holder by crediting the account of the Holder or its nominee at DTC (as specified in the applicable Exercise Notice) with the number of Warrant Shares required to be delivered, no later than the close of business on such Delivery Date. In the event that the Transfer Agent is not a participant in FAST, or if the Warrant Shares are not otherwise eligible for delivery through FAST, or if the Holder so specifies in an Exercise Notice or otherwise in writing on or before the Exercise Date, the Company shall effect delivery of Warrant Shares by delivering to the Holder or its nominee physical certificates representing such Warrant Shares, no later than the close of business on such Delivery Date. Warrant Shares delivered to the Holder shall not contain any restrictive legend as long as the resale of such Warrant Shares (x) has been or will be made (as certified in writing by the Holder to the Company) pursuant to an effective Registration Statement (as defined in the Registration Rights Agreement), (y) has been made pursuant to Rule 144, or (z) may be made pursuant to Rule 144(k) or any successor rule or provision.

3. Failure to Deliver Warrant Shares.

(a) In the event that the Company fails for any reason to deliver to the Holder the number of Warrant Shares specified in the applicable Exercise Notice on or before the Delivery Date therefor (an "Exercise Default"), the Company shall pay to the Holder payments ("Exercise Default Payments") in the amount of (i) (N/365) multiplied by (ii) the aggregate Exercise Price of the Warrant Shares which are the subject of such Exercise Default multiplied by (iii) the lower of twelve percent (12%) per annum and the maximum rate permitted by applicable law (the "Default Interest Rate"), where "N" equals the number of days elapsed between the original Delivery Date of such Warrant Shares and the date on which all of such Warrant Shares are issued and delivered to the Holder. Cash amounts payable hereunder shall be paid on or before the fifth (5th) Business Day of each calendar month following the calendar month in which such amount has accrued.

(b) In the event of an Exercise Default, the Holder may, upon written notice to the Company, regain on the date of such notice the rights of the Holder under the exercised portion of this Warrant that is the subject of such Exercise Default. In such event, the Holder shall retain all of the Holder's rights and remedies with respect to the Company's failure to deliver such Warrant Shares (including without limitation the right to receive the cash payments specified in Section 3(a) above); provided, however, that such cash payments shall cease to accrue effective as of the date of such notice.

(c) The Holder's rights and remedies hereunder are cumulative, and no right or remedy is exclusive of any other. In addition to the amounts specified herein, the Holder shall have the right to pursue all other remedies available to it at law or in equity (including, without limitation, a decree of specific performance and/or injunctive relief). Nothing herein shall limit the Holder's right to pursue actual damages for the Company's failure to issue and deliver Warrant Shares on the applicable Delivery Date (including, without limitation, damages relating to any purchase of Common Stock by the Holder to make delivery on a sale effected in anticipation of receiving Warrant Shares upon exercise, such damages to be in an amount equal to (A) the aggregate amount paid by the Holder for the Common Stock so purchased minus (B) the aggregate amount of net proceeds, if any, received by the Holder from the sale of the Warrant Shares issued by the Company pursuant to such exercise).

4. Exercise Limitations. In no event shall a Holder be permitted to exercise this Warrant, or part hereof, if, upon such exercise, either:

(a) the number of shares of Common Stock beneficially owned by the Holder (other than shares which would otherwise be deemed beneficially owned except for being subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 4(a)), would exceed 4.99% of the number of shares of Common Stock then issued and outstanding. As used herein, beneficial ownership shall be determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended, and the rules thereunder. To the extent that the limitation contained in this Section 4(a) applies, the submission of an Exercise Notice by the Holder shall be deemed to be the Holder's representation that this Warrant is exercisable pursuant to the terms hereof and the Company shall be entitled to rely on such representation without making any further inquiry as to whether this Section 4(a) applies. Nothing contained herein shall be deemed to restrict the right of a Holder to exercise this Warrant, or part thereof, at such time as such exercise will not violate the provisions of this Section 4(a). This Section 4(a) may not be amended unless such amendment is approved by the holders of a majority of the Common Stock then outstanding; *provided, however*, that the limitations contained in this Section 4(a) shall cease to apply (x) upon sixty (60) days' prior written notice from the Holder to the Company, or (y) immediately upon written notice from the Holder to the Company at any time after the public announcement or other disclosure of a Major Transaction (as defined below) or a Change of Control; or

(b) unless Stockholder Approval (as defined below) has been obtained, the number of Warrant Shares that such Holder would receive upon such exercise, when added to the sum of (i) the number of Warrant Shares previously received by such Holder pursuant to this Warrant, plus (ii) the number of shares of Common Stock previously received by such Holder upon conversion of the Preferred Shares, would exceed the product of (A) the Cap Amount (as defined in the Certificate) multiplied by (B) a fraction, the numerator of which is the number of Warrant Shares originally issuable under this Warrant and the denominator of which is the aggregate number of Warrant Shares originally issuable under this Warrant and the other Warrants (such product, the "Allocation Amount"). In the event that any Investor to which this Warrant was originally issued shall sell or otherwise transfer any part of this Warrant, the remaining shares of

Common Stock constituting such transferring Investor's Allocation Amount shall be allocated between the transferring Investor and the transferee in proportion to amount of this Warrant being transferred. In the event that, at any time, sum of (i) the aggregate number of Warrant Shares issuable under this Warrant (without regard to any restrictions on such issuance) plus (ii) the aggregate number of shares of Common Stock issuable upon conversion of Preferred Shares owned by the Holder (without regard to any restrictions on such conversion), plus (iii) the number of shares of Common Stock previously issued to the Holder upon the conversion of Preferred Shares and the number of Warrant Shares previously issued to the Holder, exceeds ninety percent (90%) of the Holder's Allocation Amount, the Company shall, upon the written request of the Holder, hold as promptly as reasonably practicable a special meeting of its stockholders for the purpose of obtaining, and use its best efforts to obtain, Stockholder Approval. In the event that the stockholders do not approve such transactions at such meeting, the Company shall continue to use its best efforts to seek such approval as soon as practicable after such meeting, but no less frequently than annually thereafter. "Stockholder Approval" means the affirmative vote of the holders of a majority of the votes cast at a meeting of stockholders approving the issuance of shares of Common Stock in excess of the Cap Amount.

5. Payment of the Exercise Price: Cashless Exercise. The Holder may pay the Exercise Price in either of the following forms or, at the election of Holder, a combination thereof:

(a) through a cash exercise (a "Cash Exercise") by delivering immediately available funds, or

(b) if an effective Registration Statement is not available for the resale of all of the Warrant Shares issuable hereunder at the time an Exercise Notice is delivered to the Company, through a cashless exercise (a "Cashless Exercise"), as hereinafter provided. The Holder may effect a Cashless Exercise by surrendering this Warrant to the Company and noting on the Exercise Notice that the Holder wishes to effect a Cashless Exercise, upon which the Company shall issue to the Holder the number of Warrant Shares determined as follows:

$$X = Y \times (A - B) / A$$

where: X = the number of Warrant Shares to be issued to the Holder;

Y = the number of Warrant Shares with respect to which this Warrant is being exercised;

A = the Market Price (as defined in the Certificate) as of the Exercise Date; and

B = the Exercise Price.

For purposes of Rule 144, it is intended and acknowledged that the Warrant Shares issued in a Cashless Exercise transaction shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares required by Rule 144 shall be deemed to have been commenced, on the Issue Date.

6. Anti-Dilution Adjustments; Distributions; Other Events 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 6. In the event that any adjustment of the Exercise Price required herein results in a fraction of a cent, the Exercise Price shall be rounded up or down to the nearest one hundredth of a cent.

(a) Subdivision or Combination of Common Stock If the Company, at any time after the Execution Date (as defined in the Securities Purchase Agreement), subdivides (by any stock split, stock dividend, recapitalization, reorganization, reclassification or otherwise) the outstanding shares of Common Stock into a greater number of shares, then effective upon the close of business on the record date for effecting such subdivision, the Exercise Price in effect immediately prior to such subdivision will be proportionately reduced. If the Company, at any time after the Issue Date, combines (by reverse stock split, recapitalization, reorganization, reclassification or otherwise) the outstanding shares of Common Stock into a smaller number of shares, then, effective upon the close of business on the record date for effecting such combination, the Exercise Price in effect immediately prior to such combination will be proportionately increased.

(b) Distributions. If the Company shall declare or make any distribution of cash or any other assets (or rights to acquire such assets) to holders of Common Stock, as a partial liquidating dividend or otherwise, including without limitation any dividend or distribution to the Company's stockholders in shares (or rights to acquire shares) of capital stock of a subsidiary) (a "Distribution"), the Company shall deliver written notice of such Distribution (a "Distribution Notice") to the Holder at least thirty (30) days prior to the earlier to occur of (i) the record date for determining stockholders entitled to such Distribution (the "Record Date") and (ii) the date on which such Distribution is made (the "Distribution Date"). In the Distribution Notice to a Holder, the Company must indicate whether the Company has elected (A) to deliver to such Holder the same amount and type of assets being distributed in such Distribution as though the Holder were a holder on the Determination Date therefor of a number of shares of Common Stock into which the this Warrant is exercisable as of such Determination Date (such number of shares to be determined at the Exercise Price then in effect and without giving effect to any limitations on such exercise) or (B) to reduce the Exercise Price as of the Determination Date therefor by an amount equal to the fair market value of the assets to be distributed divided by the number of shares of Common Stock as to which such Distribution is to be made, such fair market value to be reasonably determined in good faith by the independent members of the Company's Board of Directors. If the Company does not notify the Holders of its election pursuant to the preceding sentence within two (2) Business Days following the date on which the Company publicly announces a Distribution, the Company shall be deemed to have elected clause (A) of the preceding sentence.

(c) Dilutive Issuances.

(i) Adjustment Upon Dilutive Issuance. If, at any time after the Issue Date, the Company issues or sells, or in accordance with subparagraph (iii) of this paragraph (c), is deemed to have issued or sold, any shares of Common Stock for per share consideration less than

the Exercise Price on the date of such issuance or sale (a "Dilutive Issuance"), then the Exercise Price shall be adjusted as follows:

(A) If such Dilutive Issuance occurs prior to the Effective Date (as defined in the Registration Rights Agreement), then effective immediately upon the Dilutive Issuance, the Exercise Price shall be adjusted so as to equal the consideration received or receivable by the Company (on a per share basis) for the additional shares of Common Stock so issued, sold or deemed issued or sold in such Dilutive Issuance (which, in the case of a deemed issuance or sale, shall be calculated in accordance with subparagraph (iii) below).

(B) If such Dilutive Issuance occurs on or after the Effective Date, then effective immediately upon the Dilutive Issuance, the Exercise Price shall be adjusted so as to equal an amount determined by multiplying such Exercise Price by the following fraction:

$$\frac{N_0 + N_1}{N_0 + N_2}$$

where:

- $N_0$  = the number of shares of Common Stock outstanding immediately prior to the issuance, sale or deemed issuance or sale of such additional shares of Common Stock in such Dilutive Issuance (without taking into account any shares of Common Stock issuable upon conversion, exchange or exercise of any securities or other instruments which are convertible into or exercisable or exchangeable for Common Stock ("Convertible Securities") or options, warrants or other rights to purchase or subscribe for Common Stock or Convertible Securities ("Purchase Rights") other than shares of Common Stock issuable under the Preferred Shares and the Warrants, which shall be taken into account in determining such number);
- $N_1$  = the number of shares of Common Stock which the aggregate consideration, if any, received or receivable by the Company for the total number of such additional shares of Common Stock so issued, sold or deemed issued or sold in such Dilutive Issuance (which, in the case of a deemed issuance or sale, shall be calculated in accordance with subparagraph (iii) below) would purchase at the Exercise Price in effect immediately prior to such Dilutive Issuance; and
- $N_2$  = the number of such additional shares of Common Stock so issued, sold or deemed issued or sold in such Dilutive Issuance.

Notwithstanding the foregoing, no adjustment shall be made pursuant hereto if such adjustment would result in an increase in the Exercise Price.

(ii) Adjustment Upon Below Market Issuance. If, at any time after the Issue Date, the Company issues or sells, or in accordance with subparagraph (iii) of this paragraph (c), is deemed to have issued or sold, any shares of Common Stock for per share consideration less than an amount equal to 95% of the Five (5) Day VWAP (as defined in the Certificate) on the date of such issuance or sale (or deemed issuance or sale) (a "Below Market Issuance"), then effective immediately upon the Dilutive Issuance, the Exercise Price shall be adjusted so as to equal an amount determined by multiplying such Exercise Price by the following fraction:

$$\frac{N_0 + N_1}{N_0 + N_2}$$

where:

- $N_0$  = the number of shares of Common Stock outstanding immediately prior to the issuance, sale or deemed issuance or sale of such additional shares of Common Stock in such Below Market Issuance (without taking into account any shares of Common Stock issuable upon conversion, exchange or exercise of any Convertible Securities or Purchase Rights, other than shares of Common Stock issuable under the Preferred Shares and the Warrants, which shall be taken into account in determining such number);
- $N_1$  = the number of shares of Common Stock which the aggregate consideration, if any, received or receivable by the Company for the total number of such additional shares of Common Stock so issued, sold or deemed issued or sold in such Below Market Issuance (which, in the case of a deemed issuance or sale, shall be calculated in accordance with subparagraph (iii) below) would purchase at the Five (5) Day VWAP in effect on the date of such Below Market Issuance; and
- $N_2$  = the number of such additional shares of Common Stock so issued, sold or deemed issued or sold in such Below Market Issuance.

Notwithstanding the foregoing, no adjustment shall be made pursuant to this paragraph (c)(ii) if such adjustment would result in an increase in the Exercise Price. In the event that the Company effects an issuance that is both a Dilutive Issuance and a Below Market Issuance, the Exercise Price will be adjusted to the lower of the prices calculated pursuant to subparagraphs (i) and (ii) of this paragraph (c).

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(iii) Effect On Exercise Price Of Certain Events. For purposes of determining the adjusted Exercise Price under subparagraph (i) or (ii) of this paragraph (c), the following will be applicable:

(A) Issuance Of Purchase Rights. If the Company issues or sells any Purchase Rights, whether or not immediately exercisable, and the price per share for which Common Stock is issuable upon the exercise of such Purchase Rights (and the price of any conversion of Convertible Securities, if applicable) is less than either or both of an amount equal to 95% of the Five (5) Day VWAP and the Exercise Price in effect on the date of issuance or sale of such Purchase Rights, then the maximum total number of shares of Common Stock issuable upon the exercise of all such Purchase Rights (assuming full conversion, exercise or exchange of Convertible Securities, if applicable) shall, as of the date of the issuance or sale of such Purchase Rights, 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 Purchase Rights” shall be determined by dividing (x) the total amount, if any, received or receivable by the Company as consideration for the issuance or sale of all such Purchase Rights, plus the minimum aggregate amount of additional consideration, if any, payable to the Company upon the exercise of all such Purchase Rights, plus, in the case of Convertible Securities issuable upon the exercise of such Purchase Rights, the minimum aggregate amount of additional consideration payable upon the conversion, exercise or exchange thereof (determined in accordance with the calculation method set forth in subparagraph (iii)(B) below) at the time such Convertible Securities first become convertible, exercisable or exchangeable, by (y) the maximum total number of shares of Common Stock issuable upon the exercise of all such Purchase Rights (assuming full conversion, exercise or exchange of Convertible Securities, if applicable). No further adjustment to the Exercise Price shall be made upon the actual issuance of such Common Stock upon the exercise of such Purchase Rights or upon the conversion, exercise or exchange of Convertible Securities issuable upon exercise of such Purchase Rights.

