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To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Miracle Optics

- Individual(s)
- Association
- General Partnership
- Limited Partnership
- Corporation-State of California
- Other \_\_\_\_\_

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

2. Name and address of receiving party(ies)

Name: Viva IP Corp.

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

Street Address: 3140 Route 22 West

City: Sommerville State: NJ Zip: 08876

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State of New Jersey
- Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached?  Yes  No

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other \_\_\_\_\_

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

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

76/188,818

Additional number(s) attached  Yes  No

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

Name: Craig D. Spector, Esq.

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

Street Address: Shapiro & Croland, 411

Hackensack Avenue

City: Hackensack State: NJ Zip: 07601

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41)..... \$ 40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Craig D. Spector, Esq.  
Name of Person Signing

Signature

1/3/02  
Date

Total number of pages including cover sheet, attachments, and document: 4

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patent & Trademarks, Box Assignments  
Washington, D.C. 20231

01/07/2002 6TOM11 00000063 76188818

01 FC:481

40.00 OP

NOTICE  
OF  
GRANT OF SECURITY INTEREST  
IN  
TRADEMARKS

Pursuant to that certain Loan Agreement, dated as of November 16, 2001, (as the same may be amended, modified, extended or restated from time to time, the "Agreement") by and between Miracle Optics, Inc., a California corporation (a/k/a Miracle Optics, a California corporation) (the "Grantor" ), and Viva IP Corp. ("Lender"), Grantor has granted to the Lender a continuing security interest in and continuing lien upon, the trademarks and trademark applications shown below:

TRADEMARKS

<u>Trademark Serial No.</u>	<u>Mark</u>	Publication Date of <u>Trademark</u>
76/188,818	Magic Clip	July 24, 2001

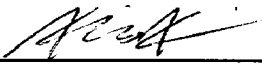
TRADEMARK APPLICATIONS

<u>Trademark Applications No.</u>	<u>Description of Trademark Applied For</u>	<u>Date of Trademark Applications</u>
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Grantor and the Lender, hereby acknowledge and agree that the security interest in the foregoing trademarks and trademark applications (i) may only be terminated in accordance with the terms of the Agreement and (ii) is not to be construed as an assignment or license of any trademark or trademark application.

Very truly yours,

MIRACLE OPTICS, INC. (a/k/a Miracle Optics), a California corporation

By:   
Name: Xin Xiao  
Title: President

Acknowledged and Accepted:

VIVA IP CORP.

By:   
Name: Harvey Ross  
Title: President

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles } ss.

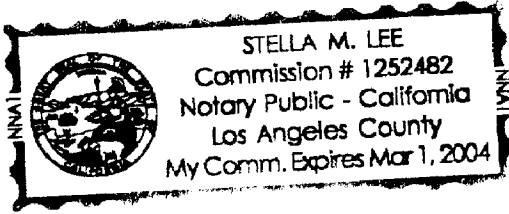
On 12/17/2001, before me, Stella M Lee,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Xin Xiao  
Name(s) of Signer(s)

personally known to me  
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Place Notary Seal Above

[Signature]  
Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: Notice of Grant of Security Interest in Trademarks

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): President
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

LOAN AGREEMENT

BY AND AMONG

VIVA IP CORP.

AS LENDER

AND

MIRACLE OPTICS, XIN XIAO,  
SHIJUN ZHENG AND MING XIAO  
COLLECTIVELY

AS BORROWER

Dated: as of November 16, 2001

Prepared by:

Shapiro & Croland

411 Hackensack Avenue

Hackensack, New Jersey 07601

(201) 488-3900

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LOAN AGREEMENT

This Loan Agreement, dated as of the 16<sup>th</sup> day of November, 2001 by and among VIVA IP CORP., a New Jersey corporation, having an office 3140 Route 22 West, Somerville, New Jersey 08876 ("Lender"), MIRACLE OPTICS, a California corporation, having an office at 709 Brea Canyon Road, Suite 7, Walnut, California 91789 ("Miracle"), XIN XIAO (a/k/a Tony Xin Xiao), residing at 1235 Lindengrove Avenue, Rowland Heights, California 91748 ("Tony"), SHIJUN ZHENG (a/k/a Bob Zheng), residing at 1528 Euclid Street, Unit #7, Santa Monica, California 90404 ("Bob") and MING XIAO (a/k/a Michael Xiao), residing at 1235 Lindengrove Avenue, Rowland Heights, California 91748 ("Michael" and, together with Miracle, Tony, and Bob "Borrower").

W I T N E S S E T H:

WHEREAS, Borrower desires to borrow the sum of up to \$1,000,000.00 (the "Loan") from Lender and Lender has agreed to make the Loan subject to terms and conditions herein contained.

NOW THEREFORE, in consideration of Ten and 00/100 (\$10.00) Dollars, the foregoing premise and other good and valuable consideration including, without limitation the mutual premises and agreements set forth in this Agreement, the parties hereto agree as follows:

**Section 1. Certain Definitions.** As used herein the following terms shall have the following meanings for all purposes of this Agreement:

**1.1 "040 Patent"** shall mean U.S. Patent 6132040 entitled "Auxiliary Interlocking Frame for Eyeglasses" and anticipated amendments and modifications to the foregoing, as well as certain related magnetic clip-on technology patent applications currently being developed and prepared for submission to the United States Patent and Trademark Office for letters patent by Borrowers.

**1.2 "732 Patent"** shall mean U.S. Patent 6116732 entitled "Interlock Magnetic Shelter Frame in Spectacle" and anticipated amendments and modifications to the foregoing, as well as certain related magnetic clip-on technology patent applications currently being developed and prepared for



submission to the United States Patent and Trademark Office for letters patent by Borrowers.

1.3 "**Acceleration Notice**" shall have the meaning ascribed thereto in Section 8 of this Agreement.

1.4 "**Affiliate**" shall mean, with respect to any Person (the "**Person specified**"), any other Person that:

(a) directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified;

(b) is a director or officer or manager of the Person specified or of any Person covered by subdivision (a) above;

(c) is a direct or indirect general partner, beneficiary of a trust or other owner of any stock or membership interest or other evidences of beneficial ownership of or in the Person specified or any Person covered by subdivision (b) above; or

(d) is related by blood or marriage to the Person specified or any Person covered by subdivisions (a), (b) or (c) above or the spouse, if any, of the foregoing Persons.

The term "**control**" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting stock, partnership or membership interests, by contract or otherwise.

1.5 "**Aspex Litigation**" shall mean the Complaint, Counterclaim and any and all amendments thereof in the matter captioned Aspex Eyewear, Inc., et al. v. Miracle Optics pending in the United States District Court for the Southern District of New York (Case No. 01-CIV-2671).

1.6 "**Available Principal Amount**" shall mean One Million and 00/100 (\$1,000,000) Dollars available to Borrower pursuant to the Note.

1.7 "Bankruptcy Code" shall mean the United States Bankruptcy Reform Act of 1978, as amended, or any successor statute, and the rules promulgated thereunder.

1.8 "Basic Interest" shall mean the amount of interest at the Basic Interest Rate payable from time to time on the Loan pursuant to this Agreement and the Note.

1.9 "Basic Interest Rate" shall mean a per annum rate equal to eight (8%) percent, calculated on the basis of a 360-day year and charged for the actual number of days elapsed.

1.10 "Borrower's Counsel Opinion" shall mean that certain opinion of Mark Ziemba, Esq., of even date herewith, reasonably acceptable to Lender, regarding Borrower and the Loan, issued as a condition precedent to the making of the Loan on the Effective Date, which shall include, but not be limited to, a usury opinion as well as an opinion as to the enforceability of the Loan transaction under New Jersey law.

1.11 "Business Day(s)" shall mean any day other than a Saturday, Sunday or day on which the banks in The City of New York are authorized or obligated by law or local proclamation to be closed.

1.12 "Calendar Quarter" shall mean each and every three (3) month calendar period during the term of this Agreement comprising the months (or portions thereof) of (a) January, February and March, (b) April, May and June, (c) July, August and September, and (d) October, November and December; provided, however, that the first Calendar Quarter shall commence on the Effective Date and end on September 30, 2001.

1.13 "Capital Stock" shall mean that capital stock of Miracle described in Section 5.29 of this Agreement.

1.14 "Collateral" shall mean any and all of the Capital Stock, IP Collateral and the Miracle Collateral.

1.15 "Collection Costs" shall have the meaning ascribed thereto in the Section 10.1 of this Agreement.

1.16 "Contingent Obligation" shall mean, as to any Person, any obligation, direct or indirect, contingent or otherwise, of such Person (a) with respect to any Debt or other

obligation of another Person, including any direct or indirect guarantee of such Debt (other than any endorsement for collection in the ordinary course of business) or any other direct or indirect obligation, by agreement or otherwise, to purchase or repurchase any such Debt or obligation or any security therefor, or to provide funds for the payment or discharge of any such Debt or obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise), (b) to provide funds to maintain the financial condition of the other Person, or (c) otherwise to assure or hold harmless the holders of Debt or other obligation of another Person against loss in respect thereof. The amount of any Contingent Obligation shall be an amount equal to the amount of the Debt or obligation guaranteed or otherwise supported thereby.

**1.17 "Contracts"** shall mean any agreements or understandings (whether written or unwritten) granting any person rights in, to or against Miracle or the Collateral, now or hereafter affecting the Collateral.

**1.18 "Debt"** shall mean, with respect to any Person, the aggregate amount of, without duplication: (a) all obligations for borrowed money (secured or unsecured), (b) all obligations evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations to pay the deferred purchase price of property or services, except short term unsecured indebtedness arising in the ordinary course of business and paid timely by Borrower, (d) all capitalized leases, (e) all obligations or liabilities of others secured by a lien on any asset owned by such Person or Persons whether or not such obligation or liability is assumed, (f) all obligations of such Person or Persons, contingent or otherwise, in respect of any letters of credit or banker's acceptances and (g) all Contingent Obligations.

**1.19 "Default"** shall mean any event or condition which, with the giving of notice or the lapse of time, or both, would constitute an Event of Default.

**1.20 "Default Rate"** shall mean a rate of interest equal to the lesser of (a) thirteen percent (13%) per annum or (b) the highest rate permitted by applicable law, calculated on the basis of a 360-day year and charged for the actual number of days elapsed.

1.21 "Effective Date" shall mean the date of this Agreement.

1.22 "ERISA" shall mean the Employment Retirement Income Security Act of 1974, as amended.

1.23 "Event of Default" shall have the meaning ascribed thereto in Section 7 of this Agreement.

1.24 "Exclusive License Agreements" shall mean the Exclusive License Agreements, dated as of November 16, entered into by and between Miracle and Tony pertaining to the Patents.

1.25 "Expiration Date" shall have the meaning ascribed thereto in Section 3.1 of this Agreement.

1.26 "Final Disposition" shall mean a settlement of the Aspek Litigation resulting in a voluntary dismissal of the complaint and counterclaim with prejudice.

1.27 "Final Judgment" shall mean a judgment that is final and is no longer subject to appeal.

1.28 "Financial Statements" shall mean:

(a) Financial Statements dated as of June 30, 2001 prepared by the certified public accountants for Miracle;

(b) as soon as practicable and in any event on or before April 15<sup>th</sup> next following the end of each Fiscal Year of Borrower, the balance sheet of Borrower as of the end of such year and the related statements of income, stockholders' equity and cash flow of Borrower for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and compiled by Miracle's accountants, which report shall state that such financial statements present fairly the financial position of Borrower as at the date indicated and the results of its operations and cash flow for the periods indicated, presented, as applicable, in accordance with accounting practices consistent with the current accounting practices of Miracle;

(c) as soon as practicable and in any event within forty-five (45) Business Days after the end of each Calendar Quarter of Borrower, as of the end of such quarter,

statements of income and expense of Borrower for such quarter, prepared on a cash basis, setting forth in each case in comparative form the figures for the prior Calendar Quarter, all in reasonable detail and certified by a duly authorized officer of Borrower as presenting fairly the financial condition of Borrower as at the dates indicated and for the periods indicated;

(d) Intentionally Omitted.

(e) together with each delivery of financial statements pursuant to subdivisions (a), (b) and (c) above, a certificate of an officer of Borrower, stating that there has been reviewed thereby the terms of the Loan Documents and there has made thereby, a review in reasonable detail of the transactions and condition of Borrower during the accounting period covered by such financial statements and that such review has not disclosed the existence of any Default or Event of Default during or at the end of such accounting period and that such an officer does not have knowledge of the existence, as at the date of such certificate, of any Default or Event of Default, or, if such an officer does have knowledge that a Default or an Event of Default existed or exists, specifying the nature and period of existence thereof and what action Borrower has taken, is taking, or proposes to take with respect thereto;

(f) promptly after and in any event within five (5) Business Days after Borrower becomes aware of the occurrence of any Default or Event of Default, a certificate of Borrower setting forth the details thereof and the action which Borrower is taking or proposes to take with respect thereto;

(g) promptly and in any event within five (5) Business Days after Borrower obtains knowledge thereof, written notice of all litigation or proceedings commenced or threatened affecting Borrower (a) in which there is a reasonable possibility of an adverse decision and liability in excess of \$50,000, (b) in which injunctive or similar relief is sought which if obtained could have a Material Adverse Effect or (c) which questions the validity or enforceability of any Loan Document;

(h) promptly and in any event within five (5) Business Days after the receipt thereof by Borrower a copy of any notice, summons, citation or written communication concerning any actual, alleged, suspected or threatened violation of Environmental Laws;

(i) promptly and in any event within five (5) Business Days after the availability thereof, copies of all amendments to the formation documents of Borrower (provided, however, that nothing contained in this subdivision (h) shall be deemed to permit Borrower to so amend its formation documents without the consent of Lender, unless an amendment is required by law); and

(j) from time to time such additional information regarding the financial position or business of Borrower as Lender may reasonably request.

