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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**  
**Washington, DC 20549**

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**FORM 8-K**

**CURRENT REPORT**  
**Pursuant to Section 13 or 15(d) of**  
**The Securities Exchange Act of 1934**  
**Date of Report (Date of earliest event reported)**  
**January 16, 2007**

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**IRIDEX CORPORATION**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation)

**0-27598**

(Commission File Number)

**77-0210467**

(IRS Employer  
Identification No.)

**1212 Terra Bella Avenue**  
**Mountain View, California 94043**  
(Address of principal executive offices, including zip code)

**(650) 940-4700**

(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

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.**

On January 16, 2007, IRIDEX Corporation, a Delaware corporation (the “Company” or “IRIDEX”) entered into (i) a Business Loan and Security Agreement (the “Business Loan Agreement”) with Mid-Peninsula Bank, part of Greater Bay Bank N.A. (“Lender”), (ii) an Export-Import Bank Loan and Security Agreement (the “Exim Agreement”) with Lender, and (iii) a Borrower Agreement (the “Borrower Agreement” and together with the Business Loan Agreement and the Exim Agreement, the “Credit Agreement”) in favor of Lender and Export-Import Bank of the United States (“Exim Bank”). The Credit Agreement provides for an asset-based revolving line of credit of up to \$6 million (the “Revolving Loans”) and a \$6 million term loan (the “Term Loan”). Of the Revolving Loans, up to \$3 million principal amount (the “Exim Sublimit”) will be guaranteed by Exim Bank.

Under the Business Loan Agreement, the Company has the right to borrow the full amount of the Term Loan in a single advance on or after January 16, 2007, subject to satisfaction of customary conditions precedent. Payments of principal outstanding under the Term Loan are due in sixty monthly installments beginning February 28, 2007 and ending February 28, 2012. On January 16, 2007, the Company borrowed the full amount of the Term Loan. The Company may prepay all amounts outstanding under the Term Loan without penalty, subject to a minimum interest charge of \$250.

Under the Business Loan Agreement, the Company has the right to borrow, partially or wholly prepay and reborrow Revolving Loans in the aggregate amount of the lesser of (i) 80% of eligible domestic accounts, and (ii) \$6 million less any outstanding advances, including advances made under the Exim Sublimit (such amount, the “Borrowing Base”). All outstanding amounts under the Revolving Loans, including principal, interest, fees, costs and charges, are payable in full on January 31, 2009. If at any the amount outstanding under the Revolving Loans exceeds the Borrowing Base, the Company will be required to pay the difference between the outstanding amount and the Borrowing Base. The Company may prepay all amounts outstanding under the Revolving Loans without penalty, subject to a minimum interest charge of \$250.

Under the Exim Sublimit, the Company may borrow, partially or wholly prepay and reborrow loans (“Exim Revolving Loans”) and request the issuance of letters of credit (“Letters of Credit”). The total amount available under the Exim Sublimit is the lesser of (i) (a) 90% of eligible foreign accounts, plus (b) 75% of eligible foreign inventory, minus (c) 25% of the face value of all outstanding or requested non-Warranty letters of credit, minus (d) 100% of outstanding or requested Warranty letters of credit, and (ii) \$3 million (such amount, the “Exim Borrowing Base”). If the aggregate amount outstanding under the Exim Sublimit exceeds the Exim Borrowing Base, the Company is required to pay the difference between such outstanding amount and the Exim Borrowing Base. The Exim Sublimit is subject to an annual facility fee in the amount of \$45,000.

The Company’s obligations under the Term Loans and the Revolving Loans (including the Exim Sublimit) are secured by a lien on substantially all of the Company’s assets. Interest on the Term Loan and the Revolving Loans (including the Exim Sublimit) is the prime rate as published in the Wall Street Journal, minus 0.5%, subject to adjustment under certain circumstances including adjustments to the prime rate, late payment or the occurrence of an event of default.

Each of the Business Loan Agreement and the Exim Agreement contains certain customary covenants, including a financial covenant which requires the Company to maintain profitability during certain periods, and to meet certain tangible net worth and debt service requirements. In addition, the Company must maintain \$3 million in unrestricted cash in an account with Lender. Other covenants include, but are not limited to, covenants limiting or restricting the Company’s ability to incur indebtedness, incur liens, enter into mergers or consolidations, dispose of assets, make investments, pay dividends, enter into transactions with affiliates, or prepay certain indebtedness.

Each of the Business Loan Agreement and the Exim Agreement contains customary events of default including, but not limited to, payment defaults, covenant defaults, cross-defaults to other indebtedness, material judgment defaults, inaccuracy of representations and warranties, bankruptcy and insolvency defaults, payment on subordinated debt, defects in Lender’s security interest, change in control defaults and material adverse change defaults. The occurrence of an event of default will increase the interest by 4.5% and could result in the

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acceleration of all obligations of the Company to Lender with respect to indebtedness, whether under the Business Loan Agreement or otherwise.

The foregoing description of the Business Loan Agreement, the Exim Agreement and the Borrower Agreement does not purport to be complete and is qualified in its entirety by the terms and conditions of the Business Loan Agreement, the Exim Agreement and the Borrower Agreement attached as Exhibits 99.1, 99.2 and 99.3, respectively, to this Current Report on Form 8-K, which exhibits are incorporated herein by reference.

### **Item 2.01. Completion of Acquisition or Disposition of Assets.**

On January 16, 2007, IRIDEX completed its acquisition of the aesthetics business of Laserscope, a California corporation (“Laserscope”), a wholly owned subsidiary of American Medical Systems, Inc., a Delaware corporation (“AMS”), pursuant to that certain Asset Purchase Agreement (the “Asset Purchase Agreement”), dated as of November 30, 2006, by and among the Company, AMS and Laserscope.

The Company issued a press release on January 17, 2007 announcing that it had completed the acquisition of the aesthetics business of Laserscope (the “Aesthetics Business”). The text of the release is set out in the attached Exhibit 99.4.

Pursuant to the terms of the Asset Purchase Agreement, IRIDEX purchased certain equipment, finished goods inventory, contracts relating to the Aesthetics Business, accounts receivable and prepaid expenses, intellectual property, customer lists and other assets and liabilities related to the Aesthetics Business. In addition, the Company acquired all of the outstanding equity interests in Laserscope’s subsidiaries, Laserscope (UK) Ltd., a British private limited company, and Laserscope France, S.A., a French société anonyme (together, the “Subsidiaries”), after segregation of the assets and the liabilities of each entity which were not part of the Aesthetics Business. In exchange for such net assets and equity interests in the Subsidiaries, the Company assumed certain liabilities specified in the Asset Purchase Agreement and paid Laserscope \$28 million at closing, subject to certain post-closing adjustments, consisting of \$26 million in immediately available funds and 213,435 shares of the Company’s common stock. The Company will also pay Laserscope up to an additional \$9 million as determined by the book value of certain inventory following termination of a manufacturing transition period of approximately six to nine months.

In connection with the transaction, the parties also entered into ancillary agreements, including a license agreement, a product supply agreement and an administrative services agreement, each of which is intended to facilitate the transition of the Aesthetics Business from Laserscope to the Company and to allow the Company to run the Aesthetics Business following the closing of the transaction.

The foregoing description of the transactions consummated pursuant to the Asset Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the terms and conditions contained in the Asset Purchase Agreement, which was filed as Exhibit 2.1 to IRIDEX’s Current Report on Form 8-K, filed on December 6, 2006, and is incorporated herein by reference.

### **Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information set forth under Item 1.01, “Entry into a Material Definitive Agreement,” is incorporated herein by reference.

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### Item 9.01. Financial Statements and Exhibits.

#### (d) Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
2.1*	Asset Purchase Agreement dated November 30, 2006 by and among American Medical Systems, Inc., a Delaware corporation, Laserscope, a California corporation and a wholly owned subsidiary of American Medical Systems, Inc. and IRIDEX Corporation.
99.1	Business Loan and Security Agreement by and among Iridex Corporation and Mid-Peninsula Bank, part of Greater Bay Bank N.A., dated January 16, 2007.
99.2	Export-Import Bank Loan and Security Agreement by and among Iridex Corporation and Mid-Peninsula Bank, part of Greater Bay Bank N.A., dated January 16, 2007.
99.3	Borrower Agreement by Iridex Corporation in favor of Export-Import Bank of the United States and Mid-Peninsula Bank, part of Greater Bay Bank N.A., dated January 16, 2007.
99.4	Press release dated January 17, 2007.

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\* Previously filed as Exhibit 2.1 to IRIDEX's Current Report on Form 8-K, filed on December 6, 2006.

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**SIGNATURES**

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

**IRIDEX CORPORATION**

By: /s/ LARRY TANNENBAUM

**Larry Tannenbaum**

**Chief Financial Officer, Secretary and Senior**

**Vice President of Finance and Administration**

Date: **January 22, 2007**

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**EXHIBIT INDEX**

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\* Previously filed as Exhibit 2.1 to IRIDEX's Current Report on Form 8-K, filed on December 6, 2006.



**BUSINESS LOAN AND SECURITY AGREEMENT**

**THIS BUSINESS LOAN AND SECURITY AGREEMENT** dated January 16, 2007, for reference purposes is made and executed between **Iridex Corporation** ("**Borrower**"), having its principal place of business and executive offices located at 1212 Terra Bella Avenue, Mountain View, CA 94043, and **Mid-Peninsula Bank, part of Greater Bay Bank N.A.** ("**Lender**"), with its Palo Alto office located at 420 Cowper Street, Palo Alto, CA 94301, on the following terms and conditions. Capitalized words and phrases used in the Agreement shall have the meanings set forth below under the caption Definitions or as otherwise defined in the Agreement.

**1. RECITALS.** Borrower has received prior commercial loans from Lender or has applied to Lender for a commercial loan or loans or other financial accommodations, including those which may be described on any exhibit or schedule attached to this Agreement. Borrower understands and agrees that: (A) in granting, renewing, or extending any Loan, Lender is relying upon Borrower's representations, warranties, and agreements as set forth in this Agreement; (B) the granting, renewing, or extending of any Loan by Lender at all times shall be subject to Lender's sole judgment and discretion; (C) all such Loans shall be and remain subject to the terms and conditions of this Agreement, and (D) the prior Loan under the Business Loan Agreement dated October 5, 2006, and the promissory note dated October 5, 2006, and any other related agreements or other documents will be terminated and superseded by this Agreement and the Loans described in this Agreement. This Agreement combines two credit facilities, namely (i) a \$6,000,000 principal amount, asset-based revolving line of credit ("**Line of Credit**"), including, if approved by the Export-Import Bank of the United States ("**Exim Bank**"), the \$3,000,000 principal amount export-import revolving line of credit to be guaranteed by the Exim Bank ("**Exim Sub-Limit Line**") to be provided by Lender to Borrower under the terms and conditions of the Export-Import Bank Loan and Security Agreement ("**Exim Agreement**") between Lender and Borrower dated the same date as this Agreement, and the Borrower Agreement (as amended, supplemented or modified, "**Borrower Agreement**"), entered into by Borrower in favor of the Exim Bank and the Lender dated the same date as this Agreement, and (ii) a \$6,000,000 principal amount term loan ("**Term Loan**"); collectively the Line of Credit, including the Exim Sub-Limit Line thereunder and Term Loan are collectively referred to as the "**Credit Facilities**".

**2. TERM.** This Agreement shall be effective as of January 16, 2007, and shall continue in full force and effect until such time as all of the Loans have been paid in full, including principal, interest, costs, expenses, attorneys' fees, and other fees and charges, or until such time as the parties may agree in writing to terminate this Agreement.

**3. LINE OF CREDIT.** Lender agrees to make Advances to Borrower from time to time from the date of this Agreement to the Expiration Date under the Line of Credit, provided the aggregate amount of such Advances outstanding at any time under the Line of Credit does not exceed the lesser of (i) the Borrowing Base, or (ii) the Line of Credit maximum amount less the aggregate amount of the then outstanding advances under the Line of Credit and the face amount of all then outstanding letters of credit provided to Borrower under the Exim Sub-Limit Line ("**Outstanding Aggregate Exim Credit Amount**"), and provided further that any advances under the Exim Sub-Limit Line shall be made in accordance with the Exim Agreement and the Borrower Agreement. Within the foregoing limits, Borrower may borrow, partially or wholly prepay, and re-borrow under the Line of Credit on the terms and subject to the conditions of this Agreement.

**4. TERM LOAN.** Upon fulfillment to Lender's satisfaction of all conditions set forth below and in the Related Documents, Lender agrees to make to Borrower, and Borrower agrees to accept from Lender, one Advance in an amount equal to the full amount of the Term Loan.

**5. CONDITIONS PRECEDENT TO EACH ADVANCE.**

**5.1** Lender's obligation to make any Advance to or for the account of Borrower under the Line of Credit under this Agreement, and to make the Advance under the Term Loan, is subject to the following conditions precedent, with all documents, instruments, opinions, reports, and other items required under this Agreement to be in form and substance satisfactory to Lender:

(a) Lender shall have received evidence that this Agreement and all Related Documents have been duly authorized, executed, and delivered by Borrower to Lender. Without limiting the foregoing, Borrower shall provide to Lender the following documents for the Loans, all duly signed by Borrower unless not intended to be signed: (1) the Line of Credit Note and the Term Note; (2) financing statements and all other documents perfecting Lender's Security Interest; (3) evidence of insurance as required below; (4) together with all such Related Documents as Lender may require for the Loan; and (5) the Exim Agreement and Borrower Agreement and any related documents, all in form and substance satisfactory to Lender and Lender's counsel.

(b) Borrower shall have provided in form and substance satisfactory to Lender properly certified resolutions, duly authorizing the execution and delivery of this Agreement, the Line of Credit Note, the Term Note, the Related Documents, and the Exim Agreement, the Borrower Agreement and any related documents. In addition, Borrower shall have provided such other resolutions, authorizations, documents and instruments as Lender or its counsel, may require.

(c) Lender shall have received such opinions of counsel, supplemental opinions, and documents as Lender may request.

(d) The security interests in the Collateral shall have been duly authorized, created, and perfected with first lien priority and shall be in full force and effect.

(e) Lender, at its option and for its sole benefit, shall have conducted an audit of Borrower's Accounts, books, records, and operations, and Lender shall be satisfied as to their condition.

(f) Borrower shall have paid to Lender all fees, costs, and expenses specified in this Agreement and the Related Documents as are then due and payable, including Lender's attorney fees and costs in connection with the negotiation and documentation of the Credit Facilities.

(g) The representations and warranties set forth in this Agreement, in the Related Documents, and the Exim Agreement, the Borrower Agreement, and any related documents, and in any document or certificate delivered to Lender under this Agreement are true and correct.

(h) There shall not exist at the time of any Advance a condition which would constitute an Event of Default under this Agreement, and Borrower shall have delivered to Lender the compliance certificate called for in the paragraph below titled "Compliance Certificate" under the section titled "Affirmative Covenants."

**5.2 Making Loan Advances.** Advances under the Line of Credit, as well as directions for payment from Borrower's accounts, may be requested orally or in writing by authorized persons. Lender may, but need not, require that all oral requests be confirmed in writing. Each Advance shall be conclusively deemed to have been made at the request of and for the benefit of Borrower (1) when credited to any deposit account of Borrower maintained with Lender or (2) when advanced in accordance with the instructions of an authorized person. Lender, at its option, may set a cutoff time, after which all requests for Advances will be treated as having been requested on the next succeeding Business Day.

**5.3 Mandatory Loan Repayments.** If at any time the aggregate principal amount of the outstanding Advances under the Line of Credit (excluding the then Outstanding Aggregate Exim Credit Amount) shall exceed the applicable Borrowing Base, Borrower, immediately upon written or oral notice from Lender, shall pay to Lender an amount equal to the difference between the outstanding principal balance of the Advances under the Line of Credit (excluding the then Outstanding Aggregate Exim Credit Amount) and the Borrowing Base. In addition, if at any time the aggregate principal amount of the outstanding Advances under the Line of Credit plus the then Outstanding Aggregate Exim Credit Amount ("Aggregate Outstanding Line of Credit Amount") shall exceed the Line of Credit maximum amount, Borrower, immediately upon written or oral notice from Lender, shall pay to Lender an amount equal to the difference between the Aggregate Outstanding Line of Credit Amount and the Line of Credit maximum amount. On the Expiration Date, Borrower shall pay to Lender in full the aggregate unpaid principal amount of all Advances under the Line of Credit then outstanding and all accrued unpaid interest, together with all other applicable fees, costs and charges, if any, not yet paid.

**5.4 Loan Account.** Lender shall maintain on its books a record of account in which Lender shall make entries for each Advance under the Line of Credit and such other debits and credits as shall be appropriate in connection with the Line of Credit facility. Lender shall provide Borrower with periodic statements of Borrower's

account, which statements shall be considered to be correct and conclusively binding on Borrower unless Borrower notifies Lender to the contrary within 30 days after Borrower's receipt of any such statement which Borrower deems to be incorrect.

## **6. CREATION OF SECURITY INTEREST; COLLATERAL.**

**6.1 Grant of Security Interest.** Borrower hereby grants to Lender a continuing security interest in all presently existing and hereafter acquired or arising Collateral in order to secure prompt repayment of any and all Indebtedness and in order to secure prompt performance by Borrower of each of its covenants and duties under the Agreement and Related Documents. Except for Permitted Liens, such security interest constitutes a valid, first priority security interest in the presently existing Collateral, and will constitute a valid, first priority security interest in Collateral acquired after the date hereof. Borrower acknowledges that during the continuance of any Event of Default Lender may place a "hold" on any Deposit Account pledged as Collateral to secure the Obligations. Notwithstanding termination of this Agreement, Lender's Security Interest in the Collateral shall remain in effect for so long as any Indebtedness (except for inchoate indemnity obligations) is outstanding.

**6.2 Perfection of Security Interest; Delivery of Additional Documents.** Borrower agrees to execute all documents perfecting Lender's Security Interest and to take whatever actions are requested by Lender to perfect and continue Lender's Security Interest in the Collateral. Without limiting the foregoing, Borrower shall from time to time execute and deliver to Lender, at the request of Lender, all Negotiable Collateral, all financing statements and other documents that Lender may reasonably request, in form satisfactory to Lender, to perfect and continue perfected Lender's Security Interest in the Collateral and in order to fully consummate all of the transactions contemplated under the Agreement and the Related Documents.

**6.3 Right to Inspect.** Lender (through any of its officers, employees, or agents) shall have the right, upon reasonable prior notice, from time to time during Borrower's usual business hours, to inspect Borrower's books and records, facilities and activities, and to check, test, and appraise the Collateral in order to verify Borrower's financial condition or the amount, condition of, or any other matter relating to, the Collateral. During the first year this Agreement is in effect, Lender shall have the right to conduct semi-annual accounts receivable audits, and thereafter, Lender shall have the right to conduct such audits annually, at Borrower's expense, the results of which audits shall be satisfactory to Lender. Upon the occurrence of any Event of Default and during the continuance of such Event of Default, the immediately preceding limitation on the number of audits shall not be applicable. Borrower will cause its officers and employees to give their full cooperation and assistance in connection therewith.

**6.4 Collateral Schedules.** Concurrently with the execution and delivery of this Agreement, Borrower shall execute and deliver to Lender schedules of Accounts and schedules of Eligible Accounts in form and substance satisfactory to the Lender.

**7. REPRESENTATIONS AND WARRANTIES.** Borrower represents and warrants to Lender, as of the date of this Agreement, as of the date of each disbursement of loan proceeds, and as of the date of any renewal, extension or modification of any Loan:

**7.1 Organization.** Borrower and each Subsidiary is a corporation duly and validly existing and in good standing under the laws of its state of incorporation and qualified and licensed to do business in, and is in good standing in, any state in which the conduct of its business or its ownership of property requires that it be so qualified, except for states as to which any failure to so qualify would not have a Material Adverse Effect. Borrower and each of its Subsidiaries has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. Borrower maintains its principal office at 1212 Terra Bella Avenue, Mountain View, CA 94043. Unless Borrower has designated otherwise in writing, the principal office is the office at which Borrower keeps its books and records including its records concerning the Collateral. Borrower will notify Lender prior to any change in the location of Borrower's state of organization or any change in Borrower's name.

**7.2 Assumed Business Names.** Borrower has filed or recorded all documents or filings required by law relating to all assumed business names used by Borrower. Excluding the name of Borrower, the following is a complete list of all assumed business names under which Borrower does business: **None.**

**7.3 Authorization; No Conflict.** The execution, delivery, and performance of this Agreement and all the Related Documents are within Borrower's powers, have been duly authorized and are not conflict with, nor

constitute a breach of any provision contained in Borrower's Certificate of Incorporation or Bylaws, or any law, governmental regulation, court decree, or order applicable to Borrower or to Borrower's properties, nor will they constitute an event of default under any material agreement to which Borrower is a party or by which Borrower is bound. Borrower is not in default under any material agreement to which it is a party or by which it is bound, which default could have a Material Adverse Effect.

**7.4 Financial Information.** All consolidated financial statements related to Borrower and any Subsidiary that have been delivered by Borrower to Lender fairly present in all material respects Borrower's consolidated financial condition as of the date thereof and Borrower's consolidated results of operations for the period then ended. There has not been a material adverse change in the consolidated financial condition of Borrower since the date of the most recent of such financial statements submitted to Lender. Borrower has no material contingent obligations except as disclosed in such financial statements.

**7.5 Legal Effect.** This Agreement constitutes, and any instrument or agreement Borrower is required to give under this Agreement when delivered will constitute, legal, valid, and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.

**7.6 No Prior Encumbrances.** Borrower owns and has good and indefeasible title to the Collateral free and clear of all Security Interests, except for Permitted Liens, and has not executed any security documents or financing statements relating to such properties that have not been terminated except in connection with such Permitted Liens. All of Borrower's and each of its Subsidiaries respective properties are titled in their respective legal names, and Borrower has not used or filed a financing statement under any other name for at least the last five years.

**7.7 Eligible Accounts.** The Eligible Accounts are bona fide existing obligations. The property giving rise to such accounts has been delivered to the account debtor or to the account debtor's agent for immediate shipment to and unconditional acceptance by the account debtor. Borrower has not received notice of actual or imminent Insolvency Proceeding of any account debtor that is included in any Borrowing Base Certificate as an Eligible Account.

**7.8 Hazardous Substances.** None of Borrower's or any Subsidiary's properties or assets has ever been used by Borrower or any Subsidiary or, to the best of Borrower's knowledge, by previous owners or operators, in the disposal of, or to produce, store, handle, treat, release, or transport, any hazardous waste or hazardous substance other than in accordance with applicable law; to the best of Borrower's knowledge, none of Borrower's properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a hazardous waste or hazardous substance disposal site, or a candidate for closure pursuant to any environmental protection statute; no lien arising under any environmental protection statute has attached to any revenues or to any real or personal property owned by Borrower or any Subsidiary; and neither Borrower nor any Subsidiary has received a summons, citation, notice, or directive from the Environmental Protection Agency or any other federal, state or other governmental agency concerning any action or omission by Borrower or any Subsidiary relating to the release or other disposition of hazardous waste or hazardous substances into the environment.

**7.9 Litigation.** Except as set forth in the Disclosure Letter, there are no actions or proceedings pending by or, to the knowledge of Borrower threatened in writing, against Borrower or any Subsidiary before any court or administrative agency in which an adverse decision could have a Material Adverse Effect or a material adverse effect on Borrower's interest or Bank's security interest in the Collateral.

**7.10 Taxes.** Borrower and each Subsidiary has filed or caused to be filed all material tax returns and reports required to be filed, and has paid, or has made adequate provision for the payment of, all taxes, assessments and other governmental charges reflected therein, except to the extent any such payment has been contested in good faith by appropriate proceedings and is reserved against (to the extent required by GAAP) by Borrower.

**7.11 Solvency.** The fair saleable value of Borrower's assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities; the Borrower is not left with unreasonably small capital after the transactions contemplated by this Agreement; and Borrower is able to pay its debts (including trade debts) as they mature.

**7.12 Regulatory Compliance.** Borrower and each Subsidiary has met the minimum funding requirements of ERISA with respect to any employee benefit plans subject to the Employment Retirement Income Security Act of 1974, as amended, and the regulations thereunder ("ERISA"). No event has occurred resulting from

Borrower's failure to comply with ERISA that is reasonably likely to result in Borrower's incurring any liability that could have a Material Adverse Effect. Borrower is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940. Borrower is not engaged principally, or as one of the important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T and U of the Board of Governors of the Federal Reserve System). Borrower has complied with all the provisions of the Federal Fair Labor Standards Act. Borrower has not violated any statutes, laws, ordinances or rules applicable to it, violation of which could have a Material Adverse Effect.

**7.13 Binding Effect.** This Agreement, the Line of Credit Note, the Term Note, and all Related Documents are binding upon the signers thereof, as well as upon their successors, representatives and assigns, and are legally enforceable in accordance with their respective terms.

**7.14 Subsidiaries.** Borrower does not own any stock, partnership interest or other equity securities of any Person, except for Permitted Investments.

**7.15 Government Consents.** Borrower and each Subsidiary has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all governmental authorities that are necessary for the continued operation of Borrower's business as currently conducted.

**7.16 Full Disclosure.** No representation, warranty or other statement made by Borrower in any certificate or written statement furnished to Lender taken together with all such certificates and written statements furnished to Bank contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained in such certificates or statements not misleading, it being recognized by Lender that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not to be viewed as facts and that actual results during the period or periods covered by any such projections and forecasts may differ from the projected or forecasted results.

**8. AFFIRMATIVE COVENANTS.** Borrower covenants and agrees with Lender that, until payment in full of all Indebtedness (except for inchoate indemnity obligations), Borrower will:

**8.1 Good Standing.** Borrower shall maintain its and each of its Subsidiaries' corporate existence and good standing in its jurisdiction of incorporation and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Effect. Borrower shall maintain, and shall cause each of its Subsidiaries to maintain in force all licenses, approvals and agreements, the loss of which could have a Material Adverse Effect.

**8.2 Financial Records.** Maintain its books and records in accordance with GAAP, applied on a consistent basis, and permit Lender to examine and audit Borrower's books and records at all reasonable times.

**8.3 Financial Statements; Reports.** Furnish Lender with the following:

(a) **Additional Requirements.** Borrower agrees to furnish Lender with the following:

(1) Annual CPA Audited financial statements (10-K) Report within 90 days of fiscal year end, but in no event later than Form 10-K filing due date for accelerated filers, if applicable.

(2) Quarterly CPA Prepared financial statements (10-Q) Report within 45 days quarter end, but in no event later than Form 10-Q filing due date for accelerated filers, if applicable.

(3) Borrower prepared affidavit of liquidity to be submitted monthly when borrowing within 15 days of calendar month end, signed by Borrower's CFO stating that Borrower has full and complete ownership and use of Domestic Unrestricted Cash/Marketable Securities (defined as cash and marketable securities not subject to any Liens or any restrictions on use or access for use of any kind by Borrower, excluding any Liens in favor of Bank, held in deposit or investment accounts located in the United States) of at least \$3,000,000.00.

(4) During the first year term of this Agreement, an Accounts Receivable audit will be performed semi-annually at the Borrower's expense by an auditor selected by Lender, and then annually thereafter.

(5) Promptly upon receipt of notice thereof, a report of any legal actions claims, investigations, administrative proceedings or similar actions pending or threatened against or affecting Borrower or any Subsidiary that could result in damages or costs to Borrower or any Subsidiary of \$250,000 or more

(6) Such budgets, sales projections, operating plans or other financial information as Bank may reasonably request from time to time

(7) Borrower prepared accounts receivable aging, accounts payable aging, and Borrowing Base Certificate reports to be submitted monthly within 15 days of calendar month end in the form requested by Lender.

All financial reports required to be provided under this Agreement shall be prepared in accordance with GAAP, applied on a consistent basis, and certified by Borrower as being true and correct.

**8.4 Inventory Returns.** Borrower shall keep all Inventory in good and marketable condition, free from all material defects. Returns and allowances, if any, as between Borrower and its account debtors shall be on the same basis and in accordance with the usual customary practices of Borrower, as they exist at the time of the execution and delivery of this Agreement. Borrower shall promptly notify Lender of all returns and recoveries and of all disputes and claims, where the returns, recoveries, disputes or claims involve more than \$250,000 in the aggregate in any consecutive three-month period.

