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U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

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

1. Name of conveying party(ies): Naxcom Exchange, Inc. 4-17-03
Individual(s) Association
General Partnership Limited Partnership
Corporation-State
Other Delaware corporation
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)
Name: Landmark Communications, Inc.
Internal Address: Attn: Guy R. Friddell, III
Street Address: 150 W. Brambleton Avenue
City: Norfolk State: VA Zip: 23510
Individual(s) citizenship
Association
General Partnership
Limited Partnership
Corporation-State Virginia
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: April 8, 2003

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
B. Trademark Registration No.(s) 2,589,310
Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Thomas C. Inglima, Esquire
Internal Address: Willcox & Savage, P.C.
Street Address: Ste 1800, One Commercial Place
City: Norfolk State: VA Zip: 23510

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:

DO NOT USE THIS SPACE

9. Signature.

Eric Knapp Signature Date April 7, 2003

Total number of pages including cover sheet, attachments, and document: 26

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

TRADEMARK REEL: 002728 FRAME: 0542

# LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (the "Agreement") is made as of April 8, 2003 by and between LANDMARK COMMUNICATIONS, INC., a Virginia corporation ("Lender"), having an office at 150 West Brambleton Avenue, Norfolk, Virginia 23510, and NAXCOM EXCHANGE, INC., a Delaware corporation ("Borrower"), with its principal executive offices at 5959 Century Boulevard, Suite 556, Los Angeles, California 90045.

## RECITALS:

A. Lender and Borrower have entered into a non-binding Summary of Landmark Investment Terms (the "Term Sheet"):

B. \_\_\_\_\_ the Term Sheet contemplates that Borrower will obtain a bridge loan from Lender in the total amount of \_\_\_\_\_

C. Lender is willing to make the Bridge Loan on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the parties agree as follows:

## ARTICLE 1

### DEFINITIONS AND CONSTRUCTION

1.1 Definitions. All terms not defined when used shall have the meanings given such terms in Annex I attached hereto.

1.2 Accountings and Other Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP and all calculations and determinations made hereunder shall be made in accordance with GAAP. When used herein, the term "financial statements" shall include the notes and schedules thereto. The terms "including"/"includes" shall always be read as meaning "including (or includes) without limitation", when used herein.

## ARTICLE 2

### LOAN AND TERMS OF PAYMENT

2.1 Amount; Use. Lender agrees, on the terms and conditions of this Agreement, to make the Bridge Loan to Borrower through \_\_\_\_\_ in immediately available funds. The proceeds of the Bridge Loan shall be used for working capital purposes.

2.2 Note. The Bridge Loan shall be evidenced by the Commercial Note (attached hereto as Exhibit A) in the principal amount of \_\_\_\_\_ (the "Note"). The Note shall bear interest on the unpaid principal thereof at an initial rate of \_\_\_\_\_ if not paid in full when due, whether at maturity, by acceleration or otherwise. Interest shall be computed on the actual number of days elapsed on the basis of a year consisting of three hundred sixty (360) days. Interest shall be paid monthly, commencing on May 1, 2003, and continuing on the first day of each successive month thereafter. The unpaid principal balance of the Note and all accrued and unpaid interest thereon shall be due and payable in full in one lump sum payment on the earliest of \_\_\_\_\_, or (iii) October 1, 2003 (assuming payment is not due earlier as a result of an event of default).

2.3 Prepayment. Borrower may from time to time prepay the Bridge Loan in whole or in part without premium or penalty; provided that all prepayments shall be applied to payments in the inverse order of their maturity.

2.4 Deliveries Prior to Funding. Lender's obligation to make the Bridge Loan is subject to the condition precedent that Lender shall have received, in form and substance satisfactory to Lender, the items listed on Annex II attached hereto.