**1.29 "Financing Statements"** shall mean UCC (Form-1) Financing Statements.

**1.30 "Fiscal Year"** shall mean the fiscal year of Miracle, which shall be the twelve (12) month period ending on each December 31.

**1.31 "IP Collateral"** shall have the meaning ascribed to that term in the IP Security Agreement.

**1.32 "Interest Rate"** shall mean the Basic Interest Rate.

**1.33 "IP Security Agreement"** shall mean that certain Intellectual Property Security Agreement, of even date herewith, granted by Borrower to Lender.

**1.34 "Late Charge(s)"** shall mean the payment in the amount of six (6%) percent of any payment required to be made under any of the Loan Documents, not made on or prior to the date set forth in this Agreement and/or the other Loan Documents.

**1.35 "Leases"** shall mean any agreements or understandings (whether written or unwritten) granting rights of possession or use of all or any portion of the Collateral to any Person (including any Affiliate), whether the same shall be entitled a lease or otherwise, now or hereafter affecting the Collateral.

**1.36 "Loan"** shall (a) have the meaning ascribed thereto in the recitals of this Agreement and (b) mean and include the principal indebtedness evidenced by the Note, all accrued and unpaid Basic Interest, interest at the Default Rate, Late Charges

and other sums and charges due and payable from time to time, and all other obligations of Borrower or Guarantors under this Agreement and the other Loan Documents.

1.37 "Loan Documents" shall mean the documents, instruments, agreements and pledges, described in Section 4.1 of this Agreement and all other written matter now and/or from time to time hereafter executed by and/or on behalf of Borrower, or any of them, or at its or their direction, evidencing, securing or in any way relating to the Loan or delivered in connection therewith and with this Agreement, and all amendments, modifications and supplements to the foregoing.

1.38 "Material", "Material Adverse Effect" or "Material Adverse Change" shall mean (a) a condition or event material to, (b) a material adverse effect on or (c) a material adverse change in, as the case may be, any one or more of the following: (i) the business, assets, results of operations, financial condition or prospects of Borrower, or any of them, or (ii) the ability of Borrower, or any of them, to perform any of their respective obligations under any Loan Document to which Borrower, or any of them, is a party.

1.39 "Maturity Date" shall mean the date which is ten (10) days after the later of (a) a Final Judgment in the Aspex Litigation or other Final Disposition is entered or achieved in the Aspex Litigation, or (b) the expiration of the fully unexercised Option.

1.40 "Miracle Collateral" shall mean collateral described in Schedule 1.40, attached hereto and made a part hereof.

1.41 "Note" shall mean that certain Promissory Note, of even date herewith, in the original principal amount of \$1,000,000.00, made by Borrower to the order of Lender.

1.42 "Option" shall have the meaning ascribed to that term in Section 3.1 of the Agreement.

1.43 "Option Notice" shall have the meaning ascribed to that term in Section 3.1 of the Agreement.

1.44 "Option Property" shall have the meaning ascribed to that term in Section 3.1 of the Agreement.

1.45 "Outstanding Loan Obligations" shall mean the sum, from time to time, of (a) the Outstanding Principal Amount, (b) accrued and unpaid Basic Interest, (c) accrued and unpaid interest at the Default Rate, (d) Late Charges, (e) the Collection Costs, and (f) all other amounts due and payable under this Agreement and the other Loan Documents.

1.46 "Outstanding Principal Amount" shall mean the outstanding principal amount of the Loan from time to time.

1.47 "Patents" shall mean the 732 Patent and the 040 Patent collectively.

1.48 "Person" shall mean an individual, corporation, partnership, joint venture, association, limited liability company, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or other entity.

1.49 "Pledge and Security Agreement" shall mean that certain Pledge and Security Agreement, of even date herewith, by the shareholder(s) of Borrower in favor of Lender.

1.50 "Prohibited Action" shall mean (a) the commencement of any action or proceeding by Borrower or any Guarantors or any Affiliate of any thereof seeking to or having the effect of (i) challenging the validity or enforceability of the Loan Documents, or any of them, whether in whole or in part, or any provision therein contained, (ii) rescinding the Loan Documents, or any of them, whether in whole or in part or (iii) modifying the Loan Documents, or any of them, in whole or in part, if the intent, purpose or effect thereof is to delay, hinder or postpone or otherwise interfere with the rights and remedies available to Lender under the Loan Documents, or any of them or (b) if Borrower or Guarantor or any Corporate Guarantor or any Affiliate of any thereof shall oppose any motion or application made by Lender to modify or lift the automatic stay imposed pursuant to Section 362 of the Bankruptcy Code upon any filing by or against Borrower or Guarantors, or any of them, of a petition in bankruptcy.

1.51 "Required Insurance" shall have the meaning ascribed thereto in Section 9.1.8 of this Agreement.



1.52 "Restricted Transfer" shall have the meaning ascribed thereto in Section 6.1 of this Agreement.

1.53 "Solvent" shall mean, with respect to any Person, that (a) the total present fair salable value of such Person's assets on a going concern basis is in excess of the total amount of such Person's liabilities, including contingent liabilities, (b) such Person is able to pay his or its liabilities and contingent liabilities as they become due and (c) such Person does not have unreasonably small capital to carry on such Person's business as, theretofore operated and as proposed to be operated.

1.54 "Transfer" shall mean any sale, conveyance, assignment, transfer, pledge, hypothecation, encumbrance, lien or security interest.

1.55 "Transfer Date" shall have the meaning ascribed to that term in Section 3.1 of the Agreement.

1.56 "UCC" shall mean the Uniform Commercial Code as adopted in the jurisdiction whose laws govern the Loan Documents to which any financing statement filed pursuant thereto relates.

## Section 2. Amount and Terms of the Loan.

2.1 Agreement to Loan. Provided that there shall not have occurred any Event of Default, Lender agrees, upon the terms and conditions set forth in this Agreement and in reliance upon Borrower's representations, warranties, covenants and undertakings set forth in this Agreement and in the other Loan Documents, to make the Loan to Borrower as provided in this Agreement in the amount of up to \$1,000,000.00 payable to Miracle to be utilized to fund the legal fees, costs and expenses incurred to date or to be incurred by Miracle (or any Affiliates of Miracle which become a party) for services rendered after the date of this Agreement, in connection with the Aspex Litigation or any other litigation commenced by Aspex Eyewear, Inc. or any Affiliate (limited to those defined in Section 1.4(a)) against Miracle the subject of which is magnetic clip technology or products and to maintain and, if appropriate in Lender's sole discretion, provide U.S. Patent protection for Miracle's development in the field of magnetic attachment or auxiliary frames (such as sunglass frames) to primary frames (such as those which include transparent corrective lenses). Borrower's

obligation to repay the Outstanding Loan Obligations shall be evidenced by the Note which shall be due and payable on the Maturity Date. Viva shall have the right but not the obligation to increase the Loan beyond the \$1,000,000 limit, and if there is such an increase, the definition of Loan hereunder shall be deemed amended to include the additional amount, and, as a condition thereof, Viva may require that an amended note and appropriate reaffirmations and estoppel certificates be executed and delivered.

## 2.2 Interest.

2.2.1 Basic Interest. The Loan shall bear interest at the Basic Interest Rate on the Outstanding Principal Amount, from and including the Effective Date through and including the Maturity Date.

2.2.2 Default Interest. Interest shall accrue and be payable at the Default Rate (a) on all amounts not paid when due and payable under this Agreement, the Note or under any other Loan Document (without giving effect to any grace period which may be applicable with respect to such payment) and (b) from and after the Maturity Date, on the Outstanding Loan Obligations.

2.2.3 Advances. Advances shall be made in accordance with the terms and conditions of this Agreement and the Note, but shall not be payable more frequently than once each month, not earlier than the thirtieth (30<sup>th</sup>) day following the close of the month for which legal bills are rendered to Miracle. If and to the extent Borrower requires funds under this Agreement, Borrower shall deliver to Lender, from time to time, written requests for funds not to exceed, in the aggregate \$1,000,000.00 including any initial advance made as of the date of this Promissory Note. Each such request shall be accompanied by copies of all current invoices from legal counsel to Miracle in connection with the Aspex Litigation and shall be in the total amount of fees due pursuant to such invoices. Funds shall be delivered to Miracle by Lender within five (5) Business Days of Lender's receipt of the request and shall be in the form of a check or wire funds transfer payable to Miracle.

2.3 Prepayment. Prepayment of the Loan shall be prohibited until the Maturity Date or until demand for payment in

obligation to repay the Outstanding Loan Obligations shall be evidenced by the Note which shall be due and payable on the Maturity Date. Viva shall have the right but not the obligation to increase the Loan beyond the \$1,000,000 limit, and if there is such an increase, the definition of Loan hereunder shall be deemed amended to include the additional amount, and, as a condition thereof, Viva may require that an amended note and appropriate reaffirmations and estoppel certificates be executed and delivered.

## **2.2 Interest.**

**2.2.1 Basic Interest.** The Loan shall bear interest at the Basic Interest Rate on the Outstanding Principal Amount, from and including the Effective Date through and including the Maturity Date.

**2.2.2 Default Interest.** Interest shall accrue and be payable at the Default Rate (a) on all amounts not paid when due and payable under this Agreement, the Note or under any other Loan Document (without giving effect to any grace period which may be applicable with respect to such payment) and (b) from and after the Maturity Date, on the Outstanding Loan Obligations.

**2.2.3 Advances.** Advances shall be made in accordance with the terms and conditions of this Agreement and the Note, but shall not be payable more frequently than once each month, not earlier than the thirtieth (30<sup>th</sup>) day following the close of the month for which legal bills are rendered to Miracle. If and to the extent Borrower requires funds under this Agreement, Borrower shall deliver to Lender, from time to time, written requests for funds not to exceed, in the aggregate \$1,000,000.00 including any initial advance made as of the date of this Promissory Note. Each such request shall be accompanied by copies of all current invoices from legal counsel to Miracle in connection with the Aspex Litigation and shall be in the total amount of fees due pursuant to such invoices. Funds shall be delivered to Miracle by Lender within five (5) Business Days of Lender's receipt of the request and shall be in the form of a check or wire funds transfer payable to Miracle.

**2.3 Prepayment.** Prepayment of the Loan shall be prohibited until the Maturity Date or until demand for payment in

an Acceleration Notice delivered by Lender to Borrower or upon the written consent of Lender.

**2.4 Late Charges.** Lender may collect a Late Charge on account of any payment required to be made hereunder or under any other Loan Document not made within five (5) Business Days of when due and payable.

**2.5 Application of Payments.** Upon an Event of Default, any and all payments received by Lender in respect of the Loan shall be applied or disbursed by Lender as follows and in the following order of priority: first, to the payment of all Late Charges and other amounts due and payable under the Loan Documents and not specifically set forth below, second, to the payment of all interest at the Default Rate, third, to the payment of all accrued and unpaid Basic Interest, and fourth, to the Outstanding Principal Amount, or in such other order of priority as Lender shall elect.

**2.6 Maturity.** On the Maturity Date, the Outstanding Loan Obligations due hereunder and under the other Loan Documents shall be paid in full.

### **Section 3. Option.**

**3.1 Grant of Option.** In consideration of Viva making the Loan, Borrowers hereby grant to Viva, for a period beginning on the Effective Date and ending on the date twenty (20) days after the entry of Final Judgment or other Final Disposition is entered or achieved in the Aspex Litigation (the "Expiration Date") an option (the "Option") to acquire (a) the Capital Stock, (b) the 732 Patent, (c) the 040 Patent, (d) any additional existing patents and patent applications of Borrowers in the field of magnetic eyewear in existence at the time the Option is exercised, (e) any improvement in the field of magnetic eyewear developed by Borrowers during the term of this Agreement, (f) any amendments or modifications thereof and related to intellectual property and (g) the names "Magic Clip", "Miracle Optical" and "Miracle" used in connection with the business of Miracle (the "Option Property"). The balance sheet of the Company as of the Transfer Date shall not include any of Borrower's inventory of non-magnetic eyewear provided, however, that exclusion of such inventory is conditioned upon it not causing Miracle to have current liabilities (excluding the outstanding Loan Obligations) in excess of current assets as of that date. The Option granted

herein may be exercised by Viva in whole or in part (i.e. as to all, or any part of the Option Property), in Viva's sole election, provided, however, that Viva may only exercise the Option one (1) time during the period provided that there shall not have occurred any default or breach by Lender, in which case the Option shall not be exercisable so long as a default or breach by Lender has not been cured to the satisfaction of the Borrower. In the event the Option is not timely exercised the same shall expire and be null and void thereafter. In the event that the Option is exercised with respect to a portion, but not all, of the Option Property, the Option shall terminate as to any Option Property not made part of the exercise of the Option by Viva as of the date of delivery of the Option Notice (as herein defined). The Option, shall be exercisable, by delivering written notice to Borrower in a manner consistent with the notice requirements set forth in Section 12 of this Agreement, stating that Viva exercises its Option (the "Option Notice"). The Option Notice shall specify that Viva is ready, willing and able to complete acquisition of the Option Property described therein on a designated date (the "Transfer Date") not sooner than three (3) days nor later than thirty (30) days after the date of the Option Notice, such date to be designated by Viva in its sole discretion. On the Transfer Date the Option Property identified in the Option Notice shall be transferred to Viva by delivery of documents, in the case of Capital Stock held in escrow pursuant to the Escrow Agreement, and/or such transfer documents which are necessary and adequate to transfer such Option Property to Viva in accordance with the terms of this Agreement and under any applicable law or regulation. In the event that the Option Property described in the Option Notice includes Capital Stock, then Borrower may retain the non-magnetic eyewear inventory or so much of the non-magnetic eyewear inventory as may be retained without causing Miracle's current liabilities to exceed Miracle's current assets as of the Transfer Date. On the Transfer Date such retained non-magnetic eyewear inventory may be transferred by Miracle to Bob or an entity owned or controlled by Bob.