**8.5 Financial Covenants and Ratios.** Comply with the following covenants and ratios:

(a) **Minimum Income and Cash flow Requirements.** Borrower agrees to maintain Profitability for each of the quarterly periods ending June 30, 2007, September 30, 2007, and December 31, 2007. Beginning with the quarter ending March 31, 2008, and for each quarter thereafter, Borrower shall maintain Profitability as measured each quarter on a rolling four quarter basis. For the purposes of this covenant, Profitability shall mean, on a consolidated basis, after tax Net Income in excess of \$1.00 as reported on Borrower's financial statements.

(b) **Tangible Net Worth Requirements.** Borrower shall have a minimum Tangible Net Worth of not less than \$15,500,000.00 measured as of March 31, 2007, and measured on a quarterly basis thereafter, with such minimum Tangible Net Worth requirement to be increased each quarter thereafter by 50% of Net Profit After Tax of the preceding quarter, provided that if Borrower's Net Profit After Tax is negative (i.e., a loss), the then current minimum Tangible Net Worth will not be decreased. For the purposes of this covenant, and for all other purposes of this Agreement, Net Profit After Tax will be the amount, determined on a consolidated basis, reported as after tax Net Income at the end of each fiscal quarter on Borrower's financial statements.

(c) **Other Requirements.** Borrower agrees to the following:

(1) To maintain a minimum aggregate amount of Domestic Unrestricted Cash/Marketable Securities of \$3,000,000.00.

(2) To maintain a Debt Service Ratio of 1.750 to 1.000 to be measured quarterly on a year-to-date basis beginning at March 31, 2007, and continuing through the quarter ending December 31, 2007, and measured on a rolling four quarter basis thereafter. Debt Service Ratio is defined as Net Profit After Tax plus Depreciation, Amortization, all Interest Expense, and other Non Cash Charges, divided by Current Portion of Long-Term Debt (C.P.L.T.D.) plus all Interest Expense, and all of the foregoing components of Debt Service Ratio shall be determined according to GAAP.

Except as provided above, all computations made to determine compliance with the requirements contained in this paragraph shall be made in accordance with GAAP, applied on a consistent basis, and certified by Borrower's CFO as being true and correct.

**8.6 Insurance.** Borrower, at its expense, shall keep the Collateral insured against loss or damage by fire, theft, explosion, sprinklers, and all other hazards and risks, and in such amounts, as ordinarily insured against by other owners in similar businesses conducted in the locations where Borrower's business is conducted on the date hereof. Borrower shall also maintain insurance relating to Borrower's ownership and use of the Collateral in amounts and of a type that are customary to businesses similar to Borrower's. All such policies of insurance shall be in such form, with such companies, and in such amounts as reasonably satisfactory to Lender. All such policies of property insurance shall contain a lender's loss payable endorsement, in a form satisfactory to Lender, showing Lender as an additional loss payee thereof and all liability insurance policies shall show the Lender as an additional insured, and shall specify that the insurer must give at least 20 days notice to Lender before canceling its policy for any reason. Upon Lender's request, Borrower shall deliver to Lender certified copies of such policies of insurance and evidence of the payments of all premiums therefor. Other than insurance proceeds paid as a result of damage or other losses in shipment of products, all proceeds payable under any such policies shall, at the option of Lender, be payable to Lender to be applied on account of the Indebtedness.

**8.7 Insurance Reports.** Furnish to Lender, upon request of Lender, reports on each existing insurance policy showing such information as Lender may reasonably request, including without limitation the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the properties insured; (5) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (6) the expiration date of the policy. In addition, upon request of Lender (however not more often than annually), Borrower will have an independent appraiser satisfactory to Lender determine, as applicable, the actual cash value or replacement cost of any Collateral. The cost of such appraisal shall be paid by Borrower.

**8.8 Notice in Event of Filing of Action for Debtor's Relief.** Borrower shall notify Lender in writing within five days of the occurrence of any of the following: (1) Borrower begins or consents in any manner to any proceeding or arrangement for its liquidation in whole or in part or to any other proceeding or arrangement whereby any of its assets are subject generally to the payment of its liabilities or whereby any receiver, trustee, liquidator or the like is appointed for it or any substantial part of its assets (including without limitation the filing by Borrower of a petition for appointment as a debtor-in-possession under Title 11 of the U.S. Code); (2) Borrower fails to obtain the dismissal or stay on appeal within 30 calendar days of the commencement of any proceeding arrangement referred to in (1) above; (3) Borrower begins any other procedure for the relief of financially distressed or insolvent debtors, or such procedure has been commenced against it, whether voluntarily or involuntarily, and such procedure has not been effectively terminated, dismissed or stayed within 30 calendar days after the commencement thereof, or (4) Borrower begins any procedure for its dissolution, or a procedure therefor has been commenced against it

**8.9 Loan Proceeds.** Other than the proceeds from the initial Advances under the Line of Credit and Term Loan, use all Loan proceeds solely for Borrower's business operations, unless specifically consented to the contrary by Lender in writing.

**8.10 Taxes.** Borrower shall make, and shall cause each Subsidiary to make, due and timely payment or deposit of all material federal, state, and local taxes, assessments, or contributions required of it by law, and will execute and deliver to Lender, on demand, appropriate certificates attesting to the payment or deposit thereof; and Borrower will make, and will cause each Subsidiary to make, timely payment or deposit of all material tax payments and withholding taxes required of it by applicable laws, including, but not limited to, those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon request, furnish Lender with proof satisfactory to Lender indicating that Borrower or a Subsidiary has made such payments or deposits; provided that Borrower or a Subsidiary need not make any payment if the amount or validity of such payment is contested in good faith by appropriate proceedings and is reserved against (to the extent required by GAAP) by Borrower.

**8.11 Performance.** Perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in the Related Documents, and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender immediately in writing of any default in connection with any agreement.

**8.12 Environmental Studies.** Promptly conduct and complete, at Borrower's expense, all such investigations, studies, samplings and testing as may be requested by Lender or any governmental authority relative to any substance, or any waste or by-product of any substance defined as toxic or a hazardous substance under

applicable federal, state, or local law, rule, regulation, order or directive, at or affecting any property or any facility owned, leased or used by Borrower.

**8.13 Compliance with Governmental Requirements.** Borrower shall meet, and shall cause each Subsidiary to meet, the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA. Borrower shall comply, and shall cause each Subsidiary to comply, with all statutes, laws, ordinances and government rules and regulations to which it is subject, noncompliance with which could reasonably be expected to have a Material Adverse Effect or a material adverse effect on the Collateral or the priority of Lender's Security Interest in the Collateral, including without limitation, the Americans With Disabilities Act. Borrower may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Borrower has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Collateral are not jeopardized. Lender may require Borrower to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**8.14 Inspection.** Permit employees or agents of Lender at any reasonable time to inspect any and all Collateral for the Loan or Loans and Borrower's other properties and to examine or audit Borrower's books, accounts, and records and to make copies and memoranda of Borrower's books, accounts, and records. If Borrower now or at any time hereafter maintains any records (including without limitation computer generated records and computer software programs for the generation of such records) in the possession of a third party, Borrower, upon request of Lender, shall notify such party to permit Lender free access to such records at all reasonable times and to provide Lender with copies of any records it may request, all at Borrower's expense.

**8.15 Environmental Compliance and Reports.** Borrower shall comply in all respects with any and all Environmental Laws; not cause or permit to exist, as a result of an intentional or unintentional action or omission on Borrower's part or on the part of any third party, on property owned and/or occupied by Borrower, any environmental activity where damage may result to the environment, unless such environmental activity is pursuant to and in compliance with the conditions of a permit issued by the appropriate federal, state or local governmental authorities; shall furnish to Lender promptly and in any event within 30 days after receipt thereof a copy of any notice, summons, lien, citation, directive, letter or other communication from any governmental agency or instrumentality concerning any intentional or unintentional action or omission on Borrower's part in connection with any environmental activity whether or not there is damage to the environment and/or other natural resources.

**8.16 Additional Assurances.** Make, execute and deliver to Lender such promissory notes, mortgages, deeds of trust, security agreements, assignments, financing statements, instruments, documents and other agreements as Lender or its attorneys may reasonably request to evidence and secure the Loans and to perfect all Security Interests.

**9. RECOVERY OF ADDITIONAL COSTS.** If the imposition of or any change in any law, rule, regulation or guideline, or the interpretation or application of any thereof by any court or administrative or governmental authority (including any request or policy not having the force of law) shall impose, modify or make applicable any taxes (except federal, state or local income or franchise taxes imposed on Lender), reserve requirements, capital adequacy requirements or other obligations which would (A) increase the cost to Lender for extending or maintaining the Credit Facilities, (B) reduce the amounts payable to Lender under this Agreement or the Related Documents, or (C) reduce the rate of return on Lender's capital as a consequence of Lender's obligations with respect to the Credit Facilities, then Borrower agrees to pay Lender such additional amounts as will compensate Lender therefor, within five days after Lender's written demand for such payment, which demand shall be accompanied by an explanation of such imposition or charge and a calculation in reasonable detail of the additional amounts payable by Borrower, which explanation and calculations shall be conclusive in the absence of manifest error.

**10. LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Borrower fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Borrower's failure to discharge or pay when due any amounts Borrower is required to discharge or pay under this Agreement or any Related Documents, Lender on Borrower's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, Security Interests, encumbrances and other claims, at any time levied or placed on any Collateral and paying all costs for insuring, maintaining and preserving any Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Line of Credit Note from the date incurred or paid by Lender to the date of repayment by Borrower. All such expenses will become a



part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Line of Credit Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Line of Credit Note (or the Term Note if the Line of Credit Note has been terminated prior to the expenditure being incurred); or (C) be treated as a balloon payment which will be due and payable at the Line of Credit Note's maturity (or the Term Note's maturity if the Line of Credit Note has been terminated prior to the expenditure being incurred).

**11. NEGATIVE COVENANTS.** Borrower covenants and agrees with Lender that so long as any credit hereunder shall be available and until payment in full of all Indebtedness (except for inchoate indemnity obligations), Borrower shall not do any of the following, or enter into any agreement to do any of the following:

**11.1 Indebtedness.** (Create, incur, assume or be or remain liable with respect to any Indebtedness or permit any Subsidiary so to do, other than Permitted Indebtedness.

**11.2 Encumbrances.** , Create, incur, assume or suffer to exist any Security Interests with respect to any of its properties or other assets, including without limitation any of Borrower's patents, patent applications, trademarks, service marks, trade names, copyrights, trade secrets, know-how, show-how, and any other intellectual property rights or proprietary information, and any licenses or rights held by Borrower to use any such rights of any third parties, or assign or otherwise convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries so to do, except for Permitted Liens.

**11.3 Change in Business.** Engage in any business, or permit any of its Subsidiaries to engage in any business, other than the businesses currently engaged in by Borrower and any business substantially similar or related thereto (or incidental thereto), or suffer a material change in Borrower's executive management personnel and Borrower's board of directors does not fill the vacancy or vacancies created thereby within 30 days of any such change. Borrower will not, without 30 days prior written notification to Lender, relocate its chief executive office.

**11.4 Dispositions.** Convey, sell, lease, transfer or otherwise dispose of (collectively, a "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, other than: (i) Transfers of Inventory in the ordinary course of business; (ii) Transfers of non-exclusive licenses or exclusive licenses related to distributorship agreements limited to a geographic range or field of use and similar arrangements for the use of the property of Borrower or its Subsidiaries in the ordinary course of business; (iii) Transfers of worn-out or obsolete Equipment; or (iv) Transfers constituting Permitted Investments.

**11.5 Mergers or Acquisitions.** Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with or into any other business organization (other than a merger of any Subsidiaries with Borrower), or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person, or cease operations, liquidate, change its name, or dissolve (other than pursuant to a merger of a Subsidiary with Borrower).

**11.6 Distributions.** Pay any dividends or make any other distribution or payment on account of or in redemption, retirement or purchase of any capital stock, except for dividends payable solely in Borrower's capital stock.

**11.7 Investments; Guaranties.** Directly or indirectly acquire or own, or make any Investment in or to any Person, or permit any of its Subsidiaries to do so, other than Permitted Investments, or incur any obligation as surety or guarantor other than in the ordinary course of business.

**11.8 Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower except for Permitted Affiliate Transactions.

**11.9 Negative Pledge Agreements.** Borrower shall not permit the inclusion in any material contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a Security Interest in any of Borrower's property.

**11.10 Subordinated Debt.** Make any payment in respect of any Subordinated Debt, or permit any of its Subsidiaries to make any such payment, except in compliance with the terms of such Subordinated Debt, or amend any provision contained in any documentation relating to the Subordinated Debt without Lender's prior written consent.

**11.11 Inventory and Equipment.** Except at Permitted Locations, store the Inventory or the Equipment with a bailee, warehouseman, or similar party unless Lender has received a pledge of the warehouse receipt covering

such Inventory. Except for Inventory sold in the ordinary course of business and except for Permitted Location and such other locations as Lender may approve in writing, Borrower shall keep the Inventory and Equipment only at Borrower's principal office set forth in Section 7.1 and such other locations of which Borrower gives Lender prior written notice and as to which Borrower signs and files a financing statement where needed to perfect Lender's Security Interest therein.

**11.12 Compliance.** Become an "investment company" controlled by an "investment company," within the meaning of the Investment Company Act of 1940, or become principally engaged in, or undertake as one of its important activities, the business of extending credit for the purpose of purchasing or carrying margin stock, or use the proceeds of any Advance for such purpose. Fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur, fail to comply with the Federal Fair Labor Standards Act or violate any law or regulation, which violation could have a Material Adverse Effect or a material adverse effect on the Collateral or the priority of Lender's Security Interest in the Collateral, or permit any of its Subsidiaries to do any of the foregoing. Neither Borrower nor any tenant, contractor, agent or other authorized user of any of the Collateral shall use, generate, manufacture, store, treat, dispose of or release any hazardous waste or substance on, under, about or from any of the Collateral; and any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including without limitation all environmental protection laws. Borrower authorizes Lender and its agents to enter upon the Collateral to make such inspections and tests as Lender may deem appropriate to determine compliance of the Collateral with this Section of this Agreement. Any inspections or tests made by Lender shall be at Borrower's expense and for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Borrower or to any other person. Borrower hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any such laws, and (2) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of this Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance on the Collateral. The provisions of this Section of this Agreement, including the obligation to indemnify, shall survive the payment of the Indebtedness and the termination, expiration or satisfaction of this Agreement and shall not be affected by Lender's acquisition of any interest in any of the Collateral, whether by foreclosure or otherwise.

**11.13 Loans to Shareholders or Affiliates.** Without Lender's prior written consent, make any loans to any shareholder or Affiliate of Borrower. As used in this Section, the term "loan" does not include salary, rent paid to an affiliated entity owned by the shareholders, or to other expenses incurred in the ordinary course of Borrower's business, or Permitted Investments.

**11.14 Agreements.** Borrower will not enter into any agreement containing any provisions which would be violated or breached by the performance of Borrower's obligations under this Agreement or in connection herewith unless such provisions would be rendered ineffective under the Code (including Sections 9-406, 9-407 and 9-408 thereof) or other applicable law.

**12. CESSATION OF ADVANCES.** If Lender has made any commitment to make any Loan to Borrower, whether under this Agreement or under any other agreement, Lender shall have no obligation to make Loan Advances or to disburse Loan proceeds if: (A) Borrower or any Guarantor is in default under the terms of this Agreement or any of the Related Documents or any other agreement that Borrower or any Guarantor has with Lender; (B) Borrower or any Guarantor dies, becomes incompetent or becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged a bankrupt; (C) there occurs a material adverse change in Borrower's financial condition, in the financial condition of any Guarantor, or in the value of any Collateral securing any Loan; or (D) any Guarantor seeks, claims or otherwise attempts to limit, modify or revoke such Guarantor's guaranty of the Loan or any other loan with Lender.

**13. DEFAULT.** Each of the following shall constitute an Event of Default under this Agreement:

**13.1 Payment Default.** Borrower fails to make any payment when due under any Loan.

**13.2 Covenant Default; Cross Default.** If Borrower fails or neglects to perform, keep, or observe any material term, provision, condition, covenant, or agreement contained in this Agreement or the Related Documents, in the Exim Agreement, the Borrower Agreement, and any related documents thereto, or in any other

present or future agreement between Borrower and Bank, or an Event of Default occurs under any of the Exim Agreement or the Borrower Agreement or any related documents thereto.

**13.3 Other Agreements.** If there is a default in any agreement to which Borrower is a party with a third party or parties resulting in the acceleration by such third party or parties, of any indebtedness to such third party or parties in an amount in excess of \$250,000, or that could have a Material Adverse Effect.

**13.4 Attachment.** If any material portion of Borrower's assets is attached, seized, subjected to a writ, distress warrant, foreclosure or forfeiture proceedings, or is levied upon, or comes into the possession of any trustee, receiver or person acting in a similar capacity and such attachment, seizure, writ, distress warrant, foreclosure or forfeiture proceedings or levy has not been removed, discharged or rescinded within 15 days, or if Borrower is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or if a judgment or other claim becomes a lien or encumbrance upon any material portion of Borrower's assets, or if a notice of lien, levy, or assessment is filed of record with respect to any of Borrower's assets by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, and the same is not paid within 15 days after Borrower receives notice thereof, provided that none of the foregoing shall constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by Borrower (provided that no Advances will be required to be made during such cure period).

**13.5 False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**13.6 Insolvency.** If Borrower becomes insolvent, or if an Insolvency Proceeding is commenced by Borrower, or if an Insolvency Proceeding is commenced against Borrower and is not dismissed or stayed within 30 days (provided that no Advances will be made prior to the dismissal of such Insolvency Proceeding). This includes a garnishment of any of Borrower's Accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the Insolvency Proceeding and if Borrower gives Lender written notice of the Insolvency Proceeding and deposits with Lender monies or a surety bond for the Insolvency Proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**13.7 Defective Collateralization.** This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected Security Interest or lien) at any time and for any reason.

**13.8 Subordinated Debt.** If Borrower makes any payment on account of Subordinated Debt, except to the extent such payment is allowed under any subordination agreement entered into with Lender.

**13.9 Judgments.** If a judgment or judgments for the payment of money in an amount, individually or in the aggregate, of at least \$250,000 shall be rendered against Borrower and shall remain unsatisfied and unstayed for a period of 10 days (provided that no Advances will be made prior to the satisfaction or stay of such judgment).

**13.10 Change in Control.** Any Change in Control of Borrower shall occur. For the purposes of this Event of Default, a Change in Control means, at any time, (a) occupation of a majority of the seats (other than vacant seats) on the board of directors of Borrower by persons who were neither (i) nominated by Borrower's board of directors nor (ii) appointed by directors so nominated; or (b) any person (as such term is used in the Securities and Exchange Act of 1934, as amended), is or becomes the beneficial owner (within the meaning of Rule 13d-3 and 13d-5 of the Securities and Exchange Act of 1934, as amended) directly or indirectly of 33.33% or more of the total voting stock of Borrower on a fully diluted basis, whether as a result of the issuance, sale or distribution of securities of Borrower, any merger or consolidation to which Borrower is a party, or otherwise.

**13.11 Material Adverse Change.** If there occurs a material adverse change in Borrower's business or financial condition or a material impairment of the value or priority of Lender's Security Interests in the Collateral, or Lender believes the prospect of payment or performance of any of the Indebtedness is impaired.

**13.12 Right to Cure.** If any default, other than a default on Indebtedness, is curable and if Borrower or Grantor, as the case may be, has not been given a notice of a similar default within the preceding 12 months, it may be cured if Borrower or Grantor, as the case may be, after receiving written notice from Lender demanding cure of such default: (1) cures the default within 15 days; or (2) if the cure requires more than 15 days, immediately initiate

steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

#### **14. LENDER'S RIGHTS AND REMEDIES.**

**14.1 Rights and Remedies.** Upon the occurrence and during the continuance of an Event of Default, Bank may, at its election, without notice and without demand, do any one or more of the following:

- (1) Declare all Indebtedness, whether evidenced by the Agreement, by any of the Related Documents, or otherwise, immediately due and payable;
- (2) Cease advancing money or extending credit to or for the benefit of Borrower under the Agreement, any of the Related Documents, or under any other agreement between Borrower and Lender;
- (3) Settle or adjust disputes and claims directly with account debtors for amounts, upon terms and in whatever order that Lender reasonably considers advisable;
- (4) Notify customers of Borrower or other third parties to pay any amounts owing to Borrower directly to Lender;
- (5) Without notice to or demand upon Borrower, make such payments and do such acts as Lender considers necessary or reasonable to protect its Security Interest in the Collateral. Borrower agrees to assemble the Collateral if Lender so requires, and to make the Collateral available to Lender as Lender may designate. Borrower authorizes Lender to enter the premises where the Collateral is located, to take and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest, or compromise any encumbrance, charge, or lien which in Lender's determination appears to be prior or superior to its Security Interest and to pay all expenses incurred in connection therewith. With respect to any of Borrower's owned premises, Borrower hereby grants Lender a license to enter into possession of such premises and to occupy the same, without charge, in order to exercise any of Lender's rights or remedies provided herein, at law, in equity, or otherwise;
- (6) Set off and apply to the Indebtedness any and all (i) balances and deposits of Borrower held by Lender, or (ii) indebtedness at any time owing to or for the credit or the account of Borrower held by Lender;
- (7) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Collateral. Lender is hereby granted a license or other right, solely pursuant to the provisions of this Section 14.1, to use, without charge, Borrower's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Lender's exercise of its rights under this Section 14.1, Borrower's rights under all licenses and all franchise agreements shall inure to Lender's benefit;
- (8) Sell the Collateral at either a public or private sale, or both, by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including Borrower's premises) as Lender determines is commercially reasonable, and apply the proceeds thereof to the Indebtedness in whatever manner or order Lender deems appropriate;
- (9) Lender may credit bid and purchase at any public sale or at any private sale as permitted by law; and
- (10) Any deficiency that exists after disposition of the Collateral as provided above will be paid immediately by Borrower.

**14.2 Power of Attorney.** Borrower hereby irrevocably appoints Lender (and any of Lender's designated officers, or employees) as Borrower's true and lawful attorney to: (a) upon prior notice to Borrower, send requests for verification of Accounts or notify account debtors of Lender's security interest in the Accounts;

(b) endorse Borrower's name on any checks or other forms of payment or security that may come into Lender's possession; (c) sign Borrower's name on any invoice or bill of lading relating to any Account, drafts against account debtors, schedules and assignments of Accounts, verifications of Accounts, and notices to account debtors; (d) make, settle, and adjust all claims under and decisions with respect to Borrower's policies of insurance; (e) settle and adjust disputes and claims respecting the accounts directly with account debtors, for amounts and upon terms which Lender determines to be reasonable; (f) to file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of Borrower where permitted by law; and (g) to transfer any intellectual property Collateral into the name of Lender or a third party to the extent permitted under the California Uniform Commercial Code, provided that Lender's power of attorney hereunder with respect to the actions and powers under clauses (b) through (e) above shall be effective only upon the occurrence and during the continuance of an Event of Default, and provided further that Lender may exercise such power of attorney to sign the name of Borrower on any of the documents described in Section 6.2 regardless of whether an Event of Default has occurred. The appointment of Lender as Borrower's attorney in fact, and each and every one of Lender's rights and powers, being coupled with an interest, is irrevocable until all of the Indebtedness has been fully repaid and performed and Lender's obligation to provide Advances hereunder is terminated.

**14.3 Accounts Collection.** At any time from the date of this Agreement, Lender may, upon prior notice to Borrower, notify any Person owing funds to Borrower of Lender's Security Interest in such funds and verify the amount of such Account. Upon the occurrence and during the continuance of an Event of Default, Borrower shall collect all amounts owing to Borrower for Lender, receive in trust all payments as Lender's trustee, and immediately deliver such payments to Lender in their original form as received from the account debtor, with proper endorsements for deposit.

**14.4 Lender Expenses.** If Borrower fails to pay any amounts or furnish any required proof of payment due to third persons or entities, as required under the terms of this Agreement, then Lender may do any or all of the following: (a) make payment of the same or any part thereof; (b) set up such reserves under the Credit Line as Lender deems necessary to protect Lender from the exposure created by such failure; or (c) obtain and maintain insurance policies of the type discussed in Section 8.6 of this Agreement, and take any action with respect to such policies as Lender deems prudent. Any amounts so paid or deposited by Lender shall constitute Lender Expenses, shall be immediately due and payable, and shall bear interest at the then applicable rate hereinabove provided, and shall be secured by the Collateral. Any payments made by Lender shall not constitute an agreement by Lender to make similar payments in the future or a waiver by Lender of any Event of Default under this Agreement. Lender shall have a non-exclusive, royalty-free license to use any intellectual property Collateral to the extent reasonably necessary to permit Lender to exercise its rights and remedies upon the occurrence of an Event of Default.

**14.5 Lender's Liability for Collateral.** So long as Lender complies with reasonable banking practices, Lender shall not in any way or manner be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage thereto occurring or arising in any manner or fashion from any cause; (c) any diminution in the value thereof; or (d) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other person whomsoever. All risk of loss, damage or destruction of the Collateral shall be borne by Borrower.

**14.6 Remedies Cumulative.** Lender's rights and remedies under this Agreement and the Related Documents, and all other agreements shall be cumulative. Lender shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by Lender of one right or remedy shall be deemed an election, and no waiver by Lender of any Event of Default on Borrower's part shall be deemed a continuing waiver. No delay by Lender shall constitute a waiver, election, or acquiescence by it. No waiver by Lender shall be effective unless made in a written document signed on behalf of Lender and then shall be effective only in the specific instance and for the specific purpose for which it was given. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Borrower shall not affect Lender's right to declare a default and to exercise its rights and remedies.

**14.7 Demand; Protest.** Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees at any time held by Lender on which Borrower may in any way be liable.

**15. DEPOSIT RELATIONSHIP.** Borrower agrees that until such time as Borrower is no longer subject to the terms of this Agreement or any Related Documents, the primary deposit account(s) maintained by Borrower will be placed with Lender, or a bank affiliated with Lender.

**16. MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**16.1 Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. For the avoidance of doubt and in the case of any conflict or inconsistency between any provision contained in this Agreement and the Exim Agreement, the parties agree that all Advances made under this Agreement (but excluding Advances made and any letters of credit issued under the Exim Agreement) will be governed by the terms of this Agreement and the Related Documents (other than the Exim Agreement and its related documents), and any Advances made and any letters of credit issued under the Exim Agreement will be governed by the terms of the Exim Agreement and its related documents. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**16.2 Attorneys' Fees; Expenses.** Borrower agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Borrower shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also shall pay all court costs and such additional fees as may be directed by the court.

**16.3 Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**16.4 Consent to Loan Participation.** Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in any Loan to one or more purchasers, whether related or unrelated to Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers, or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to any Loan, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interests in the subject Loan and will have all the rights granted under the participation agreement or agreements governing the sale of such participation interests. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligation under the subject Loan irrespective of the failure or insolvency of any holder of any interest in the subject Loan. Borrower further agrees that the purchaser of any such participation interests may enforce its interests irrespective of any personal claims or defenses that Borrower may have against Lender.

**16.5 Governing Law.** This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of California without regard to its conflicts of law provisions. This Agreement has been signed and delivered by Borrower and accepted by Lender in the State of California.

**16.6 Choice of Venue.** If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Santa Clara County, State of California.

**16.7 No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Borrower, or between Lender and any Grantor, shall constitute a waiver of any of Lender's rights or of any of Borrower's or any Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute

continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**16.8 Notices.** Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address. Unless otherwise provided or required by law, if there is more than one Borrower, any notice given by Lender to any Borrower is deemed to be notice given to all Borrowers.

**16.9 Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**16.10 Successors and Assigns.** All covenants and agreements by or on behalf of Borrower contained in this Agreement or any Related Documents shall bind Borrower's successors and assigns and shall inure to the benefit of Lender and its successors and assigns. Borrower shall not, however, have the right to assign Borrower's rights under this Agreement or any interest therein, without the prior written consent of Lender.