(B) Issuance Of Convertible Securities. If the Company issues or sells any Convertible Securities, whether or not immediately convertible, exercisable or exchangeable, and the price per share for which Common Stock is issuable upon such conversion, exercise or exchange is less than either or both of an amount equal to 95% of the Five (5) Day VWAP and the Exercise Price in effect on the date of issuance or sale of such Convertible Securities, then the maximum total number of shares of Common Stock issuable upon the conversion, exercise or exchange of all such Convertible Securities shall, as of the date of the issuance or sale of such Convertible Securities, be deemed to be outstanding and to have been issued and sold by the Company for such price per share. If the Convertible Securities so issued or sold do not have a fluctuating conversion or exercise price or exchange ratio, then for the purposes of the immediately preceding sentence, the “price per share for which Common Stock is issuable upon such conversion, exercise or exchange” shall be determined by dividing (x) 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 conversion, exercise or exchange thereof (determined in accordance with the calculation method set forth in this subparagraph (iii)(B)), by (y) the maximum total number of shares of Common Stock issuable upon the exercise, conversion or exchange of all such Convertible Securities. If the Convertible Securities so issued or sold have a fluctuating conversion or exercise

price or exchange ratio (a "Variable Rate Convertible Security") (provided, however, that if the conversion or exercise price or exchange ratio of a Convertible Security may fluctuate solely as a result of provisions designed to protect against dilution, such Convertible Security shall not be deemed to be a Variable Rate Convertible Security), then for purposes of the first sentence of this subparagraph (B), the "price per share for which Common Stock is issuable upon such conversion, exercise or exchange" 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 Variable Rate Convertible Security have been satisfied) if the conversion price of such Variable Rate Convertible Security on the date of issuance or sale thereof were seventy-five percent (75%) of the actual conversion price on such date (the "Assumed Variable Market Price"), and, further, if the conversion price of such Variable Rate Convertible Security 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 paragraph (c) 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 seventy-five percent (75%) of the actual conversion price of such Variable Rate Convertible Security existing at the time of the adjustment required by this sentence. No further adjustment to the Exercise Price shall be made upon the actual issuance of such Common Stock upon conversion, exercise or exchange of such Convertible Securities.

(C) Change In Option Price Or Conversion Rate. If, following an adjustment to the Exercise Price upon the issuance of Purchase Rights or Convertible Securities pursuant to a Dilutive Issuance or a Below Market Issuance, there is a change at any time in (x) the amount of additional consideration payable to the Company upon the exercise of any Purchase Rights; (y) the amount of additional consideration, if any, payable to the Company upon the conversion, exercise or exchange of any Convertible Securities; or (z) 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), then in any such case, the Exercise Price in effect at the time of such change shall be readjusted to the Exercise Price which would have been in effect at such time had such Purchase Rights or Convertible Securities still outstanding provided for such changed additional consideration or changed conversion, exercise or exchange rate, as the case may be, at the time initially issued or sold.

(D) Calculation Of Consideration Received. If any Common Stock, Purchase Rights or Convertible Securities are issued or sold for cash, the consideration received therefor will be the amount received by the Company therefore. In case any Common Stock, Purchase Rights or Convertible Securities are issued or sold for a consideration part or all of which shall be other than cash, including in the case of a strategic or similar arrangement in which the other entity will provide services to the Company, purchase services from the Company or otherwise provide intangible consideration to the Company, the amount of the consideration other than cash received by the Company (including the net present value of the consideration expected by the Company for the provided or purchased services) shall be the fair market value of such



consideration, except where such consideration consists of publicly traded securities, in which case the amount of consideration received by the Company will be the Market Price thereof on the date of receipt. In case any Common Stock, Purchase Rights 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, Purchase Rights or Convertible Securities, as the case may be. Notwithstanding anything else herein to the contrary, if Common Stock Purchase Rights or Convertible Securities are issued or sold in conjunction with each other as part of a single transaction or in a series of related transactions, the Holder may elect to determine the amount of consideration deemed to be received by the Company therefor by deducting the fair value of any type of securities (the "Disregarded Securities") issued or sold in such transaction or series of transactions. If the Holder makes an election pursuant to the immediately preceding sentence, no adjustment to the Exercise Price shall be made pursuant to this paragraph (c) for the issuance of the Disregarded Securities or upon any conversion, exercise or exchange thereof. The independent members of the Company's Board of Directors shall calculate reasonably and in good faith, using standard commercial valuation methods appropriate for valuing such assets, the fair market value of any consideration other than cash or securities.

(E) Issuances Without Consideration Pursuant to Existing Securities If the Company issues (or becomes obligated to issue) shares of Common Stock pursuant to any anti-dilution or similar adjustments (other than as a result of stock splits, stock dividends and the like) contained in any Convertible Securities or Purchase Rights outstanding as of the date hereof, then all shares of Common Stock so issued shall be deemed to have been issued for no consideration.

(iv) Exceptions To Adjustment Of Exercise Price. Notwithstanding the foregoing, no adjustment to the Exercise Price shall be made pursuant to this paragraph (c) upon the issuance of any Excluded Securities. For purposes hereof, "Excluded Securities" means (I) securities purchased under the Securities Purchase Agreement; (II) securities issued upon conversion of the Preferred Shares or exercise of the Warrants; (III) shares of Common Stock issuable or issued to (x) employees or directors from time to time either directly or upon the exercise of options, in such case granted or to be granted by the Board of Directors, pursuant to one or more stock option plans or restricted stock plans or stock purchase plans in effect as of the Closing Date or approved by the independent members of the Board of Directors or by the Company's stockholders, or (y) consultants, either directly or pursuant to warrants to purchase Common Stock that are outstanding on the date hereof or issued hereafter, provided such issuances are approved by the Board of Directors or by the Company's stockholders; (IV) except as required by subparagraph (c)(ii)(E) above, shares of Common Stock issued in connection with any Convertible Securities or Purchase Rights outstanding on the date hereof; (V) shares of Common Stock issued to a Person in connection with a joint venture, strategic alliance or other commercial relationship with such Person relating to the operation of the Company's business and not for the purpose of raising equity capital; and (VI) securities issued with respect to which the Holders consents that no such adjustment shall be made as a result of such issuance.

(v) Notice Of Adjustments. Upon the occurrence of one or more adjustments or readjustments of the Exercise Price pursuant to this paragraph (c) or any change in the number or type of stock, securities and/or other property issuable upon exercise of this Warrant, the Company, at its expense, shall promptly compute such adjustment or readjustment or change and prepare and furnish to the Holder a notice (an "Adjustment Notice") setting forth such adjustment or readjustment or change and showing in detail the facts upon which such adjustment or readjustment or change is based, and, on or before the time that it delivers an Adjustment Notice, publicly disclose the contents thereof. The failure of the Company to deliver an Adjustment Notice shall not affect the validity of any such adjustment.

(d) Major Transactions. In the event of a merger, consolidation, business combination, tender offer, exchange of shares, recapitalization, reorganization, redemption or other similar event, as a result of which shares of Common Stock shall be changed into the same or a different number of shares of the same or another class or classes of stock or securities or other assets of the Company or another entity or the Company shall sell all or substantially all of its assets (each of the foregoing being a "Major Transaction"), the Company will give the Holder at least ten (10) Trading Days written notice prior to the earlier of (I) the closing or effectiveness of such Major Transaction and (II) the record date for the receipt of such shares of stock or securities or other assets, and: (i) the Holder shall be permitted to exercise this Warrant in whole or in part at any time prior to the record date for the receipt of such consideration and shall be entitled to receive, for each share of Common Stock issuable to Holder upon such exercise, the same per share consideration payable to the other holders of Common Stock in connection with such Major Transaction, and (ii) if and to the extent that the Holder retains any portion of this Warrant following such record date, the Company will cause the surviving or, in the event of a sale of assets, purchasing entity, as a condition precedent to such Major Transaction, to assume the obligations of the Company under this Warrant, with such adjustments to the Exercise Price and the securities covered hereby as may be reasonably determined in good faith by the Board of Directors to be necessary in order to preserve the economic benefits of this Warrant to the Holder.

(e) Adjustments: Additional Shares, Securities or Assets. In the event that at any time, as a result of an adjustment made pursuant to this Section 6, the Holder of this Warrant shall, upon exercise of this Warrant, become entitled to receive securities or assets (other than Common Stock) then, wherever appropriate, all references herein to shares of Common Stock shall be deemed to refer to and include such shares and/or other securities or assets; and thereafter the number of such shares and/or other securities or assets shall be subject to adjustment from time to time in a manner and upon terms as nearly equivalent as practicable to the provisions of this Section 6. Any adjustment made herein pursuant to Section 6(a) that results in a decrease in the Exercise Price shall also effect a proportional increase in the number of shares of Common Stock into which this Warrant is exercisable.

#### 7. Fractional Interests.

No fractional shares or scrip representing fractional shares shall be issuable upon the exercise of this Warrant, but on exercise of this Warrant, the Holder hereof may purchase only a whole number of shares of Common Stock. If, on exercise of this Warrant, the Holder hereof would be entitled to a fractional share of Common Stock or a right to acquire a fractional

share of Common Stock, the Company shall, in lieu of issuing any such fractional share, pay to the Holder an amount in cash equal to the product resulting from multiplying such fraction by the Market Price as of the Exercise Date.

8. Transfer of this Warrant.

The Holder may sell, transfer, assign, pledge or otherwise dispose of this Warrant, in whole or in part, as long as such sale or other disposition is made pursuant to an effective registration statement or an exemption from the registration requirements of the Securities Act. Upon such transfer or other disposition (other than a pledge), the Holder shall deliver this Warrant to the Company together with a written notice to the Company, substantially in the form of the Transfer Notice attached hereto as Exhibit B (the "Transfer Notice"), indicating the person or persons to whom this Warrant shall be transferred and, if less than all of this Warrant is transferred, the number of Warrant Shares to be covered by the part of this Warrant to be transferred to each such person. Within three (3) Business Days of receiving a Transfer Notice and the original of this Warrant, the Company shall deliver to the each transferee designated by the Holder a Warrant or Warrants of like tenor and terms for the appropriate number of Warrant Shares and, if less than all this Warrant is transferred, shall deliver to the Holder a Warrant for the remaining number of Warrant Shares.

9. Benefits of this Warrant.

This Warrant shall be for the sole and exclusive benefit of the Holder of this Warrant and nothing in this Warrant shall be construed to confer upon any person other than the Holder of this Warrant any legal or equitable right, remedy or claim hereunder.

10. Loss, theft, destruction or mutilation of Warrant.

Upon receipt by the Company of evidence of the loss, theft, destruction or mutilation of this Warrant, and (in the case of loss, theft or destruction) of indemnity reasonably satisfactory to the Company, and upon surrender of this Warrant, if mutilated, the Company shall execute and deliver a new Warrant of like tenor and date.

11. Notice or Demands.

Any notice, demand or request required or permitted to be given by the Company or the Holder pursuant to the terms of this Warrant shall be in writing and shall be deemed delivered (i) when delivered personally or by verifiable facsimile transmission, unless such delivery is made on a day that is not a Business Day, in which case such delivery will be deemed to be made on the next succeeding Business Day, (ii) on the next Business Day after timely delivery to an overnight courier and (iii) on the Business Day actually received if deposited in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid), addressed as follows:

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*If to the Company:*

Microvision, Inc.  
19910 North Creek Parkway  
Bothell, WA 98011  
Attn: General Counsel  
Tel: (425) 415-6847  
Fax: (425) 415-6795

*with a copy to:*

Ropes & Gray LLP  
One International Place  
Boston, MA 02110  
Attn: Joel F. Freedman  
Tel: (617) 951-7000  
Fax: (617) 951-7050

and if to the Holder, to such address as shall be designated by the Holder in writing to the Company.

12. Applicable Law.

This Warrant is issued under and shall for all purposes be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within the State of New York.

13. Amendments.

No amendment, modification or other change to, or waiver of any provision of, this Warrant may be made unless such amendment, modification or change is (A) set forth in writing and is signed by the Company and (B) agreed to in writing by the holders of Warrants exercisable for a majority of the number of shares into which the all of the then outstanding Warrants issued pursuant to the Securities Purchase Agreement are exercisable (without regard to any limitation contained herein on such exercise), it being understood that upon the satisfaction of the conditions described in (A) and (B) above, each Warrant (including any Warrant held by the Holder who did not execute the agreement specified in (B) above) shall be deemed to incorporate any amendment, modification, change or waiver effected thereby as of the effective date thereof.

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14. Entire Agreement.

This Warrant, the Securities Purchase Agreement, the Certificate of Designation, the Registration Rights Agreement, and the other Transaction Documents constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Warrant, the Securities Purchase Agreement, the Certificate of Designation, the Registration Rights Agreement, and the other Transaction Documents supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

15. Headings.

The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

[Signature Page to Follow]

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IN WITNESS WHEREOF, the Company has duly executed and delivered this Warrant as of the Issue Date.

MICROVISION, INC.

By: /s/ Richard Raisig

Name: Richard Raisig  
Title: Chief Financial Officer

EXERCISE NOTICE

The undersigned Holder hereby irrevocably exercises the right to purchase \_\_\_\_\_ of the shares of Common Stock (“Warrant Shares”) of \_\_\_\_\_ evidenced by the attached Warrant (the “Warrant”). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Form of Exercise Price. The Holder intends that payment of the Exercise Price shall be made as:

\_\_\_\_\_ a Cash Exercise with respect to \_\_\_\_\_ Warrant Shares; and/or

\_\_\_\_\_ a Cashless Exercise with respect to \_\_\_\_\_ Warrant Shares, as permitted by Section 5(b) of the attached Warrant.

2. Payment of Exercise Price. In the event that the Holder has elected a Cash Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the Holder shall pay the sum of \$ \_\_\_\_\_ to the Company in accordance with the terms of the Warrant.

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

\_\_\_\_\_  
Name of Registered Holder

By: \_\_\_\_\_

Name:

Title:

TRANSFER NOTICE

FOR VALUE RECEIVED, the undersigned Holder of the attached Warrant hereby sells, assigns and transfers unto the person or persons named below the right to purchase \_\_\_\_\_ shares of the Common Stock of \_\_\_\_\_ evidenced by the attached Warrant.

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

\_\_\_\_\_  
Name of Registered Holder

By: \_\_\_\_\_

Name:

Title:

Transferee Name and Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this "Agreement"), dated as of September 9, 2004, is by and between MICROVISION, INC., a Delaware corporation (the "Company"), and each of the entities whose names appear on the signature pages hereof. Such entities are each referred to herein as an "Investor" and, collectively, as the "Investors".