**3.2 Additional Consideration.** The following deliveries shall occur on the Transfer Date simultaneously with and in exchange for the transfer of the Option Property to Viva:

(a) **Contingent Payment.** If Outstanding Principal Amount is less than the Available Principal Amount on the Transfer Date, the difference, less interest accrued on the Outstanding Principal Amount less any other amount due Lender by

Borrower, plus, additional option consideration in the total amount of \$50,000 if the Transfer Date is during the second year following the Effective Date; \$75,000 if the Transfer Date is during the third year following the Effective Date; \$100,000 if the Transfer Date is during the fourth year following the Effective Date or later, shall be paid by Viva to (i) in the event the Option Notice is limited to assets of Miracle, to Miracle, (ii) in the event the Option Notice includes assets of Miracle and other Option Property, to Miracle and to Tony, Bob and Michael, or their respective heirs, as may be applicable, reasonably allocated, to such parties, and (iii) in the event the Option Notice does not include assets of Miracle, to Tony, Bob and Michael, or their respective heirs, as may be applicable, reasonably allocated to such parties. Any amounts paid or payable to Miracle pursuant to this sub-section shall not be Miracle Property, and upon an exercise by Viva of the Option to purchase of the Capital Stock, such shall be retained in Trust by Miracle pending joint instructions of Tony, Bob and Michael.

(b) Royalty Agreement. If the Option is exercised for the 732 Patent, the 040 Patent or the Capital Stock, Viva shall execute and deliver to Tony, Bob and Eric Liu a royalty agreement, effective as of the Transfer Date, to pay Tony, Bob and Eric Liu, as they may direct, a royalty on sales of product(s) manufactured following and protected by any of (i) the Option Property (other than the Capital Stock itself), (ii) any other patents or patentable concepts of Miracle and any amendments and modifications thereof, and (iii) intellectual property related to (i) and (ii) above, ((i), (ii) and (iii) collectively referred to as the "Patented Products") equal to an aggregate of two (2%) percent<sup>1</sup> of the net sales of Patented Products (i.e. gross sales, minus returns, discounts and credits) directly or indirectly, including sales by Viva, and Viva's Affiliates, transferees and licensees, due and payable monthly for a term co-extensive with the term of the 732 Patent and the 040 Patent, each being under an obligation to use their best efforts to develop, exploit and sell the Patented Products at prices applicable to such products in the market place. Borrower shall have a reasonable right of audit to insure proper and timely calculation and payment of the royalty from time to time.

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<sup>1</sup> The Royalty Agreement shall provide that the two (2%) percent royalty shall be split 75% to Tony; 20.5% to Bob and 4.5% to Eric Liu.

The royalty agreement shall provide that the factory in the Republic of China currently manufacturing the "Magic Clip" product for Miracle shall be engaged to continue the manufacture and production of the eyeglass frames utilizing the 732 Patent, the 040 Patent and any amendments or modifications thereof, on condition that the quality of production meets Viva's standards and the price per unit is competitive with the price charged for comparable units at other factories then supplying Viva in the Republic of China and that the factory can meet delivery requirements. Viva agrees to use best efforts to address with the manufacturer any shortfalls in quality.

(c) **Releases**. Upon the exercise of the Option by Lender and delivery by Borrower on the Transfer Date of the Option Property which is the subject of the Option Notice, the Outstanding Loan Obligations, as of the Transfer Date, shall be deemed satisfied and paid in full.

### **3.3 Employment Agreements.**

In connection with the exercise of the Option by Viva, Viva agrees to negotiate in good faith, with each of Tony and Eric Liu, Employment Agreements pursuant to which the continued services of each shall be engaged by Viva or continued by Miracle (in the event Viva exercises the Option to acquire the Capital Stock) after the Transfer Date.

### **3.4 Restrictive Covenant Agreements.**

Upon execution of the Employment Agreements, in connection with the exercise of the Option by Viva, Tony agrees that he will execute and deliver (and cause Michael and Bob to execute and deliver) to Viva appropriate restrictive covenant agreements by which the technology for the 732 Patent and the 040 Patent, including additional and any existing patents and patents pending of Borrowers or any improvement or invention in the field of magnetic eyewear developed by Borrower during the Term of this Agreement, shall be protected for the duration of the Royalty Agreement described in Section 3.2(b) and that Borrower shall not divulge, disclose, or assist other Persons in the development, design, manufacture, marketing or distribution of optical frames or sun glasses utilizing or exploiting or exploitation of any magnetic clip technology now existing or developed during the Term of this Agreement whether or not based on the Patents.

Notwithstanding anything to the contrary set forth in this Article 3, Borrower, or any of them, shall be permitted to sell non-magnetic eyewear to customers of Miracle, and shall be permitted to retain a copy of the customer list of Miracle current as of the Transfer Date.

**Section 4. Conditions Precedent.** Lender's agreement to make the Loan is subject to the execution, delivery and performance by Borrower, and each of them, as applicable, to Lender's satisfaction, of all of the following, unless and to the limited extent expressly waived in writing by Lender:

**4.1 Loan Documents.** Lender shall have received the following Loan Documents and related matter, in addition to all other Loan Documents and other items as Lender shall require as a condition to the making of the Loan, all in form and substance reasonably satisfactory to Lender:

4.1.1 this Agreement;

4.1.2 the Note;

4.1.3 the Pledge and Security Agreement;

4.1.4 Intentionally omitted;

4.1.5 Stock Certificates representing all outstanding Capital Stock of Miracle with Stock Powers executed in blank;

4.1.6 the IP Security Agreement;

4.1.7 the 040 Exclusive License Agreement in favor of Miracle;

4.1.8 the 732 Exclusive License Agreement in favor of Miracle;

4.1.9 Intentionally omitted;

4.1.10 Borrower's Counsel Opinion(s); and

4.1.11 such UCC Financing Statements as Lender may require, duly executed, in order to establish, preserve and perfect Lender's liens on the Collateral.



#### 4.2 Intentionally Omitted.

#### 4.3 Selection of Counsel; Defense of Aspex Litigation.

Lender shall have the right to reasonably approve counsel selected by Borrower to represent Miracle's interest in the Aspex Litigation. Borrower shall submit the name of counsel, it wishes to so select to Lender and Lender shall have fifteen (15) days to provide its written consent or denial of consent to Borrower respecting their selection. Lender's failure to respond to such a request within fifteen (15) days shall be deemed its consent. If Lender provides its denial of consent to Borrower respecting their selection with the time period set forth above, Lender's sole recourse shall be the same as its remedies provided under Section 8.2. Notwithstanding anything to the contrary set forth in this Section 4.3, in the event the pending motion to transfer the Aspex Litigation to Los Angeles, California is not granted by the Court, the parties agree that Jeffrey Schwab, Esq. of Abelman, Frayne & Schwab, of 150 East 42<sup>nd</sup> Street, New York, New York 10017 shall represent Miracle in the Aspex Litigation, and that if the motion to transfer is granted, that David B. Abel of Squire, Sanders & Dempsey L.L.P. shall represent Miracle in the Aspex Litigation. Borrower shall diligently defend the complaint in the Aspex Litigation and shall cooperate in all respects with counsel for Miracle. If, however, the pending motion to transfer is not granted and the firm of Abelman, Frayne & Schwab is unavailable or unwilling to undertake such representation, counsel mutually acceptable to Viva and Borrower shall be selected.

**4.4 Intellectual Property.** Miracle shall be the holder of an exclusive license to use the 732 Patent and the 040 Patent and shall have entered into, and delivered to Lender copies of, Exclusive License Agreements with Tony for the exclusive use of the 732 Patent and the 040 Patent and related technology in form acceptable to Lender.

**4.5 Authorizations.** Miracle shall have provided to Lender, each in form and substance acceptable to Lender and certified as true, correct and complete (a) a certified copy of Miracle's filed Certificate of Incorporation, and all amendments thereto, (b) a certified copy of the By-Laws of Miracle, duly executed by the secretary of Miracle, (c) corporate resolutions of Miracle authorizing the transactions contemplated hereby and (d) a certificate of good standing and active status from the

Secretary of State of California, dated not more than thirty (30) days prior to the Effective Date.

**4.6 Material Adverse Change.** There shall not have occurred any Material Adverse Change since June 30, 2001.

**Section 5. Representations and Warranties.**

Borrower, and each of them, hereby represents and warrants to Lender as follows, which representations and warranties are true and correct as of the Effective Date, provided, however, that only the representations and warranties set forth in Sections 5.1, 5.2, 5.4, 5.6, 5.7, 5.11, 5.14, 5.23, 5.26, 5.27 and 5.29 shall be deemed restated during the term of the Loan and, as restated, shall remain true and correct throughout the entire term of the Loan:

**5.1 Due Formation; Organization and Authority.**

Miracle is a corporation duly formed, validly existing and in good standing under the laws of the State of California with its principal place of business as set forth in this Agreement and (a) is authorized to do business in the State of California, (b) has all requisite corporate power and authority to execute and perform its obligations under the Note, the other Loan Documents to which it is a party and all other documents and instruments to which it is a party relating to the Loan, and (c) holds all material licenses, certificates and permits from all applicable governmental authorities necessary for the conduct of its business as contemplated hereby. The execution and delivery of this Agreement and the other Loan Documents by Borrower and the creation of the security interests provided for herein and therein have been duly authorized by all necessary corporate action of Miracle. Tony, Bob and Michael are of full age and capacity to bind themselves to this Agreement and any of the Loan Documents which shall be executed by them.

**5.2 No Consent.** The execution and delivery of this Agreement and the other Loan Documents by Borrower and the performance by Borrower of its obligations hereunder and thereunder and the creation of the security interests provided for herein and therein do not and will not require any consent or approval of, or notice to or any action by, any other Person, except for any consents or approvals delivered to Lender on or prior to the date hereof. This Agreement and the other Loan Documents constitute legal, valid and binding obligations of

Borrower, enforceable against Borrower in accordance with their respective terms.

**5.3 No Conflict; Full Delivery.** The execution and delivery of this Agreement and the other Loan Documents by Borrower will not result in a breach of the terms or provisions of, or constitute a default, an event or condition which with the giving of notice or the lapse of time, or both, would constitute a default, or an event or condition which would give rise to a right or option on the part of any party to accelerate a payment, under any indenture, agreement, instrument or obligation to which Borrower or the Collateral is bound, and will not constitute a violation of any law, order, rule or regulation applicable to Borrower or the Collateral. Borrower has delivered to Lender true, correct and complete copies of any and all agreements between Borrower and any Affiliate related in any way to the Collateral and any other documents or agreements Materially affecting the use of the Collateral. Borrower has delivered to Lender true, correct and complete copies of all Material findings relating to the condition of the Collateral.

**5.4 No Default or Event of Default.** There exists no Default or Event of Default under this Agreement or the other Loan Documents.

**5.5 No Proceedings Pending.** Other than the Aspex Litigation, there are no actions, suits or proceedings, pending or, to the best of Borrower's knowledge, threatened with respect to Borrower or the Property which, in any way, would have or result in a Material Adverse Effect upon (a) the rights of Lender under this Agreement or any of the other Loan Documents, (b) Borrower's ability to perform its obligations hereunder or (c) title to the Collateral.

**5.6 No Offsets, etc.** Borrower has no deductions, defenses, counterclaims or similar rights with respect to its obligations of payment and performance hereunder, under the Note, or under any of the other Loan Documents, except as expressly set forth in this Agreement.

**5.7 Free and Clear Title; Lien Priority.** Except as permitted under Section 6.18, Borrower owns the Collateral free and clear of all liens, claims, encumbrances, covenants, conditions and restrictions, security interests and claims of others, except for the Loan Documents. Upon the proper recording

of the Financing Statements, the Loan Documents will constitute a valid and continuing first priority perfected security interest encumbering the Collateral in favor of Lender, prior to all other liens and rights of others, enforceable as such against all creditors of and purchasers from Borrower.

**5.8 Fair Statement of Facts.** This Agreement and the other Loan Documents and all budgets, schedules, reports, information, data, opinions, certificates, confirmations, applications, affidavits, agreements, returns, permits and other materials submitted to Lender in connection with or in furtherance of this Agreement, or the other Loan Documents so submitted by or on behalf of Borrower, fully and fairly state the matters with which they purport to deal as of the respective dates thereof and none of the foregoing misstate any material fact nor, separately or in the aggregate, omit or fail to state any material fact known or which should have been known to Borrower necessary to make the statements made therein not misleading.

**5.9 No Fraud.** No fraud by Borrower or any Affiliate of any thereof has occurred in the negotiation of this Agreement or the other Loan Documents.

**5.10 Solvency; No Bankruptcy.** Without regard to the Loan or the effect of the Aspex Litigation, to Borrower's knowledge, Borrower is and, after consummation of the transactions contemplated by this Agreement and the other Loan Documents, shall be, Solvent. Borrower has received no notice of, and has no knowledge or basis upon which to believe that it, or any of its shareholders, or any Guarantor is or may become the subject of any bankruptcy, reorganization or insolvency proceeding.