**16.11 Survival of Representations and Warranties.** Borrower understands and agrees that in extending Loan Advances, Lender is relying on all representations, warranties, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement or the Related Documents. Borrower further agrees that regardless of any investigation made by Lender, all such representations, warranties and covenants will survive the extension of Loan Advances and delivery to Lender of the Related Documents, shall be continuing in nature, shall be deemed made and re-dated by Borrower at the time each Loan Advance is made, and shall remain in full force and effect until such time as Borrower's Indebtedness shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

**16.12 Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**17. DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. Accounting words and terms not otherwise defined in this Agreement shall have the meanings assigned to them in accordance with generally accepted accounting principles as in effect on the date of this Agreement:

**17.1 Account.** The word "Account" means a trade account, account receivable, other receivable, or other right to payment for goods sold or services rendered owing to Borrower (or to a third party grantor acceptable to Lender).

**17.2 Advance.** The word "Advance" means a disbursement of Loan funds made, or to be made, to Borrower or on Borrower's behalf under the terms and conditions of this Agreement.

**17.3 Affiliate.** The word "Affiliate" means, with respect to any Person, any Person that owns or controls directly or indirectly such Person, any Person that controls or is controlled by or is under common control with such Person, and each of such Person's senior executive officers, directors, and partners.

**17.4 Agreement.** The word "Agreement" means this Business Loan and Security Agreement, as this Business Loan and Security Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Business Loan and Security Agreement from time to time.

**17.5 Borrower.** The word “Borrower” means Iridex Corporation and includes all co-signers and co makers signing the Note.

**17.6 Borrowing Base.** The words “Borrowing Base” mean, as determined by Lender from time to time, the lesser of (1) \$6,000,000.00 or (2) 80.000% of the aggregate amount of Eligible Accounts.

**17.7 Business Day.** The words “Business Day” mean a day on which commercial banks are open in the State of California.

**17.8 Collateral.** The word “Collateral” means all property and assets granted as collateral security for any Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and described in Exhibit A attached to this Agreement. Notwithstanding the foregoing or anything else contained herein to the contrary, “Collateral” shall not include (a) any rights or interests in any lease, license, contract, or agreement, as such, or the assets subject thereto, if under the terms of applicable law with respect thereto the valid grant of a Security Interest therein or in such assets to Lender is prohibited and such prohibition under applicable law cannot be waived, provided that the foregoing exclusions shall in no way be construed to apply if any such prohibition would be rendered ineffective under the Code (including Sections 9-406, 9-407 and 9-408 thereof) or other applicable law; (b) any application for a trademark (including, without limitation, intent-to-use trademark or service applications and any goodwill associated therewith) that would otherwise be deemed invalidated, cancelled or abandoned due to the grant of a Security Interest thereon unless and until such time as the grant of such Security Interest will not affect the validity of such trademark; and (c) any of the outstanding shares of capital stock of any Subsidiary of Borrower that is a Controlled Foreign Corporation (as defined in the Internal Revenue Code of 1986, as amended) in excess of 65% of the voting power of all classes of capital stock of such Controlled Foreign Corporation entitled to vote.

**17.9 Contingent Obligation.** The words “Contingent Obligation” mean, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (i) any indebtedness, lease, dividend, letter of credit or other obligation of another, including, without limitation, any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable; (ii) any obligations with respect to undrawn letters of credit issued for the account of that Person; and (iii) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term “Contingent Obligation” shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

**17.10 Disclosure Letter.** The words “Disclosure Letter” means the disclosure letter provided by Borrower to Lender.

**17.11 Eligible Accounts.** The words “Eligible Accounts” mean at any time, all of Borrower’s Accounts which contain selling terms and conditions acceptable to Lender. The net amount of any Eligible Account against which Borrower may borrow shall exclude all returns, discounts, credits, and offsets of any nature. Unless otherwise agreed to by Lender in writing, Eligible Accounts do not include:

- (a) Accounts with respect to which the Account Debtor is employee or agent of Borrower.
- (b) Accounts with respect to which the Account Debtor is a subsidiary of, or affiliated with Borrower or its officers, or directors.
- (c) Accounts with respect to which goods are placed on consignment, guaranteed sale, or other terms by reason of which the payment by the Account Debtor may be conditional.
- (d) Accounts with respect to which the Account Debtor is not a resident of the United States, except to the extent such Accounts are supported by insurance, bonds or other assurances satisfactory to Lender.



(e) Accounts with respect to which Borrower is or may become liable to the Account Debtor for goods sold or services rendered by the Account Debtor to Borrower.

(f) Accounts which are subject to dispute, counterclaim, or setoff.

(g) Accounts with respect to which the goods have not been shipped or delivered, or the services have not been rendered, to the Account Debtor.

(h) Accounts with respect to which Lender, in its sole discretion, deems the creditworthiness or financial condition of the Account Debtor to be unsatisfactory.

(i) Accounts of any Account Debtor who has filed or has had filed against it a petition in bankruptcy or an application for relief under any provision of any state or federal bankruptcy, insolvency, or debtor-in-relief acts; or who has had appointed a trustee, custodian, or receiver for the assets of such Account Debtor; or who has made an assignment for the benefit of creditors or has become insolvent or fails generally to pay its debts (including its payrolls) as such debts become due.

(j) Accounts with respect to which the Account Debtor is the United States government or any department or agency of the United States.

(k) Accounts which have not been paid in full within 90 days from the invoice date. The entire balance of any Account of any single Account Debtor will be ineligible whenever the portion of the Account which has not been paid within 90 days from the invoice date is in excess of 20.000% of the total amount outstanding on the Account.

(l) That portion of the Accounts of any single Account Debtor which exceeds 25.000% of all of Borrower's Accounts.

(m) C.O.D. accounts, cash accounts, noncustomer miscellaneous accounts and finance charges incurred on past due account balances.

(n) Accounts in which the borrower fails to provide Lender with requested financial information concerning the subject Accounts.

(o) Unbilled Accounts.

(p) Dated and/or extended-term Accounts.

(q) Refundable maintenance contract Accounts.

(r) Bonded Accounts.

(s) Retainages (amounts withheld from billing and which may not be due depending on acceptable performance or completion of a contract).

(t) Any Accounts that in the sole discretion of the Lender are considered to be ineligible for the purposes of the transaction(s) contemplated.

(u) Credit Balances aged past 90 days from invoice date or 60 days past due.

(v) Exim Eligible Foreign Accounts (as defined in the Exim Agreement) and any Eligible Export-Related Overseas Accounts Receivable (as defined in the Borrower Agreement).

**17.12 Environmental Laws.** The words "Environmental laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., Chapters 6.5 through 7.7 of Division 20 of the California Health and Safety Code, Section 25100, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**17.13 Equipment.** The word "Equipment" means all present and future machinery, equipment, tenant improvements, furniture, fixtures, vehicles, tools, parts and attachments in which Borrower has any interest.

**17.14 Event of Default.** The words “Event of Default” mean any of the events of default set forth in this Agreement in the default section of this Agreement.

**17.15 Expiration Date.** The words “Expiration Date” mean the earlier of January 31, 2009, or date of termination of Lender’s commitment to lend under the Line of Credit Loan under this Agreement.

**17.16 GAAP.** The word “GAAP” means generally accepted accounting principles.

**17.17 Grantor.** The word “Grantor” means each and all of the persons or entities granting a Security Interest in any Collateral for the Loan, including without limitation all Borrowers granting such a Security Interest.

**17.18 Guarantor.** The word “Guarantor” means any guarantor, surety, or accommodation party of any Loan or any portion of any Loan.

**17.19 Guaranty.** The word “Guaranty” means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of either the Line of Credit Note or the Term Note.

**17.20 Hazardous Substances.** The words “Hazardous Substances” mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words “Hazardous Substances” are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term “Hazardous Substances” also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**17.21 Indebtedness.** The word “Indebtedness” means the indebtedness evidenced by the Line of Credit Note or Related Documents, including all principal and interest called for thereunder, and the indebtedness evidenced by the Term Note or Related Documents, including all principal and interest called for thereunder, together with all other indebtedness and costs and expenses, including Lender Expenses, for which Borrower is responsible under this Agreement or under any of the Related Documents.

**17.22 Insolvency Proceeding** The words “Insolvency Proceeding” mean any proceeding commenced by or against any person or entity under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extension generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

**17.23 Inventory.** The word “Inventory” means all present and future inventory in which Borrower has any interest, including merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products intended for sale or lease or to be furnished under a contract of service, of every kind and description now or at any time hereafter owned by or in the custody or possession, actual or constructive, of Borrower, including such inventory as is temporarily out of its custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and Borrower’s books and records relating to any of the foregoing.

**17.24 Investment.** The word “Investment” means any beneficial ownership of (including stock, partnership interest or other securities) any Person, or any loan, advance or capital contribution to any Person.

**17.25 Lender.** The word “Lender” means Mid-Peninsula Bank — a part of Greater Bay Bank N. A., its successors and assigns.

**17.26 Loan.** The word “Loan” means any and all loans and financial accommodations from Lender to Borrower arising under the Credit Facilities whether now or hereafter existing, and however evidenced, including without limitation those loans and financial accommodations described herein or described on any exhibit or schedule attached to this Agreement from time to time.

**17.27 Material Adverse Effect.** The words “Material Adverse Effect” mean a material adverse effect on (i) the business operations or condition (financial or otherwise) of Borrower and its Subsidiaries taken as a whole or (ii) the ability of Borrower to repay the Indebtedness or otherwise perform its obligations under this Agreement or any of the Related Documents.

**17.28 Negotiable Collateral.** The words “Negotiable Collateral” mean all of Borrower’s present and future letters of credit of which it is a beneficiary, notes, drafts, instruments, securities, documents of title, and chattel paper, and Borrower’s books and records relating to any of the foregoing.

**17.29 Notes.** The words “Line of Credit Note” means the promissory note executed by Borrower in the principal amount of \$6,000,000.00 dated the same date as this Agreement, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for such note or credit agreement. The words “Term Note” means the promissory note executed by Borrower in the principal amount of \$6,000,000.00 dated the same date as this Agreement, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for such note or credit agreement.

**17.30 Permitted Affiliate Transactions.** The words “Permitted Affiliate Transactions” mean any of the following: (1) transactions that are in the ordinary course of Borrower’s business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm’s length transaction with a non affiliated Person; (2) compensation and benefit arrangements (including the granting of options or other equity compensation arrangements) approved by or pursuant to any plan approved by the board of directors of Borrower, and any indemnification arrangements with employees, officers, directors or consultants; (3) transactions between Borrower and a direct or indirect Subsidiary otherwise permitted by this Agreement; and (4) transactions that constitute Permitted Investments.

**17.31 Permitted Indebtedness.** The words “Permitted Indebtedness” mean any of the following: (1) Indebtedness of Borrower in favor of Lender arising under this Agreement or any Related Documents; (2) Indebtedness existing on the date of this Agreement and disclosed in writing to Lender; (3) Indebtedness secured by a lien described in clause (3) of the defined term “Permitted Liens,” provided (i) such Indebtedness does not exceed the lesser of the cost or fair market value of the equipment financed with such Indebtedness and (ii) such Indebtedness does not exceed \$500,000 in the aggregate at any given time; (4) Subordinated Debt; (5) Indebtedness to trade creditors incurred in the ordinary course of business; (6) Indebtedness arising from the endorsement of instruments for deposit in the ordinary course of business; (7) Indebtedness of Borrower to any Subsidiary and Contingent Obligations of any Subsidiary with respect to obligations of Borrower (provided the primary obligations are not prohibited hereby), and Indebtedness of any Subsidiary to any other Subsidiary and Contingent Obligations of any Subsidiary with respect to any other Subsidiary (provided the primary obligations are not prohibited hereby); and (8) Indebtedness permitted by clause (3) of the defined term “Permitted Investments.”

**17.32 Permitted Investment.** The words “Permitted Investment” means any of the following: (1) Investments existing on the date of this Agreement and disclosed in writing to Borrower; (2) (i) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one year from the date of acquisition thereof, (ii) commercial paper maturing no more than one year from the date of creation thereof and currently having the highest rating obtainable from either Standard & Poor’s Corporation or Moody’s Investors Service, Inc., and (iii) certificates of deposit maturing no more than one (1) year from the date of investment therein issued by Lender; (3) Investments of Subsidiaries in or to other Subsidiaries or Borrower and Investments by Borrower in Subsidiaries not to exceed \$1,000,000 in the aggregate in any fiscal year; (4) Investments consisting of travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business; (5) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of Borrower’s business; (6) Investments consisting of accounts receivable of, notes receivable of, or prepaid royalties and other credit extensions to, customers and suppliers who are not Affiliates, in the ordinary course of business; (7) Investments made pursuant to investment policy guidelines approved by Borrower’s board of directors, provided a copy of such guidelines is provided to Lender; and (8) other Investments by Borrower which do not exceed \$100,000 in the aggregate in any fiscal year.

**17.33 Permitted Liens.** The words “Permitted Liens” (1) Any liens existing on the date of this Agreement and disclosed in writing to Lender or arising under this Agreement or the Related Documents; (2) liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings, provided the same have no priority over any of Bank’s security interests; (3) liens (i) upon or in any equipment acquired or held by Borrower or any of its Subsidiaries to secure the purchase price of such equipment or indebtedness incurred solely for the purpose of financing the acquisition of such equipment, or (ii) existing on such equipment at the time of its acquisition, provided that the lien is confined solely to the property

so acquired and improvements thereon, and the proceeds of such equipment; (4) liens to secure payment of workers' compensation, employment insurance, old age pensions, social security or other like obligations incurred in the ordinary course of business; (5) liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 13.10; (6) liens in favor of other financial institutions arising in connection with accounts at such institutions to secure standard fees for services, but not arising in connection with financing made available by such institution, provided that the aggregate amount of such fees does not exceed \$250,000; (7) carriers' warehousemen's, mechanics, materialmen's, repairmen's or other like liens arising in the ordinary course of business which are not delinquent or which are being contested in good faith and by appropriate proceedings and for which Borrower maintains adequate reserves in accordance with GAAP; (8) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of Borrower or any applicable Subsidiary; (9) leases or subleases and licenses or sublicenses granted to others in the ordinary course of business, subject to Bank's Security Interest in the Collateral, and which do not interfere in any material respect with the business operations of the Borrower or any applicable Subsidiary; (10) liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods; (11) other liens not described above arising in the ordinary course of business and not having or not reasonably likely to have a Material Adverse Effect on Borrower and its Subsidiaries taken as a whole, or on any of the Collateral; and (12) liens incurred in connection with the extension, renewal or refinancing of the indebtedness secured by liens of the type described in clauses (1) through (3) above, provided that any extension, renewal or replacement lien shall be limited to the property encumbered by the existing lien and the principal amount of the indebtedness being extended, renewed or refinanced does not increase.

**17.34 Permitted Locations.** The words "Permitted Locations" mean (a) locations of Inventory at suppliers, customers, distributors or their representatives in the ordinary course of business; (b) locations of Equipment at manufacturers of components for Borrower, (c) locations of Equipment with employees or sales representatives in the ordinary course of business, and (d) one added warehouse location in California after the date hereof, subject to Borrower providing to Lender not less than 30 days before using such added warehouse location in California notice of the address of same.

**17.35 Person.** The word "Person" means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or governmental agency.

**17.36 Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan, including without limitation the Export-Import Bank Loan and Security Agreement between Lender and Borrower and the Export-Import Bank of the United States Working Capital Guarantee Program Borrower Agreement, both dated the same date as this Agreement.

**17.37 Security Interest.** The words "Security Interest" mean, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise.

**17.38 Subordinated Debt.** The words "Subordinated Debt" mean any debt incurred by Borrower that is subordinated to the debt owing by Borrower to Lender on terms acceptable to Lender (and identified as being such by Borrower and Lender).

**17.39 Subsidiary.** The word "Subsidiary" means any corporation or partnership in which (i) any general partnership interest or (ii) more than 50% of the stock of which by the terms thereof ordinary voting power to elect the Board of Directors, managers or trustees of the entity shall, at the time as of which any determination is being made, be owned by Borrower, either directly or through an affiliate, and without limiting the forgoing shall include either or Laserscope (UK) Ltd., a British private limited company incorporated in England and Wales with registered number 02420543, and Laserscope France, S.A., a French *societe anonyme*.

**17.40 Tangible Net Worth.** The words “Tangible Net Worth” mean at any date as of which the amount thereof shall be determined, the consolidated total assets of Borrower and its Subsidiaries minus, without duplication, (i) the sum of any amounts attributable to (a) goodwill, (b) intangible items such as unamortized debt discount and expense, patents, trade and service marks and names, copyrights and research and development expenses except prepaid expenses, (c) all reserves not already deducted from assets, (d) all notes or accounts receivable from affiliated companies, officers or employees of Borrower and (ii) Total Liabilities.

**17.41 Total Liabilities.** The words “Total Liabilities” mean at any date as of which the amount thereof shall be determined, all obligations that should, in accordance with GAAP be classified as liabilities on the consolidated balance sheet of Borrower, including in any event all Indebtedness, but specifically excluding Subordinated Debt.

**17.42 Working Capital.** The words “Working Capital” mean Borrower’s current assets less current liabilities.

**BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS BUSINESS LOAN AND SECURITY AGREEMENT AND BORROWER AGREES TO ITS TERMS. THIS BUSINESS LOAN AND SECURITY AGREEMENT IS DATED JANUARY 16, 2007.**

**BORROWER:**

**IRIDEX CORPORATION**

By: /s/ Larry Tannenbaum  
Larry Tannenbaum, Chief Financial Officer  
of Iridex Corporation

**LENDER:**

**MID-PENINSULA BANK — PART OF GREATER BAY BANK N.A.**

By: /s/ Sarah Lewis  
Authorized Signer

EXHIBIT A

The Collateral shall consist of all right, title and interest of Borrower in and to the following:

- (a) All goods and equipment now owned or hereafter acquired, including, without limitation, all machinery, fixtures, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing, and all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing, wherever located;
- (b) All inventory, now owned or hereafter acquired, including, without limitation, all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products including such inventory as is temporarily out of Borrower's custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and Borrower's Books relating to any of the foregoing;
- (c) All contract rights and general intangibles now owned or hereafter acquired, including, without limitation, goodwill, trademarks, service marks, trade styles, trade names, patents, patent applications, leases, license agreements, franchise agreements, blueprints, drawings, purchase orders, customer lists, route lists, infringements, claims, computer programs, computer discs, computer tapes, literature, reports, catalogs, design rights, income tax refunds, payments of insurance and rights to payment of any kind;
- (d) All now existing and hereafter arising accounts, contract rights, royalties, license rights and all other forms of obligations owing to Borrower arising out of the sale or lease of goods, the licensing of technology or the rendering of services by Borrower, whether or not earned by performance, and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by Borrower and Borrower's books and records relating to any of the foregoing;
- (e) All documents, cash, deposit accounts, securities, securities accounts, securities entitlements, investment property, financial assets, letters of credit, certificates of deposit, instruments and chattel paper now owned or hereafter acquired and Borrower's books and records relating to the foregoing;
- (f) All copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished, now owned or hereafter acquired; all trade secret rights, including all rights to unpatented inventions, know-how, operating manuals, license rights and agreements and confidential information, now owned or hereafter acquired; all mask work or similar rights available for the protection of semiconductor chips, now owned or hereafter acquired; all claims for damages by way of any past, present and future infringement of any of the foregoing; and
- (g) Any and all claims, rights and interests in any of the above and all substitutions for, additions and accessions to and proceeds thereof.

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IRIDEX CORPORATION  
EXPORT-IMPORT BANK  
LOAN AND SECURITY AGREEMENT

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This EXPORT-IMPORT BANK LOAN AND SECURITY AGREEMENT (the "Exim Agreement") is entered into as of January 16, 2007, by and between Mid-Peninsula Bank, part of Greater Bay Bank N.A. ("Bank") and Iridex Corporation ("Borrower").

#### RECITALS

A. Borrower and Bank are parties to that certain Business Loan and Security Agreement of even date herewith (the "Domestic Agreement"), together with related documents.

B. Borrower and Bank desire in this Exim Agreement to set forth their agreement with respect to a working capital facility to be guaranteed by Export-Import Bank of the United States.

#### AGREEMENT

The parties agree as follows:

##### 1. DEFINITIONS AND CONSTRUCTION

1.1 Definitions. As used in this Exim Agreement, the following terms shall have the following definitions:

"Accounts" means all presently existing and hereafter arising accounts, contract rights, and all other forms of obligations owing to Borrower arising out of the sale or lease of goods (including, without limitation, the licensing of software and other technology) or the rendering of services by Borrower, whether or not earned by performance, and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by Borrower and Borrower's Books relating to any of the foregoing.

"Advance" or "Advances" means a cash advance under the Revolving Facility.

"Affiliate" means, with respect to any Person, any Person that owns or controls directly or indirectly such Person, any Person that controls or is controlled by or is under common control with such Person, and each of such Person's senior executive officers, directors, and partners.

"Borrower Agreement" means the Export-Import Bank of the United States Working Capital Guarantee Program Borrower Agreement between Borrower and Bank, as may be amended, supplemented or modified.

"Borrower's Books" means all of Borrower's books and records including: ledgers; records concerning Borrower's assets or liabilities, the Collateral, business operations or financial condition; and all computer programs, or tape files, and the equipment, containing such information.

"Borrowing Base" means an amount equal to (i) ninety percent (90%) of the Exim Eligible Foreign Accounts, plus (ii) seventy-five percent (75%) of Eligible Foreign Inventory (the "Inventory Portion"), plus (iii) zero percent (0%) of the cash and cash equivalents held by and pledged to Bank as collateral security for the Obligations, minus (iv) twenty-five percent (25%) of the aggregate face amount of all outstanding or requested non-Warranty Letters of Credit, and minus (v) 100% of the aggregate face amount of all outstanding or requested Warranty Letters of Credit. Upon approval of Exim Bank, Eligible Export-Related Overseas Accounts Receivable or Eligible Export-Related Overseas Inventory (as both terms are defined in the Borrower Agreement), or both, will be included in the Borrowing Base in accordance with the Borrower Agreement.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banks in the State of California are authorized or required to close.

"Buyer" shall mean a Person that has entered into one or more Export Orders with Borrower.



“Closing Date” means the date of this Exim Agreement.

“Code” means the California Uniform Commercial Code.

“Collateral” means the property described on Exhibit A attached hereto. Notwithstanding the foregoing or anything else contained herein to the contrary, “Collateral” shall not include (a) any rights or interests in any lease, license, contract, or agreement, as such, or the assets subject thereto, if under the terms of applicable law with respect thereto the valid grant of a Lien therein or in such assets to Bank is prohibited and such prohibition under applicable law cannot be waived, provided that the foregoing exclusions shall in no way be construed to apply if any such prohibition would be rendered ineffective under the Code (including Sections 9-406, 9-407 and 9-408 thereof) or other applicable law; (b) any application for a trademark (including, without limitation, intent-to-use trademark or service applications and any goodwill associated therewith) that would otherwise be deemed invalidated, cancelled or abandoned due to the grant of a Lien thereon unless and until such time as the grant of such Lien will not affect the validity of such trademark; and (c) any of the outstanding shares of capital stock of any subsidiary of Borrower that is a Controlled Foreign Corporation (as defined in the Internal Revenue Code of 1986, as amended) in excess of 65% of the voting power of all classes of capital stock of such Controlled Foreign Corporation entitled to vote.

“Commercial Letters of Credit” shall mean those letters of credit payable in U.S. Dollars and issued or caused to be issued by Bank on behalf of Borrower under Section 2.1.2 for the benefit of a supplier(s) of Borrower in connection with such Borrower’s purchase of goods or services from the supplier in support of the export of the Items.

“Contingent Obligation” means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (i) any indebtedness, lease, dividend, letter of credit or other obligation of another, including, without limitation, any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable; (ii) any obligations with respect to undrawn letters of credit issued for the account of that Person; and (iii) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term “Contingent Obligation” shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

“Copyrights” means any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held,

“Credit Accommodations” shall mean, collectively, Advances and Letter of Credit Obligations.

“Current Liabilities” means, as of any applicable date, all amounts that should, in accordance with GAAP, be included as current liabilities on the consolidated balance sheet of Borrower and its Subsidiaries, as at such date, plus, to the extent not already included therein, all outstanding Advances made under this Exim Agreement, including all Indebtedness that is payable upon demand or within one year from the date of determination thereof unless such Indebtedness is renewable or extendable at the option of Borrower or any Subsidiary to a date more than one year from the date of determination.

“Daily Balance” means the amount of the Obligations owed at the end of a given day.

“Disclosure Letter” means the disclosure letter provided by Borrower to Bank.

“Domestic Agreement” means that certain Business Loan and Security Agreement by and between Borrower and Bank dated as of even date herewith.

“Domestic Loan Documents” means the Domestic Agreement and the instruments and documents executed in connection with that Agreement.

“Eligible Foreign Inventory” means Inventory purchased or manufactured by Borrower for resale located in the United States, other than Inventory that is excluded under the Borrower Agreement and this Exim Agreement. Eligible Foreign Inventory shall not include the following:

- (a) any Inventory which is not located in the United States;
- (b) any demonstration Inventory or Inventory sold on consignment;
- (c) any Inventory consisting of proprietary software;
- (d) any Inventory which is damaged, obsolete, returned, defective, recalled or unfit for further processing;
- (e) any Inventory which has been previously exported from the United States;
- (f) any Inventory which constitutes defense articles or defense services;
- (g) any Inventory which is to be incorporated into items destined for shipment to a country in which Exim Bank is legally prohibited from doing business;
- (h) any Inventory which is to be incorporated into items destined for shipment to a country in which Exim Bank coverage is not available for commercial reasons, except to the extent such items are sold to such country on terms of a letter of credit confirmed by a bank acceptable to Exim Bank; and
- (i) any Inventory which is to be incorporated into items whose sale would result in an Account that is not an Exim Eligible Foreign Account.

“Equipment” means all present and future machinery, equipment, tenant improvements, furniture, fixtures, vehicles, tools, parts and attachments in which Borrower has any interest.

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

“Exim Bank” means Export-Import Bank of the United States.

“Exim Bank Expenses” means all: reasonable costs or expenses (including reasonable attorneys’ fees and expenses) incurred in connection with the preparation, negotiation, administration, and enforcement of the Loan Documents, including any costs incurred in relation to opposing or seeking to obtain relief from any stay or restructuring order prohibiting Bank from exercising its rights as a secured creditor, foreclosing upon or disposing of Collateral, or such related matters; fees that Bank pays to Exim Bank in consideration of the issuance of the Exim Guarantee; and Bank’s reasonable attorneys’ fees and expenses incurred in amending, enforcing or defending the Loan Documents, whether or not suit is brought.

“Exim Committed Line” means a credit extension of up to three million and no/100 Dollars (\$3,000,000).

“Exim Eligible Foreign Accounts” means those Accounts payable in United States Dollars that arise in the ordinary course of Borrower’s business from Borrower’s sale of Eligible Foreign Inventory (i) with respect to which the account debtor is not a resident of the United States; (ii) that have been validly collaterally assigned and comply with all of Borrower’s representations and warranties to Bank; and (iii) (A) that are supported by one or more standby letters of credit issued by a financial institution acceptable to Bank on terms acceptable to Bank and Exim Bank or (B) are Accounts on open account terms approved by Bank in its sole discretion on a case by case basis; provided, that standards of eligibility may be fixed and revised from time to time by Bank in Bank’s reasonable judgment and upon notification thereof to the Borrower in accordance with the provisions hereof. Exim Eligible Foreign Accounts shall not include the following:

(a) Accounts with a term in excess of one hundred eighty (180) days;

(b) Unless pre-approved by Bank in its sole discretion, Accounts that the account debtor has failed to pay within sixty (60) calendar days of the original due date of the invoice unless such Accounts are insured through Exim Bank export credit insurance for comprehensive commercial and political risk, or through Exim Bank approved private insurers for comparable coverage, in which case ninety (90) calendar days shall apply;

(c) Accounts with respect to an account debtor, fifty percent (50%) of whose Accounts the account debtor has failed to pay within ninety (90) days of the original date of invoice;

(d) Accounts evidenced by a letter of credit until the date of shipment of the items covered by the subject letter of credit;

(e) Accounts with respect to which the account debtor is an Affiliate of Borrower;

(f) Accounts with respect to which the account debtor is located in a country in which Exim Bank is legally prohibited from doing business;

(g) Accounts with respect to which the account debtor is located in a country in which Exim Bank coverage is not available for commercial reasons;

(h) Accounts with respect to which Borrower is liable to the account debtor for goods sold or services rendered by the account debtor to Borrower, but only to the extent of Borrower’s liability to such account debtor;

(i) Accounts with respect to which the account debtor disputes liability or makes any claim with respect thereto (but only to the extent of the amount subject to such dispute or claim), or is subject to any Insolvency Proceeding, or becomes insolvent, or goes out of business;

(j) Accounts generated by the sale of products purchased for military purposes;

(k) Accounts generated by sales of Inventory which constitutes defense articles or defense services;

(l) Accounts payable in currency other than Dollars;

(m) Accounts which are due and owing and the collection of which must be made outside the United States;

(n) Accounts generated by the rendering of maintenance services;

(o) Advance deposits or payments made by account debtors;

(p) Accounts the collection of which Bank or Exim Bank determines in its reasonable judgment to be doubtful; and

(q) Accounts that are excluded from the Borrowing Base under the Borrower Agreement.