A. The Company has agreed, on the terms and subject to the conditions set forth in the Securities Purchase Agreement, dated as of September 9, 2004 (the "Securities Purchase Agreement"), to issue and sell to each Investor named therein shares of Series A Convertible Preferred Stock (the "Preferred Stock") and a Warrant (as defined in the Securities Purchase Agreement). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Securities Purchase Agreement.

B. The shares of Preferred Stock are convertible into shares (the "Conversion Shares") of the Company's common stock, par value \$0.001 per share (the "Common Stock"). The Warrants are exercisable into shares of Common Stock (the "Warrant Shares") in accordance with their terms.

C. In order to induce each Investor to enter into the Securities Purchase Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended (the "Securities Act"), and under applicable state securities laws.

In consideration of each Investor entering into the Securities Purchase Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS.

For purposes of this Agreement, the following terms shall have the meanings specified:

"Commission" means the Securities and Exchange Commission.

"Effective Date" means the date on which the Registration Statement is declared effective by the Commission.

"Filing Deadline" means the thirtieth (30th) calendar day following the Closing Date.

"Holder" means any person owning or having the right to acquire, through conversion of the Preferred Stock or exercise of the Warrants or otherwise, Registrable Securities, including initially each Investor and thereafter any permitted assignee thereof.

"Registrable Securities" means the Conversion Shares and the Warrant Shares and any other shares of Common Stock issuable pursuant to the terms of the Preferred Stock or the Warrants, and any shares of capital stock issued or issuable from time to time (with any adjustments) in replacement of, in exchange for or otherwise in respect of the Conversion Shares or the Warrant Shares.

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“Registration Deadline” means the one hundred twentieth (120th) calendar day following the Closing Date.

“Registration Period” has the meaning set forth in paragraph 2(b) below.

“Registration Statement” means a registration statement or statements prepared in compliance with the Securities Act and pursuant to Rule 415 under the Securities Act (“Rule 415”) or any successor rule providing for the offering of securities on a continuous or delayed basis.

## 2. REGISTRATION.

(a) Registration Statement. On or before the Filing Deadline, the Company shall prepare and file with the Commission a Registration Statement on Form S-3 pursuant to Rule 415 under the Securities Act covering the resale of a number of shares of Registrable Securities equal to one hundred twenty percent (120%) of the number of shares of Common Stock issuable on the Closing Date pursuant to the conversion of the Preferred Stock and the exercise of the Warrants (such number to be determined using the Conversion Price or Exercise Price, as applicable, in effect on such date and without regard to any restriction on the ability of any Holder to convert such Holder’s Preferred Stock or exercise such Holder’s Warrant as of such date). Such Registration Statement shall state, to the extent permitted by Rule 416 under the Securities Act, that it also covers such indeterminate number of additional shares of Common Stock as may become issuable upon the conversion of the Preferred Stock and exercise of the Warrants in order to prevent dilution resulting from stock splits, stock dividends or similar events. Notwithstanding the foregoing, if the Company does not meet the eligibility requirements for filing a Registration Statement on Form S-3, then the Company shall instead prepare and file with the Commission a Registration Statement meeting the foregoing requirements of Form S-1 or Form S-2, and in such event, the Company shall re-file such Registration Statement, or file a new Registration Statement covering at least the number of shares then registered on the existing Registration Statement (and not previously sold pursuant to the existing Registration Statement or pursuant to Rule 144 under the Securities Act (“Rule 144”)), on Form S-3 as promptly as practicable (but in no event later than thirty (30) days) after the Company meets the eligibility requirements to use Form S-3 for the resale of Registrable Securities by each Investor.

(b) Effectiveness. The Company shall use its best efforts to cause the Registration Statement to become effective as soon as practicable following the filing thereof, but in no event later than the Registration Deadline. The Company shall respond promptly to any and all comments made by the staff of the Commission on the Registration Statement, and shall submit to the Commission, within two (2) Business Days after the Company learns that no review of the Registration Statement will be made by the staff of the Commission or that the staff of the Commission has no further comments on the Registration Statement, as the case may be, a request for acceleration of the effectiveness of the Registration Statement to a time and date not later than two (2) Business Days after the submission of such request. The Company will maintain the

effectiveness of the Registration Statement until the earliest to occur of (i) the date on which all of the Registrable Securities eligible for resale thereunder have been publicly sold pursuant to either the Registration Statement or Rule 144, (ii) the date on which all of the Registrable Securities remaining to be sold under the Registration Statement (in the reasonable opinion of counsel to the Company) may be immediately sold to the public under Rule 144(k) under the Securities Act ("Rule 144(k)") or any successor provision, and (iii) the second anniversary of the Closing Date (the period beginning on the Closing Date and ending on the earliest to occur of (i), (ii) or (iii) above being referred to herein as the "Registration Period").

(c) Registration Default. If (i) the Registration Statement is not filed on or before the Filing Deadline or declared effective by the Commission on or before the Registration Deadline, (ii) after the Registration Statement has been declared effective by the Commission, sales of Registrable Securities cannot be made by a Holder under the Registration Statement for any reason not within the exclusive control of such Holder (other than during a Black-out Period (as defined below) or that such Registrable Securities as are then freely saleable pursuant to Rule 144(k)), (iii) the Common Stock ceases to be listed on the Nasdaq National Market, the Nasdaq Small Cap Market or the New York Stock Exchange, or (iv) an amendment or supplement to the Registration Statement, or a new registration statement, required to be filed pursuant to the terms of paragraph 4(k) below is not filed on or before the date required by such paragraph (each of the foregoing clauses (i), (ii), (iii) and (iv) being referred to herein as a "Registration Default"), the Company shall make cash payments to each Holder equal to such Holder's *pro rata* share (based on the aggregate number of Registrable Securities held by or issuable to such Holder as of the Registration Deadline) of \$100,000 [*i.e.* 1% of the Purchase Price] for each thirty (30) day period in which a Registration Default exists, such payment to be pro rated for any portion of any such thirty (30) day period. Each such payment shall be made within five (5) Business Days following the last day of each calendar month in which a Registration Default existed. Any such payment shall be in addition to any other remedies available to each Holder at law or in equity, whether pursuant to the terms hereof, the Securities Purchase Agreement, the Certificate of Designation, or otherwise.

(d) Allocation of Conversion Shares and Warrant Shares. The initial number of Conversion Shares and Warrant Shares included in any Registration Statement and each increase in the number thereof included therein shall be allocated *pro rata* among the Holders based on the aggregate number of Registrable Securities issuable to each Holder at the time the Registration Statement covering such initial number of Registrable Securities or increase thereof is declared effective by the Commission (such number to be determined using the Conversion Price or Exercise Price, as applicable, in effect at such time and without regard to any restriction on the ability of a Holder to convert such Holder's Preferred Stock or exercise such Holder's Warrant as of such date). In the event that a Holder sells or otherwise transfers any of such Holder's Registrable Securities, each transferee shall be allocated the portion of the then remaining number of Registrable Securities included in such Registration Statement allocable to the transferor.

(e) Registration of Other Securities. During the period beginning on the date hereof and ending on the Effective Date, the Company shall, except as described in Schedule 3.12 to the Securities Purchase Agreement, refrain from filing any registration statement (other than (i) a Registration Statement filed hereunder, or (ii) a registration statement on Form S-8 with respect to stock option plans and agreements and stock plans currently in effect and disclosed in the Securities

Purchase Agreement or the schedules thereto). In no event shall the Company include any securities other than the Registrable Securities on any Registration Statement filed by the Company on behalf of the Holders pursuant to the terms hereof.

### 3. PIGGYBACK REGISTRATION.

If at any time prior to the expiration of the Registration Period, (i) the Company proposes to register shares of Common Stock under the Securities Act in connection with the public offering of such shares for cash (a "Proposed Registration") other than a registration statement on Form S-8 or Form S-4 or any successor or other forms promulgated for similar purposes and (ii) a Registration Statement covering the sale of all of the Registrable Securities is not then effective and available for sales thereof by the Holders, the Company shall, at such time, promptly give each Holder written notice of such Proposed Registration. Each Holder shall have ten (10) Business Days from its receipt of such notice to deliver to the Company a written request specifying the amount of Registrable Securities that such Holder intends to sell and such Holder's intended method of distribution. Upon receipt of such request, the Company shall use its best efforts to cause all Registrable Securities which the Company has been requested to register to be registered under the Securities Act to the extent necessary to permit their sale or other disposition in accordance with the intended methods of distribution specified in the request of such Holder; *provided, however*, that the Company shall have the right to postpone or withdraw any registration effected pursuant to this Section 3 without obligation to the Holders. If, in connection with any underwritten public offering for the account of the Company or for stockholders of the Company that have contractual rights to require the Company to register shares of Common Stock, the managing underwriter(s) thereof shall impose a limitation on the number of shares of Common Stock which may be included in a registration statement because, in the judgment of such underwriter(s), marketing or other factors dictate such limitation is necessary to facilitate such offering, then the Company shall be obligated to include in the registration statement only such limited portion of the Registrable Securities with respect to which each Holder has requested inclusion hereunder as such underwriter(s) shall permit. Any exclusion of Registrable Securities shall be made *pro rata* among the Holders seeking to include Registrable Securities in a registration statement, in proportion to the number of Registrable Securities sought to be included by such Holders; *provided, however*, that the Company shall not exclude any Registrable Securities unless the Company has first excluded all outstanding securities, the holders of which are not entitled to inclusion of such securities in the registration statement or are not entitled to *pro rata* inclusion with the Registrable Securities; and *provided, further*, that, after giving effect to the immediately preceding proviso, any exclusion of Registrable Securities shall be made *pro rata* with holders of other securities having the right to include such securities in the registration statement.

### 4. OBLIGATIONS OF THE COMPANY.

In addition to performing its obligations hereunder, including without limitation those pursuant to Section 2 above, the Company shall, with respect to the Registration Statement:

(a) use its best efforts to prepare and file with the Commission such amendments and supplements to the Registration Statement and the prospectus used in connection with the Registration Statement as may be necessary to comply with the provisions of the Securities Act or to maintain the effectiveness of the Registration Statement during the Registration Period, or as may be reasonably requested by a Holder in order to incorporate information concerning such Holder or such Holder's intended method of distribution;

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(b) prior to or promptly following the Closing, use its best efforts to secure the listing of all Registrable Securities on the Nasdaq National Market System, and provide each Holder with reasonable evidence thereof;

(c) furnish to each Holder such number of copies of the prospectus included in the Registration Statement, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as such Holder may reasonably request in order to facilitate the disposition of such Holder's Registrable Securities;

(d) use commercially reasonable efforts to register or qualify the Registrable Securities under the securities or "blue sky" laws of such jurisdictions within the United States as shall be reasonably requested from time to time by a Holder, and do any and all other acts or things which may be necessary or advisable to enable such Holder to consummate the public sale or other disposition of the Registrable Securities in such jurisdictions; *provided* that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such jurisdiction;

(e) notify each Holder immediately after becoming aware of the occurrence of any event (but shall not, without the prior written consent of such Holder, disclose to such Holder any facts or circumstances constituting material non-public information) as a result of which the prospectus included in the Registration Statement, as then in effect, contains an untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, and as promptly as practicable prepare and file with the Commission and furnish to each Holder a reasonable number of copies of a supplement or an amendment to such prospectus as may be necessary so that such prospectus does not contain an untrue statement of material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing;

(f) use commercially reasonable efforts to prevent the issuance of any stop order or other order suspending the effectiveness of the Registration Statement and, if such an order is issued, to obtain the withdrawal thereof at the earliest possible time and to notify each Holder of the issuance of such order and the resolution thereof;

(g) furnish to each Holder, on the date that the Registration Statement, or any successor registration statement, becomes effective, a letter, dated such date, of an officer of the Company or of outside counsel representing the Company (and reasonably acceptable to such Holder) addressed to such Holder, confirming such effectiveness and, to the knowledge of such officer or counsel, the absence of any stop order;

(h) provide to each Holder and its representatives the reasonable opportunity to conduct, subject to confidentiality agreements reasonably acceptable to the Company, a reasonable inquiry of the Company's financial and other records during normal business hours and make available its officers, directors and employees for questions regarding information which such Holder may reasonably request in order to fulfill any due diligence obligation on its part;

(i) permit counsel for each Holder to review the Registration Statement and all amendments and supplements thereto, and any comments made by the staff of the Commission concerning such Holder and/or the transactions contemplated by the Transaction Documents and the Company's responses thereto, within a reasonable period of time prior to the filing thereof with the Commission (or, in the case of comments made by the staff of the Commission, within a reasonable period of time following the receipt thereof by the Company); and

(j) in the event that, at any time, the number of shares available under the Registration Statement is insufficient to cover one hundred five percent 105% of the Registrable Securities issuable under the Preferred Stock and Warrants (such number to be determined using the Conversion Price or Exercise Price, as applicable, in effect at such time and without regard to any restriction on the ability of any Holder to convert such Holder's Preferred Stock or exercise such Holder's Warrant) the Company shall promptly amend the Registration Statement or file a new registration statement, in any event as soon as practicable, but not later than the tenth (10<sup>th</sup>) day following notice from a Holder of the occurrence of such event, so that the Registration Statement or such new registration statement, or both, covers no less than one hundred twenty percent (120%) of the Registrable Securities eligible for resale thereunder and issuable under the Preferred Stock and Warrants (such number to be determined using the Conversion Price or Exercise Price, as applicable, in effect at the time of such amendment or filing and without regard to any restriction on the ability of any Holder to convert such Holder's Preferred Stock or exercise such Holder's Warrant). The Company shall use its best efforts to cause such amendment and/or new Registration Statement to become effective as soon as practicable following the filing thereof. Any Registration Statement filed pursuant to this paragraph 4(j) shall state that, to the extent permitted by Rule 416 under the Securities Act, such Registration Statement also covers such indeterminate number of additional shares of Common Stock as may become issuable upon conversion of the Preferred Stock and exercise of the Warrants in order to prevent dilution resulting from stock splits, stock dividends or similar events. Unless and until such amendment or new Registration Statement becomes effective, each Holder shall have the rights described in paragraph 2(c) above.

#### 5. PERMITTED SUSPENSION.

(a) Black-Out Period. Notwithstanding the Company's obligations under this Agreement, if in the good faith judgment of the Company, following consultation with legal counsel, it would be detrimental to the Company or its stockholders for resales of Registrable Securities to be made pursuant to the Registration Statement due to the existence of a material development involving the Company which the Company would be obligated to disclose in the Registration Statement, which disclosure would be premature or otherwise inadvisable at such time or would have a Material Adverse Effect upon the Company and its stockholders, the Company shall have the right to suspend the use of the Registration Statement for a period of not more than thirty (30) days (the "Black-out Period"); *provided, however*, that the Company may so defer or suspend the use of the Registration Statement for no more than thirty (30) days in any twelve-month period and not within 30 days of the end of any prior Black-out Period.

(b) Suspension. Notwithstanding anything to the contrary contained herein or in the Purchase Agreement, if the use of the Registration Statement is suspended by the Company, the Company shall promptly give written notice of the suspension to the Investors and shall promptly notify the Investors in writing as soon as the use of the Registration Statement may be resumed.