**5.11 Leases and Contracts.** Borrower shall not enter into any Lease or Contracts in respect of the use, occupancy, rental or leasing of its business premises or any part thereof, without Lender's prior written consent, except for Leases and Contracts entered into by Miracle in the ordinary course of its business operations.

**5.12 Debt.** Except for (a) Debt set forth on the financial statements delivered to Lender, if any, (b) the Loan and (c) short term unsecured indebtedness incurred by Borrower in

the ordinary course of business, Borrower has no Debt outstanding.

**5.13 No Violations.** Except as alleged in the Aspex Litigation, there are no, nor, to the best of Borrower's knowledge, are there any Material alleged or asserted, violations of any law, ordinance, permit, order, rule or regulation, declaration, covenant or restriction which has been issued or noted by any governmental authority against the Collateral or Borrower.

**5.14 Collateral.** All of the covenants set forth in Section 29 of this Agreement, and the representations, warranties and covenants set forth in the Pledge and Security Agreement and the Intellectual Property Security Agreement are true and correct. The Collateral is, and shall remain, in good condition and repair and Borrower shall not be negligent in the care and use thereof. Borrower is and shall remain the sole lawful owner, and in possession of, the Collateral (except the Collateral Stock pledged to Lender pursuant to the Pledge and Security Agreement), and has the sole right and lawful authority to grant the security interests described in this Agreement, the Pledge and Security Agreement and the Intellectual Property Security Agreements. The Collateral shall remain free and clear of all liens, claims and encumbrances of every kind, nature and description (except for the liens in favor of Lender created pursuant to the Loan Documents).

**5.15 No Federal Regulatory Limitations.** Borrower is not (a) an "investment company" registered or required to be registered under the Investment Company Act of 1940, as amended, or a company controlled by such a company, or (b) subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the Interstate Commerce Act or to any federal or state statute or regulation limiting its ability to incur debt for money borrowed.

**5.16 No Strikes.** To the best of Borrower's knowledge, there are no strikes or other labor disputes or grievances pending or threatened against the Borrower.

**5.17 ERISA.** As of the date hereof and throughout the term of the Loan (a) Borrower is not and will not be an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, (b) the assets of Borrower do not

and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA, (c) Borrower is not and will not be a "governmental plan" as defined in Section 3(3) of ERISA and (d) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of and fiduciary obligations with respect to governmental plans.

**5.18 FIRPTA.** Borrower is not and will not be, and no legal or beneficial interest of a shareholder in Borrower is or will be held, directly or indirectly, by a "foreign corporation", "foreign partnership", "foreign trust", "foreign estate", "foreign person", "affiliate" of a "foreign person" or a "United States intermediary" of a "foreign person" within the meaning of Internal Revenue Code Sections 897 and 1445, the Foreign Investments in Real Property Tax Act of 1980, the International Foreign Investment Survey Act of 1976, the Agricultural Foreign Investment Disclosure Act of 1978, or the regulations promulgated pursuant to such Acts or any amendments to such Acts.

**5.19 Consumer Credit Laws; Usury.** The indebtedness evidenced by the Loan, including interest, fees and charges, is a business loan; is an exempted transaction under the Truth in Lending Act, 15 U.S.C. 1601 et seq.; and does not and will not, violate the provisions of the consumer credit laws or usury laws of any applicable jurisdiction.

**5.20 Securities Laws.** To the best of Borrower's knowledge after due inquiry, none of the transactions contemplated in this Agreement will violate or result in a violation of Section 7 of the Securities Exchange Act of 1934, as amended, or any regulations issued pursuant thereto, including, without limitation, Regulations G, T, U and X of the Board of Governors of the Federal Reserve System. Borrower does not own or intend to carry or purchase any "margin security" within the meaning of said Regulation G and no Affiliate of Borrower intends to purchase any "margin security" within the meaning of said Regulation G with the proceeds of the Loan. The proceeds of the Loan have not been and will not be used to purchase or refinance any borrowing the proceeds of which were used to purchase any "security" within the meaning of the Securities Exchange Act of 1934, as amended.

**5.21 No Material Adverse Change.** Since June 30, 2001, there has been no Material Adverse Change.

**5.22 Tax Matters.** All United States Federal income tax returns and all other Material tax returns required to be filed by Borrower have been filed (taking into account permitted extensions) and all taxes due pursuant to such returns have been paid. There has not been asserted or to the best of Borrower's knowledge, proposed to be asserted, any tax deficiency against Borrower that would be Material that is not reserved against on the financial books of Borrower.

**5.23 Ownership Interests.** No shareholder of Borrower has granted any agreements, options, warrants, pledges, proxies, restrictions, charges, encumbrances or rights which would impair or encumber the Capital Stock. All Capital Stock in Borrower has been validly issued and is owned free and clear of any liens, claims, encumbrances or charges of any kind, except the Pledge and Security Agreement.

**5.24 Tax Status.** Borrower has elected to be taxed as a Sub-chapter S corporation for purposes of Federal income taxation and for purposes of the tax laws of any state or locality in which Borrower is subject to taxation.

**5.25 Reaffirmation.** Borrower hereby remakes and reaffirms to and for the benefit of Lender each and all of the representations and warranties set forth in the Pledge and Security Agreement and in the IP Security Agreement, which are incorporated herein by this reference as though set forth at length herein.

**5.26 Shareholders.** The shareholders of Miracle are Tony, holding 4,700 shares of Capital Stock (47%); Bob, holding 4,300 shares of Capital Stock (43%) and Michael, holding 1,000 shares of Capital Stock (10%). All of the aforementioned shareholders own all of the issued and outstanding voting and non-voting Capital Stock of Miracle (the "Capital Stock").

**5.27 Principal Office.** The principal and only office of Miracle is located at 709 Brea Canyon Road, Suite 7, Walnut, California 91789, and shall be maintained at all times within the State of California.

**5.28 Financial Statements.** The Financial Statements fairly represent the financial condition of Miracle as of the date thereof and hereof, and without regard to the Aspex Litigation, no event or series of events has occurred between the

aforementioned date of the Financial Statements and the date hereof that would have a Material Adverse Effect upon the financial condition of the Borrowers.

## **5.29 Intellectual Property.**

**5.29.1** Tony is the sole owner of the 732 Patent and the 040 Patent, free and clear of liens, claims and encumbrances, except for the Aspex Litigation.

**5.29.2** Miracle is the sole owner of the trademark Magic Clip™ and the holder of an exclusive license to use the 732 Patent and the 040 Patent, free and clear of liens, claims and encumbrances, except for the Aspex Litigation.

**5.29.3** The Exclusive License Agreements are in full force and effect, have not been violated by the parties thereto or by any other Person and there exist no claims, actions, suits or proceedings, pending, or to the Borrower's knowledge, threatened by any Person pertaining thereto, except pursuant to the Aspex Litigation.

**Section 6. Covenants of Borrower.** Borrower hereby covenants and agrees with Lender as follows:

**6.1 Restricted Transfers.** Without the prior written consent of Lender in each instance, which may be granted or withheld in Lender's sole discretion, Borrower shall not Transfer, exchange or otherwise dispose of, or grant any option or warrant with respect to, or make any other disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record), all or any part of the Collateral, or any part thereof or any interest therein, or any of the revenues to be earned therefrom, or any direct or indirect ownership interest in Miracle, at any level or tier of ownership, either of record or beneficially (any of the foregoing, except as specifically hereinabove permitted, being herein referred to as a "Restricted Transfer"), or suffer or permit a Restricted Transfer to occur except that in the regular course of business Borrower may transfer property for the purchase and sale of inventory and for the payment of its current liabilities in the ordinary course of business. For purposes of the foregoing sentence, the issuance of capital stock, the creation of interests or the dilution in any manner, of an existing interest, direct or



indirect, in Miracle, or any of the Collateral shall be deemed to be a Restricted Transfer.

**6.2 Delivery of Financial Statements.** Miracle shall furnish or cause to be furnished to Lender each and every of the Financial Statements on the dates set forth in the definition thereof in Section 1 hereof.

**6.3 Corrections.** Borrower shall promptly correct, with the cooperation of Lender, any defect which may be discovered in the contents of this Agreement or in any of the other Loan Documents.

**6.4 Additional Information.** Promptly upon written request, Borrower shall furnish to Lender such other information as Lender may reasonably request with respect to the business, affairs or condition (financial or otherwise) of Borrower or any of them.

**6.5 Material Events.** Borrower shall promptly notify Lender of any condition or event suffered by Borrower that has resulted in (a) a Material Adverse Change, (b) a Material breach of or non-compliance with any Material term, condition or covenant contained herein or in any other Loan Document, or (c) a Material breach of or non-compliance with any Material Contract to which Borrower is a party or by which any of its property may be bound.

**6.6 Estoppel.** Within ten (10) Business Days after Lender's written request, Borrower shall furnish to Lender and/or its designee, a statement, duly sworn, certifying as to the Outstanding Principal Amount of the Loan, and whether any offsets or defenses exist against the obligations of Borrower to repay the Loan, and in respect of such other matters relating to the Loan as Lender shall reasonably request, which statement shall expressly contemplate and permit the reliance thereupon by Lender and/or its designee for any purpose.

**6.7 Further Assurances.** Borrower shall promptly execute, acknowledge, deliver and record or file such documents or instruments and take such actions and do such further acts, as may be reasonably necessary, desirable or proper to carry out more effectively the purposes of this Agreement and of the other Loan Documents.

**6.8 Covenant to Pay and Perform.** Borrower shall fully and faithfully pay the Loan, without any deductions, defenses, counterclaims or offsets whatsoever, as and when due and fully and faithfully perform all of its obligations, in accordance with the provisions of this Agreement, the Note and the other Loan Documents.

**6.9 Right to Examine.** Borrower shall permit Lender to examine, upon reasonable advance notice during regular business hours at the principal office of Borrower, such records, books and papers of Borrower as reflect upon its financial condition, the income and expenses relating to the Collateral, the income and expenses relating to the Collateral, and the business conducted by Borrower with respect thereto.

**6.10 Solvency.** Without regard to the Loan or the effect of the Aspex Litigation, Borrower is, and shall at all times be and remain, Solvent.

**6.11 Compliance with Laws.** Borrower will do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges, and Borrower will timely comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to Borrower or to the Collateral or any part thereof.

**6.12 Tax Returns.** Miracle shall deliver to Lender, on or before April 15 of each year during the term of the Loan, a copy of its federal income tax return (including all schedules thereto) in respect of the prior tax year, prepared and signed by its certified public accountants or, if Miracle shall file an extension, a copy of such extension and all working papers of its certified public accountants figuring the liability of Miracle in connection with such extension, together with current revised financial statements compiled and signed by the certified public accountants. Miracle shall promptly thereafter provide a copy of its federal income tax return (including all schedules thereto) upon filing thereof and in no event later than October 15 of each Fiscal Year.

**6.15 No Merger, etc.** Except as otherwise herein provided, Borrower shall not enter into any merger, consolidation, reorganization, or recapitalization, reclassify its interests or capital stock, as applicable, liquidate, wind up or dissolve or sell, lease, transfer or otherwise dispose of, in

one transaction or a series of transactions, all or substantially all of its business or assets, whether now owned or hereafter acquired.

**6.16 Reaffirmation.** Borrower hereby remakes and reaffirms to and for the benefit of Lender each and all of the covenants set forth in the Security Agreement and IP Security Agreement, which are incorporated herein by this reference as though set forth herein in full.

**6.17 No Amendment of Formation Documents.** Miracle shall not amend, alter, change or repeal any provision of its certain Certificate of Incorporation of Miracle, filed with the Office of the Secretary of State of California on June 7, 1994.

**6.18 No Sale or Refinancing.**

(a) Supplementing the provisions of Section 6.1, notwithstanding that either such activity may result in the repayment in full of the entire Outstanding Loan Obligations, Borrower shall not sell the Collateral (except sales of goods in the ordinary course of business) or refinance the Loan (or any financing which Borrower secures to replace the Loan), without the prior written consent of Lender.

(b) Miracle shall not enter into equipment leases for business equipment except for such leases for equipment to be used solely in connection with the conduct and expansion of the business of Miracle, provided, that the aggregate value of such equipment shall not exceed \$50,000 as determined by invoice cost.

**6.19 No Material Agreements.** Borrower shall not enter into any Material agreements respecting the Collateral, without the prior written consent of Lender, except in the ordinary course of business.

**6.20 Distribution of Profit.**

Notwithstanding the provisions of any Loan Documents to the contrary, during the period of the Option, Miracle shall have the right to continue to conduct its business in the ordinary course (including expanding, changing and enhancing its business in the ordinary course), but shall not prepay any Debt or obligation beyond a period of thirty (30) days

in advance, lend money to any person, distribute or transfer assets or the Miracle Collateral, or increase the salary or other compensation of any employee, except (x) if quarterly sales targets are met during the pendency of the Option, each of Tony and Bob may be paid by Miracle additional compensation of \$2,000.00 and Eric Liu \$1,000.00 per quarter, and (y) if annual sales targets are met, each of Tony and Bob may be paid a bonus of \$2,000.00 and Eric Liu a bonus of \$1,000.00, provided, however, that there shall be no increase in salary or other compensation of any employee, and there shall be no distribution of any funds or property of Miracle to any officer or director of Miracle, provided, however, Miracle shall have the right to (i) distribute Sub-chapter S profits (excluding Loan proceeds), if any, realized between the Effective Date and the end of each calendar year or, in the event Viva exercises its Option, the Transfer Date, during which the Agreement is in effect, but such Sub-chapter S profits, determined according to accounting practices consistent with the current accounting practices of Miracle, are distributable only to the extent that they exceed ten (10%) percent of the Company's net Sub-chapter S profits for that calendar year ("Distributable Profit"); and (ii) distribute, in addition to Distributable Profit, a sum sufficient to enable each shareholder of Miracle to pay his Federal income tax liability attributable to the undistributed ten (10%) percent of the Company's net Sub-chapter S profits for that calendar year. Notwithstanding anything to the contrary set forth in this Section 6.20 any distribution as of the Transfer Date following exercise of the Option by Viva shall be estimated and placed in escrow with Viva's counsel for a period of up to sixty (60) days to allow for final reconciliation of Sub-chapter S profit attributable to the period up to the Transfer Date. The reconciled amount shall then be distributed from the escrow funds. Borrowers hereby agree that when the corporate tax return is filed, the return shall be in conformity with and reconciled to the year end Sub-chapter S profit.