ARTICLE 3

GRANT OF SECURITY INTEREST

3.1 Grant of Security Interest. To secure Borrower's prompt, punctual, and faithful performance of all and each of Borrower's Obligations, Borrower hereby grants to Lender a continuing security interest in and to, and assigns to Lender, the following, and each item thereof, whether such item is now owned or now due or subject to an interest of Borrower, or whether such item is hereafter acquired, arises, or becomes due or becomes subject to an interest of Borrower, and all products, proceeds, substitutions, and accessions of or to any of the following (all of which, together with any other property in which Lender may in the future be granted a security interest, is referred to herein as the "Collateral"):

- (a) All Accounts and Accounts Receivable;
- (b) All Inventory;
- (c) All Contract Rights (or other rights to the payment of money);
- (d) All General Intangibles (including without limitation all intellectual property, payment intangibles, patents, patent applications, trademarks, trademark applications, trade names, copyrights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished, trade secret rights, engineering drawings, service marks, and all licenses, permits, agreements of any kind or nature pursuant to which Borrower possesses, uses or has authority to possess or use

property (whether tangible or intangible) of others or others possess, use or have authority to possess or use property (whether tangible or intangible) of Borrower);

(e) All Investment Property;

(f) All Equipment (and any accessions thereto);

(g) All Goods;

(h) All Fixtures;

(i) All Chattel Paper (whether tangible or electronic);

(j) All books, records, and information relating to the Collateral and/or to the operation of Borrower's business, and all rights of access to such books, records, and information, and all property in which such books, records, and information are stored, recorded and maintained;

(k) All software, computer programs, customer lists, tax refunds, goodwill, trade secrets, and other recorded data, including without limitation writings, plans, specifications and schematics, and all rights relating to the foregoing;

(l) All Instruments (including promissory notes), Documents of Title, Documents, policies and certificates of insurance, Securities and all other investment property, supporting obligations, deposits, deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, general tort claims, impressed accounts, compensating balances, money, cash, or other property;

(m) All insurance claims and proceeds, refunds and premium rebates, including, without limitation, proceeds of fire and credit insurance, whether any of such proceeds, refunds, and premium rebates arise out of any of the foregoing ((a) - (l)) or otherwise;

(n) All liens, guaranties, rights, remedies, and privileges pertaining to any of the foregoing including the right of stoppage in transit; and

(o) Any and all other tangible and intangible property of Borrower.

3.2 Extent and Duration of Security Interest. This grant of a security interest is in addition to, and supplemental of, any security interest previously granted by Borrower to Lender, is applicable to all Obligations, and shall continue in full force and effect until all Obligations have been paid and/or satisfied in full. Borrower warrants that the security interest granted hereunder shall at all times constitute a valid, first priority security interest in all of Borrower's property, both tangible and intangible.

### 3.3 Filing of Financing Statement, Etc.

(a) Borrower authorizes Lender to file such financing statements describing the Collateral as Lender deems necessary to perfect and continue perfected Lender's security

interest in the Collateral (and ensure the priority thereof). Borrower shall from time to time execute and deliver to Lender, at the request of Lender, all documents that Lender may reasonably request, in form reasonably satisfactory to Lender to perfect and continue perfected Lender's security interests in the Collateral (and ensure the priority thereof) and in order to fully consummate all of the transactions contemplated under the Loan Documents.

(b) Borrower shall have possession of the Collateral it has pledged, except where otherwise expressly provided in this Agreement. Where Collateral is in the possession of a third party, Borrower will join with Lender in notifying the third party of Lender's security interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Lender.

(c) Borrower will cooperate with Lender in obtaining control with respect to Collateral consisting of:

- (i) Deposit Accounts;
- (ii) Investment Property;
- (iii) Letter of credit rights; and
- (iv) Electronic Chattel Paper.

(d) Borrower will not create any Chattel Paper without placing a legend on the Chattel Paper acceptable to Lender indicating that Lender has a security interest in the Chattel Paper.

#### ARTICLE 4

#### REPRESENTATIONS AND WARRANTIES

To induce Lender to make the Bridge Loan, Borrower represents and warrants that, except as set forth in the disclosure schedules attached to Annex III, the representations and warranties set forth in Annex III are true, correct and complete. Borrower further represents and warrants that all representations and warranties made under each Borrowing Certificate shall be incorporated herein by this reference as if set out in full.