#### 6. OBLIGATIONS OF EACH HOLDER.

In connection with the registration of Registrable Securities pursuant to a Registration Statement, and as a condition to the Company's obligations under Section 2 hereof, each Holder shall:

(a) timely furnish to the Company in writing such information regarding itself and the intended method of disposition of such Registrable Securities as the Company shall reasonably request in order to effect the registration thereof;

(b) upon receipt of any notice from the Company of the happening of any event of the kind described in paragraphs 4(e) or 4(f) or of the commencement of a Black-out Period, immediately discontinue any sale or other disposition of such Registrable Securities pursuant to such Registration Statement until the filing of an amendment or supplement as described in paragraph 4(e) or withdrawal of the stop order referred to in paragraph 4(f), or the termination of the Black-out Period, as the case may be, and use commercially reasonable efforts to maintain the confidentiality of such notice and its contents;

(c) to the extent required by applicable law, deliver a prospectus to the purchaser of such Registrable Securities;

(d) notify the Company when it has sold all of the Registrable Securities held by it; and

(e) notify the Company in the event that any information supplied by such Holder in writing for inclusion in such Registration Statement or related prospectus is untrue or omits to state a material fact required to be stated therein or necessary to make such information not misleading in light of the circumstances then existing; immediately discontinue any sale or other disposition of such Registrable Securities pursuant to such Registration Statement until the filing of an amendment or supplement to such prospectus as may be necessary so that such prospectus does not contain an untrue statement of material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing; and use commercially reasonable efforts to assist the Company as may be appropriate to make such amendment or supplement effective for such purpose.

#### 7. INDEMNIFICATION.

In the event that any Registrable Securities are included in a Registration Statement under this Agreement:

(a) To the extent permitted by law, the Company shall indemnify and hold harmless each Holder, the officers, directors, employees, agents and representatives of such Holder,

and each person, if any, who controls such Holder within the meaning of the Securities Act or the Securities Exchange Act of 1934, as amended (the "Exchange Act"), against any losses, claims, damages, liabilities or reasonable out-of-pocket expenses (whether joint or several) (collectively, including legal or other expenses reasonably incurred in connection with investigating or defending same, "Losses"), insofar as any such Losses arise out of or are based upon (i) any untrue statement or alleged untrue statement of a material fact contained in such Registration Statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, or (ii) the omission or alleged omission to state therein a 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. Subject to the provisions of paragraph 7(c) below, the Company will reimburse such Holder, and each such officer, director, employee, agent, representative or controlling person, for any legal or other out-of-pocket expenses as reasonably incurred by any such entity or person in connection with investigating or defending any Loss; *provided, however*, that the foregoing indemnity shall not apply to amounts paid in settlement of any Loss if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld), nor shall the Company be obligated to indemnify any person for any Loss to the extent that such Loss is (i) based upon and is in conformity with written information furnished by such person expressly for use in such Registration Statement or (ii) based on a failure of such person to deliver or cause to be delivered the final prospectus contained in the Registration Statement and made available by the Company, if such delivery is required by applicable law. The Company shall not enter into any settlement of a Loss that does not provide for the unconditional release of such Holder from all liabilities and obligations relating to such Loss.

(b) To the extent permitted by law, each Holder who is named in such Registration Statement as a selling stockholder, acting severally and not jointly, shall indemnify and hold harmless the Company, the officers, directors, employees, agents and representatives of the Company, and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act, against any Losses to the extent (and only to the extent) that any such Losses are based upon and in conformity with written information furnished by such Holder expressly for use in such Registration Statement. Subject to the provisions of paragraph 7(c) below, such Holder will reimburse any legal or other expenses as reasonably incurred by the Company and any such officer, director, employee, agent, representative, or controlling person, in connection with investigating or defending any such Loss; *provided, however*, that the foregoing indemnity shall not apply to amounts paid in settlement of any such Loss if such settlement is effected without the consent of such Holder (which consent shall not be unreasonably withheld); and *provided, further*, that, in no event shall any indemnity under this paragraph 7(b) exceed the net proceeds resulting from the sale of the Registrable Securities sold by such Holder under such Registration Statement.

(c) Promptly after receipt by an indemnified party under this Section 7 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 7, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in and to assume the defense thereof with counsel mutually satisfactory to the parties; *provided, however*, that an indemnified party shall have the right to retain its own counsel, with the reasonably incurred fees and expenses of one such counsel for all indemnified parties to be paid by the indemnifying party, if representation of such



indemnified party by the counsel retained by the indemnifying party would be inappropriate under applicable standards of professional conduct due to actual or potential conflicting interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, to the extent prejudicial to its ability to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 7 with respect to such action, but the omission so to deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 7 or with respect to any other action unless the indemnifying party is materially prejudiced as a result of not receiving such notice.

(d) In the event that the indemnity provided in paragraph (a) or (b) of this Section 7 is unavailable or insufficient to hold harmless an indemnified party for any reason, the Company and each Holder agree, severally and not jointly, to contribute to the aggregate Losses to which the Company or such Holder may be subject in such proportion as is appropriate to reflect the relative fault of the Company and such Holder in connection with the statements or omissions which resulted in such Losses; *provided, however*, that in no case shall such Holder be responsible for any amount in excess of the net proceeds resulting from the sale of the Registrable Securities sold by it under the Registration Statement. Relative fault shall be determined by reference to whether any alleged untrue statement or omission relates to information provided by the Company or by such Holder. The Company and each Holder agree that it would not be just and equitable if contribution were determined by *pro rata* allocation or any other method of allocation which does not take account of the equitable considerations referred to above. Notwithstanding the provisions of this paragraph (d), 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 is not guilty of such fraudulent misrepresentation. For purposes of this Section 7, each person who controls a Holder within the meaning of either the Securities Act or the Exchange Act and each officer, director, employee, agent or representative of such Holder shall have the same rights to contribution as such Holder, and each person who controls the Company within the meaning of either the Securities Act or the Exchange Act and each officer, director, employee, agent or representative of the Company shall have the same rights to contribution as the Company, subject in each case to the applicable terms and conditions of this paragraph (d).

(e) The obligations of the Company and each Holder under this Section 7 shall survive the conversion of the Preferred Stock and exercise of the Warrants in full, the completion of any offering or sale of Registrable Securities pursuant to a Registration Statement under this Agreement, or otherwise.

#### 8. REPORTS.

With a view to making available to each Holder the benefits of Rule 144 and any other similar rule or regulation of the Commission that may at any time permit such Holder to sell securities of the Company to the public without registration, the Company agrees (until all of the Registrable Securities have been sold under a Registration Statement or pursuant to Rule 144) to:

- (a) make and keep public information available, as those terms are understood and defined in Rule 144;

(b) file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and

(c) furnish to such Holder, so long as such Holder owns any Registrable Securities and a Registration Statement covering the sale of all of the Registrable Securities is not then effective and available for sales thereof by the Holders, promptly upon written request (i) a written statement by the Company, if true, that it has complied with the reporting requirements of Rule 144, the Securities Act and the Exchange Act, and (ii) to the extent not publicly available through the Commission's EDGAR database, a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company.

#### 9. MISCELLANEOUS.

(a) Expenses of Registration. Except as otherwise provided in the Securities Purchase Agreement, all reasonable expenses, other than underwriting discounts and commissions and fees and expenses of counsel and other advisors to each Holder, incurred in connection with the registrations, filings or qualifications described herein, including (without limitation) all registration, filing and qualification fees, printers' and accounting fees, the fees and disbursements of counsel for the Company, and the fees and disbursements incurred in connection with the letter described in paragraph 4(g) hereof, shall be borne by the Company.

(b) Amendment; Waiver. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended or waived except pursuant to a written instrument executed by the Company and the Holders of a majority of the Registrable Securities into which all of the Preferred Stock and Warrants then outstanding are convertible or exercisable (without regard to any limitation on such conversion or exercise). Any amendment or waiver effected in accordance with this paragraph shall be binding upon each Holder, each future Holder and the Company. The failure of any party to exercise any right or remedy under this Agreement or otherwise, or the delay by any party in exercising such right or remedy, shall not operate as a waiver thereof.

(c) Notices. Any notice, demand or request required or permitted to be given by the Company or a Holder pursuant to the terms of this Agreement shall be in writing and shall be deemed delivered (i) when delivered personally or by verifiable facsimile transmission, unless such delivery is made on a day that is not a Business Day, in which case such delivery will be deemed to be made on the next succeeding Business Day, (ii) on the next Business Day after timely delivery to an overnight courier and (iii) on the Business Day actually received if deposited in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid), addressed as follows:

*If to the Company:*

Microvision, Inc.  
19910 North Creek Parkway  
Bothell, WA 98011  
Attn: General Counsel  
Tel: (425) 415-6847  
Fax: (425) 415-6795

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with a copy to:

Ropes & Gray LLP  
One International Place  
Boston, MA 02110  
Attn: Joel F. Freedman  
Tel: (617) 951-7000  
Fax: (617) 951-7050

and if to a Holder, to such address as shall be designated by such Holder in writing to the Company.

(d) Assignment. Upon the transfer of any Preferred Stock, Warrants or Registrable Securities by a Holder, the rights of such Holder hereunder with respect to such securities so transferred shall be assigned automatically to the transferee thereof, and such transferee shall thereupon be deemed to be a "Holder" for purposes of this Agreement, as long as: (i) the Company is, within a reasonable period of time following such transfer, furnished with written notice of the name and address of such transferee, (ii) the transferee agrees in writing with the Company to be bound by all of the provisions hereof, and (iii) such transfer is made in accordance with the applicable requirements of the Securities Purchase Agreement; *provided, however*, that the registration rights granted under this Agreement shall not be assigned to any person or entity that receives any Preferred Stock, Warrants or Registrable Securities in a public transaction pursuant to an effective registration statement under the Securities Act or pursuant to Rule 144.

(e) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed one and the same instrument. This Agreement, once executed by a party, may be delivered to any other party hereto by facsimile transmission.

(f) Governing Law. This Agreement 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 entirely within the State of New York.

(g) Holder of Record. A person is deemed to be a Holder whenever such person owns or is deemed to own of record Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more persons with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from the record owner of such Registrable Securities.

(h) Entire Agreement. This Agreement, the Securities Purchase Agreement, the Certificate of Designation, the Warrants, and the other Transaction Documents constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, the Securities Purchase Agreement, the Certificate of Designation, the Warrants, and the other Transaction Documents supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

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(i) Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(j) Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

[Signature Pages to Follow]

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IN WITNESS WHEREOF, the undersigned have executed this Registration Rights Agreement as of the date first-above written.

MICROVISION, INC.

By: /s/ Richard F. Rutkowski

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Name: Richard F. Rutkowski  
Title: Chief Executive Officer

SATELLITE STRATEGIC FINANCE ASSOCIATES, LLC

By: Satellite Asset Management, L.P., its Manager

By: /s/ Simon Raykher

\_\_\_\_\_  
Simon Raykher  
General Counsel

## SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT (this "Agreement"), dated as of September 9, 2004, is by and between Microvision, Inc., a Delaware corporation (the "Company"), and each of the entities whose names appear on the signature pages hereof. Such entities are each referred to herein as an "Investor" and, collectively, as the "Investors".

The Company wishes to sell to each Investor, and each Investor wishes to purchase, on the terms and subject to the conditions set forth in this Agreement, (A) shares (the "Preferred Shares") of the Company's Series A Convertible Preferred Stock (the "Preferred Stock") having the rights and privileges set forth in the form of Certificate of Designation attached hereto as Exhibit A (the "Certificate of Designation" or "Certificate") and (B) a Warrant in the form attached hereto as Exhibit B (each, a "Warrant" and, collectively, the "Warrants"). The Preferred Stock will be convertible into shares (the "Conversion Shares") of the Company's common stock, par value \$.001 per share (the "Common Stock") on the terms set forth in the Certificate. The Warrants issued to an Investor will entitle such Investor to purchase a number of shares of Common Stock (the "Warrant Shares") equal to (i) the number of Conversion Shares into which the Preferred Shares purchased by such Investor at the Closing (as defined below) are convertible (without regard to any limitation on such conversion contained herein or in the Certificate) times (ii) twenty five percent (25%). The Warrants will have an exercise price per share equal to \$8.16 and will expire on the fifth (5<sup>th</sup>) anniversary of the issuance thereof. The Preferred Shares, the Conversion Shares, the Warrants and the Warrant Shares are collectively referred to herein as the "Securities".

The Company has agreed to effect the registration of the Conversion Shares and the Warrant Shares under the Securities Act of 1933, as amended (the "Securities Act"), pursuant to a Registration Rights Agreement in the form attached hereto as Exhibit C (the "Registration Rights Agreement"). The sale of the Preferred Shares and the Warrants by the Company to the Investors will be effected in reliance upon the exemption from securities registration afforded by the provisions of Regulation D ("Regulation D"), as promulgated by the Commission (as defined below) under the Securities Act.

In consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and each Investor hereby agree as follows:

1. PURCHASE AND SALE OF PREFERRED SHARES AND WARRANTS

1.1 Closing of Purchase and Sale; Purchase Price. Upon the terms and subject to the satisfaction or waiver of the conditions set forth herein, the Company agrees to sell and each Investor agrees to purchase (i) the number of Preferred Shares set forth below such Investor's name on the signature pages hereof and (ii) a Warrant. The purchase price for the Preferred Shares and Warrant being purchased by an Investor (the "Purchase Price") shall be equal to the aggregate Stated Value of the Preferred Shares being purchased by such Investor. The closing of the purchase and sale of the Preferred Shares and Warrants (the "Closing") will be deemed to occur at the offices of Duval & Stachenfeld, LLP, 300 East 42<sup>nd</sup> Street, New York, New York 10017, when (A) this Agreement and the other Transaction Documents (as defined below) have been executed and delivered by the Company

and, to the extent applicable, by each Investor, (B) each of the conditions to the Closing described in Section 5 hereof has been satisfied or waived by the Company or each Investor, as appropriate, and (C) each Investor shall have delivered the Purchase Price payable by it to the Company by wire transfer of immediately available funds against physical delivery of duly executed certificates representing the Preferred Shares and Warrants being purchased by such Investor. The date on which one or more wire transfers to the Company in payment of the Purchase Price have been initiated (provided a fed wire number has been obtained) is referred to herein as the "Closing Date".

1.2 Certain Definitions. When used herein, the following terms shall have the respective meanings indicated:

"Affiliate" means, as to any Person (the "subject Person"), any other Person (a) that directly or indirectly through one or more intermediaries controls or is controlled by, or is under direct or indirect common control with, the subject Person, (b) that directly or indirectly beneficially owns or holds ten percent (10%) or more of any class of voting equity of the subject Person, or (c) ten percent (10%) or more of the voting equity of which is directly or indirectly beneficially owned or held by the subject Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, through representation on such Person's board of directors or other management committee or group, by contract or otherwise.

"Board of Directors" means the Company's board of directors.

"Business Day" means any day other than a Saturday, a Sunday or a day on which the New York Stock Exchange or commercial banks located in New York City are authorized or permitted by law to close.

"Certificate of Designation" has the meaning specified in the preamble to this Agreement.

"Closing" and "Closing Date" have the respective meanings specified in Section 1.1 hereof.

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" means the common stock, par value \$0.001 per share, of the Company.

"Conversion Price" has the meaning specified in the Certificate of Designation.