**6.21 Exclusive License Agreements.** Borrower has not and shall not terminate the Exclusive License Agreements; and has not and shall not by act or omission default thereunder as of and from the Effective Date until the Expiration Date.

**6.22** Borrower will diligently pursue the defense and counterclaim in the Aspex Litigation to Final Judgment or Final Disposition taking all steps necessary to achieve same.

6.23 The present total compensation paid by Miracle to Tony is Twenty Eight Thousand Eight Hundred and 00/100 (\$28,800.00) Dollars per annum; Michael is \$0 per annum; Bob is Twenty Eight Thousand Eight Hundred and 00/100 (\$28,800.00) Dollars per annum; and Eric Liu is Twenty Four Thousand and 00/100 (\$24,000.00) Dollars per annum plus commissions on net sales at the rate of three (3%) percent.

6.24 If following Lender's exercise of the Option, Borrower retains the Capital Stock, then Borrower shall, effective as of the Transfer Date, change the corporate name of Miracle and file with the appropriate governmental office or offices, official documents necessary to accomplish same.

**Section 7.** Any of the following shall constitute an Event of Default hereunder:

7.1 **Monetary Default.** If default shall be made in the payment of any Basic Interest, Principal, Late Charges, Collection Costs, or payment of any other sum due under the Note, this Agreement or the other Loan Documents not specifically referenced in this Section 7, when and as the same shall become due and payable; or

7.2 **Nonmonetary Default.** If Borrower shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and not specifically referenced in this Section 7, and such default shall have continued for a period of fifteen (15) Business Days after Lender's written notice thereof; provided, however, that in the event such default cannot be cured by the payment of money and is not reasonably susceptible of cure within such fifteen (15) Business Days and Borrower commences the cure thereof within such fifteen (15) Business Days and continuously and diligently pursues completion thereof, Borrower shall be given such longer period as may be reasonably necessary in order to so complete such cure, in no event, however, to exceed sixty (60) days in the aggregate; or

7.3 **Default Under Loan Documents.** If there shall occur a default or event of default under the Note, the Pledge and Security Agreement or the IP Security Agreement or under any other Loan Document, which is not governed by Sections 7.1 or 7.2 hereof, and such default or event of default shall have continued beyond the expiration of any cure or grace period specified in

the Pledge and Security Agreement or the IP Security Agreement or such other Loan Document, as applicable; or

**7.4 Breach of Representation, etc.** If any representation or warranty made by Borrower herein, or by Borrower or any Affiliate of Borrower in any of the other Loan Documents, is false or erroneous in any Material respect; or

**7.5 Bankruptcy.** If Borrower shall (a) apply for or consent to the appointment of a receiver, trustee or liquidator, (b) be unable, or admit in writing its inability, to pay its debts as they mature, (c) make an assignment for the benefit of creditors, (d) be adjudicated a bankrupt or declared insolvent or (e) file a voluntary petition in bankruptcy or a petition or any answer seeking reorganization or an arrangement with creditors or to take advantage of any insolvency proceedings; or

**7.6 Receiver, Trustee, etc.** If, by order of a court of competent jurisdiction, a receiver, trustee or liquidator of Borrower or of the Collateral or any part thereof shall be appointed, and such order shall not be discharged or dismissed within fifteen (15) Business Days after such appointment; or if any creditor of Borrower shall file a petition in bankruptcy against Borrower or for reorganization of Borrower and such petition shall not be discharged or dismissed within fifteen (15) Business Days after the filing thereof; or

**7.7 Judgments.** If any court shall on or after the date hereof render or there shall be otherwise entered or taken a Final Judgment against Borrower in an amount in excess of \$50,000.00 or if any of the property of Borrower is attached which attachment, in Lender's reasonable judgment, has a Material Adverse Effect and, in either such case, the same shall not be discharged, or bonded (with or without an appeal taken therefrom) within fifteen (15) Business Days after the entry thereof; or

**7.8 Restricted Transfers.** If there shall occur a Restricted Transfer; or

**7.9 Not Solvent.** Without regard to the effect of the Aspex Litigation or this Loan, if at any time Borrower shall not be Solvent; or

**7.10 Material Adverse Change.** If there shall have occurred a Material Adverse Change; or

**7.11 Prohibited Action.** If there shall have occurred a Prohibited Action; or

**7.12 Amendment of Formation Documents.** If there shall have occurred a breach of the covenant set forth in Section 6.19 if this Agreement.

**Section 8. Remedies.**

**8.1** Upon the occurrence of an Event of Default under Sections 5.7, 5.9, 5.14, 5.29, 7.1, 7.2 (pursuant to Sections 6.1, 6.8 (except, with respect to Section 6.8, to the extent such Event of Default is non-monetary in nature), 6.16, 6.18, 6.20 or 29), 7.5, 7.6 or 7.7, the Maturity Date shall be accelerated automatically and immediately, and the Loan and all other obligations of Borrower hereunder and under the other Loan Documents shall become due and payable automatically and immediately, without presentment, demand, protest, notice of protest or other requirements of any kind, all of which are hereby expressly waived by Borrower. Upon the occurrence of any Event of Default described in this Section 8.1, Lender may, give written notice (the "Acceleration Notice") to Borrower accelerating the Maturity Date and declaring the Loan and all other obligations of Borrower hereunder and under the Loan Documents to be due and payable immediately, without further presentment, demand, protest, notice of protest or other requirements of any kind, all of which are expressly waived by Borrower; or may exercise the Option.. If the Loan shall not be fully paid immediately upon the occurrence of such an Event of Default, then Lender shall be entitled to exercise any and all rights and remedies available to it under this Agreement, the Pledge and Security Agreement, the IP Security Agreement and the other Loan Documents, as well as all rights and remedies available to Lender at law or in equity.

**8.2** Other than under the sections referred in Section 8.1, Lender may upon the occurrence of any Event of Default, at its option, (i) exercise the Option, or (ii) waive the Event of Default and continue funding the Loan to Borrower in accordance with this Agreement.

8.3 Without limiting the foregoing, at any time an Event of Default exists or has occurred and is continuing, Lender may, in its discretion and without limitation, (i) with or without judicial process or the aid or assistance of others, enter upon any premises on or in which any of the Miracle Collateral may be located and take possession of the Miracle Collateral or complete processing, manufacturing and repair of all or any portion of the Miracle Collateral, (ii) require Miracle, at Miracle's expense, to assemble and make available to Lender any part or all of the Miracle Collateral at any place and time designated by Lender, (iii) collect, foreclose, receive, appropriate, setoff and realize upon any and all Miracle Collateral, (iv) remove any or all of the Miracle Collateral from any premises on or in which the same may be located for the purpose of effecting the sale, foreclosure or other disposition thereof or for any other purpose, (v) sell, lease, transfer, assign, deliver or otherwise dispose of any and all Miracle Collateral (including entering into contracts with respect thereto, public or private sales at any exchange, broker's board, at any office of Lender or elsewhere) at such prices or terms as Lender may deem reasonable, for cash, upon credit or for future delivery, with the Lender having the right to purchase the whole or any part of the Miracle Collateral at any such public sale, all of the foregoing being free from any right or equity of redemption of Miracle, which right or equity of redemption is hereby expressly waived and released by Miracle. If any of the Miracle Collateral is sold or leased by Lender upon credit terms or for future delivery, the Outstanding Loan Obligations shall not be reduced as a result thereof until payment therefor is finally collected by Lender. If notice of disposition of Miracle Collateral is required by law, five (5) days prior notice by Lender to Miracle designating the time and place of any public sale or the time after which any private sale or other intended disposition of Miracle Collateral is to be made, shall be deemed to be reasonable notice thereof and Miracle hereby waives any other notice. In the event Lender institutes an action to recover any Miracle Collateral or seeks recovery of any Miracle Collateral by way of prejudgment remedy, Miracle waives the posting of any bond which might otherwise be required.

8.4 Lender shall apply the cash proceeds of Miracle Collateral actually received by Lender from any sale, lease, foreclosure or other disposition of the Miracle Collateral in accordance with the terms of this Loan Agreement. Miracle



shall remain liable to Lender for the payment of any deficiency with interest at the Default Rate.

**8.5 Grant of Security Interest.** To secure payment and performance of all Outstanding Loan Obligations, Miracle hereby grants to Lender a continuing security interest in, a lien upon, and a right of set off against, and hereby assigns to Lender as security, all of the assets and property of Miracle including, but not limited to, the following property and interests in property, whether now owned or hereafter acquired or existing, and wherever located and as more particularly described in Schedule 1.40, attached hereto:

**8.5.1** Accounts ("Accounts" shall mean all present and future rights of Miracle to payment for goods sold or leased or for services rendered, which are not evidenced by instruments or chattel paper, and whether or not earned by performance);

**8.5.2** all present and future contract rights, general intangibles (including tax and duty refunds, registered and unregistered patents, trademarks, service marks, copyrights, trade names, applications for the foregoing, trade secrets, goodwill, processes, drawings, blueprints, customer lists, licenses, whether as licensor or licensee, chooses in action and other claims and existing and future leasehold interests in equipment, real estate and fixtures), chattel paper, documents, instruments, letters of credit, bankers' acceptances and guaranties;

**8.5.3** all present and future monies, securities, credit balances, deposits, deposit accounts and other property of Miracle now or hereafter held or received by or in transit to Lender or its affiliates or at any other depository or other institution from or for the account of Miracle whether for safekeeping, pledge, custody, transmission, collection or otherwise, and all present and future liens, security interests, rights, remedies, title and interest in, to and in respect of Accounts and other Miracle Collateral, including (a) rights and remedies under or relating to guaranties, contracts of suretyship, letters of credit and credit and other insurance related to the Miracle Collateral, (b) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid vendor, lienor or secured party, (c) goods described in invoices, documents, contracts or instruments with

respect to, or otherwise representing or evidencing, Accounts or other Miracle Collateral, including returned, repossessed and reclaimed goods, and (d) deposits by and property of account debtors or other persons securing the Outstanding Loan Obligations of account debtors;

**8.5.4** Inventory ("Inventory" shall mean all of Miracle's now owned and hereafter existing or acquired raw materials, work in process, finished goods and all other inventory of whatsoever kind or nature, wherever located);

**8.5.5** Equipment ("Equipment" shall mean all of Miracle's now owned and hereafter acquired equipment, machinery, computers and computer hardware and software (whether owned or licensed), vehicles, tools, furniture, fixtures, all attachments, accessions and property now or hereafter affixed thereto or used in connection therewith, and substitutions and replacements thereof, wherever located);

**8.5.6** Records ("Records" shall mean all of Miracle's present and future books of account of every kind or nature, purchase and sale agreements, invoices, ledger cards, bills of lading and other shipping evidence, statements, correspondence, memoranda, credit files and other data relating to the Miracle Collateral or any account debtor, together with the tapes, disks, diskettes and other data and software storage media and devices, file cabinets or containers in or on which the foregoing are stored (including any rights of Miracle with respect to the foregoing maintained with or by any other person)); and

**8.5.7** all products and proceeds of the foregoing, in any form, including insurance proceeds and any claims against third parties for loss or damage to or destruction of any or all of the foregoing.

**8.6 Power of Attorney.** Miracle hereby irrevocably designates and appoints Lender (and all persons designated by Lender) as Miracle's true and lawful attorney-in-fact, and authorizes Lender, in Miracle's or Lender's name, to execute in Miracle's name and file any UCC financing statements or amendments thereto and continuation statements thereof. Miracle hereby releases Lender and its officers, employees and designees from any liabilities arising from any act or acts under this power of attorney and in furtherance thereof, whether of

omission or commission, except as a result of Lender's own gross negligence or willful misconduct as determined pursuant to a final non-appealable order of a court of competent jurisdiction.

**8.7 Right to Cure.**

Lender may, at its option, (a) cure any default by Miracle under any agreement with a third party or pay or bond on appeal any judgment entered against Miracle, (b) discharge taxes, liens, security interests or other encumbrances at any time levied on or existing with respect to the Miracle Collateral and (c) pay any amount, incur any expense or perform any act which, in Lender's reasonable judgment, is necessary or appropriate to preserve, protect, insure or maintain the Miracle Collateral and the rights of Lender with respect thereto. Lender may add any amounts so expended to the Outstanding Loan Obligations and charge Miracle's account therefor, such amounts to be repayable by Miracle on written demand. Lender shall be under no obligation to effect such cure, payment or bonding and shall not, by doing so, be deemed to have assumed any obligation or liability of Miracle. Any payment made or other action taken by Lender under this Section shall be without prejudice to any right to assert an Event of Default hereunder and to proceed accordingly.