#### ARTICLE 5

#### AFFIRMATIVE COVENANTS

Borrower covenants and agrees that, so long as any Obligations are outstanding, Borrower will continue to do all of the following:

5.1 Payment of Obligations. Punctually pay the principal of and interest on the Obligations when due, at the times and places, in the manner and in accordance with the terms of this Agreement, the Note, and the other Loan Documents.

5.2 Conduct of Business and Maintenance of Existence. Continue to engage in business of the same general type as now being conducted by Borrower, and do and cause to be done all things necessary to maintain and keep in full force and effect its corporate existence in good standing in each jurisdiction in which it conducts business, except for any jurisdiction in which failure to qualify or maintain good standing would not result in a materially adverse effect.

5.3 Compliance with Laws, Etc. Comply in all material respects with all laws, statutes, ordinances, orders, rules or regulations applicable to Borrower or to the Collateral (or any part thereof) or to any other property owned, leased, operated or used by Borrower, including, without limitation, environmental laws, the violation of which would have a material adverse effect on the business, operations, properties or financial condition of Borrower.

5.4 Payment of Liabilities and Taxes. Pay, when due, all of its Indebtedness and liabilities, and pay and discharge promptly all taxes, assessments and governmental charges and levies (including, without limitation, F.I.C.A. payments and withholding taxes) upon Borrower or upon Borrower's income, profits or property (including, without limitation, the Collateral), except to the extent the amount or validity thereof is contested in good faith by appropriate proceedings so long as adequate reserves have been set aside therefor.

5.5 Contractual Obligations. Comply with any agreement or undertaking to which Borrower is a party and maintain in full force and effect all contracts and leases to which Borrower is or becomes a party unless the failure to do so would not have a material adverse effect on the business, operation, properties or financial condition of Borrower.

5.6 Maintenance of Properties. Do all things necessary to maintain, preserve, protect and keep its properties in good repair, working order and condition, and make all necessary and proper repairs, renewals and replacements so that Borrower's business may be properly conducted at all times, unless the failure to do so would not have a material adverse effect on the business, operation or financial condition of Borrower. Borrower shall promptly notify Lender of any event causing deterioration, loss or depreciation in value of any substantial portion of the Collateral and the amount of such loss or depreciation. Borrower shall perform, observe, and comply with all of the terms and provisions to be performed, observed or complied with by it under each contract, agreement or obligation relating to the Collateral. Lender shall have no duty to, and Borrower hereby releases Lender from all claims for loss or damage caused by the failure of Lender to, collect, protect, preserve or enforce any of the Collateral or preserve rights against Account Debtors and prior parties to the Collateral.

5.7 Insurance.

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

(b) All such policies of insurance shall be in such form, with such companies, and in such amounts as are reasonably satisfactory to Lender. All such policies of property insurance shall contain a lender's loss payable endorsement, in a form satisfactory to Lender, showing Lender as an additional loss payee thereof and all liability insurance policies shall show Lender as an additional insured, and shall specify that the insurer must give at least twenty (20) days notice to Lender before canceling its policy for any reason. At Lender's request, Borrower shall deliver to Lender certified copies of such policies of insurance and evidence of the payments of all premiums therefor. All proceeds payable under any such policy shall, at the option of Lender, be payable to Lender.

5.8 Inspection. Permit Lender, by its representatives and agents, to inspect any of the properties, books and financial records of Borrower, to examine and make copies of the books of accounts and other financial records of Borrower, and to discuss the affairs, finances and accounts of Borrower with, and to be advised as to the same by, Borrower (or its representatives) at such reasonable times and intervals as Lender may designate. In connection with the foregoing, Lender and its representatives and agents, at the expense of Borrower, shall have the right to (a) enter any business premises of Borrower or any other premises where the Collateral and the records relating thereto may be located and to audit, appraise, examine and inspect the Collateral and all records related thereto and to make extracts therefrom and copies thereof, and (b) verify under reasonable procedures the validity, amount, quality, quantity, value and condition of, and any other matter relating to, the Collateral, including contacting Account Debtors or any person possessing any of the Collateral.