"Debt" means, as to any Person at any time: (a) all indebtedness, liabilities and obligations of such Person for borrowed money; (b) all indebtedness, liabilities and obligations of such Person to pay the deferred purchase price of Property or services, except trade accounts

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payable of such Person arising in the ordinary course of business that are not past due by more than 90 days; (c) all capital lease obligations of such Person; (d) all indebtedness, liabilities and obligations of others guaranteed by such Person; (e) all indebtedness, liabilities and obligations secured by a Lien existing on Property owned by such Person, whether or not the indebtedness, liabilities or obligations secured thereby have been assumed by such Person or are non-recourse to such Person; (f) all reimbursement obligations of such Person (whether contingent or otherwise) in respect of letters of credit, bankers' acceptances, surety or other bonds and similar instruments; and (g) all indebtedness, liabilities and obligations of such Person to redeem or retire shares of capital stock of such Person.

“Disclosure Documents” means all SEC Documents filed by the Company at least two (2) Business Days prior to the date of this Agreement via the Commission’s Electronic Data Gathering, Analysis and Retrieval system (EDGAR) in accordance with the requirements of Regulation S-T under the Exchange Act.

“Effective Date” has the meaning set forth in the Registration Rights Agreement.

“Environmental Law” means any federal, state, provincial, local or foreign law, statute, code or ordinance, principle of common law, rule or regulation, as well as any Permit, order, decree, judgment or injunction issued, promulgated, approved or entered thereunder, relating to pollution or the protection, cleanup or restoration of the environment or natural resources, or to the public health or safety, or otherwise governing the generation, use, handling, collection, treatment, storage, transportation, recovery, recycling, discharge or disposal of hazardous materials.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

“Execution Date” means the date of this Agreement.

“GAAP” means generally accepted accounting principles, applied on a consistent basis, as set forth in (i) opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants, (ii) statements of the Financial Accounting Standards Board and (iii) interpretations of the Commission and the Staff of the Commission. Accounting principles are applied on a “consistent basis” when the accounting principles applied in a current period are comparable in all material respects to those accounting principles applied in a preceding period.

“Governmental Authority” means any nation or government, any state, provincial or political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including without limitation any stock exchange, securities market or self-regulatory organization.



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“Governmental Requirement” means any law, statute, code, ordinance, order, rule, regulation, judgment, decree, injunction, franchise, license or other directive or requirement of any federal, state, county, municipal, parish, provincial or other Governmental Authority or any department, commission, board, court, agency or any other instrumentality of any of them.

“Intellectual Property” means any U.S. or foreign patents, patent rights, patent applications, trademarks, trade names, service marks, brand names, logos and other trade designations (including unregistered names and marks), trademark and service mark registrations and applications, copyrights and copyright registrations and applications, inventions, invention disclosures, protected formulae, formulations, processes, methods, trade secrets, computer software, computer programs and source codes, manufacturing research and similar technical information, engineering know-how, customer and supplier information, assembly and test data drawings or royalty rights.

“Lien” means, with respect to any Property, any mortgage or mortgages, pledge, hypothecation, assignment, deposit arrangement, security interest, tax lien, financing statement, pledge, charge, or other lien, charge, easement, encumbrance, preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever on or with respect to such Property (including, without limitation, any conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing).

“Market Price” means, as of a particular date, the average of each daily VWAP for the ten (10) consecutive Trading Days occurring immediately prior to (but not including) such date. For the avoidance of doubt, the Market Price shall be determined by calculating the daily VWAP for each of the ten (10) Trading Days immediately preceding the relevant date, adding together all of the daily VWAP’s for such ten (10) Trading Day period, and dividing such sum by ten (10).

“Material Adverse Effect” means an effect that is material and adverse to (i) the consolidated business, operations, properties, financial condition or results of operations of the Company and its Subsidiaries taken as a whole or (ii) an Investor as a holder of the Preferred Shares or the Warrants.

“Material Contracts” means, as to the Company, any agreement required pursuant to Item 601 of Regulation S-B or Item 601, as applicable, of Regulation S-K under the Securities Act to be filed as an exhibit to any report, schedule, registration statement or definitive proxy statement filed or required to be filed by the Company with the Commission under the Exchange Act or any rule or regulation promulgated thereunder, and any and all amendments, modifications, supplements, renewals or restatements thereof.

“NASD” means the National Association of Securities Dealers, Inc.

“Outstanding Registrable Securities” means, at any time, all Registrable Securities that at such time are either issued and outstanding or issuable upon conversion of the Preferred Stock or exercise of the Warrants (without regard to any limitation on such conversion or exercise).

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Affiliates. “Pension Plan” means an employee benefit plan (as defined in ERISA) maintained by the Company for employees of the Company or any of its

“Permitted Liens” means the following:

(a) encumbrances consisting of easements, rights-of-way, zoning restrictions or other restrictions on the use of real Property or imperfections to title that do not (individually or in the aggregate) materially impair the ability of the Company to use such Property in its businesses, and none of which is violated in any material respect by existing or proposed structures or land use;

(b) Liens for taxes, assessments or other governmental charges that are not delinquent or which are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the Property subject to such Liens, and for which adequate reserves (as determined in accordance with GAAP) have been established; and

(c) Liens of mechanics, materialmen, warehousemen, carriers, landlords or other similar statutory Liens securing obligations that are not yet due and are incurred in the ordinary course of business or which are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the Property subject to such Liens, for which adequate reserves (as determined in accordance with GAAP) have been established.

“Person” means any individual, corporation, trust, association, company, partnership, joint venture, limited liability company, joint stock company, Governmental Authority or other entity.

“Principal Market” means the principal exchange or market on which the Common Stock is listed or traded.

“Property” means property and/or assets of all kinds, whether real, personal or mixed, tangible or intangible (including, without limitation, all rights relating thereto).

“Pro Rata Share” means, with respect to an Investor, the ratio determined by dividing (i) the number of Preferred Shares purchased hereunder by such Investor by (ii) the aggregate number of Preferred Shares purchased hereunder by all of the Investors.

“Purchase Price” has the meaning specified in Section 1.1 hereof.

“Registrable Securities” means the Conversion Shares and the Warrant Shares, any other shares of Common Stock issuable pursuant to the terms of the Certificate of Designation or the Warrants, and any shares of capital stock issued or issuable from time to time (with any adjustments) in replacement of, in exchange for or otherwise in respect of the Conversion Shares or the Warrant Shares; provided, however, that “Registrable Securities” shall not include any such shares that have been sold to the public pursuant to the Registration Statement or Rule 144.

“Registration Statement” has the meaning set forth in the Registration Rights Agreement.

“Rule 144” means Rule 144 under the Securities Act, or any successor provision.

“SEC Documents” has the meaning specified in Section 3.4 hereof.

“Securities” has the meaning specified in the preamble to this Agreement.

“Stated Value” means \$1,000, subject to proportionate adjustment in the event of a stock split or similar event.

“Subsidiary” means, with respect to the Company, any corporation or other entity (other than an entity having no material operations or business during the twelve month period immediately preceding the Execution Date) of which at least a majority of the outstanding shares of stock or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors (or Persons performing similar functions) of such corporation or entity (regardless of whether, in the case of a corporation, stock of any other class or classes of such corporation shall or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned or controlled by the Company and/or one or more of its Affiliates.

“Termination Date” means the first date on which there are no Preferred Shares or Warrants outstanding.

“Trading Day” means any day on which the Common Stock is purchased and sold on the Principal Market.

“Transaction Documents” means (i) this Agreement, (ii) the Warrants, (iii) the Registration Rights Agreement, and (iv) all other agreements, documents and other instruments executed and delivered by or on behalf of the Company or any of its officers at the Closing.

“VWAP” on a Trading Day means the volume weighted average price of the Common Stock for such Trading Day as reported by Bloomberg Financial Markets or, if Bloomberg Financial Markets is not then reporting such prices, by a comparable reporting service of national reputation selected by the Holders and reasonably satisfactory to the Company. If the VWAP cannot be calculated for the Common Stock on such Trading Day on any of the foregoing bases, then the Company shall submit such calculation to an independent investment banking firm of national reputation reasonably acceptable to the Investors, and shall cause such investment banking firm to perform such determination and notify the Company and the Investors of the results of determination no later than two (2) Business Days from the time such calculation was submitted to it by the Company. All such determinations shall be appropriately adjusted for any stock dividend, stock split or other similar transaction during such period.

1.3 Other Definitional Provisions. All definitions contained in this Agreement are

equally applicable to the singular and plural forms of the terms defined. The words “hereof”, “herein” and “hereunder” and words of similar import referring to this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

## 2. REPRESENTATIONS AND WARRANTIES OF EACH INVESTOR

Each Investor hereby represents and warrants to the Company and agrees with the Company that, as of the Execution Date and as of the Closing Date:

2.1 Authorization; Enforceability. Such Investor is duly and validly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization as set forth below such Investor’s name on the signature page hereof with the requisite corporate power and authority to purchase the Securities being purchased by it and to execute and deliver this Agreement and the other Transaction Documents. This Agreement constitutes, and upon execution and delivery thereof, each other Transaction Document to which such Investor is a party will constitute, such Investor’s valid and legally binding obligation, enforceable in accordance with its terms, subject to (i) applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar laws of general application relating to or affecting the enforcement of creditors’ rights generally and (ii) general principles of equity.

2.2 Accredited Investor. Such Investor is an “accredited investor” as that term is defined in Rule 501 of Regulation D; (ii) is acquiring the Securities in the ordinary course of its business, solely for its own account, and not with a view to the public resale or distribution of all or any part thereof, except pursuant to sales that are registered under the Securities Act or are exempt from the registration requirements of the Securities Act and does not have any agreement or understanding with any person to distribute any of the Securities; provided, however, that, in making such representation, such Investor does not agree to hold the Securities for any minimum or specific term and reserves the right to sell, transfer or otherwise dispose of the Securities at any time in accordance with the provisions of this Agreement and with Federal and state securities laws applicable to such sale, transfer or disposition.

2.3 Information. The Company has provided such Investor with information regarding the business, operations and financial condition of the Company, and has granted to such Investor the opportunity to ask questions of and receive satisfactory answers from representatives of the Company, its officers, directors, employees and agents concerning the Company and materials relating to the terms and conditions of the purchase and sale of the Securities hereunder, as such Investor deems relevant in making an informed decision with respect to its investment in the Securities. Such Investor is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment. Neither such information nor any other investigation conducted by such Investor or its representatives shall modify, amend or otherwise affect such Investor’s right to rely on the Company’s representations and warranties contained in this Agreement.

2.4 Limitations on Disposition. Such Investor acknowledges that, except as provided in the Registration Rights Agreement, the Securities have not been and are not being registered under the Securities Act and may not be transferred or resold without registration under the Securities Act or unless pursuant to an exemption therefrom.

2.5 Legend. Such Investor understands that the certificates representing the Securities may bear at issuance a restrictive legend in substantially the following form:

“The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended (the “Securities Act”), or the securities laws of any state, and may not be offered, transferred, pledged, hypothecated, sold or otherwise disposed of unless a registration statement under the Securities Act and applicable state securities laws shall have become effective with regard thereto, or an exemption from registration under the Securities Act and applicable state securities laws is available in connection with such offer or sale.”

Notwithstanding the foregoing, it is agreed that, as long as (A) the resale or transfer (including without limitation a pledge) of any of the Securities is registered pursuant to an effective registration statement and the holder represents in writing to the Company that such Securities have been or will be sold pursuant to such registration statement, (B) such Securities have been sold pursuant to Rule 144, subject to receipt by the Company of customary documentation in connection therewith, or (C) such Securities are eligible for resale under Rule 144(k) or any successor provision and the holder thereof represents in writing to the Company that it is eligible to use such rule for public resales of such Securities, the certificates representing such Securities shall be issued without any legend or other restrictive language and, with respect to Securities upon which such legend is stamped, the Company shall issue new certificates without such legend to the holder upon request.

2.6 Reliance on Exemptions. Such Investor understands that the Securities are being offered and sold to it in reliance upon specific exemptions from the registration requirements of federal and state securities laws and that the Company is relying on the truth and accuracy of the representations and warranties of such Investor set forth in this Section 2 in order to determine the availability of such exemptions and the eligibility of such Investor to acquire the Securities.

2.7 Non-Affiliate Status; Common Stock Ownership. Such Investor is not an Affiliate of the Company or of any other Investor and is not acting in association or concert with any other Person with regard to its purchase of Preferred Shares and Warrants or otherwise in respect of the Company. Such Investor’s investment in the Securities is not for the purpose of acquiring, directly or indirectly, control of, and it has no intent to acquire or exercise control of, the Company or to influence the decisions or policies of the Board of Directors.

2.8 No Short Position in Company Securities. Neither such Investor nor any person trading on its behalf or at its direction has established or maintained a short position in the Common Stock or any other securities of the Company at any time during the period of fifteen (15) Trading Days immediately preceding the Execution Date.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company hereby represents and warrants to each Investor that, except as expressly set forth on the disclosure schedules to this Agreement, as of the Execution Date and as of the Closing Date:

3.1 Organization, Good Standing and Qualification. The Company is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or

organization and has all requisite power and authority to carry on its business as now conducted. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which it conducts business except where the failure so to qualify has not had or would not reasonably be expected to have a Material Adverse Effect. The Company does not have any Subsidiaries.

3.2 Authorization; Consents. The Company has the requisite corporate power and authority to adopt and file the Certificate of Designation and perform its obligations thereunder, to enter into and perform its obligations under this Agreement and the other Transaction Documents, including without limitation its obligations to issue and sell the Preferred Shares and Warrants to such Investor in accordance with the terms thereof and to issue Conversion Shares and Warrant Shares upon conversion of the Preferred Shares or exercise of the Warrants, as the case may be. All corporate action on the part of the Company by its officers, directors and stockholders necessary for the authorization, execution and delivery of, and the performance by the Company of its obligations under, the Certificate of Designation, this Agreement and the other Transaction Documents has been taken, and no further consent or authorization of the Company, its Board of Directors, stockholders, any Governmental Authority or organization (other than such approval as may be required under the Securities Act and applicable state securities laws in respect of the Registration Rights Agreement and such stockholder approval as is expressly contemplated hereby), or any other person or entity is required (pursuant to any rule of the Nasdaq National Market or otherwise). The Board of Directors, and/or a duly authorized committee thereof, has determined, at a duly convened meeting(s) or pursuant to a unanimous written consent, that the issuance and sale of the Securities, and the consummation of the transactions contemplated by the Certificate of Designation, this Agreement and the other Transaction Documents (including without limitation the issuance of the Conversion Shares and the Warrant Shares), are in the best interests of the Company.

3.3 Due Execution; Enforceability. This Agreement has been and, at or prior to the Closing, each other Transaction Document will be, duly executed and delivered by the Company. Each Transaction Document constitutes the valid and legally binding obligation of the Company, enforceable against it in accordance with its terms, subject to (i) applicable bankruptcy, insolvency, fraudulent transfer, moratorium, reorganization or other similar laws of general application relating to or affecting the enforcement of creditors' rights generally and (ii) general principles of equity.