**Section 9. Insurance; Casualty and Taking.**

**9.1 Insurance, Coverages.**

Miracle shall at all times herein provided prior to payment or satisfaction in full of the Loan and performance of all of the obligations of Miracle, obtain or cause to be obtained in respect of Miracle, the Collateral and all of Miracle's property the following policies of insurance, to the extent applicable in Lender's discretion, issued by insurance companies and containing terms satisfactory to Lender in its sole discretion:

**9.1.1** at all times, Miracle shall maintain comprehensive all risk insurance on all of its property and the personal property of any Affiliate of Miracle in each case (a) in an amount equal to 100% of the "Full Replacement Cost" (which for purposes hereof shall mean actual replacement value exclusive of costs of excavations, foundations, underground utilities and footings), and (b) providing for no deductible in excess of \$5,000.00 ("Property Insurance");

**9.1.2** at all times, Borrower shall maintain commercial general liability insurance against claims

for personal injury, bodily injury, death or property damage occurring upon, in or about the Property ("Liability Insurance"), which Liability Insurance may be carried under one or more umbrella policies aggregating the minimum combined single limit hereinbelow described and shall (a) be on the so-called "occurrence" form with a combined single limit of not less than \$1,000,000.00, (b) continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate and (c) cover at least the following hazards: (i) premises and operations, (ii) products and completed operations on an "if any" basis, (iii) independent contractors, (iv) blanket contractual liability for all written and oral contracts and (v) contractual liability covering the indemnities contained in the Loan Documents;

9.1.3 at all times, Borrower shall maintain worker's compensation, subject to the statutory limits of the State of California, and employer's liability insurance with a limit pursuant to the California Statutory Form in respect of any work or operations on or about the Property or in connection with the Property ("Worker's Compensation Insurance");

9.1.4 such other insurance as Lender may reasonably require from time to time (together with the Property Insurance, the Liability Insurance, and the Worker's Compensation Insurance, as applicable, the "Required Insurance").

9.2 Identification of Lender. Lender's security interest in the Collateral shall be identified in the Required Insurance as follows:

(i) The Property Insurance shall provide for at least thirty (30) days written notice to Lender in the event of policy cancellation and/or material change and shall identify Lender and Lender's address:

Viva IP Corp., its respective successors,  
and/or assigns, as its interest may appear

(ii) The Liability Insurance and the Worker's Compensation Insurance shall provide for at least thirty (30) days written notice to Lender in the event of policy cancellation and/or material change, and shall name Lender as an additional insured.

**9.3 Approved Insurer.** The Required Insurance shall be carried by insurance companies acceptable to Lender which are authorized to do business in the State of California and which have a general policy rating of A or better and a financial class of VI or better by A.M. Best Company, Inc.

**9.4 Waiver of Subrogation.** The Required Insurance, as applicable, and all renewals thereof shall contain, in form and substance reasonably acceptable to Lender, a standard "Waiver of Subrogation" endorsement, and an endorsement providing in general that any claim or defense the insurance company may have against Borrower to deny payment of any claim by Borrower thereunder shall not be effective against Lender (and affirmatively providing that the insurance company will pay the proceeds of such Required Insurance to Lender notwithstanding any claim or defense of the insurance company against Lender). Borrower shall pay the premiums for the Required Insurance as the same become due and payable. Not later than thirty (30) days prior to the expiration date of each of the Required Insurance, Borrower will deliver to Lender or cause to be delivered to Lender a renewal policy or policies for each of the Required Insurance marked "premium paid" or accompanied by other evidence of payment of premium satisfactory to Lender. If at any time Lender is not in receipt of written evidence that all Required Insurance hereunder is in force and effect, Lender shall have the right to take such action as Lender reasonably deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate, and all expenses reasonably incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon written demand.

**9.5 No Separate Insurance.** Borrower will not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained pursuant to this Section 9.

**9.6 Damage and Destruction.** In case of any damage to or destruction of the Collateral or any part of either thereof Borrower will promptly give written notice thereof to Lender, generally describing the nature and extent of such damage or destruction. To the extent of Borrower's interest therein, Lender shall be entitled to all insurance proceeds payable on account of such damage or destruction and to all awards or

payments allocable to the Collateral, and Borrower hereby irrevocably assigns to Lender all rights of Borrower to any such proceeds, award or payment and irrevocably authorizes and empowers Lender, at its option, in the name of Borrower or otherwise, to file and prosecute what would otherwise be Borrower's claim for any such proceeds, award or payment and to collect, retain and apply the same in accordance with this Agreement. Notwithstanding the foregoing, in the event of any single instance of damage or destruction on account of which the insurance proceeds payable, net of all costs of collection and settlement, are \$10,000.00 or less, if there shall not have occurred and be continuing a Default or have occurred an Event of Default, Borrower shall be entitled to requisition such proceeds pursuant to Lender's customary disbursement procedures, and shall promptly commence and diligently prosecute to completion the repair and/or restoration of the affected portions of the Property; provided, however, that Lender shall disburse to Borrower such insurance proceeds, for application to restoration of the Property if the net amount thereof is less than \$10,000.00, Borrower shall promptly commence and diligently prosecute to completion the repair and/or restoration of the affected portion of the Collateral, irrespective of whether net insurance proceeds or net condemnation awards, as the case may be, are made available to Borrower or, if made available, are sufficient therefor.

## **Section 10. Enforcement.**

**10.1 Lender's Expenses.** If any action or proceeding is commenced to which Lender is made a party in connection with or in any way relating to the Loan or in which it becomes necessary to defend or uphold the lien of this Agreement, Borrower shall, on written demand, reimburse Lender for all reasonable expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Lender in connection therewith, together with interest thereon at the Default Rate if such reimbursement is not made within five (5) Business Days of such demand, which sum shall become part of the Loan and, to the extent permitted by applicable law, be secured by the Pledge and Security Agreement and IP Security Agreement and the other Loan Documents. Borrower shall bear and pay all reasonable expenses (including reasonable attorneys' fees and disbursements) of or incidental to the administration, enforcement, compromise or settlement of this Agreement or the Loan, and for defending or asserting the rights and claims of

Lender in respect thereof, whether or not any action for such enforcement has been commenced ("Collection Costs"). All such expenses incurred by Lender, together with interest thereon at the Default Rate if such reimbursement is not made within three (3) Business Days of demand for repayment thereof, shall be part of the Loan and, to the extent permitted by applicable law, secured by the Pledge and Security Agreement, the IP Security Agreement and the other Loan Documents. Notwithstanding anything to the contrary set forth in this Section 10, Borrower shall not be liable for costs and expenses incurred by Lender in connection with negotiation and closing of the Loan transaction or in connection with exercise and closing pursuant to the Option (except to the extent Lender commences an action to enforce its rights pursuant to the Option).

**10.2 Proceedings and Actions.** Lender shall have the right to join in and defend, any action, proceeding or arbitration which Lender, in its discretion, determines may adversely affect the Collateral. Lender shall also have the right, after written notice to Borrower, to institute any action or proceeding which Lender may, in its reasonable discretion, determine should be brought to protect its interest in the Collateral or its rights hereunder. All reasonable costs and expenses incurred by Lender in connection with such actions or proceedings (including reasonable attorneys' fees and disbursements), shall be paid by Borrower on written demand, together with interest thereon at the Default Rate if not paid within five (5) Business Days of such demand, and all such costs and expenses, together with such interest, shall be part of the Loan and secured by the Pledge and Security Agreement, the IP Security Agreement and the other Loan Documents.

**10.3 No Waiver.** Application of a Late Charge shall not be construed as a consent by Lender to any extension of time or as a waiver of any Default or Event of Default that may be related to such or any other overdue payment or of any other Default or Event of Default. Application of interest at the Default Rate shall not be deemed to constitute a waiver of any Default or Event of Default or a consent to any extension of time for the payment or performance of any obligation with respect to which the Default Rate may be invoked hereunder.

**Section 11. Costs and Expenses.** Borrower agrees to pay to Lender, on written demand, all reasonable costs and expenses incurred by Lender, including reasonable attorneys' fees

and disbursements, in connection with any review or approval required by Lender under this Agreement, including, without limitation, the review, preparation and/or negotiation of any document, instrument, agreement or certificate requested by Borrower to be delivered by Lender or required or requested by Lender to be entered into by Lender and Borrower pursuant to the provisions of the Loan Documents, and in connection with this Agreement and the other Loan Documents and the transactions contemplated thereby and hereby, together with all costs and expenses (including, without limitation, attorneys' fees and disbursements) expended for collection of any payment due hereunder, under the Note and under the other Loan Documents and all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Lender in connection with a suit at law or equity, whether at the trial or appellate level, to foreclose Lender's lien on the Collateral and sell the Collateral or any part thereof whether or not such suit shall have proceeded to judgment, together with interest thereon at the Default Rate, and Borrower agrees that such costs shall be deemed to be part of the Loan and shall be secured by the Pledge and Security Agreement, the IP Security Agreement and the other Loan Documents. Borrower agrees to pay or to reimburse Lender, upon demand, the reasonable fees and out-of-pocket expenses incurred by Lender and by Lender's counsel. Borrower shall also pay all other closing costs in connection with the transactions contemplated hereby and by the other Loan Documents, including, without limitation, recording fees. Notwithstanding anything to the contrary set forth in this Section 11, Borrower shall not be liable for costs and expenses incurred by Lender in connection with negotiation and closing of the Loan transaction or in connection with exercise and closing pursuant to the Option (except to the extent Lender commences an action to enforce its rights pursuant to the Option).

**Section 12.** **Notices.** Unless otherwise provided for herein, all notices and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given (a) when delivered, if delivered personally or by facsimile transmission (provided that all notices and other communications sent by facsimile transmission shall, in order to be deemed duly given, also be sent by the other method under subdivision (b) hereof), or (b) on the following Business Day, if sent by overnight mail or nationally recognized prepaid overnight



courier, in each case to the parties at the following addresses or at such other addresses as shall be specified by like notice:

(i) If to Lender:  
Viva IP Corp.  
3140 Route 22 West  
Somerville, New Jersey 08876  
Attn: Mr. Harvey Ross, President  
Facsimile No.: (908) 595-6242  
Telephone No.: (908) 595-6200

with a copy to:  
Shapiro & Croland  
411 Hackensack Avenue  
Hackensack, New Jersey 07601  
Attention: Robert P. Shapiro, Esq.  
Facsimile No.: (201) 488-9481  
Telephone No.: (201) 488-3900

(ii) If to Borrower:

Miracle Optics  
Attention: Mr. Xin Xiao  
709 Brea Canyon Road, Suite 7  
Walnut, California 91789  
Facsimile No.:  
Telephone No.:

with a copy to:  
Mark A. Ziemba, Esq.  
Squire, Sanders & Dempsey, L.L.P.  
801 South Figueroa, 14<sup>th</sup> Floor  
Los Angeles, California 90017-5554  
Facsimile No.: (213) 623-4581  
Telephone No.: (213) 624-2500

**Section 13. Place of Payment.** All payments of principal and interest on the Note and all other sums due to Lender hereunder and under the other Loan Documents shall be made in immediately available United States dollars and shall be paid to Viva IP Corp., Attn: Mr. Harvey Ross, President, 3140 Route 22 West, Somerville, New Jersey 08876 or to such other payee or at such other place as Lender shall notify Borrower in writing.

December 3, 2001 4:53 pm

**Section 14. Remedies, Cumulative; No Waiver.** The rights, remedies and benefits herein expressly specified are cumulative and are not exclusive of any rights, remedies or benefits which Lender may have by operation of law or pursuant to any of the Loan Documents or otherwise. No failure on the part of Lender to exercise, and no delay by Lender in exercising, any right under this Agreement, the Note or any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement or any other Loan Document preclude any other or further exercise thereof or the exercise of any other right.

**Section 15. Entire Agreement; Amendments.** This Agreement, the Note and the other Loan Documents, constitute the entire agreement between and among the parties hereto relating to the subject matter hereof, incorporate or rescind all prior agreements and understandings between and among the parties hereto relating to the Loan, cannot be changed or terminated orally and shall be deemed effective as of the date hereof. No amendment or waiver of any provision of this Agreement, the Note or any other Loan Document shall be effective unless the same shall be in writing and signed by the party against whom such amendment or waiver is to be enforced.

**Section 16. Financing Statements.** If, in the opinion of Lender, any Financing Statements, UCC continuation statements or other filings are required to be filed at any time to perfect the security interests created hereby and by the Pledge and Security Agreement and IP Security Agreement, then Borrower shall execute as many counterparts of such Financing Statements or UCC continuation statements as Lender shall request from time to time and hereby authorizes Lender to file same, at Borrower's cost and expense, in the manner provided by law. Upon the failure or refusal of Borrower to execute and deliver the same to Lender, Lender is hereby irrevocably authorized and empowered to execute and file such Financing Statements and UCC continuation statements for and on behalf of Borrower, and Borrower hereby irrevocably grants Lender a limited power of attorney, coupled with an interest, for said purposes.

**Section 17. Successors and Assigns.** Borrower shall neither assign nor delegate any of its rights, privileges or duties arising under this Agreement without the prior written consent of Lender and any such attempted or purported assignment or delegation without such prior written consent shall be null

and void, ab initio. Subject to the terms of the preceding sentence, all representations, covenants, provisions and agreements made by or on behalf of Borrower in this Agreement shall be binding upon the successors and assigns of Borrower as if they were Borrower hereunder and shall inure to the benefit of Lender.