5.9 Collection of Receivables Collateral. Collect its Receivables Collateral only in the ordinary course of business consistent with Borrower's past practices, and shall not, without Lender's prior written consent unless done so in the ordinary course of business consistent with past practices made known to Lender in writing, compromise or adjust the amount of any Receivable Collateral or extend the time for payment of any Receivable Collateral.

5.10 Further Assurances. Defend the title of Borrower to the Collateral and the security interest and lien thereon of Lender against all persons and against all security interests and liens on the Collateral adverse to those of Lender. Borrower will, from time to time, at the expense of Borrower, execute, deliver, acknowledge and cause to be duly filed, recorded or registered any statement, assignment, instrument, paper, agreement or other document and take any other action that from time to time may be reasonably necessary or desirable, or that Lender may reasonably request, in order to create, preserve, continue, perfect, confirm or validate the security interest and lien of Lender on the Collateral or to enable Lender to obtain the full benefits of this Agreement or to exercise and enforce any of its rights, powers and remedies hereunder or under applicable laws. Borrower shall pay all costs of, and incidental to, the filing, recording or registration of any such document as well as any recordation, transfer or other tax required to be paid in connection with any such filing, recordation or registration. Borrower hereby covenants to save harmless and indemnify Lender from and against any liability resulting from the failure to pay any required documentary stamps, recordation and transfer taxes and recording costs incurred by Lender in connection with this Agreement or the Collateral, which covenant shall survive the termination of this Agreement and the payment of all other Obligations. Borrower agrees that a carbon, photographic, photostatic or other reproduction of this Agreement or of a financing statement signed by Borrower in connection with this

Agreement shall be sufficient as a financing statement. If any Receivable Collateral arises out of a contract with the United States of America or any state, county, municipality or any department, agency or instrumentality thereof, Borrower shall immediately notify Lender thereof and, if required by Lender, execute and deliver any agreements, notices and/or assignments and do such other things as may be satisfactory to Lender in order that all sums due or to become due to Borrower under such contract shall be duly assigned to Lender in accordance with the Federal Assignment of Claims Act and/or any other applicable federal, state and local laws or regulations relating to the assignment of governmental obligations. If, in the reasonable opinion of Lender, any Equipment is or may become a part of any real estate owned or leased by Borrower, Borrower will, upon the request of Lender, use its commercially reasonable efforts to furnish to Lender in form and content satisfactory to Lender, a landlord's waiver by the record owner of such real estate and a mortgagee's waiver by any person who has a security interest or lien on such real estate which is or may be superior to the security interest and lien of Lender on such Equipment.

5.11 Notice. Promptly give written notice to Lender of (a) the occurrence of any Event of Default or any event, development or circumstance which might materially adversely effect the business, operations, properties or financial condition of Borrower, (b) any litigation instituted or threatened against Borrower or any judgment against Borrower where claims against Borrower exceed \_\_\_\_\_ and are not covered in full by insurance, and (c) any notice of a claim against, or investigation of, Borrower, the Collateral or any other property owned, leased, operated or used by Borrower. Borrower shall also promptly provide Lender with copies of all notices received from, or required to be provided to, any landlord from which Borrower leases any real property under any lease agreement.

5.12 Commercial Tort Claims. If Borrower shall at any time hold or acquire a commercial tort claim, Borrower shall immediately notify Lender in a writing signed by Borrower of the brief details thereof and grant to Lender in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to Lender.

5.13 Newly Created Intellectual Property. Borrower will promptly notify Lender of all new trademark, patent and copyright registrations and applications for registration now or hereafter filed by Borrower.

## ARTICLE 6

### NEGATIVE COVENANTS

Borrower covenants and agrees that, so long as any Obligations are outstanding, Borrower will not do any of the following:

6.1 Dispositions. Convey, sell, lease, transfer or otherwise dispose of (collectively, a "Transfer"), all or any part of its business or property, other than Transfers: (i) of inventory in the ordinary course of business, (ii) of non-exclusive licenses and similar arrangements for the use of the property of Borrower in the ordinary course of business; (iii) that constitute payment



of normal and usual operating expenses in the ordinary course of business; or (iv) of worn-out or obsolete equipment.

6.2 Changes in Business. Engage in any business, other than the businesses currently engaged in by Borrower and any business substantially similar or related thereto (or incidental thereto).