“Exim Guarantee” means that certain Master Guarantee Agreement or other agreement, as amended from time to time, the terms of which are incorporated by reference into this Exim Agreement, pursuant to which Exim Bank guarantees Borrower’s obligations under this Exim Agreement.

“Exim Loan Documents” means, collectively, this Exim Agreement, the Borrower Agreement, any note or notes executed by Borrower, any guaranty application, and any other agreement entered into between Borrower and Bank in connection with this Exim Agreement, all as amended or extended from time to time.

“Export Order” shall mean a written export order or contract for the purchase by a Buyer from Borrower of any of the Items.

“Export-Related Historical Inventory Value” shall mean with respect to a Borrower, the relevant Export-Related Sales Ratio (as defined in the Borrower Agreement), or Borrower’s applicable quarterly foreign sales percentage as reported in Borrower’s SEC Form 10-Q or 10-K report, if current, multiplied by the lowest of (i) the cost of such Borrower’s Inventory as determined in accordance with GAAP, or (ii) the market value of such Borrower’s Inventory as determined in accordance with GAAP, or (iii) the appraised or orderly liquidation value of such Borrower’s Inventory, if Bank has loans and financial accommodations to such Borrower for which it conducts (or contracts for the performance of) such an appraised or orderly liquidation value.

“GAAP” means generally accepted accounting principles as in effect from time to time.

“Indebtedness” means (a) all indebtedness for borrowed money or the deferred purchase price of property or services, including without limitation reimbursement and other obligations with respect to surety bonds and letters of credit, (b) all obligations evidenced by notes, bonds, debentures or similar instruments, (c) all capital lease obligations and (d) all Contingent Obligations.

“Insolvency Proceeding” means any proceeding commenced by or against any person or entity under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extension generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“Inventory” means all present and future inventory in which Borrower has any interest, including merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products intended for sale or lease or to be furnished under a contract of service, of every kind and description now or at any time hereafter owned by or in the custody or possession, actual or constructive, of Borrower, including such inventory as is temporarily out of its custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and Borrower’s Books relating to any of the foregoing.

“Investment” means any beneficial ownership of (including stock, partnership interest or other securities) any Person, or any loan, advance or capital contribution to any Person.

“IRC” means the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

“Items” shall mean, with respect to the Exim Committed Line, the finished goods or services which are intended for export from the United States.

“Letter of Credit” means a Commercial Letter of Credit or Standby Letter of Credit or similar undertaking issued by Bank pursuant to Section 2.1.2.

“Letter of Credit Obligations” shall mean all outstanding obligations incurred by Bank, whether direct or indirect, contingent or otherwise, due or not due, in connection with the issuance by Bank of Letters of Credit.

“Letter of Credit Reserve” has the meaning set forth in Section 2.1.2.

“Lien” means any mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance.

“Loan Documents” means, collectively, this Exim Agreement, any note or notes executed by Borrower, and any other agreement entered into between Borrower and Bank in connection with this Exim Agreement, all as amended or extended from time to time.

“Material Adverse Effect” means a material adverse effect on (i) the business operations or condition (financial or otherwise) of Borrower and its Subsidiaries taken as a whole or (ii) the ability of Borrower to repay the Obligations or otherwise perform its obligations under the Loan Documents.

“Maturity Date” means January 31, 2009.

“Negotiable Collateral” means all of Borrower’s present and future letters of credit of which it is a beneficiary, notes, drafts, instruments, securities, documents of title, and chattel paper, and Borrower’s Books relating to any of the foregoing.

“Obligations” means all debt, principal, interest, Bank Expenses and other amounts owed to Bank by Borrower pursuant to this Exim Agreement or any other related agreement, whether absolute or contingent, due or to become due, now existing or hereafter arising, including any interest that accrues after the commencement of an Insolvency Proceeding and including any debt, liability, or obligation owing from Borrower to others that Bank may have obtained by assignment or otherwise.

“Patents means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

“Payment Date” means the last calendar day of each month, commencing on the first such date after the Closing Date.

“Periodic Payments” means all installments or similar recurring payments that Borrower may now or hereafter become obligated to pay to Bank pursuant to the terms and provisions of any instrument, or agreement now or hereafter in existence between Borrower and Bank.

“Permitted Affiliate Transactions” are:

(a) transactions that are in the ordinary course of Borrower’s business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm’s length transaction with a non affiliated Person;

(b) compensation and benefit arrangements (including the granting of options or other equity compensation arrangements) approved by or pursuant to any plan approved by the board of directors of Borrower, and any indemnification arrangements with employees, officers, directors or consultants;

(c) transactions between Borrower and a direct or indirect Subsidiary otherwise permitted by this Exim Agreement; and

(d) transactions that constitute Permitted Investments.

“Permitted Indebtedness” means:

(a) Indebtedness of Borrower in favor of Bank arising under this Exim Agreement or any other Loan Document;

(b) Indebtedness existing on the Closing Date and previously disclosed in writing by Borrower to Bank;

(c) Indebtedness secured by a lien described in clause (c) of the defined term “Permitted Liens,” provided (i) such Indebtedness does not exceed the lesser of the cost or fair market value of the equipment financed with such Indebtedness and (ii) such Indebtedness does not exceed \$500,000 in the aggregate at any given time;

(d) Subordinated Debt;

(e) Indebtedness to trade creditors incurred in the ordinary course of business;

(f) Indebtedness arising from the endorsement of instruments for deposit in the ordinary course of business;

(g) Indebtedness of Borrower to any Subsidiary and Contingent Obligations of any Subsidiary with respect to obligations of Borrower (provided the primary obligations are not prohibited hereby), and Indebtedness of any Subsidiary to any other Subsidiary and Contingent Obligations of any Subsidiary with respect to any other Subsidiary (provided the primary obligations are not prohibited hereby); and

(h) Indebtedness permitted by clause (c) of the defined term “Permitted Investments.”

“Permitted Investment” means:

(a) Investments existing on the Closing Date previously disclosed in writing by Borrower to Bank; and

(b) (i) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one (1) year from the date of acquisition thereof, (ii) commercial paper maturing no more than one (1) year from the date of creation thereof and currently having the highest rating obtainable from either Standard & Poor’s Corporation or Moody’s Investors Service, Inc., and (iii) certificates of deposit maturing no more than one (1) year from the date of investment therein issued by Bank;

(c) Investments of Subsidiaries in or to other Subsidiaries or Borrower and Investments by Borrower in Subsidiaries not to exceed One Million Dollars (\$1,000,000) in the aggregate in any fiscal year;

(d) Investments consisting of travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business;

(e) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of Borrower’s business;

(f) Investments consisting of accounts receivable of, notes receivable of, or prepaid royalties and other credit extensions to, customers and suppliers who are not Affiliates, in the ordinary course of business;

(g) Investments made pursuant to investment policy guidelines approved by Borrower's board of directors, provided a copy of such guidelines is provided to Bank; and

Other Investments by Borrower which do not exceed One Hundred Thousand Dollars (\$100,000) in the aggregate in any fiscal year.

"Permitted Liens" means the following:

(a) Any Liens existing on the Closing Date and previously disclosed in writing by Borrower to Bank or arising under this Exim Agreement or the other Loan Documents;

(b) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings, provided the same have no priority over any of Bank's security interests;

(c) Liens (i) upon or in any equipment acquired or held by Borrower or any of its Subsidiaries to secure the purchase price of such equipment or indebtedness incurred solely for the purpose of financing the acquisition of such equipment, or (ii) existing on such equipment at the time of its acquisition, provided that the Lien is confined solely to the property so acquired and improvements thereon, and the proceeds of such equipment;

(d) Liens to secure payment of workers' compensation, employment insurance, old age pensions, social security or other like obligations incurred in the ordinary course of business;

(e) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.8;

(f) Liens in favor of other financial institutions arising in connection with accounts at such institutions to secure standard fees for services, but not arising in connection with financing made available by such institution, provided that the aggregate amount of such fees does not exceed Two Hundred Fifty Thousand Dollars (\$250,000);

(g) carriers' warehousemen's, mechanics, materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not delinquent or which are being contested in good faith and by appropriate proceedings and for which Borrower maintains adequate reserves in accordance with GAAP;

(h) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of Borrower or any applicable Subsidiary;

(i) Leases or subleases and licenses or sublicenses granted to others in the ordinary course of business, subject to Bank's security interest in the Collateral, and which do not interfere in any material respect with the business operations of the Borrower or any applicable Subsidiary;

(j) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(k) Other Liens not described above arising in the ordinary course of business and not having or not reasonably likely to have a Material Adverse Effect on Borrower and its Subsidiaries taken as a whole, or on any of the Collateral.

(l) Liens incurred in connection with the extension, renewal or refinancing of the indebtedness secured by Liens of the type described in clauses (a) through (c) above, provided that any extension,

renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness being extended, renewed or refinanced does not increase.

“Permitted Locations” means (a) locations of Inventory at suppliers, customers, distributors or their representatives in the ordinary course of business; (b) locations of Equipment at manufacturers of components for Borrower, (c) locations of Equipment with employees or sales representatives in the ordinary course of business, and (d) one added warehouse location in California after the date hereof, subject to Borrower providing to Bank not less than thirty (30) days before using such added warehouse location in California notice of the address of same.

“Person” means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or governmental agency.

“Prime Rate” means the variable rate of interest, per annum, most recently published in the Western edition of The Wall Street Journal as the “prime rate,” whether or not such published rate is the lowest rate available from Bank.

“Responsible Officer” means each of the Chief Executive Officer, the Chief Financial Officer and the Controller of Borrower.

“Revolving Facility” means the facility under which Borrower may request Bank to issue cash advances, as specified in Section 2.1 hereof.

“Standby Letter of Credit” shall mean those letters of credit issued or caused to be issued by Bank under Section 2.1.2 for Borrower’s account that can be drawn upon by a Buyer only if Borrower fails to perform all of its obligations with respect to an Export Order.

“Subordinated Debt” means any debt incurred by Borrower that is subordinated to the debt owing by Borrower to Bank on terms acceptable to Bank (and identified as being such by Borrower and Bank).

“Subsidiary” means any corporation or partnership in which (i) any general partnership interest or (ii) more than 50% of the stock of which by the terms thereof ordinary voting power to elect the Board of Directors, managers or trustees of the entity shall, at the time as of which any determination is being made, be owned by Borrower, either directly or through an Affiliate.

“Tangible Net Worth” means at any date as of which the amount thereof shall be determined, the consolidated total assets of Borrower and its Subsidiaries minus, without duplication, (i) the sum of any amounts attributable to (a) goodwill, (b) intangible items such as unamortized debt discount and expense, patents, trade and service marks and names, copyrights and research and development expenses except prepaid expenses, (c) all reserves not already deducted from assets, (d) all notes or accounts receivable from affiliated companies, officers or employees of Borrower and (ii) Total Liabilities.

“Total Liabilities” means at any date as of which the amount thereof shall be determined, all obligations that should, in accordance with GAAP be classified as liabilities on the consolidated balance sheet of Borrower, including in any event all Indebtedness, but specifically excluding Subordinated Debt.

“Trademarks” means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Assignor connected with and symbolized by such trademarks.

“Warranty” shall mean Borrower’s guarantee to a Buyer that the Items will function as intended during the warranty period set forth in the applicable Export Order.



“Warranty Letter of Credit” shall mean a Standby Letter of Credit which is issued or caused to be issued by Bank to support the obligations of Borrower with respect to a Warranty or a Standby Letter of Credit which by its terms becomes a Warranty Letter of Credit.

1.2 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP and all calculations made hereunder shall be made in accordance with GAAP. When used herein, the terms “financial statements” shall include the notes and schedules thereto.

## 2. LOAN AND TERMS OF PAYMENT

### 2.1 Credit Extensions.

#### 2.1.1 Revolving Advances.

(a) Subject to the terms and conditions of this Exim Agreement and the Domestic Agreement, Bank agrees to make Advances to Borrower in an aggregate amount outstanding at any time not to exceed (i) the Exim Committed Line or the Borrowing Base, whichever is less, minus (ii) the face amount of all outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit), and (iii) minus the amount by which the then outstanding aggregate advances to Borrower under the Line of Credit facility under the Domestic Agreement exceed \$3,000,000. Notwithstanding the foregoing, at no time shall the portion of the principal balance of the Credit Accommodations that is supported by the Inventory Portion of the Borrowing Base exceed 60% of the sum of the outstanding Advances plus the aggregate undrawn face amount of all outstanding Commercial Letters of Credit. Subject to the terms and conditions of this Exim Agreement, amounts borrowed pursuant to this Section 2.1 may be repaid and re-borrowed at any time prior to the Maturity Date.

(b) To evidence the Advances, Borrower shall execute and deliver to Bank pursuant to the terms of the Domestic Agreement the Line of Credit Note (as defined in the Domestic Agreement).

(c) Whenever Borrower desires an Advance, Borrower will notify Bank by facsimile transmission or telephone no later than 3:00 p.m. California time, on the Business Day that the Advance is to be made. Each such notification shall be promptly confirmed by a Payment/Advance Form in substantially the form of Exhibit C hereto. In addition to the procedure set forth in the preceding sentence, Bank is authorized to make Advances under this Exim Agreement, based upon written instructions received from a Responsible Officer or without instructions if in Bank’s discretion such Advances are necessary to meet Obligations which have become due and remain unpaid. Bank will credit the amount of Advances made under this Section 2.1 to Borrower’s deposit account.

(d) The Exim Committed Line shall terminate on the Maturity Date, at which time all Advances under this Section 2.1 and any other amounts due under this Exim Agreement shall be immediately due and payable.

#### 2.1.2 Letters of Credit.

(a) Subject to the terms and conditions of this Exim Agreement, Bank agrees to issue or cause to be issued Letters of Credit for the account of Borrower in an aggregate outstanding face amount not to exceed the Exim Committed Line, minus the then outstanding principal balance of the Advances. Each Letter of Credit shall have an expiry date no later than (x) the Maturity Date or (y) one year from the date of issuance. All Letters of Credit shall be, in form and substance, acceptable to Bank in its sole discretion and shall be subject to the terms and conditions of Bank’s form of standard Application and Letter of Credit Agreement. For any drawn but unreimbursed Letter of Credit, the unreimbursed amount shall be deemed an Advance under Section 2.1.1.

(b) If at any time the Borrowing Base is less than the sum of (i) the aggregate outstanding Advances, (ii) 100% of the aggregate amount set aside for any Standby Letters of Credit serving as Warranty Letters of Credit, and (iii) 25% of the aggregate amount set aside for any other Letters of Credit, Borrower shall immediately either pay to Bank an amount equal to the difference between such sum (as described above) and

the Borrowing Base, or provide Bank with additional collateral sufficient to cover such difference. In addition, as a condition to the issuance of any Warranty Letters of Credit, Borrower shall have pledged to Bank, as collateral security for the Obligations, cash collateral in an amount of not less than 25% of all issued and outstanding Warranty Letters of Credit.

(c) The obligation of Borrower to immediately reimburse Bank for drawings made under Letters of Credit shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Exim Agreement and such Letters of Credit, under all circumstances whatsoever. Borrower shall indemnify, defend, protect and hold Bank harmless from any loss, cost, expense or liability, including, without limitation, reasonable attorneys' fees, arising out of or in connection with any Letters of Credit.

(d) Borrower may request that Bank issue a Letter of Credit payable in a currency other than United States Dollars. If a demand for payment is made under any such Letter of Credit, Bank shall treat such demand as an Advance to Borrower of the equivalent of the amount thereof (plus cable charges) in United States currency at the then prevailing rate of exchange in San Francisco, California, for sales of that other currency for cable transfer to the country of which it is the currency.

(e) Upon the issuance of any Letter of Credit payable in a currency other than United States Dollars, Bank shall create a reserve under the Exim Committed Line for Letters of Credit against fluctuations in currency exchange rates, in an amount equal to ten percent (10%) of the face amount of such Letter of Credit. The amount of such reserve may be amended by Bank from time to time to account for fluctuations in the exchange rate. The availability of funds under the Exim Committed Line shall be reduced by the amount of such reserve for so long as such Letter of Credit remains outstanding.

**2.2 Overadvances.** If, at any time or for any reason, the amount of Obligations owed by Borrower to Bank pursuant to Section 2.1.1 of this Exim Agreement is greater than the lesser of (i) the Exim Committed Line, or (ii) the Borrowing Base, Borrower shall immediately pay to Bank, in cash, the amount of such excess.

### **2.3 Interest Rates, Payments, and Calculations.**

(a) **Interest Rate.** Except as provided in Section 2.3(b), any Advances under this Exim Agreement shall bear interest, on the average daily balance thereof, at a per annum rate equal to One half (0.50) percentage points below the Prime Rate.

(b) **Default Rate.** All Obligations shall bear interest, from and after the occurrence and during the continuance of an Event of Default, at a rate equal to five (5) percentage points above the rate that applied immediately prior to the occurrence of the Event of Default.

(c) **Payments.** Interest hereunder shall be due and payable on each Payment Date. Bank shall, at its option, charge such interest, all Exim Bank Expenses, and all Periodic Payments against Borrower's deposit account or against the Exim Committed Line, in which case those amounts shall thereafter accrue interest at the rate then applicable hereunder. Any interest not paid when due shall be compounded by becoming a part of the Obligations, and such interest shall thereafter accrue interest at the rate then applicable hereunder.

(d) **Computation.** In the event the Prime Rate is changed from time to time hereafter, the applicable rate of interest hereunder shall be increased or decreased contemporaneously with such change by an amount equal to such change in the Prime Rate. All interest chargeable under the Exim Loan Documents shall be computed on the basis of a three hundred sixty (360) day year for the actual number of days elapsed.

**2.4 Crediting Payments.** The receipt by Bank of any wire transfer of funds, check, or other item of payment shall be immediately applied to conditionally reduce Obligations, but shall not be considered a payment on account unless such wire transfer is of immediately available federal funds and is made to the appropriate deposit account of Bank or unless and until such check or other item of payment is honored when presented for payment. Notwithstanding anything to the contrary contained herein, any payment (other than a wire transfer of immediately

available funds) received by Bank after 12:00 noon California time shall be deemed to have been received by Bank as of the opening of business on the immediately following Business Day.

2.5 Fees. Borrower shall pay to Bank the following fees:

(a) Facility Fee. A annual Facility Fee equal to Forty Five Thousand and no/100 Dollars (\$45,000), which fee shall be due on the Closing Date and on the first anniversary of the Closing Date, and shall be fully earned and non-refundable when paid;

(b) Financial Examination and Appraisal Fees. Bank's customary fees and out-of-pocket expenses for Bank's audits of Borrower's Accounts and Inventory, and for each appraisal of Collateral and financial analysis and examination of Borrower performed from time to time by Bank or its agents;

(c) Exim Bank Expenses. On the Closing Date, Exim Bank Expenses incurred through the Closing Date and, after the Closing Date, all Exim Bank Expenses as they become due.

2.6 Additional Costs. In case any law, regulation, treaty or official directive or the interpretation or application thereof by any court or any governmental authority charged with the administration thereof or the compliance with any guideline or request of any central bank or other governmental authority (whether or not having the force of law):

(a) subjects Bank to any tax with respect to payments of principal or interest or any other amounts payable hereunder by Borrower or otherwise with respect to the transactions contemplated hereby (except for taxes on the overall net income of Bank imposed by the United States of America or any political subdivision thereof); or

(b) imposes, modifies or deems applicable any deposit insurance, reserve, special deposit or similar requirement against assets held by, or deposits in or for the account of, or loans by, Bank; or

(c) imposes upon Bank any other condition with respect to their performance under this Exim Agreement,

and the result of any of the foregoing is to increase the cost to Bank, reduce the income receivable by Bank or impose any expense upon Bank with respect to any loans, Bank shall notify Borrower thereof. Borrower agrees to pay to Bank the amount of such increase in cost, reduction in income or additional expense as and when such cost, reduction or expense is incurred or determined, upon presentation all in reasonable detail by Bank of a statement in the amount and setting forth Bank's calculation thereof, which statement shall be deemed true and correct absent manifest error.

2.7 Term. Subject to Section 12.7, this Exim Agreement shall become effective once duly executed and authorized by Borrower and Bank and shall continue in full force and effect for a term ending on the Maturity Date, on which date all Obligations shall become immediately due and payable. Notwithstanding the foregoing, Bank shall have the right to terminate this Exim Agreement immediately and without notice upon the occurrence and during the continuance of an Event of Default. Notwithstanding any termination of this Exim Agreement, all of Bank's security interest in all of the Collateral and all of the terms and provisions of this Exim Agreement shall continue in full force and effect until all Obligations (except for inchoate indemnity obligations) have been paid and performed in full, and no termination shall impair any right or remedy of Bank, nor shall any such termination relieve Borrower of any Obligation to Bank until all of the Obligations have been paid and performed in full.

2.8 Use of Proceeds. Borrower will use the proceeds of Advances only for the purposes specified in the Borrower Agreement. Borrower shall not use the proceeds of the Advances for any purpose prohibited by the Borrower Agreement.

### 3. CONDITIONS OF LOANS

3.1 Conditions Precedent to Initial Advance. The obligation of Bank to make the initial Advance is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, the following:

- (a) this Exim Agreement, the Borrower Agreement and the Line of Credit Note, each duly executed by Borrower;
- (b) a certificate of the secretary of Borrower with respect to incumbency and resolutions authorizing the execution and delivery of this Exim Agreement;
- (c) the Exim Guarantee;
- (d) financing statements (Forms UCC-1);
- (e) insurance certificate;
- (f) an audit of Borrower's Accounts and Inventory, the results of which shall be satisfactory to Bank;
- (g) documents and agreements as specified in Section 5.1 of the Domestic Agreement;
- (h) payment of the fees and Exim Bank Expenses then due and specified in Section 2.5 hereof; and
- (i) such other documents, and completion of such other matters, as Bank may deem reasonably necessary or appropriate.
- (j) If the any portion of the initial Advance will be supported by the Inventory Portion of the Borrowing Base, Borrower will submit to Bank a determination of the Export-Related Historical Inventory Value. Once any Advance is made to Borrower by the Inventory Portion of the Borrowing Base, Bank shall require and Borrower will submit a sales mix examination at least every 90 days. An adjustment to the Export-Related Historical Inventory Value will be calculated at each review.

3.2 Conditions Precedent to all Advances. The obligation of Bank to make each Advance, including the initial Advance, is further subject to the following conditions:

- (a) timely receipt by Bank of the Payment/Advance Form as provided in Section 2.1;
- (b) timely receipt by Bank of an Export Order as defined in the Borrower Agreement and Borrowing Base Certificate current within five (5) Business Days;
- (c) the Exim Guarantee shall be in full force and effect; and
- (d) the representations and warranties contained in Section 5 hereof shall be true and accurate in all material respects on and as of the date of such Payment/ Advance Form and on the effective date of each Advance as though made at and as of each such date (except to the extent they relate specifically to an earlier date, in which case such representations and warranties shall continue to have been true and accurate as of such date), and no Event of Default shall have occurred and be continuing, or would result from such Advance.

The making of each Advance shall be deemed to be a representation and warranty by Borrower on the date of such Advance as to the accuracy of the facts referred to in subsection (d) of this Section 3.2.

#### 4. CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Borrower hereby grants to Bank a continuing security interest in all presently existing and hereafter acquired or arising Collateral in order to secure prompt repayment of any and all Obligations and in order to secure prompt performance by Borrower of each of its covenants and duties under the Exim Loan Documents. Except for Permitted Liens, such security interest constitutes a valid, first priority security interest in the presently existing Collateral, and will constitute a valid, first priority security interest in Collateral acquired after the date hereof. Borrower acknowledges that during the continuance of any Event of Default Bank may place a "hold" on any Deposit Account pledged as Collateral to secure the Obligations. Notwithstanding termination of this Exim Agreement, Bank's Lien on the Collateral shall remain in effect for so long as any Obligations (except for inchoate indemnity obligations) are outstanding.

4.2 Delivery of Additional Documentation Required. Borrower shall from time to time execute and deliver to Bank, at the request of Bank, all Negotiable Collateral, all financing statements and other documents that Bank may reasonably request, in form satisfactory to Bank, to perfect and continue perfected Bank's security interests in the Collateral and in order to fully consummate all of the transactions contemplated under the Exim Loan Documents.

4.3 Right to Inspect. Each of Bank and Exim Bank (through any of their respective officers, employees, or agents) shall have the right, upon reasonable prior notice, from time to time during Borrower's usual business hours, to inspect Borrower's Books, facilities and activities, and to check, test, and appraise the Collateral in order to verify Borrower's financial condition or the amount, condition of, or any other matter relating to, the Collateral. During the first year this Exim Agreement is in effect, Bank shall have the right to conduct semi-annual accounts receivable audits, and thereafter, Bank shall have the right to conduct such audits annually, at Borrower's expense, the results of which audits shall be satisfactory to Bank. Upon the occurrence of any Event of Default and during the continuance of such Event of Default, the immediately preceding limitation on the number of audits shall not be applicable. Borrower will cause its officers and employees to give their full cooperation and assistance in connection therewith.

#### 5. REPRESENTATIONS AND WARRANTIES

Borrower represents, warrants and covenants as follows:

5.1 Due Organization and Qualification. Borrower and each Subsidiary is a corporation duly and validly existing and in good standing under the laws of its state of incorporation and qualified and licensed to do business in, and is in good standing in, any state in which the conduct of its business or its ownership of property requires that it be so qualified, except for states as to which any failure to so qualify would not have a Material Adverse Effect, Borrower and each Subsidiary have the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage.

5.2 Due Authorization; No Conflict; Legal Effect. The execution, delivery, and performance of the Exim Loan Documents are within Borrower's powers, have been duly authorized, and are not in conflict with nor constitute a breach of any provision contained in Borrower's Certificate of Incorporation or Bylaws, or any law, governmental regulation, court decree, or order applicable to Borrower or to Borrower's properties, nor will they constitute an event of default under any material agreement to which Borrower is a party or by which Borrower is bound. Borrower is not in default under any material agreement to which it is a party or by which it is bound, which default could have a Material Adverse Effect. This Exim Agreement constitutes, and any instrument or agreement Borrower is required to give under this Exim Agreement when delivered will constitute, legal, valid, and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.

5.3 No Prior Encumbrances. Borrower has good and indefeasible title to the Collateral, free and clear of Liens, except for Permitted Liens, and has not executed any security documents or financing statements relating to such properties that have not been terminated except in connection with such Permitted Liens. All of Borrower's and each Subsidiary's respective properties are titled in their respective legal names, and Borrower has not used or filed a financing statement under any other name for at least the last five years.

5.4 Bona Fide Eligible Accounts. The Exim Eligible Foreign Accounts are bona fide existing obligations. The property giving rise to such accounts has been delivered to the account debtor or to the account debtor's agent for immediate shipment to and unconditional acceptance by the account debtor. Borrower has not received notice of actual or imminent Insolvency Proceeding of any account debtor that is included in any Borrowing Base Certificate as an Exim Eligible Foreign Account.