**Section 18. Waiver of Stay, Extension and Moratorium Laws, Appraisal and Valuation, Redemption and Marshaling; Preferences.** Borrower shall not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Collateral, or any part thereof, wherever enacted, which may affect the covenants and terms of performance of the Loan Documents, nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Collateral, or any part of any thereof, prior to any sale or sales thereof which may be made pursuant to any provision of any Loan Document, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after any such sale or sales, claim or exercise any right under any statute to redeem the property so sold, or any part thereof, and Borrower hereby expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Lender, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. Borrower, for itself and all who may claim under them, waive, to the extent that they lawfully may, all right to have the Collateral marshaled upon any foreclosure of the Pledge and Security Agreement or IP Security Agreement. To the extent Borrower makes a payment to Lender, which payment or the proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party having requisite authority under the Bankruptcy Code or any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligation hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received.

**Section 19. Usury.**

(a) It is the intention of the parties hereto to conform strictly to the usury and other laws relating to the imposition and collection of interest from time to time in force, and all agreements between Borrower and Lender, whether now existing or hereafter arising and whether oral or written, are hereby expressly limited so that in no contingency or event whatsoever, whether by acceleration or maturity or otherwise, shall the amount paid or agreed to be paid to Lender, or collected by Lender or for the use, forbearance or detention of the money to be loaned under the Note, this Agreement or otherwise, or for the payment or performance of any covenant or obligation contained herein or in any of the other Loan Documents or in any other security agreement given to secure the Loan or in any other document evidencing, securing or pertaining to the Loan, exceed the maximum amount of interest allowable under applicable law (the "Maximum Amount"). If under any circumstances whatsoever fulfillment of any provision hereof or any other Loan Document, at the time performance of such provision shall be due, shall involve transcending the Maximum Amount, then ipso facto, the obligation to be fulfilled shall be reduced to the Maximum Amount. For the purposes of calculating the actual amount of interest paid and or payable, in respect of laws pertaining to usury or such other laws, all sums paid or agreed to be paid to the holder of the Note for the use, forbearance or detention of the Loan shall, to the extent permitted by applicable law, be amortized, allocated and spread from the date of disbursement of the proceeds of the Loan until payment in full of the Loan, so that the actual rate of interest on account of the Loan is uniform throughout the term hereof. If under any circumstances Lender shall ever receive an amount deemed interest by applicable law, which would exceed the Maximum Amount, such amount that would be excessive interest under applicable usury laws shall be deemed a payment in reduction of the principal amount owing under the Note and shall be so applied to principal and not to the payment of interest, or if such excessive interest exceeds the outstanding principal balance of the Loan, such excessive interest shall be deemed to have been a payment made by mistake and shall be refunded to Borrower or to any other person making such payment on Borrower's behalf.

**Section 20. Brokerage.** The parties hereto represent and warrant that neither party has dealt with any broker, finder or like agent in connection with the Loan or the execution and

delivery hereof. Each party indemnifies and holds harmless the other party from and against any expense, cost or liability arising from or incurred in connection with any claim by any broker who shall claim to have dealt with either party. The rights of Lender granted in this Section 20 are in addition to and not in lieu of any indemnity granted elsewhere in this Agreement, the Loan Documents or otherwise at law.

**Section 21. Benefit of this Agreement.** Except for certain rights of Eric Liu expressly set forth in this Agreement, the covenants, provisions, terms, conditions and obligations of the parties hereto are imposed solely and exclusively for the benefit of Lender (and Lender's successors or assigns) and Borrower and no other Person (including, without limitation, any contractor, mechanic or materialmen performing work at the Property) shall have standing to require satisfaction of such covenants, provisions, terms, conditions and obligations in accordance herewith and no other Person (including, without limitation, any contractor, mechanic or materialmen performing work at the Property) shall, under any circumstances, be deemed to be a beneficiary of such covenants, provisions, terms, conditions and obligations, any or all of which may be freely waived in whole or in part by Lender at any time if in its sole discretion it deems it advisable to do so.

**Section 22. Governing Law; Service of Process.**

(a) This Agreement shall be construed and enforced in accordance with the internal laws of the State of New Jersey.

(b) All actions or proceedings arising in connection with the Loan Documents (including, without limitation, this Agreement) shall be tried and litigated in state or Federal courts located in the State of New Jersey, or the Superior Court of the State of New Jersey, County of Bergen unless such actions or proceedings are required to be brought in another court to obtain subject matter jurisdiction over the matter in controversy. BORROWER WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS, TO ASSERT THAT IT IS NOT SUBJECT TO THE JURISDICTION OF SUCH COURTS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE HERewith.

(c) IN ANY ACTION AGAINST EITHER PARTY HEREIN, SERVICE OF PROCESS MAY BE MADE UPON SUCH PARTY BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO ITS RESPECTIVE ADDRESS ABOVE SET FORTH, WHICH SERVICE SHALL BE DEEMED SUFFICIENT FOR PERSONAL JURISDICTION AND SHALL BE DEEMED EFFECTIVE THREE (3) DAYS AFTER MAILING OR AS THE RULES OF COURT MAY OTHERWISE PROVIDE.

(d) THE PARTIES HEREIN HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVE, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY EITHER PARTY UNDER THE LOAN DOCUMENTS (INCLUDING, WITHOUT LIMITATION, THIS AGREEMENT), ANY AND EVERY RIGHT EITHER PARTY MAY HAVE TO (A) INJUNCTIVE RELIEF, (B) A TRIAL BY JURY, (C) INTERPOSE ANY COUNTERCLAIM THEREIN (EXCEPT FOR ANY COMPULSORY COUNTERCLAIM WHICH, IF NOT ASSERTED IN SUCH PROCEEDING, WOULD BE WAIVED) AND (D) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING.

**Section 23. Construction.**

(a) All defined terms used herein shall be applicable equally to the singular and plural forms of such terms.

(b) TIME IS OF THE ESSENCE in this Agreement and the performance of each of the covenants and agreements on Borrower's part to be performed hereunder.

(c) This Agreement and all of the Loan Documents executed and delivered in connection with the Loan shall be interpreted without regard to any canons of construction which require that a document be interpreted or construed against the party which caused the same to be drafted.

**Section 24. Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**Section 25. Section Headings.** All section headings herein have been inserted for convenience of reference only and

shall not affect any construction or interpretation of this Agreement.

**Section 26. Execution Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

**Section 27. Indemnity.**

**27.1 Nature of Indemnity.** To the fullest extent permitted by applicable law, Borrower shall and does hereby indemnify and defend Lender and each director, officer, agent, member, partner and employee thereof and each Person, if any, who has the power, directly or indirectly, to direct or cause the direction of the management and policies, by contract or otherwise, of Lender from and against any and all losses, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, (including, without limitation, reasonable attorneys' fees and disbursements), which may be imposed upon, incurred by or asserted against Lender arising out of or in connection with: (a) any breach or alleged breach on the part of Borrower pursuant to any of the terms, covenants, conditions or provisions of this Agreement or any of the other Loan Documents, (b) the execution, delivery and enforcement of any of the Loan Documents, (c) any action taken or omitted to be taken by Borrower or any Affiliate thereof, (d) the ownership of a mortgagee's interest in the Property, (e) any accident, injury to or death of Persons or loss of property occurring on or about the Collateral, (f) any use or non-use or condition of the Collateral, (g) in respect of the Collateral, the negligence or tortuous acts of Borrower or any Affiliate thereof, or any of their contractors, servants, employees, licensees or invitees and (h) the payment of any tax, fee, assessment or other charge (except for income taxes and franchise taxes imposed upon Lender) imposed by any governmental authority which is attributable to the execution, delivery, filing or recording of any of the Loan Documents.

**27.2 Absence of Insurance.** The obligations of Borrower under this Article 27 shall not in any way be affected by the absence of insurance, or by the failure or refusal of any insurance company to perform any obligation on its part under any insurance policies.

**27.3 Reimbursement.** If any claim, action or proceeding is made or brought against Lender by reason of any event as to which Borrower is obligated to indemnify Lender, then, upon demand by Lender, Borrower, at Borrower's sole cost and expense, shall resist or defend such claim, action or proceeding in Lender's name, if necessary, by the attorneys for Borrower's insurance company (if such claim, action or proceeding is covered by insurance) or such other attorneys as Lender shall approve. Notwithstanding the foregoing, Lender may engage its own attorneys in its reasonable discretion to defend itself or to assist in its defense with respect to any such matter, and Borrower shall pay the reasonable fees and disbursements of such attorneys. Any sums payable by Borrower to Lender pursuant to this Section 27 shall be payable on demand, together with interest thereon at the Default Rate if such reimbursement is not made within three (3) Business Days of such demand, and shall be secured by this Loan Agreement and the other Loan Documents.

**Section 28. Additional Obligations of Borrower.**

Borrower is hereby, in addition to its other obligations under this Agreement and under the other Loan Documents, personally liable to and shall pay Lender on written demand the amount of all of Lender's losses and/or damages arising out of, or in any way related to or on account of (a) any act of fraud committed by Borrower or any Affiliate of Borrower in respect of the Loan, (b) any Material misrepresentation or breach of warranty or indemnity in connection with the making of the Loan, (c) the occurrence of waste with respect to the Collateral or security provided under the Loan Documents, (d) the appropriation or application of insurance proceeds or condemnation awards relating to the Property or any other of the Collateral contrary to the applicable provisions of the Loan Documents, (e) the occurrence of any uninsured casualty to the Collateral, (f) the existence of any liens on the Collateral which, within fifteen (15) days of demand therefor, are not removed, released, or insured over to the satisfaction of Lender, (g) any removal of any part of the Collateral in violation of the Loan Documents without the prior written consent of Lender, (h) Borrower's failure to execute and deliver to Lender, upon written request, any forms, affidavits or returns, or to provide any information with respect to any such forms, affidavits or returns, required to be executed and delivered by Borrower pursuant to applicable law upon any foreclosure or sale of the Collateral provided under the Loan Documents, or any transfer of any of the Collateral provided under the Loan Documents in lieu thereof, (i) the interposition



of any defense, claim or counterclaim, or the commencement of any action, whether or not in connection with any exercise of Lender's remedies under the Loan Documents, by Borrower or any Affiliate of Borrower alleging that Lender is a partner or joint venturer with Borrower in connection with the Collateral and the transactions contemplated by the Loan Documents, or (j) any Prohibited Action.

**Section 29. Security Interest; UCC Rights.**

**29.1 Covenants.**

**29.1.1 Accounts Covenants.**

(a) Lender shall have the right at any reasonable time or times during normal business hours, in Lender's name or in the name of a nominee of Lender, to verify the validity, amount or any other matter relating to any Account or other Miracle Collateral, by mail, telephone, facsimile transmission or otherwise.

(b) Miracle shall deliver or cause to be delivered to Lender, with appropriate endorsement and assignment, with full recourse to Miracle, all chattel paper and instruments which Miracle now owns or may at any time acquire immediately upon Miracle's receipt thereof, except as Lender may otherwise agree.

(c) Lender may, at any time or times that an Event of Default exists or has occurred and is continuing, (i) notify any or all account debtors that the Accounts have been assigned to Lender and that Lender has a security interest therein and Lender may direct any or all accounts debtors to make payment of Accounts directly to Lender, (ii) extend the time of payment of, compromise, settle or adjust for cash, credit, return of merchandise or otherwise, and upon any terms or conditions, any and all Accounts or other Outstanding Loan Obligations included in the Miracle Collateral and thereby discharge or release the account debtor or any other party or parties in any way liable for payment thereof without affecting any of the Outstanding Loan Obligations, (iii) demand, collect or enforce payment of any Accounts or such other Outstanding Loan Obligations, but without any duty to do so, and Lender shall not be liable for its failure to collect or enforce the payment thereof nor for the negligence of its agents or

attorneys with respect thereto and (iv) take whatever other action Lender may deem necessary or desirable for the protection of its interests. At any time that an Event of Default exists or has occurred and is continuing, at Lender's request, all invoices and statements sent to any account debtor shall state that the Accounts and such other Outstanding Loan Obligations have been assigned to Lender and are payable directly and only to Lender and Miracle shall deliver to Lender such originals of documents evidencing the sale and delivery of goods or the performance of services giving rise to any Accounts as Lender may require.

**29.1.2 Inventory Covenants.** With respect to the Inventory: (a) Miracle shall at all times maintain inventory records reasonably satisfactory to Lender, keeping correct and accurate records itemizing and describing the kind, type, quality and quantity of Inventory, Miracle's cost therefor and daily withdrawals therefrom and additions thereto; (b) Miracle shall not remove any Inventory from the locations set forth or permitted herein, without the prior written consent of Lender, except for sales of Inventory in the ordinary course of Miracle's business and except to move Inventory directly from one location set forth or permitted herein to another such location; (c) Miracle shall produce, use, store and maintain the Inventory, with all reasonable care and caution and in accordance with applicable standards of any insurance and in conformity with applicable laws (including the requirements of the Federal Fair Labor Standards Act of 1938, as amended and all rules, regulations and orders related thereto); (d) Miracle assumes all responsibility and liability arising from or relating to the production, use, sale or other disposition of the Inventory; (e) Miracle shall not sell Inventory to any customer on approval, or any other basis which entitles the customer to return or may obligate Miracle to repurchase such Inventory other than returns by customers in the ordinary course of Miracle's business; (f) Miracle shall keep the Inventory in good and marketable condition; and (g) Miracle shall not, without prior written notice to Lender, acquire or accept any Inventory on consignment or approval.