6.3 Mergers or Acquisitions. Merge or consolidate with or into any other entity or acquire all or substantially all of the assets of any corporation or other entity.

6.4 Distributions or Investments. Borrower shall not, without the prior written consent of Lender, make any distribution in respect of any of Borrower's stock or redeem, retire, purchase, or acquire any of Borrower's stock held by any other person, or invest in or purchase any stock or securities or rights to purchase any such stock or securities of any corporation or other entity.

6.5 Restrictions on Indebtedness; Expenditures and Material Obligations.

(a) Borrower shall not make any loans or advances to, nor acquire, guarantee or otherwise become responsible for the Indebtedness of, any Person, other than advance payments made to Borrower's suppliers in the ordinary course or to Borrower's employees for travel and related expenses.

(b) Borrower shall not create, incur, assume or be or remain liable with respect to Indebtedness, except for (i) Permitted Indebtedness and (ii) trade indebtedness incurred in the ordinary course of business.

(c) Borrower shall not make any payment in respect of any Indebtedness, except payments made in respect of (i) Permitted Indebtedness, to the extent such payments are made in compliance with the terms of such Permitted Indebtedness (and do not constitute prepayments) and (ii) trade indebtedness incurred in the ordinary course of business. Without limiting the payments prescribed in the preceding sentence, Borrower shall not (A) make any payment out of the ordinary course of business, or (B) make any payment to any member or Affiliate (excluding payments made to Lender and/or its Affiliates) or any director, officer or employee (excluding employee salaries, board fees and expense reimbursements in accordance with Borrower's policies and procedures).

(d) Borrower shall not amend any provision contained in any documentation relating to any Indebtedness (including Permitted Indebtedness) without Lender's prior written consent.

6.6 Transactions with Affiliates. Directly or indirectly enter into any material transaction with any Affiliate of Borrower or permit to exist any such material transaction other than any transaction with Lender (which shall only list transactions existing through the date hereof) except for transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a nonaffiliated Person.

6.7 Changes in Business Locations or Incorporation. Borrower will not, without at least thirty (30) days prior written notification to Lender, relocate its chief executive office or add any new offices or business locations or create any Subsidiary or reincorporate or reorganize in any other jurisdiction.

6.8 Encumbrances. Create, incur, assume or suffer to exist any Lien with respect to any of its property, or assign or otherwise convey any right to receive income, including the sale of any Accounts, except for Permitted Liens.

## ARTICLE 7

### EVENTS OF DEFAULT

The occurrence of any event described in this ARTICLE 7 (which has not otherwise been cured within the applicable cure period, if any) shall constitute an "Event of Default" herein. Upon the occurrence of any Event of Default, Lender, at its election and without notice of its election or demand, may declare all Obligations immediately due and payable (provided that upon the occurrence of an Event of Default described in Section 7.8 or 7.9 all Obligations shall become immediately due and payable without any action by Lender). Upon such acceleration, the Event of Default shall also constitute, without notice or demand, a default under all other agreements between Lender and Borrower and instruments and papers given Lender by Borrower, whether such agreements, instruments, or papers now exist or hereafter arise.

7.1 Payment Default. The failure by Borrower to pay, when due, any amount under this Agreement or the Note or any other Obligation, provided, however, that such payment default is not cured within three (3) Business Days from the date of notice of such nonpayment given by Lender in the manner provided in Section 9.15.

7.2 Covenant Default. The failure by Borrower to promptly, punctually, faithfully and timely perform or discharge, or to comply with, any covenant to or with Lender or any Obligation, provided, however, that such failure or breach is not cured within twenty (20) days from date of notice given by Lender in the manner provided in Section 9.15; provided, further, in no event shall the notice and cure period set forth in this Section 7.2 apply to a payment default under Section 7.1 above.

7.3 Misrepresentation. The determination by Lender that any representation or warranty at any time made by Borrower to Lender under this Agreement was not true or complete in all material respects (or in all respects to the extent the representation or warranty is qualified by a materiality standard) when given or has otherwise been breached.