5.5 Merchantable Inventory. All Inventory is in all material respects of good and marketable quality, free from all material defects.

5.6 Name; Location of Chief Executive Office. Except as previously disclosed in writing by Borrower to Bank, Borrower has not done business under any name other than that specified on the signature page hereof. The chief executive office of Borrower is located at the address indicated in Section 10 hereof. Unless Borrower has designated otherwise in writing, the principal office is the office at which Borrower keeps its books and records including its records concerning the Collateral.

5.7 Litigation. Except as set forth in the Disclosure Letter, there are no actions or proceedings pending by or, to the knowledge of Borrower threatened in writing, against Borrower or any Subsidiary before any court or administrative agency in which an adverse decision could have a Material Adverse Effect or a material adverse effect on Borrower's interest or Bank's security interest in the Collateral.

5.8 No Material Adverse Change in Financial Statements. All consolidated financial statements related to Borrower and any Subsidiary that have been delivered by Borrower to Bank fairly present in all material respects Borrower's consolidated financial condition as of the date thereof and Borrower's consolidated results of operations for the period then ended. There has not been a material adverse change in the consolidated financial condition of Borrower since the date of the most recent of such financial statements submitted to Bank. Borrower has no material contingent obligations except as disclosed in such financial statements.

5.9 Solvency. The fair saleable value of Borrower's assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities; the Borrower is not left with unreasonably small capital after the transactions contemplated by this Exim Agreement; and Borrower is able to pay its debts (including trade debts) as they mature.

5.10 Regulatory Compliance. Borrower and each Subsidiary has met the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA. No event has occurred resulting from Borrower's failure to comply with ERISA that is reasonably likely to result in Borrower's incurring any liability that could have a Material Adverse Effect. Borrower is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940. Borrower is not engaged principally, or as one of the important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T and U of the Board of Governors of the Federal Reserve System). Borrower has complied with all the provisions of the Federal Fair Labor Standards Act. Borrower has not violated any statutes, laws, ordinances or rules applicable to it, violation of which could have a Material Adverse Effect.

5.11 Environmental Condition. None of Borrower's or any Subsidiary's properties or assets has ever been used by Borrower or any Subsidiary or, to the best of Borrower's knowledge, by previous owners or operators, in the disposal of, or to produce, store, handle, treat, release, or transport, any hazardous waste or hazardous substance other than in accordance with applicable law; to the best of Borrower's knowledge, none of Borrower's properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a hazardous waste or hazardous substance disposal site, or a candidate for closure pursuant to any environmental protection statute; no lien arising under any environmental protection statute has attached to any revenues or to any real or personal property owned by Borrower or any Subsidiary; and neither Borrower nor any Subsidiary has received a summons, citation, notice, or directive from the Environmental Protection Agency or any other federal, state or other governmental agency concerning any action or omission by Borrower or any Subsidiary relating to the release or other disposition of hazardous waste or hazardous substances into the environment.

5.12 Taxes. Borrower and each Subsidiary has filed or caused to be filed all material tax returns required to be filed, and has paid, or has made adequate provision for the payment of, all taxes, assessments and other governmental charges reflected therein, except to the extent any such payment has been contested in good faith by appropriate proceedings and is reserved against (to the extent required by GAAP) by Borrower.

5.13 Subsidiaries. Borrower does not own any stock, partnership interest or other equity securities of any Person, except for Permitted Investments.

5.14 Government Consents. Borrower and each Subsidiary has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all governmental authorities that are necessary for the continued operation of Borrower's business as currently conducted.

5.15 Full Disclosure. No representation, warranty or other statement made by Borrower in any certificate or written statement furnished to Bank taken together with all such certificates and written statements furnished to Bank contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained in such certificates or statements not misleading, it being recognized by Bank that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not to be viewed as facts and that actual results during the period or periods covered by any such projections and forecasts may differ from the projected or forecasted results.

## 6. AFFIRMATIVE COVENANTS

Borrower covenants and agrees that, until payment in full of the Obligations (except for inchoate indemnity obligations), Borrower shall do all of the following:

6.1 Good Standing. Borrower shall maintain its and each of its Subsidiaries' corporate existence and good standing in its jurisdiction of incorporation and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Effect. Borrower shall maintain, and shall cause each of its Subsidiaries to maintain in force all licenses, approvals and agreements, the loss of which could have a Material Adverse Effect.

6.2 Government Compliance. Borrower shall meet, and shall cause each Subsidiary to meet, the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA. Borrower shall comply, and shall cause each Subsidiary to comply, with all statutes, laws, ordinances and government rules and regulations to which it is subject, noncompliance with which could reasonably be expected to have a Material Adverse Effect or a material adverse effect on the Collateral or the priority of Bank's Lien on the Collateral, including without limitation, the Americans With Disabilities Act. Borrower may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Borrower has notified Bank in writing prior to doing so and so long as, in Bank's sole opinion, Bank's interests in the Collateral are not jeopardized. Bank may require Borrower to post adequate security or a surety bond, reasonably satisfactory to Bank, to protect Bank's interest.

6.3 Financial Statements, Reports, Certificates. Borrower shall maintain its books and records in accordance with GAAP, applied on a consistent basis, and permit Bank to examine and audit Borrower's books and records at all reasonable times. Borrower shall deliver to Bank: (a) quarterly CPA prepared financial statements (10-Q) Report within 45 days quarter end, but in no event later than Form 10-Q filing due date for accelerated filers, if applicable; (b) annual CPA Audited financial statements (10-K) Report within 90 days of fiscal year end, but in no event later than Form 10-K filing due date for accelerated filers, if applicable.; (c) a monthly affidavit of liquidity signed by Borrower's CFO stating that Borrower has full and complete ownership and use of Domestic Unrestricted Cash/Marketable Securities (defined as cash and marketable securities not subject to any Liens or any restrictions on use or access for use of any kind by Borrower, excluding any Liens in favor of Bank, held in deposit or investment accounts located in the United States) of at least \$3,000,000.00, such affidavit to be submitted to Bank within 15 days of calendar month end; (d) promptly upon receipt of notice thereof, a report of any legal actions claims, investigations, administrative proceedings or similar actions pending or threatened against or affecting Borrower or any Subsidiary that could result in damages or costs to Borrower or any Subsidiary of Two Hundred and Fifty

Thousand Dollars (\$250,000) or more; and (e) such budgets, sales projections, operating plans or other financial information as Bank may reasonably request from time to time.

Within fifteen (15) days after the last day of each month, Borrower shall deliver to Bank a Borrowing Base Certificate signed by a Responsible Officer in substantially the form of Exhibit D hereto, together with aged listings of accounts receivable and accounts payable.

Bank shall have a right from time to time hereafter to audit Borrower's Accounts at Borrower's expense, provided that such audits will be conducted no more often than every six (6) months during the first year this Exim Agreement is in effect and annually thereafter, unless an Event of Default has occurred and is continuing.

6.4 Inventory; Returns. Borrower shall keep all Inventory in good and marketable condition, free from all material defects. Returns and allowances, if any, as between Borrower and its account debtors shall be on the same basis and in accordance with the usual customary practices of Borrower, as they exist at the time of the execution and delivery of this Exim Agreement. Borrower shall promptly notify Bank of all returns and recoveries and of all disputes and claims, where the returns, recoveries, disputes or claims involve more than Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate in any consecutive three-month period.

6.5 Taxes. Borrower shall make, and shall cause each Subsidiary to make, due and timely payment or deposit of all material federal, state, and local taxes, assessments, or contributions required of it by law, and will execute and deliver to Bank, on demand, appropriate certificates attesting to the payment or deposit thereof; and Borrower will make, and will cause each Subsidiary to make, timely payment or deposit of all material tax payments and withholding taxes required of it by applicable laws, including, but not limited to, those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon request, furnish Bank with proof satisfactory to Bank indicating that Borrower or a Subsidiary has made such payments or deposits; provided that Borrower or a Subsidiary need not make any payment if the amount or validity of such payment is contested in good faith by appropriate proceedings and is reserved against (to the extent required by GAAP) by Borrower.

#### 6.6 Insurance.

(a) Borrower, at its expense, shall keep the Collateral insured against loss or damage by fire, theft, explosion, sprinklers, and all other hazards and risks, and in such amounts, as ordinarily insured against by other owners in similar businesses conducted in the locations where Borrower's business is conducted on the date hereof. Borrower shall also maintain insurance relating to Borrower's ownership and use of the Collateral in amounts and of a type that are customary to businesses similar to Borrower's.

(b) All such policies of insurance shall be in such form, with such companies, and in such amounts as reasonably satisfactory to Bank. All such policies of property insurance shall contain a lender's loss payable endorsement, in a form satisfactory to Bank, showing Bank as an additional loss payee thereof and all liability insurance policies shall show the Bank as an additional insured, and shall specify that the insurer must give at least twenty (20) days notice to Bank before canceling its policy for any reason. Upon Bank's request, Borrower shall deliver to Bank certified copies of such policies of insurance and evidence of the payments of all premiums therefor. Other than insurance proceeds paid as a result of damage or other losses in shipment of products, all proceeds payable under any such policies shall, at the option of Bank, be payable to Bank to be applied on account of the Obligations.

(c) Furnish to Bank, upon request of Bank, reports on each existing insurance policy showing such information as Bank may reasonably request, including without limitation the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the properties insured; (5) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (6) the expiration date of the policy. In addition, upon request of Bank (however not more often than annually), Borrower will have an independent appraiser satisfactory to Bank determine, as applicable, the actual cash value or replacement cost of any Collateral. The cost of such appraisal shall be paid by Borrower.



6.7 Principal Depository. Borrower shall maintain its principal depository and operating accounts with Bank.

6.8 Financial Covenants and Ratios. Comply with the following covenants and ratios:

(a) Tangible Net Worth Requirements. Borrower shall have a minimum Tangible Net Worth of not less than \$15,500,000.00 measured as of March 31, 2007, and measured on a quarterly basis thereafter, with such minimum Tangible Net Worth requirement to be increased each quarter thereafter by 50% of Net Profit After Tax of the preceding quarter, provided that if Borrower's Net Profit After Tax is negative (i.e., a loss), the then current minimum Tangible Net Worth will not be decreased. For the purposes of this covenant, and for all other purposes of this Exim Agreement, Net Profit After Tax will be the amount, determined on a consolidated basis, reported as after tax Net Income at the end of each fiscal quarter on Borrower's financial statements.

(b) Minimum Income and Cash flow Requirements: Borrower agrees to maintain Profitability for each of the three month periods ending June 30, 2007, September 30, 2007, and December 31, 2007. Beginning with the quarter ending March 31, 2008, and for each quarter thereafter, Borrower shall maintain Profitability as measured each quarter on a rolling four quarter basis. For the purposes of this covenant, Profitability shall mean, on a consolidated basis, after tax Net Income in excess of \$1.00 as reported on Borrower's financial statements.

(c) Other Requirements. Borrower agrees to the following: (i) to maintain a minimum aggregate amount of Domestic Unrestricted Cash/Marketable Securities of \$3,000,000.00; and (ii) to maintain a Debt Service Ratio of 1.750 to 1.000 to be measured quarterly on a year-to-date basis beginning at March 31, 2007, and continuing through the quarter ending December 31, 2007, and measured on a rolling four quarter basis thereafter. Debt Service Ratio is defined as Net Profit After Tax plus Depreciation, Amortization, all Interest Expense, and other Non Cash Charges, divided by Current Portion of Long-Term Debt (C.P.L.T.D.) plus all Interest Expense, and all of the foregoing components of Debt Service Ratio shall be determined according to GAAP.

6.9 Borrower Agreement. Borrower shall comply with all of the terms of the Borrower Agreement. In the event of any conflict or inconsistency between any provision contained in the Borrower Agreement with any provision contained in this Exim Agreement, the more strict provision, with respect to Borrower, shall control.

6.10 Notice in Event of Filing of Action for Debtor's Relief. Borrower shall notify Bank in writing within five (5) days of the occurrence of any of the following: (1) Borrower begins or consents in any manner to any proceeding or arrangement for its liquidation in whole or in part or to any other proceeding or arrangement whereby any of its assets are subject generally to the payment of its liabilities or whereby any receiver, trustee, liquidator or the like is appointed for it or any substantial part of its assets (including without limitation the filing by Borrower of a petition for appointment as a debtor-in-possession under Title 11 of the U.S. Code); (2) Borrower fails to obtain the dismissal or stay on appeal within thirty (30) calendar days of the commencement of any proceeding arrangement referred to in (1) above; (3) Borrower begins any other procedure for the relief of financially distressed or insolvent debtors, or such procedure has been commenced against it, whether voluntarily or involuntarily, and such procedure has not been effectively terminated, dismissed or stayed within thirty (30) calendar days after the commencement thereof, or (4) Borrower begins any procedure for its dissolution, or a procedure therefor has been commenced against it.

6.11 Payment in Dollars. Borrower shall require payment in United States Dollars for the Items, unless Exim Bank otherwise agrees in writing.

6.12 Further Assurances; Performance. At any time and from time to time Borrower shall execute and deliver such further instruments and take such further action as may reasonably be requested by Bank to effect the purposes of this Exim Agreement. Borrower shall perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Exim Agreement and in all other instruments and agreements between Borrower and Bank. Borrower shall notify Bank immediately in writing of any default in connection with this Exim Agreement or other instruments or agreements between Borrower and Bank.

6.13 Revolving Facility Proceeds. Borrower shall use all proceeds from the Revolving Facility solely for Borrower's business operations, unless specifically consented to the contrary by Bank in writing.

6.14 Environmental Studies. Borrower shall promptly conduct and complete, at Borrower's expense, all such investigations, studies, samplings and testing as may be reasonably requested by Bank or any governmental authority relative to any substance, or any waste or by-product of any substance defined as toxic or a hazardous substance under applicable federal, state, or local law, rule, regulation, order or directive, at or affecting any property or any facility owned, leased or used by Borrower.

6.15 Environmental Compliance and Reports. Borrower shall comply in all respects with any and all environmental protection laws; not cause or permit to exist, as a result of an intentional or unintentional action or omission on Borrower's part or on the part of any third party, on property owned and/or occupied by Borrower, any environmental activity where damage may result to the environment, unless such environmental activity is pursuant to and in compliance with the conditions of a permit issued by the appropriate federal, state or local governmental authorities; shall furnish to Bank promptly and in any event within thirty (30) days after receipt thereof a copy of any notice, summons, lien, citation, directive, letter or other communication from any governmental agency or instrumentality concerning any intentional or unintentional action or omission on Borrower's part in connection with any environmental activity whether or not there is damage to the environment and/or other natural resources.

6.16 Inspection. Borrower shall permit employees or agents of Bank at any reasonable time to inspect any and all Collateral and Borrower's other properties and to examine or audit Borrower's books, accounts, and records and to make copies and memoranda of Borrower's books, accounts, and records. If Borrower now or at any time hereafter maintains any records (including without limitation computer generated records and computer software programs for the generation of such records) in the possession of a third party, Borrower, upon request of Bank, shall notify such party to permit Bank free access to such records at all reasonable times and upon reasonable notice, and to provide Bank with copies of any records it may request, all at Borrower's expense.

## 7. NEGATIVE COVENANTS

Borrower covenants and agrees that so long as any credit hereunder shall be available and until payment in full of the Obligations (except for inchoate indemnity obligations), Borrower will not do any of the following, or enter into any agreement to do any of the following:

7.1 Dispositions. Convey, sell, lease, transfer or otherwise dispose of (collectively, a "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, other than: (i) Transfers of Inventory in the ordinary course of business; (ii) Transfers of non-exclusive licenses or exclusive licenses related to distributorship agreements limited to a geographic range or field of use and similar arrangements for the use of the property of Borrower or its Subsidiaries in the ordinary course of business; (iii) Transfers of worn-out or obsolete Equipment; or (iv) Transfers constituting Permitted Investments.

7.2 Change in Business. Engage in any business, or permit any of its Subsidiaries to engage in any business, other than the businesses currently engaged in by Borrower and any business substantially similar or related thereto (or incidental thereto), or suffer a material change in Borrower's executive management personnel and Borrower's board of directors does not fill the vacancy or vacancies created thereby within thirty (30) of any such change. Borrower will not, without thirty (30) days prior written notification to Bank, relocate its chief executive office.

7.3 Mergers or Acquisitions. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with or into any other business organization (other than a merger of any Subsidiaries with Borrower), or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person, or cease operations, liquidate, change its name, or dissolve (other than pursuant to a merger of a Subsidiary with Borrower).

7.4 Indebtedness. Create, incur, assume or be or remain liable with respect to any Indebtedness, or permit any Subsidiary so to do, other than Permitted Indebtedness.

7.5 Encumbrances. Create, incur, assume or suffer to exist any Lien with respect to any of its properties or other assets, including without limitation any of Borrower's patents, patent applications, trademarks, service marks, trade names, copyrights, trade secrets, know-how, show-how, and any other intellectual property rights or proprietary information, and any licenses or rights held by Borrower to use any such rights of any third parties, or assign or otherwise convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries so to do, except for Permitted Liens.

7.6 Distributions. Pay any dividends or make any other distribution or payment on account of or in redemption, retirement or purchase of any capital stock, except for dividends payable solely in Borrower's capital stock.

7.7 Investments: Guarantees. Directly or indirectly acquire or own, or make any Investment in or to any Person, or permit any of its Subsidiaries to do so, other than Permitted Investments, or incur any obligation as surety or guarantor other than in the ordinary course of business.

7.8 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower except for Permitted Affiliate Transactions.

7.9 Negative Pledge Agreements. Borrower shall not permit the inclusion in any material contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in any of Borrower's property.

7.10 Subordinated Debt. Make any payment in respect of any Subordinated Debt, or permit any of its Subsidiaries to make any such payment, except in compliance with the terms of such Subordinated Debt, or amend any provision contained in any documentation relating to the Subordinated Debt without Bank's prior written consent.

7.11 Inventory and Equipment. Except at Permitted Locations, store the Inventory or the Equipment with a bailee, warehouseman, or similar party unless Bank has received a pledge of the warehouse receipt covering such Inventory. Except for Inventory sold in the ordinary course of business and except for Permitted Location and such other locations as Bank may approve in writing, Borrower shall keep the Inventory and Equipment only at the location set forth in Section 10 hereof and such other locations of which Borrower gives Bank prior written notice and as to which Borrower signs and files a financing statement where needed to perfect Bank's security interest.

7.12 Compliance. Become an "investment company" controlled by an "investment company," within the meaning of the Investment Company Act of 1940, or become principally engaged in, or undertake as one of its important activities, the business of extending credit for the purpose of purchasing or carrying margin stock, or use the proceeds of any Advance for such purpose. Fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur, fail to comply with the Federal Fair Labor Standards Act or violate any law or regulation, which violation could have a Material Adverse Effect or a material adverse effect on the Collateral or the priority of Bank's Lien on the Collateral, or permit any of its Subsidiaries to do any of the foregoing. Neither Borrower nor any tenant, contractor, agent or other authorized user of any of the Collateral shall use, generate, manufacture, store, treat, dispose of or release any hazardous waste or substance on, under, about or from any of the Collateral; and any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including without limitation all environmental protection laws. Borrower authorizes Bank and its agents to enter upon the Collateral to make such inspections and tests as Bank may deem appropriate to determine compliance of the Collateral with this section of the Exim Agreement. Any inspections or tests made by Bank shall be at Borrower's expense and for Bank's purposes only and shall not be construed to create any responsibility or liability on the part of Bank to Borrower or to any other person. Borrower hereby (1) releases and waives any future claims against Bank for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any such laws, and (2) agrees to indemnify and hold harmless Bank against any and all claims, losses, liabilities, damages, penalties, and expenses which Bank may directly or indirectly sustain or suffer resulting from a breach of this section of the Exim Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance on the Collateral. The provisions of this section of the Exim Agreement,

including the obligation to indemnify, shall survive the payment of the Obligations and the termination, expiration or satisfaction of this Exim Agreement and shall not be affected by Bank's acquisition of any interest in any of the Collateral, whether by foreclosure or otherwise.

7.13 Loans to Shareholders or Affiliates. Without Exim Bank's prior written consent, make any loans to any shareholder or entity affiliated with Borrower. As used in this Section, the term "loan" does not include salary, rent paid to an affiliated entity owned by the shareholders, or to other expenses incurred in the ordinary course of Borrower's business, or Permitted Investments.

7.14 Borrower Agreement; Other Agreements. Violate or otherwise fail to comply with any provision of the Borrower Agreement. Borrower will not enter into any agreement containing any provisions which would be violated or breached by the performance of Borrower's obligations under this Exim Agreement or in connection herewith unless such provisions would be rendered ineffective under the Code (including Sections 9-406, 9-407 and 9-408 thereof) or other applicable law.

7.15 Exim Guarantee. Take any action, or permit any action to be taken, that causes or, with the passage of time, could reasonably be expected to cause, the Exim Guarantee to cease to be in full force and effect.

## 8. EVENTS OF DEFAULT

Any one or more of the following events shall constitute an Event of Default by Borrower under this Exim Agreement:

8.1 Payment Default. If Borrower fails to pay, when due, any of the Obligations.

8.2 Covenant Default; Cross Default. If Borrower fails or neglects to perform, keep, or observe any material term, provision, condition, covenant, or agreement contained in this Exim Agreement, in any of the Exim Loan Documents, the Domestic Loan Documents, the Borrower Agreement or in any other present or future agreement between Borrower and Bank, or an Event of Default occurs under any of the Domestic Loan Documents or the Borrower Agreement.

8.3 Material Adverse Change. If there occurs a material adverse change in Borrower's business or financial condition or a material impairment of the value or priority of Bank's security interests in the Collateral, or Bank believes the prospect of payment or performance of any Obligation is impaired.

8.4 Attachment. If any material portion of Borrower's assets is attached, seized, subjected to a writ, distress warrant, foreclosure or forfeiture proceedings, or is levied upon, or comes into the possession of any trustee, receiver or person acting in a similar capacity and such attachment, seizure, writ, distress warrant, foreclosure or forfeiture proceedings, or levy has not been removed, discharged or rescinded within fifteen (15) days, or if Borrower is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or if a judgment or other claim becomes a lien or encumbrance upon any material portion of Borrower's assets, or if a notice of lien, levy, or assessment is filed of record with respect to any of Borrower's assets by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, and the same is not paid within fifteen (15) days after Borrower receives notice thereof, provided that none of the foregoing shall constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by Borrower (provided that no Advances will be required to be made during such cure period).

8.5 Insolvency. If Borrower becomes insolvent, or if an Insolvency Proceeding is commenced by Borrower, or if an Insolvency Proceeding is commenced against Borrower and is not dismissed or stayed within thirty (30) days (provided that no Advances will be made prior to the dismissal of such Insolvency Proceeding). This includes a garnishment of any of Borrower's Accounts, including deposit accounts, with Bank. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the Insolvency Proceeding and if Borrower gives Bank written notice of the

Insolvency Proceeding and deposits with Bank monies or a surety bond for the Insolvency Proceeding, in an amount determined by Bank, in its sole discretion, as being an adequate reserve or bond for the dispute.

8.6 Other Agreements. If there is a default in any agreement to which Borrower is a party with a third party or parties resulting in the acceleration by such third party or parties, of any Indebtedness in an amount in excess of Two Hundred Fifty Thousand Dollars (\$250,000), or that could have a Material Adverse Effect.

8.7 Subordinated Debt. If Borrower makes any payment on account of Subordinated Debt, except to the extent such payment is allowed under any subordination agreement entered into with Bank.

8.8 Judgments. If a judgment or judgments for the payment of money in an amount, individually or in the aggregate, of at least Two Hundred Fifty Thousand Dollars (\$250,000) shall be rendered against Borrower and shall remain unsatisfied and unstayed for a period of ten (10) days (provided that no Advances will be made prior to the satisfaction or stay of such judgment).

8.9 Misrepresentations. Any warranty, representation or statement made or furnished to Bank by Borrower or on Borrower's behalf under the Loan Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

8.10 Exim Guarantee; Defective Collateralization. If the Exim Guarantee ceases for any reason to be in full force and effect, or if the Exim Bank declares the Exim Guarantee void or revokes or purports to revoke any obligations under the Exim Guarantee. Any of the Loan Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien in any of the Collateral) at any time and for any reason.

8.11 Change in Control. Any Change in Control of Borrower shall occur. For the purposes of this Event of Default, a Change in Control means, at any time, (a) occupation of a majority of the seats (other than vacant seats) on the board of directors of Borrower by persons who were neither (i) nominated by Borrower's board of directors nor (ii) appointed by directors so nominated; or (b) any person (as such term is used in the Securities and Exchange Act of 1934, as amended), is or becomes the beneficial owner (within the meaning of Rule 13d-3 and 13d-5 of the Securities and Exchange Act of 1934, as amended) directly or indirectly of 33.33% or more of the total voting stock of Borrower on a fully diluted basis, whether as a result of the issuance, sale or distribution of securities of Borrower, any merger or consolidation to which Borrower is a party, or otherwise.

8.12 Right to Cure. If any default, other than a payment default on any Obligation, is curable and if Borrower has not been given a notice of a similar default within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Bank demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiate steps which Bank deems in Bank's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

## 9. BANK'S RIGHTS AND REMEDIES

9.1 Rights and Remedies. Upon the occurrence and during the continuance of an Event of Default, Bank may, at its election, without notice and without demand, do any one or more of the following:

- (a) Declare all Obligations, whether evidenced by this Exim Agreement, by any of the other Loan Documents, or otherwise, immediately due and payable;
- (b) Cease advancing money or extending credit to or for the benefit of Borrower under this Exim Agreement or under any other agreement between Borrower and Bank;
- (c) Settle or adjust disputes and claims directly with account debtors for amounts, upon terms and in whatever order that Bank reasonably considers advisable;

(d) Notify customers of Borrower or other third parties to pay any amounts owing to Borrower directly to Bank;

(e) Without notice to or demand upon Borrower, make such payments and do such acts as Bank considers necessary or reasonable to protect its security interest in the Collateral. Borrower agrees to assemble the Collateral if Bank so requires, and to make the Collateral available to Bank as Bank may designate. Borrower authorizes Bank to enter the premises where the Collateral is located, to take and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest, or compromise any encumbrance, charge, or lien which in Bank's determination appears to be prior or superior to its security interest and to pay all expenses incurred in connection therewith. With respect to any of Borrower's owned premises, Borrower hereby grants Bank a license to enter into possession of such premises and to occupy the same, without charge, in order to exercise any of Bank's rights or remedies provided herein, at law, in equity, or otherwise;

(f) Set off and apply to the Obligations any and all (i) balances and deposits of Borrower held by Bank, or (ii) indebtedness at any time owing to or for the credit or the account of Borrower held by Bank;

(g) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Collateral. Bank is hereby granted a license or other right, solely pursuant to the provisions of this section 9.1, to use, without charge, Borrower's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this section 9.1, Borrower's rights under all licenses and all franchise agreements shall inure to Bank's benefit;

(h) Sell the Collateral at either a public or private sale, or both, by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including Borrower's premises) as Bank determines is commercially reasonable, and apply the proceeds thereof to the Obligations in whatever manner or order Bank deems appropriate;

(i) Bank may credit bid and purchase at any public sale or at any private sale as permitted by law; and

(j) Any deficiency that exists after disposition of the Collateral as provided above will be paid immediately by Borrower.

9.2 Exim Direction. Upon the occurrence and during the continuance of an Event of Default, Exim Bank shall have a right to: (i) direct Bank to exercise the remedies specified in section 9.1 and (ii) request that Bank accelerate the maturity of any other loans to Borrower as to which Bank has a right to accelerate.

9.3 Exim Notification. Bank shall have the right to immediately notify Exim Bank in writing if it has knowledge of the occurrence of any of the following events: (1) any failure to pay any amount due under this Loan Exim Agreement or the Line of Credit Note; (2) the Borrowing Base is less than the sum of outstanding Advances hereunder; (3) any failure to pay when due any amount payable to Bank by the Borrower under any loan(s) extended by Bank to Borrower; (4) the filing of an action for debtor's relief by, against, or on behalf of Borrower; or (5) any threatened or pending material litigation against Borrower, or any material dispute involving Borrower.