3.4 SEC Documents; Agreements; Financial Statements; Other Information. The Company has filed with the Commission all reports, schedules, registration statements and definitive proxy statements that the Company was required to file with the Commission on or after December 31, 2003 (collectively, the "SEC Documents"). The Company is not aware of any event occurring on or prior to the Closing Date (other than the transactions effected hereby and quarterly releases of financial results) that would require the filing of, or with respect to which the Company intends to file, a Form 8-K after the Closing. Each SEC Document, as of the date of the filing thereof with the Commission (or if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing), complied in all material respects with the requirements of the Securities Act or Exchange Act, as applicable, and the rules and regulations promulgated thereunder and, as of the date of such filing (or if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing), such SEC Document (including all exhibits and schedules thereto and documents incorporated by reference therein) did not contain an untrue statement of material fact or omit to state a 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. All documents required to be filed as exhibits to the SEC Documents have been filed as required. Except as set forth in the Disclosure Documents, the Company has no liabilities, contingent or otherwise, other than liabilities incurred in the ordinary course of business which, under GAAP, are not required to be reflected in the financial statements included in the SEC Documents and which, individually or in the aggregate, are not material to the business or financial condition of the Company. The financial statements included in the SEC Documents have been prepared in accordance with GAAP (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end adjustments).

**3.5 Capitalization; Debt Schedule.** The capitalization of the Company as of the date hereof, including its authorized capital stock, the number of shares issued and outstanding, the number of shares issuable and reserved for issuance pursuant to the Company's stock option plans and agreements, the number of shares issuable and reserved for issuance pursuant to securities (other than the Securities) exercisable for, or convertible into or exchangeable for any shares of Common Stock and the number of shares initially to be reserved for issuance upon conversion of the Preferred Shares and exercise of the Warrants is set forth on Schedule 3.5 hereto. All issued and outstanding shares of capital stock of the Company have been validly issued, fully paid and non-assessable. No shares of the capital stock of the Company are subject to preemptive rights or any other similar rights of security holders of the Company or any Liens created by or through the Company. Except as set forth on Schedule 3.5, there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into or exercisable or exchangeable for, any shares of capital stock of the Company, or arrangements by which the Company is or may become bound to issue additional shares of capital stock of the Company (whether pursuant to anti-dilution, "reset" or other similar provisions). Except as described on Schedule 3.5 hereto, the Company has no material Debt outstanding as of the date hereof. The Company's shares of the capital stock of Lumera Corporation are held by the Company free and clear of all Liens.

**3.6 Due Authorization; Valid Issuance.** The shares of Preferred Stock are duly authorized and, when issued, sold and delivered in accordance with the terms hereof, (i) will be duly and validly issued, free and clear of any Liens imposed by or through the Company, (ii) assuming the accuracy of each Investor's representations in this Agreement, will be issued, sold and delivered in compliance with all applicable Federal and state securities laws and (iii) will be entitled to all rights, preferences and privileges described in the Certificate of Designation. The Warrants, the Conversion Shares and the Warrant Shares are duly authorized and, when issued, sold and delivered in accordance with the terms of this Agreement, the Certificate or the Warrants, as the case may be, will be duly and validly issued, fully paid and non-assessable, free and clear of any Liens imposed by or through the Company and, assuming the accuracy of each Investor's representations in this Agreement, will be issued, sold and delivered in compliance with all applicable Federal and state securities laws.

**3.7 No Conflict with Other Instruments.** The Company is not in violation of any provisions of its charter, bylaws or any other governing document or in default (and no event has occurred which,

with notice or lapse of time or both, would constitute a default) under any provision of any instrument or contract to which it is a party or by which it or any of its Property is bound, or in violation of any provision of any Governmental Requirement applicable to it, except for any default under any such instrument or contract or any violation of any provision of a Governmental Requirement that, in either such case, has not had or would not reasonably be expected to have a Material Adverse Effect (any such violation or default being referred to herein as a "Current Violation"). The (i) execution, delivery and performance of this Agreement and the other Transaction Documents, (ii) filing of and performance of its obligations under the Certificate of Designation and (iii) consummation of the transactions contemplated hereby and thereby (including without limitation, the issuance of the Preferred Stock and the Warrants and the reservation for issuance and issuance of the Conversion Shares and the Warrant Shares) will not result in a Current Violation or in the creation of any Lien upon any assets of the Company or the triggering of any preemptive or anti-dilution rights (including without limitation pursuant to any "reset" or similar provisions) or rights of first refusal or first offer, or any other rights that would allow or permit the holders of the Company's securities or other Persons to purchase shares of Common Stock or other securities of the Company.

### 3.8 Financial Condition; Taxes; Litigation.

3.8.1 The Company's financial condition is, in all material respects, as described in the Disclosure Documents, except for changes in the ordinary course of business and normal year-end adjustments that are not, in the aggregate, materially adverse to the business or financial condition of the Company. There has occurred no (i) material adverse change to the Company's business, operations, properties, financial condition, or results of operations since the date of the Company's most recent audited financial statements contained in the Disclosure Documents or (ii) change by the Company in its accounting principles, policies and methods except as required by changes in GAAP or applicable law.

3.8.2 The Company (i) has prepared in good faith and duly and timely filed all tax returns required to be filed by it and such returns are complete and accurate in all material respects and (ii) has paid all taxes required to have been paid by it, except for taxes which it reasonably disputes in good faith or the failure of which to pay has not had or would not reasonably be expected to have a Material Adverse Effect, and has no liability with respect to accrued taxes in excess of the amounts that are described as accrued in the most recent financial statements included in the Disclosure Documents.

3.8.3 Except as described in Schedule 3.8.3, the Company is not the subject of any pending or, to the Company's knowledge, threatened inquiry, investigation or administrative or legal proceeding by the Internal Revenue Service, the taxing authorities of any state or local jurisdiction (other than with respect to taxes which it reasonably disputes in good faith or the failure of which to pay has not had or would not reasonably be expected to have a Material Adverse Effect), the Commission, the NASD, any state securities commission or other Governmental Authority.

3.8.4 Except as described in Schedule 3.8.4, there is no material claim, litigation or administrative proceeding pending or, to the Company's knowledge, threatened or contemplated, against the Company or, to the Company's knowledge, against any officer, director or employee of the Company in connection with such person's employment therewith. The Company is not a party to or subject to the provisions of, any order, writ, injunction, judgment or decree of any court or Governmental Authority which has had or would reasonably be expected to have a Material Adverse Effect.



3.9 Form S-3. The Company is eligible to register the Registrable Securities for resale by each Investor on a registration statement on Form S-3 under the Securities Act. To the Company's knowledge, there exist no facts or circumstances (including without limitation any required approvals or waivers of any circumstances that may delay or prevent the obtaining of accountant's consents) that could reasonably be expected to prohibit or delay the preparation, filing or effectiveness of such registration statement.

3.10 Acknowledgment of Dilution. The Company acknowledges that the issuance of the Conversion Shares upon conversion of the Preferred Shares and issuance of Warrant Shares upon exercise of the Warrants may result in dilution of the outstanding shares of Common Stock. The Company further acknowledges that its obligation to issue Conversion Shares and Warrant Shares in accordance with the terms of the Certificate of Designation and Warrants, respectively, is unconditional regardless of the effect of any such dilution.

3.11 Intellectual Property. Except as set forth in Schedule 3.11:

(a) The Company owns, free and clear of claims or rights or any other Person, with full right to use, sell, license, sublicense, dispose of, and bring actions for infringement of, or, to the knowledge of the Company, has acquired licenses or other rights to use, all Intellectual Property necessary for the conduct of its business as presently conducted (other than with respect to software which is generally commercially available and not used or incorporated into the Company's products and open source software which may be subject to one or more "general public" licenses). All works that are used or incorporated into the Company's services, products or services or products actively under development and which is proprietary to the Company was developed by or for the Company by the current or former employees, consultants or independent contractors of the Company or its predecessors in interest or purchased or licensed by the Company or its predecessors in interest.

(b) The business of the Company as presently conducted and the production, marketing, licensing, use and servicing of any products or services of the Company do not, to the knowledge of the Company, infringe or conflict with any patent, trademark, copyright, or trade secret rights of any third parties or any other Intellectual Property of any third parties in any material respect. The Company has not received written notice from any third party asserting that any Intellectual Property owned or licensed by the Company, or which the Company otherwise has the right to use, is invalid or unenforceable by the Company and, to the Company's knowledge, there is no valid basis for any such claim (whether or not pending or threatened).

(c) No claim is pending or, to the Company's knowledge, threatened against the Company nor has the Company received any written notice or other written claim from any Person asserting that any of the Company's present or contemplated activities infringe or may infringe in any material respect any Intellectual Property of such Person and the Company is not aware of any infringement by any other Person of any material rights of the Company under any Intellectual Property Rights.

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(d) All licenses or other agreements under which the Company is granted Intellectual Property (excluding licenses to use software utilized in the Company's internal operations and which is generally commercially available) are in full force and effect and, to the Company's knowledge, there is no material default by any party thereto. The Company has no reason to believe that the licensors under such licenses and other agreements do not have and did not have all requisite power and authority to grant the rights to the Intellectual Property purported to be granted thereby.

(e) All licenses or other agreements under which the Company has granted rights to Intellectual Property to others (including all end-user agreements) since January 1, 2003, are in full force and effect, unless otherwise terminated in accordance with the terms of such licenses or arrangements, there has been no material default by the Company thereunder and, to the Company's knowledge, there is no material default by any other party thereto.

(f) The Company has taken all steps required in accordance with commercially reasonable business practice to establish and preserve its ownership in its owned Intellectual Property and to keep confidential all material technical information developed by or belonging to the Company which has not been patented or copyrighted. To the Company's knowledge, the Company is not making any material unlawful use of any Intellectual Property of any other Person, including, without limitation, any former employer of any past or present employees of the Company. To the Company's knowledge, neither the Company nor any of its employees has any agreements or arrangements with former employers of such employees relating to any Intellectual Property of such employers, which materially interfere or conflict with the performance of such employee's duties for the Company or result in any former employers of such employees having any rights in, or claims on, the Company's Intellectual Property. Except as set forth on Schedule 3.11(f)(i), each current and former employee of the Company has executed agreements regarding confidentiality, proprietary information and assignment of inventions and copyrights to the Company, each independent contractor or consultant of the Company has executed agreements regarding confidentiality and proprietary information, and the Company has not received written notice that any employee, consultant or independent contractor is in violation of any agreement or in breach of any agreement or arrangement with former or present employers relating to proprietary information or assignment of inventions. Without limiting the foregoing: (i) the Company has taken reasonable security measures to guard against unauthorized disclosure or use of any of its Intellectual Property; and (ii) the Company has no reason to believe that any Person (including, without limitation, any former employee or consultant of the Company) has unauthorized possession of any of its Intellectual Property, or any part thereof, or that any Person has obtained unauthorized access to any of its Intellectual Property. The Company has complied in all material respects with its obligations pursuant to all agreements relating to Intellectual Property rights that are the subject of licenses granted by third parties, except for any non-compliance that has not had or would not reasonably be expected to have a Material Adverse Effect.

3.12 Registration Rights. Except as described on Schedule 3.12 hereto, the Company has not granted or agreed to grant to any person or entity any rights (including "piggy-back" registration rights) to have any securities of the Company registered with the Commission or any other governmental authority which has not been satisfied in full prior to the date hereof.

3.13 Fees. Except as contemplated by Section 6.10 hereof and as set forth on Schedule 3.13

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or disclosed in writing to the Investor by the Company, the Company is not obligated to pay any compensation or other fee, cost or related expenditure to any underwriter, broker, agent or other representative in connection with the transactions contemplated hereby. The Company will indemnify and hold harmless each Investor from and against any claim by any person or entity alleging that, as a result of any agreement or arrangement between such Person and the Company, such Investor is obligated to pay any such compensation, fee, cost or related expenditure in connection with the transactions contemplated hereby.

3.14 Foreign Corrupt Practices. Neither the Company, nor to the Company's knowledge any director, officer, agent, employee or other person acting on behalf of the Company, has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity, (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee (including without limitation any bribe, rebate, payoff, influence payment, kickback or other unlawful payment), or (iii) violated any provision of the Foreign Corrupt Practices Act of 1977, as amended.

3.15 Key Employees. Each of the Company's executive officers (as defined in Rule 501(f) of the Securities Act) (each, a "Key Employee") is currently serving in the capacity described in the SEC Documents. The Company has no knowledge of any fact or circumstance (including without limitation (i) the terms of any agreement to which such person is a party or any litigation in which such person is or may become involved and (ii) any illness or medical condition that could reasonably be expected to result in the disability or incapacity of such person) that would limit or prevent any such person from serving in such capacity on a full-time basis in the foreseeable future, or of any intention on the part of any such person to limit or terminate his or her employment with the Company.

3.16 Employee Matters. There is no strike, labor dispute or union organization activities pending or, to the knowledge of the Company, threatened between it and its employees. No employees of the Company belong to any union or collective bargaining unit. The Company has complied in all material respects with all applicable federal and state equal opportunity and other laws related to employment.

3.17 Environment. To the Company's knowledge, the Company does not have any current liability under any Environmental Law, nor, to the knowledge of the Company, do any factors exist that are reasonably likely to give rise to any such liability that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect. To the Company's knowledge, the Company has not violated any Environmental Law applicable to it now or previously in effect, other than such violations or infringements that, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect.

3.18 ERISA. Except as described on Schedule 3.18, the Company does not maintain or contribute to, or have any obligation under, any Pension Plan. The Company is in compliance in all material respects with the presently applicable provisions of ERISA and the United States Internal Revenue Code of 1986, as amended, except for matters that, individually or in the aggregate, have not had, and would not reasonably be expected to have, a Material Adverse Effect.

3.19 Insurance. The Company maintains insurance in such amounts and covering such losses and risks as the Company believes to be reasonably prudent in relation to the businesses in which the Company is engaged. No notice of cancellation has been received for any of such policies and the Company reasonably believes that is in compliance with all of the terms and conditions thereof. The Company has no reason to believe that it will not be able to renew any existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue doing business as currently conducted without a significant increase in cost, other than normal increases in the industry. Without limiting the generality of the foregoing, the Company maintains Director's and Officer's insurance in an amount deemed to be reasonable and appropriate by the Company's Board of Directors.

3.20 Property. The Company does not own any real property. The Company has good and marketable title to all personal Property owned by it which, in each such case free and clear of all Liens except for Permitted Liens and except for such Liens which, individually and together with all other Liens (including without limitation Permitted Liens) do not have, and cannot reasonably be expected to have, a Material Adverse Effect. Any Property held under lease by the Company is held by it under valid, subsisting and enforceable leases with such exceptions as are not material and do not materially interfere with the use made or proposed to be made of such Property by the Company.

3.21 Regulatory Permits. The Company possesses all material certificates, authorizations and permits issued by the appropriate federal, state or foreign regulatory authorities necessary to conduct its businesses other than where the failure to possess such certificates, authorizations or permits, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect. The Company has not received any notice or otherwise become aware of any proceedings, inquiries or investigations relating to the revocation or modification of any such certificate, authorization or permit.