7.4 Default Under Other Agreements. The occurrence of any breach or default under any other agreement between Lender and Borrower (including for such purposes an event which, with or without notice or the passage of time or both, would constitute a breach or default), including without limitation any breach of a covenant, representation or warranty made under any agreement or any instrument or paper given to Lender by Borrower, whether such agreement, instrument, or paper now exists or hereafter arises (notwithstanding that Lender may not have exercised its rights upon default under any such other agreement, instrument or paper).

7.5 Acceleration of Other Debt. The occurrence of any event such that any Indebtedness of Borrower to any creditor other than Lender has been accelerated and has not been cured within five (5) business days.

7.6 Casualty Loss; Non-Ordinary Course Sales. The occurrence of any (a) uninsured loss, theft, damage, or destruction of or to any material portion of Borrower's assets, or (b) sale (other than sales in the ordinary course of business) of the assets of Borrower.

7.7 Judgment; Restraint of Business.

(a) Any person commences any action or process against Borrower or Borrower's assets seeking to seize, attach, levy or subject to a writ or lien of any kind or nature, any of Borrower's assets.

(b) There is litigation commenced against Borrower involving a material portion of the assets of Borrower and Borrower fails to file a responsive pleading which asserts a good faith defense within the applicable time limits prescribed therein, or fails to have the proceeding dismissed within that time or otherwise fails to defend such action in good faith.

(c) The entry of any judgment against Borrower, which judgment is not satisfied (if a money judgment) or appealed from (with execution or similar process stayed) within fifteen (15) days of its entry.

(d) The entry of any order or the imposition of any other process having the force of law, the effect of which is to restrain in any material way the conduct by Borrower of its business in the ordinary course.

7.8 Business Failure. Any act by, against, or relating to Borrower, or its property or assets, which act constitutes the application for, consent to, or sufferance of the appointment of a receiver, trustee, or other person, pursuant to court action or otherwise, over all, or any part of Borrower's property; the granting of any trust mortgage or execution of an assignment for the benefit of the creditors of Borrower, or the occurrence of any other voluntary or involuntary liquidation or extension of debt agreement for Borrower; or the offering by or entering into by Borrower of any composition, extension, or any other arrangement seeking relief from or extension of the debts of Borrower, or the initiation of any other judicial or non-judicial proceeding or agreement by, against, or including Borrower which seeks or intends to accomplish a reorganization or arrangement with creditors (however, it shall not be an Event of Default hereunder until the earlier of (x) the entry of an order for relief against Borrower, or (y) the expiration of thirty (30) days without dismissal of such complaint, application, or petition if such complaint, application or petition filed against Borrower was not filed by or at the direction of Borrower or any Related Entity, and is being diligently contested).

7.9 Bankruptcy. The failure by Borrower to generally pay the debts of Borrower as they mature; adjudication of bankruptcy or insolvency relative to Borrower; the entry of an order for relief or similar order with respect to Borrower in any proceeding pursuant to the Bankruptcy Code or any other federal bankruptcy law; or the filing of any complaint, application, or petition by or against Borrower initiating any matter in which Borrower is or may be granted any relief from the debts of Borrower pursuant to Bankruptcy Code or any other insolvency statute or

procedure (however, it shall not be an Event of Default hereunder until the earlier of (x) the entry of an order for relief against Borrower, or (y) the expiration of thirty (30) days without dismissal of such complaint, application, or petition of such complaint, application or petition filed against Borrower was not filed by or at the direction of Borrower or any Related Entity, and is being diligently contested).

7.10 Material Adverse Change. If there (a) occurs a material adverse change in the business, operations or condition (financial or otherwise) of Borrower, (b) is a material impairment of the Borrower's ability to repay the Obligations, (c) is a material impairment of the value or priority of Lender's security interests in the Collateral or (d) is a Change in Control of Borrower.

## ARTICLE 8

### RIGHTS AND REMEDIES UPON DEFAULT

In addition to all of the rights, remedies, powers, privileges, and discretions which Lender is provided prior to the occurrence of an Event of Default, Lender shall, at its election, without notice of its election and without demand, have the following rights and remedies upon the occurrence of any Event of Default and at any time thereafter.