In the event that it sends such a notification to Exim Bank, Bank shall have the right thereafter to send Exim Bank a written report on the status of the events covered by said notification on each Business Day which occurs every thirty (30) calendar days after the date of said notification, until such time as Bank files a claim with Exim Bank or said default or other events have been cured. Bank shall not have any obligation to make any Advances or to issue any Letters of Credit following said notification to Exim Bank, unless Exim Bank gives its written approval thereto. If directed to do so by Exim Bank, Bank shall have a right promptly to exercise any rights it may have against Borrower to demand the immediate repayment of all amounts outstanding under the Exim Loan Documents.

9.4 Power of Attorney. Borrower hereby irrevocably appoints Bank (and any of Bank's designated officers, or employees) as Borrower's true and lawful attorney to: (a) upon prior notice to Borrower, send requests for verification of Accounts or notify account debtors of Bank's security interest in the Accounts; (b) endorse Borrower's name on any checks or other forms of payment or security that may come into Bank's possession; (c) sign Borrower's name on any invoice or bill of lading relating to any Account, drafts against account debtors, schedules and assignments of Accounts, verifications of Accounts, and notices to account debtors; (d) make, settle, and adjust all claims under and decisions with respect to Borrower's policies of insurance; (e) settle and adjust disputes and claims respecting the accounts directly with account debtors, for amounts and upon terms which Bank determines to be reasonable; (f) to file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of Borrower where permitted by law; and (g) to transfer the Intellectual Property Collateral into the name of Bank or a third party to the extent permitted under the California Uniform Commercial Code, provided that Bank's power of attorney hereunder with respect to the actions and powers under clauses (b) through (e) about shall be effective only upon the occurrence and during the continuance of an Event of Default, and provided further that Bank may exercise such power of attorney to sign the name of Borrower on any of the documents described in Section 4.2 regardless of whether an Event of Default has occurred. The appointment of Bank as Borrower's attorney in fact, and each and every one of Bank's rights and powers, being coupled with an interest, is irrevocable until all of the Obligations have been fully repaid and performed and Bank's obligation to provide Advances hereunder is terminated.

9.5 Accounts Collection. At any time from the date of this Exim Agreement, Bank may, upon prior notice to Borrower, notify any Person owing funds to Borrower of Bank's security interest in such funds and verify the amount of such Account. Upon the occurrence and during the continuance of an Event of Default, Borrower shall collect all amounts owing to Borrower for Bank, receive in trust all payments as Bank's trustee, and immediately deliver such payments to Bank in their original form as received from the account debtor, with proper endorsements for deposit.

9.6 Bank Expenses. If Borrower fails to pay any amounts or furnish any required proof of payment due to third persons or entities, as required under the terms of this Exim Agreement, then Bank may do any or all of the following: (a) make payment of the same or any part thereof; (b) set up such reserves under the Revolving Facility as Bank deems necessary to protect Bank from the exposure created by such failure; or (c) obtain and maintain insurance policies of the type discussed in Section 6.6 of this Exim Agreement, and take any action with respect to such policies as Bank deems prudent. Any amounts so paid or deposited by Bank shall constitute Bank Expenses, shall be immediately due and payable, and shall bear interest at the then applicable rate hereinabove provided, and shall be secured by the Collateral. Any payments made by Bank shall not constitute an agreement by Bank to make similar payments in the future or a waiver by Bank of any Event of Default under this Exim Agreement. Bank shall have a non-exclusive, royalty-free license to use the Intellectual Property Collateral to the extent reasonably necessary to permit Bank to exercise its rights and remedies upon the occurrence of an Event of Default.

9.7 Bank's Liability for Collateral. So long as Bank complies with reasonable banking practices, Bank shall not in any way or manner be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage thereto occurring or arising in any manner or fashion from any cause; (c) any diminution in the value thereof; or (d) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other person whomsoever. All risk of loss, damage or destruction of the Collateral shall be borne by Borrower.

9.8 Remedies Cumulative. Bank's rights and remedies under this Exim Agreement, the Loan Documents, and all other agreements shall be cumulative. Bank shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by Bank of one right or remedy shall be deemed an election, and no waiver by Bank of any Event of Default on Borrower's part shall be deemed a continuing waiver. No delay by Bank shall constitute a waiver, election, or acquiescence by it. No waiver by Bank shall be effective unless made in a written document signed on behalf of Bank and then shall be effective only in the specific instance and for the specific purpose for which it was given.

9.9 Demand; Protest. Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise,

settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees at any time held by Bank on which Borrower may in any way be liable.

#### 10. NOTICES

Unless otherwise provided in this Exim Agreement, all notices or demands by any party relating to this Exim Agreement or any other agreement entered into in connection herewith shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by certified mail, postage prepaid, return receipt requested, or by telefacsimile to Borrower or to Bank, as the case may be, at the address set forth below:

If to Borrower:	Iridex Corporation. 1212 Terra Bella Avenue Mountain View, CA 94043 Attn: Larry Tannenbaum FAX: 650-962-0486
If to Bank:	Mid-Peninsula Bank part of Greater Bay Bank N.A. 420 Cowper Street Palo Alto, CA 94301 Attn: Sarah Lewis FAX: 650-323-7421

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

#### 11. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER

This Exim Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to principles of conflicts of law. Each of Borrower and Bank hereby submits to the exclusive jurisdiction of the state and Federal courts located in the County of San Mateo, State of California. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, BORROWER AND BANK HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE EXIM LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

#### 12. GENERAL PROVISIONS

12.1 Successors and Assigns. This Exim Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties; provided, however, that neither this Exim Agreement nor any rights hereunder may be assigned by Borrower without Bank's prior written consent, which consent may be granted or withheld in Bank's sole discretion. Bank shall have the right without the consent of or notice to Borrower to sell, transfer, negotiate, or grant participations in all or any part of, or any interest in Bank's rights and benefits hereunder.

12.2 Indemnification. Borrower shall defend, indemnify and hold harmless Bank and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by the Exim Loan Documents; and (b) all losses or Bank Expenses in any way suffered, incurred, or paid by Bank as a result of or in any way arising out of, following, or consequential to transactions between Bank and Borrower whether under the Exim Loan Documents or otherwise (including without limitation reasonable attorneys fees and expenses), except for obligations, demands, claims, liabilities and losses caused by Bank's gross negligence or willful misconduct.

12.3 Time of Essence. Time is of the essence for the performance of all obligations set forth in this Exim Agreement.



12.4 Severability of Provisions. Each provision of this Exim Agreement shall be severable from every other provision of this Exim Agreement for the purpose of determining the legal enforceability of any specific provision.

12.5 Amendments in Writing. This Exim Agreement cannot be changed or terminated orally. Without the prior written consent of Exim Bank, no material amendment of or deviation from the terms of this Exim Agreement shall be made that would adversely affect the interests of Exim Bank under the Exim Guarantee, including without limitation the rescheduling of any payment terms provided for in this Exim Agreement. All prior agreements, understandings, representations, warranties, and negotiations between the parties hereto with respect to the subject matter of this Exim Agreement, if any, are merged into this Exim Agreement.

12.6 Counterparts. This Exim Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Exim Agreement.

12.7 Survival. All covenants, representations and warranties made in this Exim Agreement shall continue in full force and effect so long as any Obligations (other than inchoate indemnity obligations) remain outstanding. The obligations of Borrower to indemnify Bank with respect to the expenses, damages, losses, costs and liabilities described in Section 12.2 shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Bank have run.

12.8 Confidentiality. In handling any confidential information, Bank shall exercise the same degree of care that it exercises with respect to its own proprietary information of the same types to maintain the confidentiality of any non-public information thereby received or received pursuant to this Exim Agreement, except that disclosure of such information may be made (i) to the subsidiaries or affiliates of Bank in connection with their present or prospective business relations with Borrower, (ii) to prospective transferees or purchasers of any interest in the Loans, provided that they have entered into a comparable confidentiality agreement in favor of Borrower and have delivered a copy to Borrower, (iii) as required by law, regulations, rule or order, subpoena, judicial order or similar order, (iv) as may be required in connection with the examination, audit or similar investigation of Bank and (v) as Bank may deem appropriate in connection with the exercise of any remedies hereunder. Confidential information hereunder shall not include information that either: (a) is in the public domain or in the knowledge or possession of Bank when disclosed to Bank, or becomes part of the public domain after disclosure to Bank through no fault of Bank; or (b) is disclosed to Bank by a third party, provided Bank does not have actual knowledge that such third party is prohibited from disclosing such information.

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

IRIDEX CORPORATION

By: /s/ Larry Tannenbaum

Larry Tannenbaum, Chief Financial Officer

**MID-PENINSULA BANK — PART OF GREATER BAY BANK N.A.**

By: /s/ Sarah Lewis

Authorized Signer

## **EXHIBIT A**

The Collateral shall consist of all right, title and interest of Borrower in and to the following:

(a) All goods and equipment now owned or hereafter acquired, including, without limitation, all machinery, fixtures, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing, and all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing, wherever located;

(b) All inventory, now owned or hereafter acquired, including, without limitation, all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products including such inventory as is temporarily out of Borrower's custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and Borrower's Books relating to any of the foregoing;

(c) All contract rights and general intangibles now owned or hereafter acquired, including, without limitation, goodwill, trademarks, service marks, trade styles, trade names, patents, patent applications, leases, license agreements, franchise agreements, blueprints, drawings, purchase orders, customer lists, route lists, infringements, claims, computer programs, computer discs, computer tapes, literature, reports, catalogs, design rights, income tax refunds, payments of insurance and rights to payment of any kind;

(d) All now existing and hereafter arising accounts, contract rights, royalties, license rights and all other forms of obligations owing to Borrower arising out of the sale or lease of goods, the licensing of technology or the rendering of services by Borrower, whether or not earned by performance, and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by Borrower and Borrower's Books relating to any of the foregoing;

(e) All documents, cash, deposit accounts, securities, securities accounts, securities entitlements, investment property, financial assets, letters of credit, certificates of deposit, instruments and chattel paper now owned or hereafter acquired and Borrower's Books relating to the foregoing;

(f) All copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished, now owned or hereafter acquired; all trade secret rights, including all rights to unpatented inventions, know-how, operating manuals, license rights and agreements and confidential information, now owned or hereafter acquired; all mask work or similar rights available for the protection of semiconductor chips, now owned or hereafter acquired; all claims for damages by way of any past, present and future infringement of any of the foregoing; and

(g) Any and all claims, rights and interests in any of the above and all substitutions for, additions and accessions to and proceeds thereof.

EXHIBIT B

[Intentionally Omitted]

EXHIBIT C

LOAN PAYMENT/ADVANCE TELEPHONE REQUEST FORM  
DEADLINE FOR SAME DAY PROCESSING IS 3:00 P.M., CALIFORNIA TIME

TO: Operations Department/ Greater Bay Bank N. A.

DATE: \_\_\_\_\_

FAX#: (408) 971-4233

TIME: \_\_\_\_\_

FROM: Iridex Corporation

CLIENT NAME (BORROWER)

REQUESTED BY: \_\_\_\_\_

AUTHORIZED SIGNER'S NAME

AUTHORIZED SIGNATURE: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

FROM ACCOUNT # \_\_\_\_\_

TO ACCOUNT # \_\_\_\_\_

REQUESTED TRANSACTION TYPE	REQUEST DOLLAR AMOUNT
PRINCIPAL INCREASE (ADVANCE)	\$ _____
PRINCIPAL PAYMENT (ONLY)	\$ _____
INTEREST PAYMENT (ONLY)	\$ _____
PRINCIPAL AND INTEREST (PAYMENT)	\$ _____

OTHER INSTRUCTIONS: \_\_\_\_\_

All representations and warranties of Borrower stated in the Export-Import Bank Loan and Security Agreement are true, correct and complete in all material respects as of the date of the telephone request for an Advance confirmed by this Borrowing Certificate; provided, however, that those representations and warranties expressly referring to another date shall be true, correct and complete in all material respects as of such date.

BANK USE ONLY

TELEPHONE REQUEST:

The following person is authorized to request the loan payment transfer/loan advance on the advance designated account and is known to me.

\_\_\_\_\_  
Authorized Requester

\_\_\_\_\_  
Phone #

\_\_\_\_\_  
Received By (Bank)

\_\_\_\_\_  
Phone #

\_\_\_\_\_  
Authorized Signature (Bank)

EXHIBIT D

**BORROWING BASE CERTIFICATE**

Borrower: Iridex Corporation.

Lender: Mid-Peninsula Bank  
part of Greater Bay Bank N.A.

Commitment Amount: \$3,000,000.00

**FOREIGN ACCOUNTS RECEIVABLE FROM EXPORT ACTIVITIES**

1.	Foreign Accounts Receivable Book Value as of _____	\$ _____
2.	Additions (please explain on reverse)	\$ _____
3.	<b>TOTAL FOREIGN ACCOUNTS RECEIVABLE</b>	<b>\$ _____</b>

**ACCOUNTS RECEIVABLE DEDUCTIONS**

4.	Term in excess of 180 days	\$ _____
5.	Amounts over 60 days (unless insured, then 90 days)	\$ _____
6.	Balance of 50% over 90 day accounts	\$ _____
7.	Credit Balances over 120 days	\$ _____
8.	Accounts not payable in the U.S. Dollars or payable in other than U.S. Dollars	\$ _____
9.	Non-approved Government and Military Accounts	\$ _____
10.	Contra Accounts	\$ _____
11.	Promotion, Demo or Consignment Accounts	\$ _____
12.	Intercompany/Employee and Affiliate Accounts	\$ _____
13.	Accounts in the form of L/Cs, if subject items have not yet been shipped by Borrower	\$ _____
14.	Accounts arising from Inventory not originally located in and shipped from the U.S.	\$ _____
15.	Accounts arising from the sale of defense articles or items	\$ _____
16.	Accounts of buyers located in or from countries in which shipment is prohibited or no coverage available	\$ _____
17.	Amounts due and collectable outside U.S.	\$ _____
18.	Other exclusions	\$ _____
19.	<b>TOTAL ACCOUNTS RECEIVABLE DEDUCTIONS</b>	<b>\$ _____</b>
20.	Eligible Accounts (#3 minus #19)	\$ _____
21.	Loan Value of Accounts ( _____ % of #20)	\$ _____

**FOREIGN INVENTORY**

22.	Foreign Inventory Value as of _____	\$ _____
23.	Additions (please explain on reverse)	\$ _____
24.	<b>TOTAL FOREIGN INVENTORY</b>	<b>\$ _____</b>

**FOREIGN INVENTORY DEDUCTIONS**

25.	Outside U.S.	\$ _____
26.	Consignment	\$ _____
27.	Proprietary Software	\$ _____
28.	Damaged/Defective	\$ _____
29.	Previously Exported	\$ _____
30.	Defense Articles/Services	\$ _____
31.	Prohibited County	\$ _____
32.	No Coverage County	\$ _____
33.	Ineligible A/R	\$ _____
34.	Advance Payments/Deposits	\$ _____
35.	<b>TOTAL DEDUCTIONS</b>	<b>\$ _____</b>
36.	Eligible Inventory (#23 minus #35)	\$ _____
37.	Loan Value of Inventory ( _____ % of #36)	\$ _____

**BALANCES**

38.	Maximum Loan Amount	\$ _____
39.	Total Available [Lesser of (#21 plus #37) or #38]	\$ _____
40.	Present balance owing on Line of Credit	\$ _____
41.	Outstanding under Sublimits	\$ _____
42.	RESERVE POSITION (#39 minus (#40 plus #41))	\$ _____

The undersigned represents and warrants that the foregoing is true, complete and correct, and that the information reflected in this Schedule complies with the representations and warranties set forth in the Borrower Agreement, executed by Borrower and acknowledged by Lender, and the Export-Import Bank Loan and Security Agreement, executed by Borrower and acknowledged by Lender dated January 16, 2007, as may be amended from time to time, as if all representations and warranties were made as of the date hereof, and that Borrower is, and shall remain, in full compliance with its agreements, covenants, and obligations under such agreement. Such representations and warranties include, without limitation, the following: Borrower is using disbursements only for the purpose of enabling Borrower to finance the cost of manufacturing, producing, purchasing or selling items intended for export. Borrower is not using disbursements for the purpose of: (a) servicing any of Borrower's unrelated pre-existing or future indebtedness; (b) acquiring fixed assets or capital goods for the use of Borrower's business; (c) acquiring, equipping, equipping or renting commercial space outside the United States; (d) supporting research and development, (e) paying salaries of non-U.S. citizens or non-U.S. permanent residents who are located in the offices of the United States, or (f) serving as a retainage or warranty bond. Additionally, disbursements are not being used to finance the manufacture, purchase or sale of any of the following: (a) Items to be sold to a buyer located in a country in which the Export Import Bank of the United States is legally prohibited from doing business; (b) that part of the cost of the items which is not U.S. Content unless such part is not greater than fifty percent (50%) of the cost of the items and is incorporated into the items in the United States; (c) defense articles or defense services or items directly or indirectly destined for use by military organizations designed primarily for military use (regardless of the nature or actual use of the items); or (d) any items to be used in the construction, alteration, operation or maintenance of nuclear power, enrichment, reprocessing, research or heavy water production facilities.

Sincerely,

**BANK USE ONLY**

Iridex Corporation

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

Received by: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Verified By: \_\_\_\_\_

EXHIBIT E  
**COMPLIANCE CERTIFICATE**

TO: Mid-Peninsula Bank, part of Greater Bay Bank N.A.

FROM: Iridex Corporation

The undersigned authorized officer of Iridex Corporation hereby certifies that in accordance with the terms and conditions of the Export-Import Bank Loan and Security Agreement between Borrower and Bank (the "Agreement") dated January 16, 2007, (i) Borrower is in complete compliance for the period ending \_\_\_\_\_ with all required covenants except as noted below and (ii) all representations and warranties of Borrower stated in the Agreement are true and correct in all material respects as of the date hereof. Attached herewith are the required documents supporting the above certification. The Officer further certifies that these are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes, except for interim financial statements which lack footnotes and are subject to year-end adjustment. The Officer expressly acknowledges that no borrowings may be requested by Borrower at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that such compliance is determined not just at the date this certificate is delivered.

**Please indicate compliance status by circling Yes/No under "Complies" column.**

<u>Reporting Covenant</u>	<u>Required</u>		<u>Complies</u>
Quarterly financial statements (Form 10-Q)	Quarterly no later than 45 days after quarter end	Yes	No
Annual audited financial statement and annual report (Form 10-K)	FYE no later than 90 days after fiscal year- end	Yes	No
A/R & A/P Agings	Monthly within 15 days after calendar month end	Yes	No
A/R Audit	Semi-Annual during first 12-month period and annually thereafter	Yes	No
Monthly Liquidity Report confirming domestic Unrestricted Cash/Marketable Securities of at least \$3,000,000.00	Affidavit of Liquidity signed by Borrower's CFO within 15 days after calendar month end	Yes	No
<u>Financial Covenants</u>	<u>Required</u>	<u>Actual</u>	<u>Complies</u>
Minimum Profitability (For each of the quarterly periods ending June 30, 2007, September 30, 2007, and December 31, 2007; and beginning with the quarter ending March 31, 2008, Borrower shall maintain Profitability as measured each quarter on a rolling four quarter basis thereafter.)	In excess of \$1.00 on a consolidated basis, after tax Net Income	\$ _____	Yes
Minimum Tangible Net Worth	Not less than \$15.5m as of March 31, 2007, and measured on a quarterly basis thereafter, with such minimum Tangible Net Worth requirement to be and increased each quarter thereafter by 50% of Net Profit After Tax of the preceding quarter	\$ _____	Yes



Financial Covenants

Debt Service Ratio (to be measured quarterly on a year-to-date basis beginning March 31, 2007, and continuing through the quarter ending December 31, 2007, and measured on a rolling four quarter basis thereafter). Debt Service Ratio is defined as Net Profit After Tax plus Depreciation, Amortization, all Interest Expense, and other Non Cash Charges, divided by Current Portion of Long-Term Debt (C.P.L.T.D.) plus all Interest Expense, and all of the foregoing components of Debt Service Ratio shall be determined according to GAAP

Required

1.750 to 1.000

Actual

\_\_\_\_\_ : 1.000

Complies

Yes

No

Comments Regarding Exceptions: See Attached.

Sincerely,

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

**BANK USE ONLY**

Received by: \_\_\_\_\_

AUTHORIZED SIGNER

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

Verified: \_\_\_\_\_

AUTHORIZED SIGNER

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

Compliance Status

Yes

No

EXPORT-IMPORT BANK OF THE UNITED STATES  
WORKING CAPITAL GUARANTEE PROGRAM

BORROWER AGREEMENT

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**EXPORT-IMPORT BANK OF THE UNITED STATES  
WORKING CAPITAL GUARANTEE PROGRAM  
BORROWER AGREEMENT**

THIS BORROWER AGREEMENT (this "Agreement") is made and entered into by the entity identified as Borrower on the signature page hereof ("Borrower") in favor of the Export-Import Bank of the United States ("Ex-Im Bank") and the institution identified as Lender on the signature page hereof ("Lender").

**RECITALS**

Borrower has requested that Lender establish a Loan Facility in favor of Borrower for the purposes of providing Borrower with working capital to finance the manufacture, production or purchase and subsequent export sale of Items.

Lender and Borrower expect that Ex-Im Bank will provide a guarantee to Lender regarding this Loan Facility subject to the terms and conditions of the Master Guarantee Agreement, a Loan Authorization Agreement, and to the extent applicable, the Delegated Authority Letter Agreement or Fast Track Lender Agreement.

Lender and Ex-Im Bank have requested that Borrower execute this Agreement as a condition precedent to Lender establishing the Loan Facility and Ex-Im Bank providing the guarantee.

NOW, THEREFORE, Borrower hereby agrees as follows:

**ARTICLE I  
DEFINITIONS**

1.01 Definition of Terms. As used in this Agreement, including the Recitals to this Agreement and the Loan Authorization Agreement, the following terms shall have the following meanings:

"Accounts Receivable" shall mean all of Borrower's now owned or hereafter acquired (a) "accounts" (as such term is defined in the UCC), other receivables, book debts and other forms of obligations, whether arising out of goods sold or services rendered or from any other transaction; (b) rights in, to and under all purchase orders or receipts for goods or services; (c) rights to any goods represented or purported to be represented by any of the foregoing (including unpaid sellers' rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods); (d) moneys due or to become due to such Borrower under all purchase orders and contracts (which includes Export Orders) for the sale of goods or the performance of services or both by Borrower (whether or not yet earned by performance on the part of Borrower), including the proceeds of the foregoing; (e) any notes, drafts, letters of credit, insurance proceeds or other instruments, documents and writings evidencing or supporting the foregoing; and (f) all collateral security and guarantees of any kind given by any other Person with respect to any of the foregoing.

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“Accounts Receivable Aging Report” shall mean a report detailing the Export-Related Accounts Receivable and Export-Related Overseas Accounts Receivable for a Loan Facility, and the applicable terms for the relevant time period; in the case of Indirect Exports, such report shall indicate the portion of such Accounts Receivables corresponding to Indirect Exports.

“Advance Rate” shall mean, with respect to a Loan Facility, the rate specified in Section 5.C. of the Loan Authorization Agreement for each category of Primary Collateral except for Export-Related General Intangibles and Other Collateral. Unless otherwise set forth in writing by Ex-Im Bank, in no event shall the Advance Rate exceed (i) ninety percent (90%) for Eligible Export-Related Accounts Receivable, (ii) seventy five percent (75%) for Eligible Export-Related Inventory, (iii) seventy percent (70%) for Eligible Export-Related Overseas Accounts Receivable or (iv) sixty percent (60%) for Eligible Export-Related Overseas Inventory and (v) twenty five percent (25%) for Retainage Accounts Receivable.

“Affiliated Foreign Person” shall have the meaning set forth in Section 2.15.

“Business Day” shall mean any day on which the Federal Reserve Bank of New York is open for business.

“Buyer” shall mean a Person that has entered into one or more Export Orders with Borrower or who is an obligor on Export-Related Accounts Receivable or Export-Related Overseas Accounts Receivable.

“Capital Good” shall mean a capital good (e.g., manufacturing equipment, licensing agreements) that will establish or expand foreign production capacity of an exportable good.

“Collateral” shall mean all real and personal property and interest in real and personal property in or upon which Lender has been, or shall be, granted a Lien as security for the payment of all the Loan Facility Obligations and all products and proceeds (cash and non-cash) thereof.

“Commercial Letters of Credit” shall mean those letters of credit subject to the UCP payable in Dollars and issued or caused to be issued by Lender on behalf of Borrower under a Loan Facility for the benefit of a supplier(s) of Borrower in connection with Borrower’s purchase of goods or services from the supplier in support of the export of the Items.

“Country Limitation Schedule” shall mean the schedule published from time to time by Ex-Im Bank setting forth on a country by country basis whether and under what conditions Ex-Im Bank will provide coverage for the financing of export transactions to countries listed therein.

“Credit Accommodation Amount” shall mean, the sum of (a) the aggregate outstanding amount of Disbursements and (b) the aggregate outstanding Letter of Credit Obligations, which sum may not exceed the Maximum Amount.

“Credit Accommodations” shall mean, collectively, Disbursements and Letter of Credit Obligations.

“Debarment Regulations” shall mean, collectively, (a) the Governmentwide Debarment and Suspension (Nonprocurement) regulations (Common Rule), 53 Fed. Reg. 19204 (May 26, 1988), (b) Subpart 9.4 (Debarment, Suspension, and Ineligibility) of the Federal Acquisition Regulations, 48 C.F.R. 9.400-9.409 and (c) the revised Governmentwide Debarment and Suspension (Nonprocurement) regulations (Common Rule), 60 Fed. Reg. 33037 (June 26, 1995).

“Delegated Authority Letter Agreement” shall mean the Delegated Authority Letter Agreement, if any, between Ex-Im Bank and Lender.

“Disbursement” shall mean, collectively, (a) an advance of a working capital loan from Lender to Borrower under the Loan Facility, and (b) an advance to fund a drawing under a Letter of Credit issued or caused to be issued by Lender for the account of Borrower under the Loan Facility.

“Dollars” or “\$” shall mean the lawful currency of the United States.

“Economic Impact Approval” shall mean a written approval issued by Ex-Im Bank stating the conditions under which a Capital Good may be included as an Item in a Loan Facility consistent with Ex-Im Bank’s economic impact procedures (or other mechanism for making this determination that Ex-Im Bank notifies Lender of in writing).

“Economic Impact Certification” shall have the meaning set forth in Section 2.14(b).

“Effective Date” shall mean the date on which (a) all of the Loan Documents have been executed by Lender, Borrower and, if applicable, Ex-Im Bank and (b) all of the conditions to the making of the initial Credit Accommodations under the Loan Documents or any amendments thereto have been satisfied.