**29.1.3 Equipment Covenants.** With respect to the Equipment: (a) Miracle shall keep the Equipment in good order, repair, running and marketable condition (ordinary wear and tear excepted); (b) Miracle shall use the Equipment with all reasonable care and caution and in accordance with applicable standards of any insurance and in conformity with all applicable

laws; (c) the Equipment is and shall be used in Miracle's business and not for personal, family, household or farming use; (d) Miracle shall not remove any Equipment from the locations set forth or permitted herein, except to the extent necessary to have any Equipment repaired or maintained in the ordinary course of the business of Miracle or to move Equipment directly from one location set forth or permitted herein to another such location and except for the movement of motor vehicles used by or for the benefit of Miracle in the ordinary course of business; (e) the Equipment is now and shall remain personal property and Miracle shall not permit any of the Equipment to be or become a part of or affixed to real property; and (f) Miracle assumes all responsibility and liability arising from the use of the Equipment.

#### **29.1.4 Miracle Collateral Locations.**

Miracle may open any new location within the continental United States provided Miracle (a) gives Lender thirty (30) days prior written notice of the intended opening of any such new location and (b) executes and delivers, or causes to be executed and delivered, to Lender such agreements, documents, and instruments as Lender may deem reasonably necessary or desirable to protect its interests in the Miracle Collateral at such location, including UCC financing statements.

**Section 30. Injunctive Relief.** Borrower recognizes that, in the event Borrower fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, any remedy or law may prove to be inadequate relief to Lender; therefore, Borrower agrees that Lender, if Lender so requests, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving either actual or irreparable damages.

**Section 31. Relationship of the Parties.** This Agreement provides for the making of a loan by Lender, in its capacity as a lender, to Borrower, in its capacity as a borrower, and for the payment of interest and the payment of principal by Borrower to Lender. The lending relationship between Lender and Borrower is limited to that of creditor/secured party, on the one hand, and debtor, on the other hand. The provisions herein for compliance with financial covenants and delivery of Financial Statements are intended solely for the benefit of Lender to protect its interests as Lender in assuring payments of interest and repayment of principal, and nothing contained in this

Agreement shall be construed as permitting or obligating Lender to act as a financial or business advisor or consultant to Borrower, as permitting or obligating Lender to control the Borrower or to control the Borrower's operations, as creating a fiduciary obligation on the part of Lender to Borrower or as creating any joint venture, agency or other relationship between the parties other than as explicitly and specifically stated in this Agreement. Borrower acknowledges that it has had the opportunity to obtain the advice of experienced counsel of its own choosing in connection with the negotiation and execution of this Agreement and to obtain the advice of such counsel with respect to all matters contained herein including, without limitation, all provisions in this Agreement for waiver of trial by jury. Borrower further acknowledges that it is experienced with respect to financial and credit matters and has made its own independent decision to apply to Lender for credit and to execute and deliver this Agreement.

**Section 32. Non-Recourse.**

Notwithstanding any other provision herein to the contrary, this Agreement and the other Loan Documents shall be non-recourse as to Tony, Bob and Michael, and Lender shall, pursuant to this Agreement, look solely to the Collateral and Miracle for enforcement of the debt evidenced hereby and all Outstanding Loan Obligations, and Lender shall not seek any judgment for a deficiency against such individuals in any action to enforce any right or remedy under this Agreement, the other Loan Documents, at law or in equity; provided, however, such individuals shall be jointly and severally liable to Lender in the case of fraud, willful misrepresentation in any Loan Document or a willful breach of the covenants set forth in Sections 6.1, 6.15, 6.17, 6.18, 6.19, 6.20 and 6.21 hereof or thereof, in which event Lender shall have and be entitled to exercise against all of the Borrowers all of its rights and remedies set forth in this Agreement, the other Loan Documents, at law and in equity.

**Section 33. Aspex Litigation Recovery.**

The parties hereby agree that in the event the Option is exercised and there is an affirmative recovery on the counterclaim filed by Miracle against the plaintiff in the Aspex Litigation, the Miracle Shareholders and Viva shall share the recovery to be split equally up to a total recovery of \$2,000,000

and any recovery in excess of \$2,000,000 shall be paid to the Miracle Shareholders. Recovery of damages on the counterclaim against the plaintiff in the Aspex Litigation shall not affect the terms and conditions of this Agreement or any of the other Loan Documents.

**Section 34. Counterparts and Facsimile Signatures.**


This Agreement may be executed by facsimile and in more than one counterpart, and each such counterpart shall be deemed to be an original document.

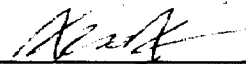
IN WITNESS WHEREOF, Borrower and Lender have executed this Agreement as of the day and year first above written.

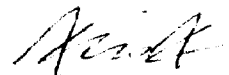
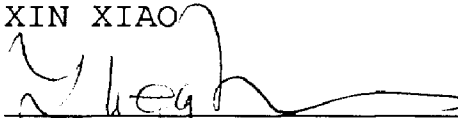
**BORROWER:**

Attest:

MIRACLE OPTICS, a California corporation

By:   
Name: Shijun Zheng  
Title: Secretary

By:   
Name: Xin Xiao  
Title: President

  
XIN XIAO  
  
SHIJUN ZHENG

\_\_\_\_\_  
MING XIAO

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

and any recovery in excess of \$2,000,000 shall be paid to the Miracle Shareholders. Recovery of damages on the counterclaim against the plaintiff in the Aspex Litigation shall not affect the terms and conditions of this Agreement or any of the other Loan Documents.

**Section 34. Counterparts and Facsimile Signatures.**

This Agreement may be executed by facsimile and in more than one counterpart, and each such counterpart shall be deemed to be an original document.

IN WITNESS WHEREOF, Borrower and Lender have executed this Agreement as of the day and year first above written.

**BORROWER:**

Attest:

MIRACLE OPTICS, a California corporation

By: \_\_\_\_\_  
Name: Shijun Zheng  
Title: Secretary

By: \_\_\_\_\_  
Name: Xin Xiao  
Title: President

\_\_\_\_\_  
XIN XIAO

\_\_\_\_\_  
SHIJUN ZHENG

\_\_\_\_\_  
*Ming Xiao*  
MING XIAO

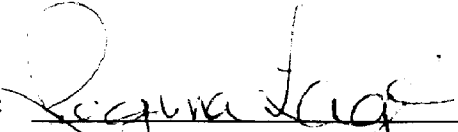
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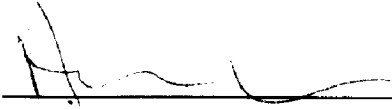
December 3, 2001 4:53 pm

**LENDER:**

Attest:

VIVA IP CORP.

By:   
Name: Regina Lage  
Title: Secretary

By:   
Name: Harvey Ross  
Title: President

STATE OF CALIFORNIA )  
 ) ss.:  
COUNTY OF Los Angeles )

On ~~November~~ <sup>December</sup> 17, 2001, before me, Stella M Lee, personally appeared XIN XIAO, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed same in his authorized capacity as President of Miracle Optics, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

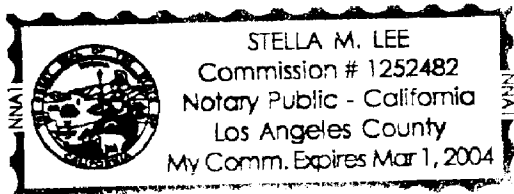


[Signature]  
[Signature of Notary Public]

STATE OF CALIFORNIA )  
 ) ss.:  
COUNTY OF Los Angeles )

On ~~November~~ <sup>December</sup> 17, 2001, before me, Stella M. Lee, personally appeared XIN XIAO, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



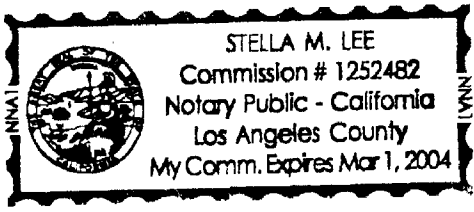
[Signature]  
[Signature of Notary Public]



STATE OF CALIFORNIA )  
 ) ss.:  
COUNTY OF Los Angeles )

On ~~November~~ <sup>December</sup> 17, 2001, before me, Stella M Lee, personally appeared SHIJUN ZHENG, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



[Signature]  
[Signature of Notary Public]

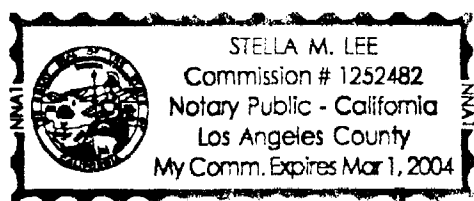
STATE OF CALIFORNIA )  
 ) ss.:  
COUNTY OF Los Angeles )

On ~~November~~ <sup>December</sup> 17, 2001, before me, Stella M Lee, personally appeared Shijun Zheng, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

as Secretary of Mirack Optics

[Signature]  
[Signature of Notary Public]



December 3, 2001 4:53 pm

STATE OF NEW JERSEY )  
 ) ss.:  
COUNTY OF Bergen )

I CERTIFY that on ~~November~~ December 26, 2001, Regina Lage personally came before me and this person acknowledged under oath, to my satisfaction, that:

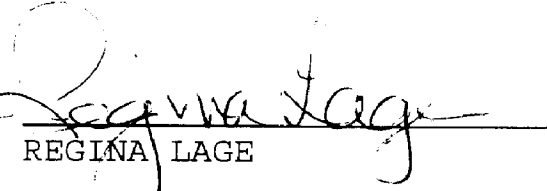
(a) this person is the secretary of Viva IP Corp., the corporation named in this document;

(b) this person is the attesting witness to the signing of this document by the proper corporate officer who is Harvey Ross, the President of the corporation;


(c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors;

(d) this person knows the proper seal of the corporation which was affixed to this document; and

(e) this person signed this proof to attest to the truth of these facts.

  
REGINA LAGE

Signed and sworn to before me  
on ~~November~~ December 26, 2001.

  
\_\_\_\_\_  
(Notary Public)

ATTORNEY AT LAW  
STATE OF NEW JERSEY

Miracle Collateral

The Miracle Collateral shall consist of all assets and personal property of Debtor including but not limited to, the following:

(a) all of Debtor's accounts, contract rights, instruments (including those evidencing indebtedness among Debtor and its affiliates), documents, chattel paper, general intangibles relating to accounts, drafts and acceptances, and all other forms of obligations owing to Debtor arising out of or in connection with the sale or lease of Inventory (as defined herein) or the rendition of services, all guarantees and other security therefor, whether secured or unsecured, now existing or hereafter created, and whether or not specifically sold or assigned to the Secured Party ("Receivables");

(b) all of Debtor's goods (other than Inventory, as defined below) whether now owned or hereafter acquired and wherever located including, without limitation, all equipment, machinery, apparatus, motor vehicles, fittings, furniture, furnishings, fixtures, parts, accessories and all replacements and substitutions therefor or accessions thereto ;

(c) all of Debtor's general intangibles, whether now owned or hereafter acquired including, without limitation, all choses in action, causes of action, corporate or other business records, inventions, designs, patents, patent applications, equipment formulations, manufacturing procedures, quality control procedures, trademarks, service marks, trade secrets, goodwill, copyrights, design rights, registrations, licenses, franchises, customer lists, tax refunds, tax refund claims, computer programs, all claims under guaranties, payment intangibles, promissory notes, security interests or other security held by or granted to such Debtor to secure payment of any of the Receivables by a customer, all rights of indemnification and all other intangible property of every kind and nature (other than Receivables) and that certain United States Trademark for the word mark "Magic Clip", serial number 76/188,818, published in the Official Gazette for the purpose of opposition on July 24, 2001;

(d) all of Debtor's now owned or hereafter acquired goods, merchandise and other personal property, wherever located, to be furnished under any contract of service or held for sale or lease, all raw materials, work in process, finished goods and materials and supplies of any kind, nature or description which are or might be used or consumed in Debtor's business or used in selling or furnishing such goods, merchandise and other personal property, and all documents of title or other documents representing them ("Inventory");

(e) all now owned or hereafter acquired securities (whether certificated or uncertificated), securities entitlements, securities accounts, commodities contracts and commodities accounts;

(f) all of Debtor's right, title and interest in and to the lease at its business premises;

(g) all right, title and interest of Debtor in and to (i) goods and other property including, but not limited to, all merchandise returned or rejected by customers, relating to or securing any of the Receivables; (ii) rights as a consignor, a consignee, an unpaid vendor, mechanic, artisan, or other lienor, including stoppage in transit, setoff, detinue, replevin, reclamation and repurchase; (iii) all additional amounts due from any customer relating to the Receivables; (iv) other property, including warranty claims, relating to any goods; (v) contract rights, rights of payment which have been earned under a contract right, instruments, investment property, documents, chattel paper, warehouse receipts, deposit accounts, money and securities; (vi) if and when obtained by Debtor, all real and personal property of third parties in which Debtor has been granted a lien or security interest as security for the payment or enforcement of Receivables; and (vii) any other goods, personal property or real property now owned or hereafter acquired in which Debtor has expressly granted a security interest or may in the future grant a security interest to Secured Party, or in any amendment or supplement hereto or thereto, or under any other agreement between Secured Party and Debtor;

(h) all ledger sheets, ledger cards, files, correspondence, records, books of account, business papers, computers, computer software (owned by Debtor or in which it has an interest),

computer programs, tapes, disks and documents relating to (a), (b), (c), (d), (e), (f), (g) or (i) hereof; and

(i) all proceeds and products of (a), (b), (c), (d), (e), (f), (g) and (h) above in whatever form, including, but not limited to: cash, deposit accounts (whether or not comprised solely of proceeds), certificates of deposit, letter of credit rights, insurance proceeds (including hazard, flood and credit insurance), negotiable instruments and other instruments for the payment of money, chattel paper, security agreements, documents, eminent domain proceeds, condemnation proceeds and tort claim proceeds.

December 3, 2001 4:53 pm

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**RECORDED: 01/04/2002**

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