3.22 Exchange Act Registration; Listing. The Company's Common Stock is registered pursuant to Section 12(g) of the Exchange Act and is listed on the Nasdaq National Market. The Company currently meets the continuing eligibility requirements for listing on the Nasdaq National Market and has not received any notice from such market or the NASD that it does not currently satisfy such requirements or that such continued listing is in any way threatened. The Company has taken no action designed to, or which, to the knowledge of the Company, would reasonably be expected to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the Nasdaq National Market.

3.23 Investment Company Status. The Company is not, and immediately after receipt of the Purchase Price for the Securities issued under this Agreement will not be, an "investment company" or an entity "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended (the "Investment Company Act").

3.24 Transfer Taxes. No stock transfer or other taxes (other than income taxes) are required to be paid in connection with the issuance and sale of any of the Securities, other than such taxes for which the Company has established appropriate reserves and intends to pay in full on or before the relevant Closing.

3.25 Internal Controls and Procedures. The Company maintains internal accounting controls, policies and procedures, and such books and records as are reasonably designed to provide reasonable assurance that (i) all transactions to which the Company is a party or by which its properties are bound are effected by a duly authorized employee or agent of the Company, supervised by and acting within the scope of the authority granted by the Company's senior management; and (ii) all transactions to which the Company is a party, or by which its properties are bound, are recorded (and such records maintained) as necessary or appropriate to ensure that the financial statements of the Company are prepared in accordance with GAAP or in accordance with Governmental Requirements, as may be required, except, in any individual case or in the aggregate, has not had, and would not reasonably be expected to have, a Material Adverse Effect.

3.26 Embargoed Person. None of the funds or other assets of the Company shall constitute property of, or shall be beneficially owned, directly or indirectly, by any person subject to trade restrictions under United States law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.*, The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq.*, and any Executive Orders or regulations promulgated under any such United States laws (each, an "Embargoed Person"), with the result that the investments evidenced by the Securities are or would be in violation of law. No Embargoed Person shall have any interest of any nature whatsoever in the Company with the result that the investments evidenced by the Securities are or would be in violation of law. None of the funds or other assets of the Company shall be derived from any unlawful activity with the result that the investments evidenced by the Securities are or would be in violation of law.

3.27 Solvency. As of the Execution Date and as of the Closing Date, (i) the fair saleable value of the Company's assets exceeds the amount that will be required to be paid on or in respect of the Company's existing Debt as such Debt matures or is otherwise payable; (ii) the Company's assets do not constitute unreasonably small capital to carry on its business for the current fiscal year as now conducted and as proposed to be conducted taking into account the current and projected capital requirements of the business conducted by the Company and projected capital availability; and (iii) the current cash flow of the Company, together with the proceeds the Company would receive upon liquidation of its assets, after taking into account all anticipated uses of such amounts, would be sufficient to pay all Debt when such Debt is required to be paid. The Company has no knowledge of any facts or circumstances which lead it to believe that it will be required to file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction, and has no present intention to so file.

3.28 Transactions with Interested Person Except as set forth in Schedule 3.28, no officer, director or employee of the Company is or has made any arrangements with the Company to become a party to any transaction with the Company (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner.

3.29 Customers. The relationships of the Company with its customers are maintained on

commercially reasonable terms. To the Company's knowledge, no customer of the Company has any plan or intention to terminate its agreement with the Company, which termination would reasonably be expected to have a Material Adverse Effect.

3.30 Full Disclosure. The representations, warranties and written statements contained in this Agreement and the other Transaction Documents and in the certificates, exhibits and schedules delivered to such Investor by the Company pursuant to this Agreement and the other Transaction Documents and in connection with such Investor's due diligence investigation of the Company, do not contain any untrue statement of a material fact, and do not omit to state a material fact required to be stated therein or necessary in order to make such representations, warranties or statements not misleading in light of the circumstances under which they were made. Neither the Company nor any Person acting on its behalf or at its direction has provided such Investor with material non-public information. Following the issuance of the press release in accordance with Section 4.1(c) hereof, to the Company's knowledge, such Investor will not possess any material non-public information concerning the Company. The Company acknowledges that such Investor is relying on the representations, acknowledgments and agreements made by the Company in this Section 3.30 and elsewhere in this Agreement in making trading and other decisions concerning the Company's securities.

3.31 No Other Agreements. The Company has not, directly or indirectly, entered into any agreement with or granted any right to any Investor relating to the terms or conditions of the transactions contemplated by the Certificate of Designation or the Transaction Documents except as expressly set forth therein.

#### 4. COVENANTS OF THE COMPANY AND EACH INVESTOR.

4.1 The Company agrees with each Investor that the Company will:

(a) file a Form D with respect to the Securities issued at the Closing as and when required under Regulation D and provide a copy thereof to such Investor promptly after such filing;

(b) take such action as the Company reasonably determines upon the advice of counsel is necessary to qualify the Securities for sale under applicable state or "blue-sky" laws or obtain an exemption therefrom, and shall provide evidence of any such action to such Investor promptly after any such filing; and

(c) (i) on or prior to 6:30 a.m. (eastern time) on the Business Day following the Execution Date, issue a press release disclosing the material terms of this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby and (ii) on or prior to 5:00 p.m. (eastern time) on the second Business Day immediately following the Execution Date, file with the Commission a Current Report on Form 8-K disclosing the material terms of this Agreement, the Certificate of Designation and the other Transaction Documents and the transactions contemplated hereby and thereby, including as exhibits this Agreement, the Certificate of Designation and the other Transaction Documents; provided, however, that each Investor shall have a reasonable opportunity to review and comment on any such press release or Form 8-K prior to the issuance or filing thereof. Thereafter, the Company shall timely file any filings and notices required by the Commission or applicable law with respect to the transactions contemplated hereby.

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4.2 The Company agrees that it will, during the period beginning on the Execution Date and ending on the Termination Date:

(a) maintain its corporate existence in good standing;

(b) maintain, keep and preserve all of its Properties necessary in the proper conduct of its businesses in good repair, working order and condition (ordinary wear and tear excepted) and make all necessary repairs, renewals and replacements and improvements thereto, except where the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(c) pay or discharge before becoming delinquent (a) all taxes, levies, assessments and governmental charges imposed on it or its income or profits or any of its Property and (b) all lawful claims for labor, material and supplies, which, if unpaid, might become a Lien upon any of its Property, except where the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; provided, however, that the Company shall not be required to pay or discharge any tax, levy, assessment or governmental charge, or claim for labor, material or supplies, whose amount, applicability or validity is being contested in good faith by appropriate proceedings being diligently pursued and for which appropriate reserves have been established under GAAP;

(d) comply with all Governmental Requirements applicable to the operation of its business, except for instances of noncompliance that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; provided, however, that the Company shall not be required to comply with any Governmental Requirements, the applicability or validity of which is being contested in good faith by appropriate proceedings being diligently pursued and for which adequate reserves have been established under GAAP;

(e) comply with all agreements, documents and instruments binding on it or affecting its Properties or business, including, without limitation, all Material Contracts, except for instances of noncompliance that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(f) provide each Investor with copies of all materials sent to its stockholders, in each such case at the same time as delivered to such stockholders;

(g) timely file with the Commission all reports required to be filed pursuant to the Exchange Act and refrain from terminating its status as an issuer required by the Exchange Act to file reports thereunder even if the Exchange Act or the rules or regulations thereunder would permit such termination;

(h) until the earlier of (A) Effective Date of the Registration Statement and (B) the six (6) month anniversary of the Closing Date, take commercially reasonable steps to restrict each of the Company's Chief Executive Officer, President and Chief Financial Officer (each, a "Specified Employee") from selling shares of Common Stock, other than (i) in connection with any

10b-5(1) trading plans in effect as of the Execution Date and disclosed to each Investor in writing and (ii) with respect to each Specified Employee, unless and until the VWAP for 10 consecutive Trading Days exceeds 140% of the Market Price on the Closing Date (the "Specified Employee Threshold"), up to 15% of the shares of Common Stock and vested options held on the date hereof by such Specified Employee; provided, that in the event the Specified Employee Threshold occurs, the restriction contained in this section shall terminate, and each Specified Employee shall be free to sell any Common Stock held by such Specified Employee; and

(i) use commercially reasonable efforts to maintain adequate insurance coverage (including D&O insurance) for the Company and each Subsidiary.

4.3 Reservation of Common Stock. The Company shall authorize, reserve for issuance to the Investor, and keep available at all times during which Preferred Shares or Warrants are outstanding, free from any preemptive rights, a number of shares of Common Stock (the "Reserved Amount") that, on the Closing Date, is not less than one hundred ten percent (110%) of the sum of (A) the number of Conversion Shares issuable upon conversion of all of the Preferred Shares issuable at the Closing plus (B) the number of Warrant Shares issuable upon exercise of all of the Warrants issuable at the Closing, in each case without regard to any limitation on such conversion or exercise that may otherwise exist. The Reserved Amount shall be allocated in accordance with each Investor's Pro Rata Share. In the event that an Investor shall sell or otherwise transfer any of such Investor's Preferred Shares or Warrants, each transferee shall be allocated a *pro rata* portion of such transferor's Reserved Amount. Any portion of the Reserved Amount allocated to any Investor or other Person which no longer holds any Preferred Shares or Warrants shall be reallocated to the remaining Investors *pro rata* based on the number of Outstanding Registrable Securities held by such Investors at such time. In the event that the Reserved Amount is insufficient at any time to cover one hundred percent 100% of the Registrable Securities issuable upon the conversion of the Preferred Stock and the exercise of the Warrants (without regard to any restriction on such conversion or exercise), the Company shall take such action (including without limitation holding a meeting of its stockholders) to increase the Reserved Amount to cover 110% of the Registrable Securities issuable upon such conversion and exercise), such increase to be effective not later than the thirtieth (30<sup>th</sup>) day (or sixtieth (60<sup>th</sup>) day, in the event stockholder approval is required for such increase) following the Company's receipt of written notice of such deficiency. While any Preferred Shares or Warrants are outstanding, the Company shall not reduce the Reserved Amount without obtaining the prior written consent of each Investor.

4.4 Use of Proceeds. The Company shall use the proceeds from the sale of the Securities in the ordinary course of its business; provided, however, that the Company shall not use such proceeds (i) to pay any dividend or make any distribution on any such securities, or (ii) to repay any loan made to or incurred by any Key Employee or Affiliate of the Company.

4.5 Use of Investor Name. Except as may be required by applicable law and/or this Agreement, the Company shall not use, directly or indirectly, any Investor's name or the name of any of its Affiliates in any advertisement, announcement, press release or other similar communication unless it has received the prior written consent of such Investor for the specific use contemplated or as otherwise required by applicable law or regulation.



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4.6 Limitations on Disposition. No Investor shall sell, transfer, assign or dispose of any Securities, unless:

(a) there is then in effect an effective registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement; or

(b) such Investor has notified the Company in writing of any such disposition, received the Company's written consent to such disposition and furnished the Company with an opinion of counsel, reasonably satisfactory to the Company, that such disposition will not require registration of such Securities under the Securities Act; provided, however, that no such consent or opinion of counsel will be required (A) if the sale, transfer or assignment complies with federal and state securities laws and is made to a fund or other institutional investor that is an Affiliate of such Investor and which is also an "accredited investor" as that term is defined in Rule 501 of Regulation D; provided, that such Affiliate provides the Company with customary accredited investor and investment representations (comparable with those set forth in Section 2.2 hereof), and agrees to be bound by the terms and conditions of this Agreement, (B) if the sale, transfer or assignment is made pursuant to Rule 144 and such Investor provides the Company with evidence reasonably satisfactory to the Company that the proposed transaction satisfies the requirements of Rule 144 or (C) in connection with a *bona fide* pledge or hypothecation of any Securities under a margin arrangement with a broker-dealer or other financial institution or the sale of any such Securities by such broker-dealer or other financial institution following such Investor's default under such margin arrangement.

4.7 Disclosure of Information. The Company agrees that it will not at any time following the Execution Date disclose material non-public information to any Investor without first obtaining such Investor's written consent to such receive such information.

4.8 Listing. The Company (i) has, or promptly following the Closing shall, use its best efforts to include all of the Conversion Shares issuable upon conversion of the Preferred Shares and all of the Warrant Shares issuable upon exercise of the Warrants (without regard to any limitation on such conversion or exercise) for listing on the Nasdaq National Market, and (ii) shall use its best efforts to maintain the designation and quotation, or listing, of the Common Stock on the Nasdaq National Market, the Nasdaq Small Cap Market or the New York Stock Exchange for a minimum of five (5) years following the Closing Date.

4.9 Indemnification of Investors. The Company will indemnify and hold each Investor and its directors, managers, officers, shareholders, members, partners, employees and agents (each, an "Investor Party") harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys' fees and costs of investigation that any such Investor Party may suffer or incur as a result of or relating to (a) any breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents or (b) any action instituted against an Investor, or any of them or their respective Affiliates, by any stockholder of the Company who is not an Affiliate of such Investor, with respect to any of the transactions contemplated by the Transaction Documents (unless such action is based upon a breach of such Investor's representation, warranties or covenants under the Transaction Documents or any

agreements or understandings such Investor may have with any such stockholder or any violations by such Investor of state or federal securities laws or any conduct by such Investor which constitutes fraud, gross negligence, willful misconduct or malfeasance). If any action shall be brought against any Investor Party in respect of which indemnity may be sought pursuant to this Agreement, such Investor Party shall promptly notify the Company in writing, and the Company shall have the right to assume the defense thereof with counsel of its own choosing. Any Investor Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Investor Party except to the extent that (i) the employment thereof has been specifically authorized by the Company in writing, (ii) the Company has failed after a reasonable period of time following such Investor Party's written request that it do so, to assume such defense and to employ counsel or (iii) in such action there is, in the reasonable opinion of such separate counsel, a material conflict on any material issue between the position of the Company and the position of such Investor Party. The Company will not be liable to any Investor Party under this Agreement (i) for any settlement by an Investor Party effected without the Company's prior written consent, which shall not be unreasonably withheld or delayed; or (ii) to the extent, but only to the extent that a loss, claim, damage or liability is attributable to such Investor Party's wrongful actions or omissions, or gross negligence or to such Investor Party's breach of any of the representations, warranties, covenants or agreements made by such Investor in this Agreement or in the other Transaction Documents.