“Eligible Export-Related Accounts Receivable” shall mean Export-Related Accounts Receivable which are acceptable to Lender and which are deemed to be eligible pursuant to the Loan Documents, but in no event shall Eligible Export-Related Accounts Receivable include any Account Receivable:

- (a) that does not arise from the sale of Items in the ordinary course of Borrower’s business;
- (b) that is not subject to a valid, perfected first priority Lien in favor of Lender;
- (c) as to which any covenant, representation or warranty contained in the Loan Documents with respect to such Account Receivable has been breached;
- (d) that is not owned by Borrower or is subject to any right, claim or interest of another Person other than the Lien in favor of Lender;
- (e) with respect to which an invoice has not been sent;
- (f) that arises from the sale of defense articles or defense services;

(g) that arises from the sale of Items to be used in the construction, alteration, operation or maintenance of nuclear power, enrichment, reprocessing, research or heavy water production facilities unless with Ex-Im Bank's prior written consent;

(h) that is due and payable from a Buyer located in a country with which Ex-Im Bank is prohibited from doing business as designated in the Country Limitation Schedule;

(i) that does not comply with the requirements of the Country Limitation Schedule;

(j) that is due and payable more than one hundred eighty (180) days from the date of the invoice;

(k) that is not paid within sixty (60) calendar days from its original due date, unless it is insured through Ex-Im Bank export credit insurance for comprehensive commercial and political risk, or through Ex-Im Bank approved private insurers for comparable coverage, in which case it is not paid within ninety (90) calendar days from its due date;

(l) of a Buyer for whom fifty percent (50%) or more of the Accounts Receivable of such Buyer do not satisfy the requirements of subclauses (j) and (k) above;

(m) that arises from a sale of goods to or performance of services for an employee of Borrower, a stockholder of Borrower, a subsidiary of Borrower, a Person with a controlling interest in Borrower or a Person which shares common controlling ownership with Borrower;

(n) that is backed by a letter of credit unless the Items covered by the subject letter of credit have been shipped;

(o) that Lender or Ex-Im Bank, in its reasonable judgment, deems uncollectible for any reason;

(p) that is due and payable in a currency other than Dollars, except as may be approved in writing by Ex-Im Bank;

(q) that is due and payable from a military Buyer, except as may be approved in writing by Ex-Im Bank;

(r) that does not comply with the terms of sale set forth in Section 7 of the Loan Authorization Agreement;

(s) that is due and payable from a Buyer who (i) applies for, suffers, or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property or calls a meeting of its creditors, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due or ceases operations of its present business, (iii) makes a general assignment for the benefit of creditors, (iv) commences a voluntary case under any state or federal bankruptcy laws (as now or hereafter in effect), (v) is adjudicated as bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law providing for the relief of debtors, (vii) acquiesces to, or fails to have



dismissed, any petition which is filed against it in any involuntary case under such bankruptcy laws, or (viii) takes any action for the purpose of effecting any of the foregoing;

(t) that arises from a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment or any other repurchase or return basis or is evidenced by chattel paper;

(u) for which the Items giving rise to such Accounts Receivable have not been shipped to the Buyer or when the Items are services, such services have not been performed or when the Export Order specifies a timing for invoicing the Items other than shipment or performance and the Items have not been invoiced in accordance with such terms of the Export Order, or the Accounts Receivable otherwise do not represent a final sale;

(v) that is subject to any offset, deduction, defense, dispute, or counterclaim or the Buyer is also a creditor or supplier of Borrower or the Account Receivable is contingent in any respect or for any reason;

(w) for which Borrower has made any agreement with the Buyer for any deduction therefrom, except for discounts or allowances made in the ordinary course of business for prompt payment, all of which discounts or allowances are reflected in the calculation of the face value of each respective invoice related thereto;

(x) for which any of the Items giving rise to such Account Receivable have been returned, rejected or repossessed;

(y) that is included as an eligible receivable under any other credit facility to which Borrower is a party;

(z) any of the Items giving rise to such Accounts Receivable are Capital Goods, unless the transaction is in accordance with Section 2.14;

(aa) that is due and payable from a Buyer that is, or is located in, the United States; provided however, that this subsection (aa) shall not preclude an Export-Related Accounts Receivable arising from the sale of Items to foreign contractors or subcontractors providing services to a United States Embassy or the United States Military located overseas from being deemed an Eligible Export-Related Accounts Receivable; or

(bb) that arises from the sale of Items that do not meet the U.S. Content requirements in accordance with Section 2.01(b)(ii).

“Eligible Export-Related Inventory” shall mean Export-Related Inventory which is acceptable to Lender and which is deemed to be eligible pursuant to the Loan Documents, but in no event shall Eligible Export-Related Inventory include any Inventory:

(a) that is not subject to a valid, perfected first priority Lien in favor of Lender;

(b) that is located at an address that has not been disclosed to Lender in writing;

(c) that is placed by Borrower on consignment or held by Borrower on consignment from another Person;

(d) that is in the possession of a processor or bailee, or located on premises leased or subleased to Borrower, or on premises subject to a mortgage in favor of a Person other than Lender, unless such processor or bailee or mortgagee or the lessor or sublessor of such premises, as the case may be, has executed and delivered all documentation which Lender shall require to evidence the subordination or other limitation or extinguishment of such Person's rights with respect to such Inventory and Lender's right to gain access thereto;

(e) that is produced in violation of the Fair Labor Standards Act or subject to the "hot goods" provisions contained in 29 U.S.C. §215 or any successor statute or section;

(f) as to which any covenant, representation or warranty with respect to such Inventory contained in the Loan Documents has been breached;

(g) that is not located in the United States unless expressly permitted by Lender, on terms acceptable to Lender;

(h) that is an Item or is to be incorporated into Items that do not meet U.S. Content requirements in accordance with Section 2.01(b)(ii);

(i) that is demonstration Inventory;

(j) that consists of proprietary software (i.e. software designed solely for Borrower's internal use and not intended for resale);

(k) that is damaged, obsolete, returned, defective, recalled or unfit for further processing;

(l) that has been previously exported from the United States;

(m) that constitutes, or will be incorporated into Items that constitute, defense articles or defense services;

(n) that is an Item or will be incorporated into Items that will be used in the construction, alteration, operation or maintenance of nuclear power, enrichment, reprocessing, research or heavy water production facilities unless with Ex-Im Bank's prior written consent;

(o) that is an Item or is to be incorporated into Items destined for shipment to a country as to which Ex-Im Bank is prohibited from doing business as designated in the Country Limitation Schedule;

(p) that is an Item or is to be incorporated into Items destined for shipment to a Buyer located in a country in which Ex-Im Bank coverage is not available for commercial reasons as designated in the Country Limitation Schedule, unless and only to the extent that such Items are to be sold to such country on terms of a letter of credit confirmed by a bank acceptable to Ex-Im Bank;

(q) that constitutes, or is to be incorporated into, Items whose sale would result in an Accounts Receivable which would not be an Eligible Export-Related Accounts Receivable;

(r) that is included as eligible inventory under any other credit facility to which Borrower is a party; or

(s) that is, or is to be incorporated into, an Item that is a Capital Good, unless the transaction is in accordance with Section 2.14.

“Eligible Export-Related Overseas Accounts Receivable” shall mean Export-Related Overseas Accounts Receivable which are acceptable to Lender and which are deemed to be eligible pursuant to the Loan Documents but in no event shall include the Accounts Receivable (a) through (bb) excluded from the definition of Eligible Export-Related Accounts Receivable.

“Eligible Export-Related Overseas Inventory” shall mean Export-Related Overseas Inventory which is acceptable to Lender and which is deemed to be eligible pursuant to the Loan Documents but in no event shall include the Inventory (a) through (r) excluded from the definition of Eligible Export-Related Inventory.

“Eligible Person” shall mean a sole proprietorship, partnership, limited liability partnership, corporation or limited liability company which (a) is domiciled, organized or formed, as the case may be, in the United States, whether or not such entity is owned by a foreign national or foreign entity; (b) is in good standing in the state of its formation or otherwise authorized to conduct business in the United States; (c) is not currently suspended or debarred from doing business with the United States government or any instrumentality, division, agency or department thereof; (d) exports or plans to export Items; (e) operates and has operated as a going concern for at least one (1) year; (f) has a positive tangible net worth determined in accordance with GAAP; and (g) has revenue generating operations relating to its core business activities for at least one year. An Affiliated Foreign Person that meets all of the requirements of the foregoing definition of Eligible Person other than subclause (a) thereof shall be deemed to be an Eligible Person

“ERISA” shall mean the Employee Retirement Income Security Act of 1974 and the rules and regulations promulgated thereunder

“Export Order” shall mean a documented purchase order or contract evidencing a Buyer’s agreement to purchase the Items from Borrower for export from the United States, which documentation shall include written information that is necessary to confirm such purchase order or contract, including identification of the Items, the name of the Buyer, the country of destination, contact information for the Buyer and the total amount of the purchase order or contract; in the case of Indirect Exports, such documentation shall further include a copy of the written purchase order or contract from a foreign purchaser or other documentation clearly evidencing a foreign purchaser’s agreement to purchase the Items.

“Export-Related Accounts Receivable” shall mean those Accounts Receivable arising from the sale of Items which are due and payable to Borrower in the United States.

“Export-Related Accounts Receivable Value” shall mean, at the date of determination thereof, the aggregate face amount of Eligible Export-Related Accounts Receivable less taxes, discounts, credits, allowances and Retainages, except to the extent otherwise permitted by Ex-Im Bank in writing.

“Export-Related Borrowing Base” shall mean, at the date of determination thereof, the sum of (a) (if Lender elects to include) the Export-Related Inventory Value or Export-Related Historical Inventory Value multiplied by the Advance Rate applicable to Eligible Export-Related Inventory set forth in Section 5.B.(1.) of the Loan Authorization Agreement, plus (b) the Export-Related Accounts Receivable Value multiplied by the Advance Rate applicable to Eligible Export-Related Accounts Receivable set forth in Section 5.B.(2.) of the Loan Authorization Agreement, plus (c) if permitted by Ex-Im Bank in writing, the Retainage Value multiplied by the Advance Rate applicable to Retainages set forth in Section 5.B.(3.) of the Loan Authorization Agreement, plus (d) the Other Assets set forth in Section 5.B.(4.) of the Loan Authorization Agreement multiplied by the Advance Rate agreed to in writing by Ex-Im Bank, plus (e) if permitted by Ex-Im Bank in writing, the Export-Related Overseas Accounts Receivable Value multiplied by the Advance Rate applicable to Eligible Export-Related Overseas Accounts Receivable set forth in Section 5.B.(5.) of the Loan Authorization Agreement, plus (f) if permitted by Ex-Im Bank in writing, the Export-Related Overseas Inventory Value multiplied by the Advance Rate applicable to Eligible Export-Related Overseas Inventory set forth in Section 5.B.(6.) of the Loan Authorization Agreement, less (g) the amounts required to be reserved pursuant to Sections 4.12 and 4.13 of this Agreement for each outstanding Letter of Credit, less (h) such reserves and in such amounts deemed necessary and proper by Lender from time to time.

“Export-Related Borrowing Base Certificate” shall mean a certificate in the form provided or approved by Lender, executed by Borrower and delivered to Lender pursuant to the Loan Documents detailing the Export-Related Borrowing Base supporting the Credit Accommodations which reflects, to the extent included in the Export-Related Borrowing Base, Export-Related Accounts Receivable, Eligible Export-Related Accounts Receivable, Export-Related Inventory, Eligible Export-Related Inventory, Export-Related Overseas Accounts Receivable, Eligible Export-Related Accounts Receivable, Export-Related Overseas Inventory and Eligible Export-Related Overseas Inventory balances that have been reconciled with Borrower’s general ledger, Accounts Receivable Aging Report and Inventory schedule.

“Export-Related General Intangibles” shall mean the Pro Rata Percentage of General Intangibles determined as of the earlier of: (i) the date such General Intangibles are liquidated and (ii) the date Borrower fails to pay when due any outstanding amount of principal or accrued interest payable under the Loan Documents that becomes the basis for a Payment Default on which a Claim is filed.

“Export-Related Historical Inventory Value” shall mean with respect to a Borrower, the relevant Export-Related Sales Ratio multiplied by the lowest of (i) the cost of such Borrower’s Inventory as determined in accordance with GAAP, or (ii) the market value of such Borrower’s Inventory as determined in accordance with GAAP or (iii) the appraised or orderly liquidation value of such Borrower’s Inventory, if Lender has loans and financial accommodations to such Borrower for which it conducts (or contracts for the performance of) such an appraised or orderly liquidation value.

“Export-Related Inventory” shall mean the Inventory of Borrower located in the United States that has been purchased, manufactured or otherwise acquired by Borrower for sale or resale as Items, or to be incorporated into Items to be sold or resold pursuant to Export Orders.

“Export-Related Inventory Value” shall mean, at the date of determination thereof, the lowest of (i) the cost of Eligible Exported-Related Inventory as determined in accordance with GAAP, or (ii) the market value of Eligible Export-Related Inventory as determined in accordance with GAAP or (iii) the lower of the appraised market value or orderly liquidation value of the Eligible Export-Related Inventory, if Lender has other loans and financial accommodations to a Borrower for which it conducts (or contracts for the performance of) such an appraised or orderly liquidation value.

“Export-Related Overseas Accounts Receivable” shall mean those Accounts Receivable arising from the sale of Items which are due and payable outside of the United States either to a Borrower or an Affiliated Foreign Person.

“Export-Related Overseas Accounts Receivable Value” shall mean, with respect to a Loan Facility, at the date of determination thereof, the aggregate face amount of Eligible Export-Related Overseas Accounts Receivable less taxes, discounts, credits, allowances and Retainages, except to the extent otherwise permitted by Ex-Im Bank in writing.

“Export-Related Overseas Inventory” shall mean the Inventory of Borrower located outside of the United States that has been purchased, manufactured or otherwise acquired by such Borrower for sale or resale as Items, or to be incorporated into Items to be sold or resold pursuant to Export Orders.

“Export-Related Overseas Inventory Value” shall mean, at the date of determination thereof, the lowest of (i) the cost of Eligible Export-Related Overseas Inventory as determined in accordance with GAAP, (ii) the market value of Eligible Export-Related Overseas Inventory as determined in accordance with GAAP or (iii) the appraised or orderly liquidation value of the Eligible Export-Related Overseas Inventory, if Lender has other loans and financial accommodations to Borrower or an Affiliated Foreign Person for which it conducts (or contracts for the performance of) such a appraised or orderly liquidation.

“Export-Related Sales Ratio” shall mean with respect to a Borrower, the percentage of such Borrower’s total sales revenue derived from the sale of Eligible Export-Related Inventory over a rolling twelve-month period ending no more than ninety (90) days prior to the date of the relevant Export-Related Borrowing Base Certificate

“Extension” shall mean, with respect to a Loan Facility, an amendment to the Loan Authorization Agreement extending the Final Disbursement Date on the same terms and conditions as the Loan Facility for an aggregate period not to exceed one hundred and twenty (120) days beyond the original Final Disbursement Date, either as agreed to in writing by Ex-Im Bank or, in the case of Delegated Authority, as notified by Lender to Ex-Im Bank pursuant to its authority under the Delegated Authority Letter Agreement.

“Fast Track Lender Agreement” shall mean the Fast Track Lender Agreement, if any, between Ex-Im Bank and Lender.

“Final Disbursement Date” shall mean the last date on which Lender may make a Disbursement set forth in Section 10 of the Loan Authorization Agreement (including as amended by an Extension) or, if such date is not a Business Day, the next succeeding Business Day; provided, however, to the extent that Lender has not received cash collateral in the amount of the Letter of Credit Obligations or an equivalent full indemnity from Borrower or Guarantor, as applicable, with respect to Letter of Credit Obligations outstanding on the Final Disbursement Date, the Final Disbursement Date with respect to an advance to fund a drawing under such Letter of Credit shall be no later than thirty (30) days after any such drawing which may be no later than the expiry date of the Letter of Credit related thereto.

“GAAP” shall mean the generally accepted accounting principles issued in the United States.

“General Intangibles” shall mean all intellectual property and other “general intangibles” (as such term is defined in the UCC).

“Guarantor” shall mean any Person which is identified in Section 3 of the Loan Authorization Agreement who shall guarantee (jointly and severally if more than one) the payment and performance of all or a portion of the Loan Facility Obligations.

“Guarantee Agreement” shall mean a valid and enforceable agreement of guarantee executed by each Guarantor in favor of Lender.

“Indirect Exports” shall mean finished goods or services that are sold by a Borrower to a Buyer located in the United States, are intended for export from the United States, and are identified in Section 4.A.(2.) of the Loan Authorization Agreement.

“Inventory” shall mean all “inventory” (as such term is defined in the UCC), now or hereafter owned or acquired by Borrower, wherever located, including all inventory, merchandise, goods and other personal property which are held by or on behalf of Borrower for sale or lease or are furnished or are to be furnished under a contract of service or which constitute raw materials, work in process or materials used or consumed or to be used or consumed in Borrower’s business or in the processing, production, packaging, promotion, delivery or shipping of the same, including other supplies.

“ISP” shall mean the International Standby Practices-ISP98, International Chamber of Commerce Publication No. 590 and any amendments and revisions thereof.

“Issuing Bank” shall mean the bank that issues a Letter of Credit, which bank is Lender itself or a bank that Lender has caused to issue a Letter of Credit by way of a guarantee or reimbursement obligation.

“Items” shall mean the finished goods or services which are intended for export from the United States, either directly or as an Indirect Export, meet the U.S. Content requirements in

accordance with Section 2.01(b)(ii) of this Agreement and are specified in Section 4.A. of the Loan Authorization Agreement.

“Letter of Credit” shall mean a Commercial Letter of Credit or a Standby Letter of Credit.

“Letter of Credit Obligations” shall mean all undrawn amounts of outstanding obligations incurred by Lender, whether direct or indirect, contingent or otherwise, due or not due, in connection with the issuance or guarantee by Lender or Issuing Bank of Letters of Credit.

“Lien” shall mean any mortgage, security deed or deed of trust, pledge, hypothecation, assignment, deposit arrangement, lien, charge, claim, security interest, security title, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any lease or title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement perfecting a security interest under the UCC or comparable law of any jurisdiction) by which property is encumbered or otherwise charged.

“Loan Agreement” shall mean a valid and enforceable agreement between Lender and a Borrower setting forth, with respect to each Loan Facility, the terms and conditions of such Loan Facility.

“Loan Authorization Agreement” shall mean, as applicable, the duly executed Loan Authorization Agreement, Fast Track Loan Authorization Agreement, or the Loan Authorization Notice, setting forth certain terms and conditions of each Loan Facility, a copy of which is attached hereto as Annex A.

“Loan Authorization Notice” shall mean the Loan Authorization Notice executed by Lender and delivered to Ex-Im Bank in accordance with the Delegated Authority Letter Agreement setting forth the terms and conditions of each Loan Facility.

“Loan Documents” shall mean the Loan Authorization Agreement, the Loan Agreement, this Agreement, each promissory note (if applicable), each Guarantee Agreement, and all other instruments, agreements and documents now or hereafter executed by the applicable Borrower, any Guarantor, Lender or Ex-Im Bank evidencing, securing, guaranteeing or otherwise relating to the Loan Facility or any Credit Accommodations made thereunder.

“Loan Facility” shall mean the Revolving Loan Facility, the Transaction Specific Loan Facility or the Transaction Specific Revolving Loan Facility established by Lender in favor of Borrower under the Loan Documents.

“Loan Facility Obligations” shall mean all loans, advances, debts, expenses, fees, liabilities, and obligations, including any accrued interest thereon, for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or amounts are liquidated or determinable) owing by Borrower to Lender, of any kind or nature, present or future, arising in connection with the Loan Facility.

“Loan Facility Term” shall mean, with respect to a Loan Facility, the number of months or portion thereof from the Effective Date to the Final Disbursement Date as set forth in the Loan Authorization Agreement as amended.

“Master Guarantee Agreement” shall mean the Master Guarantee Agreement between Ex-Im Bank and Lender, as amended, modified, supplemented and restated from time to time.

“Material Adverse Effect” shall mean a material adverse effect on (a) the business, assets, operations, prospects or financial or other condition of Borrower or any Guarantor, (b) any Borrower’s ability to pay or perform the Loan Facility Obligations in accordance with the terms thereof, (c) the Collateral or Lender’s Liens on the Collateral or the priority of such Lien, or (d) Lender’s rights and remedies under the Loan Documents.

“Maximum Amount” shall mean the maximum Credit Accommodation Amount that may be outstanding at any time under each Loan Facility, as specified in Section 5.A. of the Loan Authorization Agreement.

“Other Assets” shall mean, with respect to a Loan Facility, such other assets of a Borrower to be included in Primary Collateral, which may include cash and marketable securities, or such other assets as Ex-Im Bank agrees to in writing, and disclosed as Primary Collateral in Section 6.A. of the Loan Authorization Agreement. The applicable Advance Rate (to be multiplied by the Other Asset Value) shall be as agreed to by Ex-Im Bank in writing case by case and set forth in Section 5.B.(4) of the Loan Authorization Agreement.

“Other Asset Value” shall mean, with respect to a Loan Facility, at the date of determination thereof, the value of the Other Assets as determined in accordance with GAAP.

“Other Collateral” shall mean any additional collateral that Lender customarily would require as security for loan facilities on its own account and risk where the permitted borrowing level is based principally on a borrowing base derived from a borrower’s inventory and accounts receivable, but where such additional collateral does not enter into the borrowing base calculation.

“Permitted Liens” shall mean (a) Liens for taxes, assessments or other governmental charges or levies not delinquent, or, being contested in good faith and by appropriate proceedings and with respect to which proper reserves have been taken by Borrower; provided, that, the Lien shall have no effect on the priority of the Liens in favor of Lender or the value of the assets in which Lender has such a Lien and a stay of enforcement of any such Lien shall be in effect; (b) deposits or pledges securing obligations under worker’s compensation, unemployment insurance, social security or public liability laws or similar legislation; (c) deposits or pledges securing bids, tenders, contracts (other than contracts for the payment of money), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the ordinary course of Borrower’s business; (d) judgment Liens that have been stayed or bonded; (e) mechanics’, workers’, materialmen’s or other like Liens arising in the ordinary course of Borrower’s business with respect to obligations which are not due; (f) Liens placed upon fixed assets hereafter acquired to secure a portion of the purchase price thereof, provided, that, any such Lien shall not encumber any other property of Borrower; (g) security interests being terminated concurrently with the execution of the Loan Documents; and (h) Liens disclosed in Section 6.D. of the Loan



Authorization Agreement, provided that, except as otherwise permitted by Ex-Im Bank in writing, such Liens in Section 6.D. shall be subordinate to the Liens in favor of Lender on Primary Collateral.

“Person” shall mean any individual, sole proprietorship, partnership, limited liability partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, entity or government (whether national, federal, provincial, state, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof), and shall include such Person’s successors and assigns.

“Pro Rata Percentage” shall mean, with respect to a Loan Facility, as of the date of determination thereof, the principal balance of the Credit Accommodations outstanding as a percentage of the combined principal balance of all loans from Lender to such Borrower including the then outstanding principal balance of the Credit Accommodations plus unfunded amounts under outstanding Letters of Credit.

“Principals” shall mean any officer, director, owner, partner, key employee, or other Person with primary management or supervisory responsibilities with respect to Borrower or any other Person (whether or not an employee) who has critical influence on or substantive control over the transactions covered by this Agreement.

“Retainage” shall mean that portion of the purchase price of an Export Order that a Buyer is not obligated to pay until the end of a specified period of time following the satisfactory performance under such Export Order.

“Retainage Accounts Receivable” shall mean those portions of Eligible Export-Related Accounts Receivable or Eligible Export-Related Overseas Accounts Receivable arising out of a Retainage.

“Retainage Value” shall mean, at the date of determination thereof, the aggregate face amount of Retainage Accounts Receivable as permitted by Ex-Im Bank in writing, less taxes, discounts, credits and allowances, except to the extent otherwise permitted by Ex-Im Bank in writing.

“Revolving Loan Facility” shall mean the credit facility or portion thereof established by Lender in favor of Borrower for the purpose of providing working capital in the form of loans and/or Letters of Credit to finance the manufacture, production or purchase and subsequent export sale of Items pursuant to Loan Documents under which Credit Accommodations may be made and repaid on a continuous basis based solely on credit availability on the Export-Related Borrowing Base during the term of such credit facility

“Special Conditions” shall mean those conditions, if any, set forth in Section 13 of the Loan Authorization Agreement.

“Specific Export Orders” shall mean those Export Orders specified in Section 5.D. of the Loan Authorization Agreement as applicable for a Transaction Specific Revolving Loan Facility or a Transaction Specific Loan Facility.

“Standby Letters of Credit” shall mean those letters of credit subject to the ISP or UCP issued or caused to be issued by Lender for Borrower’s account that can be drawn upon by a Buyer only if Borrower fails to perform all of its obligations with respect to an Export Order.

“Transaction Specific Loan Facility” shall mean a credit facility or a portion thereof established by Lender in favor of Borrower for the purpose of providing working capital in the form of loans and/or Letters of Credit to finance the manufacture, production or purchase and subsequent export sale of Items pursuant to Loan Documents under which Credit Accommodations are made based solely on credit availability on the Export-Related Borrowing Base relating to Specific Export Orders and once such Credit Accommodations are repaid they may not be reborrowed.

“Transaction Specific Revolving Loan Facility” shall mean a Revolving Credit Facility established to provide financing of Specific Export Orders.

“UCC” shall mean the Uniform Commercial Code, as the same may be in effect from time to time in the relevant United States jurisdiction.

“UCP” shall mean the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500 and any amendments and revisions thereof.

“U.S.” or “United States” shall mean the United States of America including any division or agency thereof (including United States embassies or United States military bases located overseas), and any United States Territory (including without limitation, Puerto Rico, Guam or the United States Virgin Islands).

“U.S. Content” shall mean, with respect to any Item, all the costs, including labor, materials, services and overhead, but not markup or profit margin, which are of U.S. origin or manufacture, and which are incorporated into an Item in the United States.

“Warranty” shall mean Borrower’s guarantee to Buyer that the Items will function as intended during the warranty period set forth in the applicable Export Order.

“Warranty Letter of Credit” shall mean a Standby Letter of Credit which is issued or caused to be issued by Lender to support the obligations of Borrower with respect to a Warranty or a Standby Letter of Credit which by its terms becomes a Warranty Letter of Credit.

**1.02 Rules of Construction.** For purposes of this Agreement, the following additional rules of construction shall apply, unless specifically indicated to the contrary: (a) wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter; (b) the term “or” is not exclusive; (c) the term “including” (or any form thereof) shall not be limiting or exclusive; (d) all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations; (e) the words “this Agreement”, “herein”, “hereof”, “hereunder” or other words of similar import refer to this Agreement as a whole including the schedules, exhibits, and annexes

hereto as the same may be amended, modified or supplemented; (f) all references in this Agreement to sections, schedules, exhibits, and annexes shall refer to the corresponding sections, schedules, exhibits, and annexes of or to this Agreement; and (g) all references to any instruments or agreements, including references to any of the Loan Documents, the Delegated Authority Letter Agreement, or the Fast Track Lender Agreement shall include any and all modifications, amendments and supplements thereto and any and all extensions or renewals thereof to the extent permitted under this Agreement.

1.03 Incorporation of Recitals. The Recitals to this Agreement are incorporated into and shall constitute a part of this Agreement.

## **ARTICLE II OBLIGATIONS OF BORROWER**

Until payment in full of all Loan Facility Obligations and termination of the Loan Documents, Borrower agrees as follows:

2.01 Use of Credit Accommodations. (a) Borrower shall use Credit Accommodations only for the purpose of enabling Borrower to finance the cost of manufacturing, producing, purchasing or selling the Items. Borrower may not use any of the Credit Accommodations for the purpose of: (i) servicing or repaying any of Borrower's pre-existing or future indebtedness unrelated to the Loan Facility unless approved by Ex-Im Bank in writing; (ii) acquiring fixed assets or capital assets for use in Borrower's business; (iii) acquiring, equipping or renting commercial space outside of the United States; (iv) paying the salaries of non U.S. citizens or non-U.S. permanent residents who are located in offices outside of the United States; or (v) in connection with a Retainage or Warranty unless approved by Ex-Im Bank in writing.

(b) In addition, no Credit Accommodation may be used to finance the manufacture, purchase or sale of any of the following:

(i) Items to be sold to a Buyer located in a country as to which Ex-Im Bank is prohibited from doing business as designated in the Country Limitation Schedule;

(ii) that part of the cost of the Items which is not U.S. Content unless such part is not greater than fifty percent (50%) of the cost of the Items and is incorporated into the Items in the United States;

(iii) defense articles or defense services;

(iv) Capital Goods unless in accordance with Section 2.14 of this Agreement; or

(v) without Ex-Im Bank's prior written consent, any Items to be used in the construction, alteration, operation or maintenance of nuclear power, enrichment, reprocessing, research or heavy water production facilities.

2.02 Security Interests. Borrower agrees to cooperate with Lender in any steps Lender shall take to file and maintain valid, enforceable and perfected security interests in the Collateral.

2.03 Loan Documents and Loan Authorization Agreement. (a) This Agreement and each of the other Loan Documents applicable to Borrower have been duly executed and delivered on behalf of Borrower, and are and will continue to be legal and valid obligations of Borrower, enforceable against it in accordance with its terms.

(b) Borrower shall comply with all of the terms and conditions of this Agreement, the Loan Authorization Agreement and each of the other Loan Documents to which it is a party.

(c) Borrower hereby represents and warrants to Lender that Borrower is an Eligible Person.