8.1 Rights of Enforcement. Lender shall have all of the rights and remedies of a secured party upon default under the UCC, in addition to which Lender shall have all and each of the following rights and remedies, upon two (2) days notice to Borrower:

- (a) To collect the Receivables Collateral with or without the taking of possession of any of the Collateral;
- (b) To apply the Receivables Collateral or the proceeds of the Collateral towards (but not necessarily in complete satisfaction of) the Obligations;
- (c) To take possession of all or any portion of the Collateral;
- (d) To sell, lease, or otherwise dispose of any or all of the Collateral, in its then condition or following such preparation or processing as Lender deems advisable and with or without the taking of possession of any of the Collateral; and
- (e) To exercise all or any of the rights, remedies, powers, privileges, and discretions under all or any of the Loan Documents.

#### 8.2 Sale of Collateral.

(a) Any sale or other disposition of the Collateral may be at public or private sale upon such terms and in such manner as Lender deems advisable, having due regard to compliance with any statute or regulation which might affect, limit, or apply to Lender's disposition of the Collateral.

(b) Unless the Collateral is perishable or threatens to decline speedily in value, or is of a type customarily sold on a recognized market (in which event Lender shall provide Borrower with such notice as may be practicable under the circumstances), Lender shall give Borrower at least ten (10) days prior written notice of the date, time, and place of any proposed public sale, and of the date after which any private sale or other disposition of the Collateral may be made. Borrower agrees that such written notice shall satisfy all requirements for notice to Borrower which are imposed under the UCC or other applicable law with respect to Lender's exercise of Lender's rights and remedies upon default.

(c) Lender may purchase the Collateral, or any portion of it at any sale held under this Article.

(d) Lender shall apply the proceeds of any exercise of Lender's Rights and Remedies under this ARTICLE 8 towards the Obligations in such manner, and with such frequency, as Lender determines.

8.3 Collection of Accounts. Upon the occurrence and during the continuance of an Event of Default, Lender may notify any Person owing funds to Borrower of Lender's security interest in such funds and verify the amount of such funds. Borrower shall collect all amounts owing to Borrower for Lender, receive in trust all payments as Lender's trustee, and if requested or required by Lender immediately deliver such payments to Lender in their original form as received from the Account Debtor, with proper endorsements for deposit.

8.4 Occupation of Business Location. In connection with Lender's exercise of Lender's rights under this Article, Lender may enter upon, occupy, and use any premises owned or occupied by Borrower, and may exclude Borrower from such premises or portion thereof as may have been so entered upon, occupied, or used by Lender. Lender shall not be required to remove any of the Collateral from any such premises upon Lender's taking possession thereof, and may render any Collateral unusable to Borrower. In no event shall Lender be liable to Borrower for use or occupancy by Lender of any premises pursuant to this Article, nor for any charge (such as wages for Borrower's employees and utilities) incurred in connection with Lender's exercise of Lender's Rights and Remedies.

8.5 Grant of Nonexclusive License. Borrower hereby grants to Lender a royalty-free, nonexclusive, irrevocable license to use, apply, and affix any trademark, trade name, logo, or the like in which Borrower now or hereafter has rights, such license being with respect to Lender's exercise of the rights hereunder including, without limitation, in connection with any completion of the manufacture of Inventory or sale or other disposition of Inventory.

8.6 Assembly of Collateral. Lender may require Borrower to assemble the Collateral and make it available to Lender at Borrower's sole risk and expense at a place or places which are reasonably convenient to both Lender and Borrower.

8.7 Rights and Remedies. The rights, remedies, powers, privileges, and discretions of Lender hereunder (herein, the "Lender's Rights and Remedies") shall be cumulative and not exclusive of any rights or remedies which it would otherwise have. No delay or omission by Lender in exercising or enforcing any of Lender's Rights and Remedies shall operate as, or

constitute, a waiver thereof. No waiver by Lender of any Event of Default or of any default under any other agreement shall operate as a waiver of any other default hereunder or under any other agreement. No single or partial exercise of any of Lender's Rights or Remedies, and no express or implied agreement or transaction of whatever nature entered into between Lender and any person, at any time, shall preclude the other or further exercise of Lender's Rights and Remedies. No waiver by Lender of any of Lender's Rights and Remedies on any one occasion shall be deemed a waiver on any subsequent occasion, nor shall it be deemed a continuing waiver. All of Lender's Rights and Remedies and all of Lender's rights, remedies, powers, privileges, and discretions under any other agreement or transaction are cumulative, and not alternative or exclusive, and may be exercised by Lender at such time or times and in such order of preference as Lender in its sole discretion may determine. Lender's Rights and Remedies may be exercised without resort or regard to any other source of satisfaction of the Obligations.