5. CONDITIONS TO CLOSING.

5.1 Conditions to Investors' Obligations at the Closing. Each Investor's obligations to effect the Closing, including without limitation its obligation to purchase Preferred Shares and Warrants at the Closing, are conditioned upon the fulfillment (or waiver by such Investor in its sole and absolute discretion) of each of the following events as of the Closing Date:

- 5.1.1 the representations and warranties of the Company set forth in this Agreement and in the other Transaction Documents shall be true and correct in all material respects as of such date as if made on such date (except that to the extent that any such representation or warranty relates to a particular date, in which case such representation or warranty shall be true and correct in all material respects as of that particular date);
- 5.1.2 the Company shall have complied with or performed in all material respects all of the agreements, obligations and conditions set forth in the Certificate of Designation, this Agreement or the other Transaction Documents that are required to be complied with or performed by the Company on or before such date;
- 5.1.3 the Company shall have filed the Certificate of Designation with the Secretary of State of the State of Delaware, and delivered to such Investor written evidence of the acceptance of such filing;
- 5.1.4 the Closing Date shall occur not later than September 10, 2004;

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- 5.1.5 the Company shall have delivered to such Investor a certificate, signed by the Chief Executive Officer and Chief Financial Officer of the Company, certifying that the conditions specified in subparagraphs 5.1.1, 5.1.2, 5.1.3, 5.1.10, 5.1.11, 5.1.12 and 5.1.13 have been fulfilled as of the Closing Date, it being understood that such Investor may rely on such certificate as a representation and warranty of the Company made herein;
  - 5.1.6 the Company shall have delivered to such Investor a certificate, signed by the Secretary or an Assistant Secretary of the Company, attaching (i) the Certificate of Incorporation and By-Laws of the Company, and (ii) resolutions passed by its Board of Directors to authorize the transactions contemplated hereby and by the other Transaction Documents, and certifying that such documents are true and complete copies of the originals and that such resolutions have not been amended or superseded, it being understood that such Investor may rely on such certificate as a representation and warranty of the Company made herein;
  - 5.1.7 the Company shall have delivered to such Investor an opinion of counsel for the Company, dated as of the Closing Date, in form and substance reasonably satisfactory to such Investor;
  - 5.1.8 the Company shall have delivered to such Investor duly executed Warrants and certificates representing the Preferred Shares being purchased by such Investor at the Closing;
  - 5.1.9 the Company shall have executed and delivered to such Investor the Registration Rights Agreement;
  - 5.1.10 the Company shall have obtained the written agreement of each Specified Employee to refrain from selling shares of Common Stock prior to the Effective Date in accordance with Section 4.2(h) hereof;
  - 5.1.11 there shall have occurred no material adverse change in the Company's consolidated business or financial condition since the date of the Company's most recent financial statements contained in the Disclosure Documents;
  - 5.1.12 the Common Stock shall be listed on the Nasdaq National Market; and
  - 5.1.13 there shall be no injunction, restraining order or decree of any nature of any court or Government Authority of competent jurisdiction that is in effect that restrains or prohibits the consummation of the transactions contemplated hereby or by the other Transaction Documents.

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5.2 Conditions to Company's Obligations at the Closing. The Company's obligations to effect the Closing with each Investor are conditioned upon the fulfillment (or waiver by the Company in its sole and absolute discretion) of each of the following events as of the Closing Date:

- 5.2.1 the representations and warranties of such Investor set forth in this Agreement and in the other Transaction Documents shall be true and correct in all material respects as of such date as if made on such date (except that to the extent that any such representation or warranty relates to a particular date, in which case such representation or warranty shall be true and correct in all respects as of that particular date);
- 5.2.2 such Investor shall have complied with or performed all of the agreements, obligations and conditions set forth in this Agreement and in the other Transaction Documents that are required to be complied with or performed by such Investor on or before the Closing Date;
- 5.2.3 there shall be no injunction, restraining order or decree of any nature of any court or Government Authority of competent jurisdiction that is in effect that restrains or prohibits the consummation of the transactions contemplated hereby or by the other Transaction Documents;
- 5.2.4 such Investor shall have executed each Transaction Document to which it is a party and delivered the same to the Company; and
- 5.2.5 such Investor shall have tendered to the Company by wire transfer the Purchase Price for the Preferred Shares and Warrants being purchased by it at the Closing.

6. MISCELLANEOUS.

6.1 Survival; Severability. The representations, warranties, covenants and indemnities made by the parties herein, in the Certificate of Designation and in the other Transaction Documents shall survive the Closing notwithstanding any due diligence investigation made by or on behalf of the party seeking to rely thereon. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided that in such case the parties shall negotiate in good faith to replace such provision with a new provision which is not illegal, unenforceable or void, as long as such new provision does not materially change the economic benefits of this Agreement to the parties.

6.2 Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations or

liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. After the Closing, each Investor may assign its rights and obligations hereunder, in connection with any private sale or transfer of Preferred Shares or Warrants in accordance with the terms hereof, as long as, as a condition precedent to such transfer, the transferee executes an acknowledgment agreeing to be bound by the applicable provisions of this Agreement, in which case the term "Investor" shall be deemed to refer to such transferee as though such transferee were an original signatory hereto. The Company may not assign its rights or obligations under this Agreement without the prior written consent of the Investors.

6.3 No Reliance. Each party acknowledges that (i) it has such knowledge in business and financial matters as to be fully capable of evaluating this Agreement, the other Transaction Documents, and the transactions contemplated hereby and thereby, (ii) it is not relying on any advice or representation or warranty of any other party in connection with entering into this Agreement, the other Transaction Documents, or such transactions (other than the representations and warranties made in this Agreement or the other Transaction Documents), (iii) it has not received from any party any assurance or guarantee as to the merits (whether legal, regulatory, tax, financial or otherwise) of entering into this Agreement or the other Transaction Documents or the performance of its obligations hereunder and thereunder, and (iv) it has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisors to the extent that it has deemed necessary, and has entered into this Agreement and the other Transaction Documents based on its own independent judgment and on the advice of its advisors as it has deemed necessary, and not on any view (whether written or oral) expressed by any party.

6.4 Independent Nature of Investors' Obligations and Rights. The obligations of each Investor hereunder are several and not joint with the obligations of the other Investors hereunder, and no Investor shall be responsible in any way for the performance of the obligations of any other investor hereunder. Nothing contained herein, in the Certificate of Designation or in any other Transaction Document, and no action taken by any Investor pursuant hereto or thereto, shall be deemed to constitute any Investors as a partnership, an association, a joint venture or any other kind of entity, or a "group" as described in Section 13(d) of the Exchange Act, or create a presumption that any Investors are in any way acting in concert with respect to such obligations or the transactions contemplated by this Agreement. Each Investor has been represented by its own separate counsel in connection with the transactions contemplated hereby, shall be entitled to protect and enforce its rights, including without limitation rights arising out of this Agreement or the other Transaction Documents, individually, and shall not be required to be join any other Investor as an additional party in any proceeding for such purpose.

6.5 Injunctive Relief. The parties hereto acknowledge and agree that a breach by either of their obligations hereunder will cause irreparable harm the other party and that the remedy or remedies at law for any such breach will be inadequate and agrees, in the event of any such breach, in addition to all other available remedies, the non-breaching party shall be entitled to an injunction restraining any breach and requiring immediate and specific performance of such obligations.

6.6 Governing Law: Jurisdiction. This Agreement shall be governed by and construed under the laws of the State of New York applicable to contracts made and to be performed entirely within the State of New York. Each party hereby irrevocably submits to the non-exclusive

jurisdiction of the state and federal courts sitting in the City of New York in the borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby (including without limitation any dispute under or with respect to the Certificate, the Preferred Shares or the Warrant), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding involving the Investor or permitted assignee of the Investor, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law.

6.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by facsimile transmission.

6.8 Headings. The headings used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

6.9 Notices. Any notice, demand or request required or permitted to be given by the Company or the Investor pursuant to the terms of this Agreement shall be in writing and shall be deemed delivered (i) when delivered personally or by verifiable facsimile transmission, unless such delivery is made on a day that is not a Business Day, in which case such delivery will be deemed to be made on the next succeeding Business Day, (ii) on the next Business Day after timely delivery to an overnight courier and (iii) on the Business Day actually received if deposited in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid), addressed as follows:

*If to the Company:*

Microvision, Inc.  
19910 North Creek Parkway  
Bothell, WA 98011  
Attn: General Counsel  
Tel: (425) 415-6847  
Fax: (425) 415-6795

*with a copy to:*

Ropes & Gray LLP  
One International Place  
Boston, MA 02110  
Attn: Joel F. Freedman  
Tel: (617) 951-7000  
Fax: (617) 951-7050

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and if to an Investor, to such address for such Investor as shall appear on the signature page hereof executed by such Investor, or as shall be designated by such Investor in writing to the Company in accordance with this Section 6.9.

6.10 Expenses. The Company and each Investor shall pay all costs and expenses that it incurs in connection with the negotiation, execution, delivery and performance of this Agreement or the other Transaction Documents, provided, however, that that the Company shall, at the Closing, pay up to \$50,000 in immediately available funds for all reasonable, documented out-of-pocket expenses (including without limitation reasonable legal fees and expenses) incurred or to be incurred by Satellite Strategic Finance Associates, LLC (“Satellite”) in connection its due diligence investigation of the Company and the negotiation, preparation, execution, delivery and performance of this Agreement, the Certificate of Designation and the other Transaction Documents. At the Closing, the amount due for such fees and expenses (which may include fees and expenses estimated to be incurred for completion of the transaction and post-closing matters) may be netted out of the Purchase Price payable by Satellite. In the event the amount paid by the Company for such fees and expenses is less than the amount of such reasonable, documented, fees and expenses actually incurred by Satellite, the Company shall promptly pay such deficiency (up to \$50,000 in the aggregate, including any amounts paid at Closing) within thirty (30) days following receipt of an invoice therefor.

6.11 Entire Agreement; Amendments. This Agreement, the Certificate of Designation and the other Transaction Documents constitute the entire agreement between the parties with regard to the subject matter hereof and thereof, superseding all prior agreements or understandings, whether written or oral, between or among the parties. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended except pursuant to a written instrument executed by the Company and the holders of at least a majority of the Outstanding Registrable Securities at such time, and no provision hereof may be waived other than by a written instrument signed by the party against whom enforcement of any such waiver is sought. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

[Signature Pages to Follow]

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

MICROVISION, INC.

By: /s/ Richard F. Rutkowski

Name: Richard F. Rutkowski  
Title: Chief Executive Officer

SATELLITE STRATEGIC FINANCE ASSOCIATES, LLC

By: Satellite Asset Management, L.P., its Manager

By: /s/ Simon Raykher

Simon Raykher  
General Counsel

ADDRESS:

c/o Satellite Advisors, L.L.C.  
623 Fifth Avenue, 20th Floor  
New York, New York 10022  
Tel: 212-209-2000  
Fax: 212-209-2021

*With a copy to:*

Duval & Stachenfeld LLP  
300 East 42<sup>nd</sup> Street  
New York, New York 10017  
Attn: Robert L. Mazzeo, Esq.  
Tel: 212-883-1700  
Fax: 212-883-8883

Number of Preferred Shares to be Purchased: 10,000



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**Schedule 3.5**

Microvision, Inc.

Capitalization and Debt

At September 9, 2004

Proforma for the Issuance of Series A Preferred

**A. Shares Capitalization**

	<u>Shares</u>
<b>Preferred Stock</b>	
Authorized	25,000,000
Issued-Series A	10,000
Available	<u>24,990,000</u>
<b>Common Stock</b>	
Authorized	73,000,000
Issued and outstanding	21,507,788
Reserved for warrants issued (A)	1,417,783
Reserved for options issued (B)	5,174,678
Conversion of Series A:	
Common Stock	1,447,178
Warrants	361,795
Reserve (10%)	180,897
Total reserved	<u>8,582,331</u>
Available	<u>42,909,881</u>

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(A) Balance includes 145,723 Warrants subject to anti-dilution rights.

(B) Balance excludes 2,900,890 authorized but ungranted option shares

**B. Debt**

	<u>Balance</u>
Tenant improvement loan	\$ 123,234
Capital leases	<u>\$ 64,763</u>

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**Schedule 3.12**

Microvision, Inc.

Registration Rights  
At September 8, 2004**A. Restricted Common Stock**

<u>Issue Date</u>	<u>Common Shares</u>	<u>Exercise Price</u>	<u>Expiration Date</u>	<u>Demand</u>	<u>Piggyback</u>
11/11/03	8,625	N/A	N/A	No	Yes

**B. Warrants**

<u>Warrant No.</u>	<u>Issue Date</u>	<u>Warrant Shares</u>	<u>Exercise Price</u>	<u>Expiration Date</u>	<u>Demand</u>	<u>Piggyback</u>
28	12/13/00	4,907	61.13	04/03/05	No	Yes
45	10/15/01	11,938	14.62	10/15/04	No	Yes
70	09/12/03	60,000	7.50	09/12/07	Yes	Yes
71	09/12/03	10,000	12.00	09/12/07	Yes	Yes
		<u>86,845</u>				

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**Schedule 3.18**

The Company has a retirement savings plan that qualifies under Internal Revenue Code Section 401(k).

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**Schedule 3.28**

In August 2000, the Company entered into a five-year consulting agreement with Jacqueline Brandwynne, a director of the Company. In consideration for entering into the agreement, the Company issued warrants to purchase an aggregate of 100,000 shares of common stock to Ms. Brandwynne.

The Company has two existing executive loan plans under which Richard F. Rutkowski, Stephen R. Willey, and Richard A. Raisig have borrowed funds from the Company.



Contacts: Brian Heagler (investors) (425) 415-6794  
Matt Nichols (media) (425) 415-6657

**FOR IMMEDIATE RELEASE**

**Microvision signs \$10 million convertible preferred stock agreement**

BOTHELL, WA – September 10, 2005 – Microvision, Inc. (NASDAQ: [MVIS](#)), a leader in light scanning technologies, today announced that it has entered into an agreement with a single institutional investor for the sale of \$10 million of convertible preferred stock and warrants. The preferred stock matures on September 10, 2007, at which time it is payable in either cash or registered common stock, at the election of Microvision and is convertible into 1,447,178 shares of common stock, based on a conversion price of \$6.91 per share. Microvision can force conversion if the common stock price exceeds \$12.09 per share. A 3.5% annual dividend is payable quarterly in either cash or in registered common stock, at the election of Microvision. The warrants will be exercisable for 361,795 shares of common stock at \$8.16 per share through September 10, 2009.

“We are pleased to be strengthening our balance sheet and working with a new institutional investor,” said Microvision CEO Rick Rutkowski. “Establishing long-term relationships with high quality investors is an important piece of our overall financing strategy. We believe that a stronger balance sheet, an expanded investor base and our equity position in Lumera should enable us to pursue a variety of alternatives in future financings. We are particularly excited about the growth opportunities we are seeing now and we look forward to continuing to report on our successes.”

**About Microvision: [www.microvision.com](http://www.microvision.com).**

Headquartered in Bothell, Wash., Microvision, Inc. is the world leader in the development of high-resolution displays and imaging systems based on the company’s proprietary silicon micro-mirror technology. The company’s technology has applications in a broad range of military, medical, industrial, professional and consumer products.

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**Forward-Looking Statement Disclaimer**

Certain statements contained in this release, including closing of the preferred stock financing, our ability to obtain additional financing, product development, potential product applications and sales, possible growth opportunities, as well as statements containing words like "believe," and other similar expressions, are forward-looking statements that involve a number of risks and uncertainties. Factors that could cause actual results to differ materially from those projected in the company's forward-looking statements include the following: market acceptance of our technologies and products; our ability to obtain financing; our financial and technical resources relative to those of our competitors; our ability to keep up with rapid technological change; government regulation of our technologies; our ability to enforce our intellectual property rights and protect our proprietary technologies; the ability to obtain additional contract awards and to develop partnership opportunities; the timing of commercial product launches; the ability to achieve key technical milestones in key products; and other risk factors identified from time to time in the company's SEC reports, including in its Annual Report on 10-K for the year ended December 31, 2003, and its Quarterly Reports on Form 10-Q.

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