2.04 Export-Related Borrowing Base Certificates and Export Orders. (a) In order to receive Credit Accommodations under the Loan Facility, Borrower shall have delivered to Lender an Export-Related Borrowing Base Certificate as frequently as required by Lender but at least within the past month, together with a copy of the Export Order(s) or, for Revolving Loan Facilities, if permitted by Lender, a written summary of the Export Orders (when Eligible Export-Related Inventory and Eligible Overseas Export-Related Inventory are entering the Export-Related Borrowing Base) against which Borrower is requesting Credit Accommodations. In addition, so long as there are any Credit Accommodations outstanding under the Loan Facility, Borrower shall deliver to Lender an Export-Related Borrowing Base Certificate at least once each month. Lender shall determine if daily electronic reporting reconciled monthly may substitute for monthly Export-Related Borrowing Base Certificates. If the Lender requires an Export-Related Borrowing Base Certificate more frequently, Borrower shall deliver such Export-Related Borrowing Base Certificate as required by Lender.

(b) If Lender permits summaries of Export Orders, Borrower shall also deliver promptly to Lender copies of any Export Orders requested by Lender.

2.05 Schedules, Reports and Other Statements. With the delivery of each Export-Related Borrowing Base Certificate required in Section 2.04 above, Borrower shall submit to Lender in writing (a) an Inventory schedule for the preceding month, as applicable, and (b) an Accounts Receivable Aging Report for the preceding month. Borrower shall also furnish to Lender promptly upon request such information, reports, contracts, invoices and other data concerning the Collateral as Lender may from time to time specify.

2.06 Exclusions from the Export-Related Borrowing Base. In determining the Export-Related Borrowing Base, Borrower shall exclude therefrom Inventory which are not Eligible Export-Related Inventory or Eligible Export-Related Overseas Inventory and Accounts Receivable which are not Eligible Export-Related Accounts Receivable or Eligible Export-Related Overseas Accounts Receivable. Borrower shall promptly, but in any event within five (5) Business Days, notify Lender (a) if any then existing Export-Related Inventory or Export-Related Overseas Inventory no longer constitutes Eligible Export-Related Inventory or Eligible Export-Related Overseas Inventory, as applicable or (b) of any event or circumstance which to Borrower's knowledge would cause Lender to consider any then existing Export-Related Accounts Receivable or Export-Related Overseas Accounts Receivable as no longer constituting an Eligible Export-Related Accounts Receivable or Eligible Export-Related Overseas Accounts Receivable, as applicable.

2.07 Borrowings and Reborrowings. (a) If the Loan Facility is a Revolving Loan Facility or Transaction Specific Revolving Loan Facility, provided that Borrower is not in default under any of the Loan Documents, Borrower may borrow, repay and reborrow amounts under such Loan Facility up to the credit available on the current Export-Related Borrowing Base Certificate subject to the terms of this Agreement and each of the other Loan Documents until the close of business on the Final Disbursement Date.

(b) If the Loan Facility is a Transaction Specific Loan Facility, provided that Borrower is not in default under any of the Loan Documents, Borrower may borrow (but not reborrow) amounts under the Loan Facility up to the credit available on the current Export-Related Borrowing Base Certificate subject to the terms of this Agreement and each of the other Loan Documents until the close of business on the Final Disbursement Date.

2.08 Repayment Terms. (a) The Borrower on a Revolving Loan Facility shall pay in full the outstanding Loan Facility Obligations no later than the first Business Day after the Final Disbursement Date unless such Loan Facility is renewed or extended by Lender consistent with procedures required by Ex-Im Bank.

(b) The Borrower on a Transaction Specific Loan Facility and a Transaction Specific Revolving Loan Facility shall, within two (2) Business Days of the receipt thereof, pay to Lender (for application against the outstanding Loan Facility Obligations) all checks, drafts, cash and other remittances it may receive in payment or on account of the Export-Related Accounts Receivable, Export-Related Overseas Accounts Receivable or any other Collateral, in precisely the form received (except for the endorsement of Borrower where necessary). Pending such deposit, Borrower shall hold such amounts in trust for Lender separate and apart and shall not commingle any such items of payment with any of its other funds or property. Unless a Transaction Specific Loan Facility or Transaction Specific Revolving Loan Facility is renewed or extended by Lender consistent with procedures required by Ex-Im Bank, Borrower shall pay in full all outstanding Loan Facility Obligations no later than the first Business Day after the Final Disbursement Date, except for Eligible Export-Related Accounts Receivables and Eligible Export-Related Overseas Accounts Receivable outstanding as of the Final Disbursement Date and due and payable after such date, for which the principal and accrued and unpaid interest thereon shall be due and payable no later than the first Business Day after the date such Accounts Receivable are due and payable.

2.09 Financial Statements. Borrower shall deliver to Lender the financial statements required to be delivered by Borrower in accordance with Section 11 of the Loan Authorization Agreement.

2.10 Additional Security or Payment. (a) Borrower shall at all times ensure that the Export-Related Borrowing Base equals or exceeds the aggregate outstanding amount of Disbursements. If informed by Lender or if Borrower otherwise has actual knowledge that the Export-Related Borrowing Base is at any time less than the aggregate outstanding amount of Disbursements, Borrower shall, within five (5) Business Days, either (i) furnish additional Collateral to Lender, in form and amount satisfactory to Lender and Ex-Im Bank or (ii) pay to Lender an amount equal to the difference between the aggregate outstanding amount of Disbursements and the Export-Related Borrowing Base.

(b) For purposes of this Agreement, in determining the Export-Related Borrowing Base there shall be deducted from the Export-Related Borrowing Base an amount equal to (i) twenty-five percent (25%) of the undrawn amount of outstanding Commercial Letters of Credit and Standby Letters of Credit and (ii) one hundred percent (100%) of the undrawn amount of outstanding Warranty Letters of Credit less the amount of cash collateral held by Lender to secure Warranty Letters of Credit.

(c) Unless otherwise approved in writing by Ex-Im Bank, for Revolving Loan Facilities (other than Transaction Specific Revolving Loan Facilities), Borrower shall at all times ensure that the sum of the outstanding amount of Disbursements and the undrawn amount of outstanding Commercial Letters of Credit that is supported by Eligible Export-Related Inventory or Eligible Export-Related Overseas Inventory (discounted by the relevant Advance Rate percentages) in the Export-Related Borrowing Base does not exceed sixty percent (60%) of the sum of the total outstanding amount of Disbursements and the undrawn amount of all outstanding Commercial Letters of Credit. If informed by Lender or if Borrower otherwise has actual knowledge that the sum of the outstanding amount of Disbursements and the undrawn amount of outstanding Commercial Letters of Credit that is supported by such Inventory exceeds sixty percent (60%) of the sum of the total outstanding Disbursements and the undrawn amount of all outstanding Commercial Letters of Credit, Borrower shall, within five (5) Business Days, either (i) furnish additional non-Inventory Collateral to Lender, in form and amount satisfactory to Lender and Ex-Im Bank, or (ii) pay down the applicable portion of the outstanding Disbursements or (iii) reduce the undrawn amount of outstanding Commercial Letters of Credit such that the above described ratio is not exceeded.

(d) If informed by Lender or if Borrower otherwise has actual knowledge that the conditions of Section 2.16(g) are at any time not being met, Borrower shall, within five (5) Business Days, either (i) furnish additional Collateral to Lender that is not Eligible Export-Related Overseas Accounts Receivable or Eligible Export-Related Overseas Inventory, in form and amount satisfactory to Lender and Ex-Im Bank, or (ii) remove from the Export-Related Borrowing Base the portion of Eligible Export-Related Overseas Accounts Receivable or Eligible Export-Related Overseas Inventory that supports greater than fifty percent (50%) of the Export-Related Borrowing Base.

2.11 Continued Security Interest. Borrower shall not change (a) its name or identity in any manner, (b) the location of its principal place of business or its jurisdiction of organization or formation, (c) the location of any of the Collateral or (d) the location of any of the books or records related to the Collateral, in each instance without giving thirty (30) days prior written notice thereof to Lender and taking all actions deemed necessary or appropriate by Lender to continuously protect and perfect Lender's Liens upon the Collateral.

2.12 Inspection of Collateral and Facilities. (a) Borrower shall permit the representatives of Lender and Ex-Im Bank to make at any time during normal business hours inspections of the Collateral and of Borrower's facilities, activities, and books and records, and shall cause its officers and employees to give full cooperation and assistance in connection therewith.

(b) Borrower agrees to facilitate Lender's conduct of field examinations at Borrower's facilities in accordance with the time schedule and content for such examinations

that Lender requests. Such field examinations shall address at a minimum: (x) the value of the Collateral against which Credit Accommodations may be provided, (y) the amount, if any, that the aggregate outstanding amount of Disbursements exceeds the Export-Related Borrowing Base and (z) whether such Borrower is in material compliance with the terms of each of the Loan Documents. Such field examinations shall include an inspection and evaluation of the Export-Related Inventory and Export-Related Overseas Inventory, a book audit of Export-Related Accounts Receivable and Export-Related Overseas Accounts Receivable, a review of the Accounts Receivable Aging Reports and a review of Borrower's compliance with any Special Conditions. Lenders who opt to use the Export-Related Historical Inventory Value in the Export-Related Borrowing Base calculation shall reconcile those numbers against the calculation for the relevant time periods using the Export-Related Inventory Value. Whenever Export-Related Accounts Receivable or Export-Related Inventory derived from Indirect Exports are in the Export-Related Borrowing Base, Lender shall verify compliance with Section 2.15 herein, including taking a random sampling of ultimate foreign purchasers.

2.13 **General Intangibles.** Borrower represents and warrants that it owns, or is licensed to use, all General Intangibles necessary to conduct its business as currently conducted except where the failure of Borrower to own or license such General Intangibles could not reasonably be expected to have a Material Adverse Effect.

2.14 **Economic Impact Approval.** (a) For Loan Facilities up to and including \$10 million, Borrower acknowledges that Capital Goods may not be included as Items, and Export-Related Inventory, Export-Related Overseas Inventory, Export-Related Accounts Receivable and Export-Related Overseas Accounts Receivable in connection with the sale of such Capital Goods may not be included in the Export-Related Borrowing Base, if such Capital Goods would enable a foreign buyer to establish or expand production of a product where, as of the date of the Economic Impact Certification covering such Item: (i) the Buyer is subject to a Final Anti-Dumping (AD) or Countervailing Duty (CVD) order, or a Suspension Agreement arising from a AD or CVD investigation, and such product is substantially the same as the product that is the subject of the AD/CVD order or suspension agreement; or (ii) the Buyer is the subject of a Section 201 injury determination by the International Trade Commission ("ITC") and such product is substantially the same as a product that is the subject of the ITC injury determination. Borrower may consult with Ex-Im Bank regarding the appropriate application of this Section 2.14(a) and may, at its option, request that Ex-Im Bank issue an Economic Impact Approval covering any Items listed in Section 4.A. of the Loan Authorization Agreement. For Loan Facilities over \$10 million involving Items that are Capital Goods, Borrower shall obtain from Ex-Im Bank, and abide by, an Economic Impact Approval covering all Items listed in Section 4(A) of the Loan Authorization Agreement.

(b) Borrower shall provide Lender with a certification in the form of Annex B (an "Economic Impact Certification") covering the Items stated in Section 4(A) of the Loan Authorization Agreement prior to Lender including such Items in the Loan Authorization Agreement. Prior to Lender amending the Loan Authorization Agreement to include additional Items, Borrower shall provide Lender with an additional Economic Impact Certification covering such additional Items.

2.15 **Indirect Exports.** Indirect Exports may be included as Items in a Loan Facility provided that funds available under such Loan Facility's Export-Related Borrowing Base

supported by Accounts Receivable and Inventory derived from Indirect Exports at no time exceed ten percent (10%) of the Maximum Amount of such Loan Facility, and provided, further that (a) the ultimate foreign buyer for the Items must be located in a country in which Ex-Im Bank is not legally prohibited from doing business in accordance with the Country Limitation Schedule, and (b) the Borrower must make available to Lender verifiable evidence of intent to export the Indirect Exports from the United States, which evidence may be contained in the Export Orders and Accounts Receivable Aging Reports and supporting documents. Lender must obtain written consent from Ex-Im Bank prior to including funds derived from Indirect Exports in an Export-Related Borrowing Base above the ten percent (10%) threshold.

2.16 Overseas Inventory and Accounts Receivable. Upon the prior written consent of Ex-Im Bank, Export-Related Overseas Accounts Receivable and Export-Related Overseas Inventory of a Borrower or of an Affiliated Foreign Person (as defined below) may be included in the Export-Related Borrowing Base provided that conditions required by Ex-Im Bank, including the following, are met:

- (a) the Affiliated Foreign Person, if any, has been approved by Ex-Im Bank;
- (b) the Affiliated Foreign Person, if any, is a Borrower under the relevant Loan Facility;
- (c) notwithstanding the Maximum Amount of the Loan Facility, all payments due and payable on such Export-Related Overseas Accounts Receivable are collected through a cash collateral account under Lender's control;
- (d) as of the Effective Date, or such later date when the Export-Related Overseas Accounts Receivable and/or Export-Related Overseas Inventory are added to the Loan Facility, Lender has obtained a valid and enforceable first priority Lien in the Export-Related Overseas Accounts Receivable and Export-Related Overseas Inventory, as applicable;
- (e) as of the Effective Date, or such later date when the Export-Related Overseas Accounts Receivable and/or Export-Related Overseas Inventory are added to the Loan Facility, Lender has obtained a legal opinion confirming the security interest in the Export-Related Overseas Accounts Receivable and Export-Related Overseas Inventory;
- (f) the Export-Related Overseas Accounts Receivable are due and payable in United States Dollars or other currency acceptable to Ex-Im Bank; and
- (g) at no time may the portion of the Export-Related Borrowing Base derived from Eligible Export-Related Overseas Accounts Receivable and Eligible Export-Related Overseas Inventory exceed fifty percent (50%) of the Export-Related Borrowing Base.

For purposes hereof, an "Affiliated Foreign Person" shall mean a subsidiary or affiliate of a Borrower on the same Loan Facility, which has duly executed as a Borrower all of the applicable Loan Documents and any other documents required by Ex-Im Bank, meets all of the requirements of the definition of Eligible Person other than subclause (a) thereof and is in good standing in the country of its formation or otherwise authorized to conduct business in such country.



2.17 Country Limitation Schedule. Unless otherwise informed in writing by Lender or Ex-Im Bank, Borrower shall be entitled to rely on the last copy of the Country Limitation Schedule distributed from Lender to Borrower.

2.18 Notice of Certain Events. Borrower shall promptly, but in any event within five (5) Business Days, notify Lender in writing of the occurrence of any of the following:

(a) Borrower or any Guarantor (i) applies for, consents to or suffers the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or similar fiduciary of itself or of all or a substantial part of its property or calls a meeting of its creditors, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due or ceases operations of its present business, (iii) makes a general assignment for the benefit of creditors, (iv) commences a voluntary case under any state or federal bankruptcy laws (as now or hereafter in effect), (v) is adjudicated as bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law providing for the relief of debtors, (vii) acquiesces to, or fails to have dismissed within thirty (30) days, any petition filed against it in any involuntary case under such bankruptcy laws, or (viii) takes any action for the purpose of effecting any of the foregoing;

(b) any Lien in any of the Collateral, granted or intended by the Loan Documents to be granted to Lender, ceases to be a valid, enforceable, perfected, first priority Lien (or a lesser priority if expressly permitted pursuant to Section 6 of the Loan Authorization Agreement) subject only to Permitted Liens;

(c) the issuance of any levy, assessment, attachment, seizure or Lien, other than a Permitted Lien, against any of the Collateral which is not stayed or lifted within thirty (30) calendar days;

(d) any proceeding is commenced by or against Borrower or any Guarantor for the liquidation of its assets or dissolution;

(e) any litigation is filed against Borrower or any Guarantor which has had or could reasonably be expected to have a Material Adverse Effect and such litigation is not withdrawn or dismissed within thirty (30) calendar days of the filing thereof;

(f) any default or event of default under the Loan Documents;

(g) any failure to comply with any terms of the Loan Authorization Agreement;

(h) any material provision of this Agreement or any other Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms;

(i) any event which has had or could reasonably be expected to have a Material Adverse Effect; or

(j) the aggregate outstanding amount of Disbursements exceeds the applicable Export-Related Borrowing Base.

2.19 Insurance. Borrower will at all times carry property, liability and other insurance, with insurers acceptable to Lender, in such form and amounts, and with such deductibles and other provisions, as Lender shall require, and Borrower will provide evidence of such insurance to Lender on the proper Acord Form, so that Lender is satisfied that such insurance is, at all times, in full force and effect. Each property insurance policy shall name Lender as loss payee or mortgagee and shall contain a lender's loss payable endorsement in form acceptable to Lender and each liability insurance policy shall name Lender as an additional insured. All policies of insurance shall provide that they may not be cancelled or changed without at least thirty (30) days' prior written notice to Lender and shall otherwise be in form and substance satisfactory to Lender. Borrower will promptly deliver to Lender copies of all reports made to insurance companies.

2.20 Taxes. Borrower has timely filed all tax returns and reports required by applicable law, has timely paid all applicable taxes, assessments, deposits and contributions owing by Borrower and will timely pay all such items in the future as they became due and payable. Borrower may, however, defer payment of any contested taxes; provided, that Borrower (a) in good faith contests Borrower's obligation to pay such taxes by appropriate proceedings promptly and diligently instituted and conducted; (b) notifies Lender in writing of the commencement of, and any material development in, the proceedings; (c) posts bonds or takes any other steps required to keep the contested taxes from becoming a Lien upon any of the Collateral; and (d) maintains adequate reserves therefore in conformity with GAAP.

2.21 Compliance with Laws. Borrower represents and warrants that it has complied in all material respects with all provisions of all applicable laws and regulations, including those relating to Borrower's ownership of real or personal property, the conduct and licensing of Borrower's business, the payment and withholding of taxes, ERISA and other employee matters, safety and environmental matters.

2.22 Negative Covenants. Without the prior written consent of Ex-Im Bank and Lender, Borrower shall not: (a) merge, consolidate or otherwise combine with any other Person; (b) acquire all or substantially all of the assets or capital stock of any other Person; (c) sell, lease, transfer, convey, assign or otherwise dispose of any of its assets, except for the sale of Inventory in the ordinary course of business and the disposition of obsolete equipment in the ordinary course of business; (d) create any Lien on the Collateral except for Permitted Liens; (e) make any material changes in its organizational structure or identity; or (f) enter into any agreement to do any of the foregoing.

2.23 Cross Default. Borrower shall be deemed in default under the Loan Facility if Borrower fails to pay when due any amount payable to Lender under any loan or other credit accommodations to Borrower whether or not guaranteed by Ex-Im Bank.

2.24 Munitions List. If any of the Items are articles, services, or related technical data that are listed on the United States Munitions List (part 121 of title 22 of the Code of Federal Regulations), Borrower shall send a written notice promptly, but in any event within five (5) Business Days, of Borrower learning thereof to Lender describing the Items(s) and the corresponding invoice amount.

2.25 Suspension and Debarment, etc. On the date of this Agreement neither Borrower nor its Principals are (a) debarred, suspended, proposed for debarment with a final determination

still pending, declared ineligible or voluntarily excluded (as such terms are defined under any of the Debarment Regulations referred to below) from participating in procurement or nonprocurement transactions with any United States federal government department or agency pursuant to any of the Debarment Regulations or (b) indicted, convicted or had a civil judgment rendered against Borrower or any of its Principals for any of the offenses listed in any of the Debarment Regulations. Unless authorized by Ex-Im Bank, Borrower will not knowingly enter into any transactions in connection with the Items with any person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in procurement or nonprocurement transactions with any United States federal government department or agency pursuant to any of the Debarment Regulations. Borrower will provide immediate written notice to Lender if at any time it learns that the certification set forth in this Section 2.24 was erroneous when made or has become erroneous by reason of changed circumstances.

### **ARTICLE III RIGHTS AND REMEDIES**

3.01 Indemnification. Upon Ex-Im Bank's payment of a Claim to Lender in connection with the Loan Facility pursuant to the Master Guarantee Agreement, Ex-Im Bank may assume all rights and remedies of Lender under the Loan Documents and may enforce any such rights or remedies against Borrower, the Collateral and any Guarantors. Borrower shall hold Ex-Im Bank and Lender harmless from and indemnify them against any and all liabilities, damages, claims, costs and losses incurred or suffered by either of them resulting from (a) any materially incorrect certification or statement knowingly made by Borrower or its agent to Ex-Im Bank or Lender in connection with the Loan Facility, this Agreement, the Loan Authorization Agreement or any other Loan Documents or (b) any material breach by Borrower of the terms and conditions of this Agreement, the Loan Authorization Agreement or any of the other Loan Documents. Borrower also acknowledges that any statement, certification or representation made by Borrower in connection with the Loan Facility is subject to the penalties provided in Article 18 U.S.C. Section 1001.

3.02 Liens. Borrower agrees that any and all Liens granted by it to Lender are also hereby granted to Ex-Im Bank to secure Borrower's obligation, however arising, to reimburse Ex-Im Bank for any payments made by Ex-Im Bank pursuant to the Master Guarantee Agreement. Lender is authorized to apply the proceeds of, and recoveries from, any property subject to such Liens to the satisfaction of Loan Facility Obligations in accordance with the terms of any agreement between Lender and Ex-Im Bank.

**ARTICLE IV  
MISCELLANEOUS**

4.01 Governing Law. This Agreement and the obligations arising under this Agreement shall be governed by, and construed in accordance with, the law of the state governing the Loan Agreement.

4.02 Notification. All notices required by this Agreement shall be given in the manner and to the parties provided for in the Loan Agreement.

4.03 Partial Invalidity. If at any time any of the provisions of this Agreement becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, the validity nor the enforceability of the remaining provisions hereof shall in any way be affected or impaired.

4.04 Waiver of Jury Trial. BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT, PROCEEDING OR OTHER LITIGATION BROUGHT TO RESOLVE ANY DISPUTE ARISING UNDER, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE LOAN AUTHORIZATION AGREEMENT, ANY LOAN DOCUMENT, OR ANY OTHER AGREEMENT, DOCUMENT OR INSTRUMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THEREWITH OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OR OMISSIONS OF LENDER, EX- IM BANK, OR ANY OTHER PERSON, RELATING TO THIS AGREEMENT, THE LOAN AUTHORIZATION AGREEMENT OR ANY OTHER LOAN DOCUMENT.

4.05 Consequential Damages. Neither Ex-Im Bank, Lender nor any agent or attorney for any of them shall be liable to Borrower for consequential damages arising from any breach of contract, tort or other wrong relating to the establishment, administration or collection of the Loan Facility Obligations.

IN WITNESS WHEREOF, Borrower has caused this Agreement to be duly executed as of the 16<sup>th</sup> day of January, 2007.

Iridex Corporation

(Name of Borrower)

By: /s/ Larry Tannenbaum  
(Signature)  
Name: Larry Tannenbaum  
(Print or Type)  
Title: CFO  
(Print or Type)

ACKNOWLEDGED:

Mid-Peninsula Bank — part of Greater Bay Bank, N.A.  
(Name of Lender)

By: /s/ Sarah Lewis  
(Signature)  
Name : Sarah Lewis  
(Print or Type)  
Title : Senior Vice President  
(Print or Type)

ANNEXES:

Annex A - Loan Authorization Agreement, Fast Track Loan Authorization Agreement or Loan Authorization Notice, as applicable

Annex B - Economic Impact Certification

CONSENT OF GUARANTORS

Each of the undersigned as a Guarantor of the obligations of Borrower to the Lender executing the foregoing Agreement hereby agrees that the foregoing Agreement, each of their respective Guarantee Agreements and each other Loan Documents may be assigned to the Export-Import Bank of the United States.

\_\_\_\_\_  
[INDIVIDUAL GUARANTOR]

[CORPORATE GUARANTOR]

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

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

Title: \_\_\_\_\_

FOR IMMEDIATE RELEASE

Contact: Larry Tannenbaum  
Chief Financial Officer  
(650) 940-4700January 17, 2007  
Mountain View, California**IRIDEX CLOSSES ACQUISITION OF LASERSCOPE  
AESTHETICS BUSINESS***Updates Fourth Quarter 2006 Revenue Forecast  
Provides Preliminary 2007 Outlook*

IRIDEX Corporation (NASDAQ/NMS: IRIX) today announced that it has completed the acquisition of the aesthetics business of Laserscope pursuant to the terms of the definitive agreement IRIDEX entered into with Laserscope and American Medical Systems Holdings, Inc. on November 30, 2006.

Under the agreement, IRIDEX has acquired certain assets and liabilities of Laserscope including four patents, a license to an additional nine Laserscope patents, and a license under Palomar hair removal patents, for \$26 million in cash and approximately 214,000 unregistered shares of IRIDEX Common Stock. IRIDEX has also acquired between \$7.3 million and \$9.5 million in net assets in this transaction, including accounts receivable from Laserscope. The cash payment and net assets are subject to post closing adjustments. IRIDEX used a combination of existing cash and bank financing, provided by Mid Peninsula Bank, to close the transaction.

“We are very excited about the potential for shareholder returns generated by combining the Laserscope team of employees and technology with the current capabilities at IRIDEX,” said Barry Caldwell, President and CEO. “We have already begun the integration process and will begin cross-training sessions with the U.S. sales, service and clinical teams next week. Our preliminary assessment of our opportunities in 2007 leads us to believe that on a combined basis, revenue for the full year 2007 should be approximately \$75 million. This would compare with preliminary full year 2006 revenue of approximately \$36 million. The preliminary 2006 revenue result is below our original forecast due to a combination of orders falling short of expectations for dermatology and international ophthalmic equipment and to manufacturing capacity constraints that impacted the shipping of one of our recently introduced laser products. As a result, we expect our fourth quarter revenue to be approximately \$9.0 million with nearly \$600,000 in backlog.

“With the acquisition closed, we are now focused on refining our 2007 plan. We do expect that for the year, not including any one-time charges associated with the acquisition, we will generate solid profitability on a GAAP basis and have approximately 8.8 million shares outstanding as of today. We currently plan to provide further detail on our 2007 outlook when we report our final fourth quarter and 2006 results in early March,” Mr. Caldwell concluded.

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## **About IRIDEX**

IRIDEX Corporation is a leading worldwide provider of therapeutic based laser systems, disposable laser probes and delivery devices to treat eye diseases in ophthalmology and skin diseases in dermatology markets (also referred to as aesthetics). IRIDEX products are sold in the United States through a direct sales force and internationally through a network of 77 independent distributors into 107 countries. For further information, visit the Company's website at [www.iridex.com](http://www.iridex.com)

## **Safe Harbor Statement**

This announcement contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended and Section 21E of the Securities Act of 1934, as amended, relating to the Company's growth prospects, efforts to integrate the Laserscope aesthetics business, revenue growth, earnings, profitability and ability to provide future forecasts. Actual results could differ materially and adversely from those projected in the forward- looking statements based on, among other things, the risk that we will need to make adjustments to our financial results as part of the Company's customary quarterly and annual financial closing procedures and review by the Company's management and independent registered public accounting firm, the actual order and shipment rate for the Company's ophthalmology and dermatology product lines, the rate of sales to OEM customers, the rate of growth in sales of disposables and services, our ability to reduce expenses, our ability to remediate material weaknesses in our disclosure controls and the impact of any continuing weakness and uncertainties related to general economic conditions or weakness in overall demand in the Company's markets, especially with regard to the Company's dermatology products which are typically used for elective procedures that can be deferred. Additional risks and uncertainties to which the Company are subject may include, but may not necessarily be limited to, the amount of orders that the Company receives and ships, dependence on international sales and the Company's network of independent distributors, the risks associated with bringing new products to market, and the results of clinical trials and competition in our markets, as well as the risks associated with a competitive market for management talent and the risks inherent with identifying, negotiating and integrating strategic acquisitions of complementary businesses, including the acquisition of the aesthetics business of Laserscope, products or technologies. Please see a detailed description of these risks contained in our Quarterly Reports on Form 10-Q and Annual Report on Form 10-K for the fiscal year ended December 31, 2005 filed with the Securities and Exchange Commission. Forward- looking statements contained in this announcement are made as of this date and will not be updated.