## ARTICLE 9

### GENERAL

9.1 Delivery of Additional Documentation Required. Borrower shall from time to time execute and deliver to Lender, at the request of Lender, all Collateral, and all financing statements and other documents that Lender may request, in form satisfactory to Lender, to perfect and continue to perfect Lender's security interests in the Collateral (and ensure the priority thereof) and in order to fully consummate all of the transactions contemplated under the Loan Documents.

9.2 Successors and Assigns.

(a) This Agreement shall be binding upon Borrower and Borrower's representatives, successors, and assigns and shall inure to the benefit of Lender and Lender's successors and assigns, provided, however, no trustee or other fiduciary appointed with respect to Borrower shall have any rights hereunder.

(b) Lender shall have the unrestricted right at any time or from time to time, and without Borrower's or any guarantor's consent, to assign all or any portion of its rights and obligations hereunder to any of its Affiliates (each, an "Assignee"), and Borrower and each guarantor agrees that it shall execute, or cause to be executed, such documents, including without limitation, amendments to this Agreement and to any other documents, instruments and agreements executed in connection herewith as Lender shall deem necessary to effect the foregoing. In addition, at the request of Lender and any such Assignee, Borrower shall issue one or more new promissory notes, as applicable, to any such Assignee and, if Lender has retained any of its rights and obligations hereunder following such assignment, to Lender, which new promissory notes shall be issued in replacement of, but not in discharge of, the liability evidenced by the promissory note or notes held by Lender prior to such assignment and shall reflect the amount of the respective commitments and loans held by such Assignee and Lender after giving effect to such assignment. Upon the execution and delivery of appropriate assignment documentation, amendments and any other documentation required by Lender in connection with such assignment, and the payment by Assignee of the purchase price agreed to by Lender and such Assignee, such Assignee shall be a party to this Agreement and shall have all

of the rights and obligations of Lender hereunder (and under any and all other guaranties, documents, instruments and agreements executed in connection herewith) to the extent that such rights and obligations have been assigned by Lender pursuant to the assignment documentation between Lender and such Assignee, and Lender shall be released from its obligations hereunder and thereunder to a corresponding extent.

(c) Lender may transfer any Investment Property held by Lender as Collateral into Lender's name or that of its nominee and may receive the income and any distributions thereon and hold the same as Collateral for the Obligations, or apply the same to any Obligation, whether or not a default or an Event of Default has occurred.

9.3 Severability. Any determination that any provision of this Agreement or any application thereof is invalid, illegal, or unenforceable in any respect in any instance shall not affect the validity, legality, or enforceability of such provision in any other instance, or the validity, legality, or enforceability of any other provision of this Agreement.

9.4 Amendments; Course of Dealing. This Agreement and the other Loan Documents incorporate all discussions and negotiations between Borrower and Lender, either express or implied, concerning the matters included herein and in such other instruments, any custom, usage, or course of dealings to the contrary notwithstanding. No such discussions, negotiations, custom, usage, or course of dealings shall limit, modify, or otherwise affect the provisions thereof. No failure by Lender to give notice to Borrower of Borrower's having failed to observe and comply with any warranty or covenant included in any Loan Document shall constitute a waiver of such warranty or covenant or the amendment of the subject Loan Document. This Agreement may be amended only with the written consent of all parties hereto.

9.5 Power of Attorney. In connection with all powers of attorney included in this Agreement, Borrower hereby grants unto Lender full power to do any and all things necessary or appropriate in connection with the exercise of such powers as fully and effectually as Borrower might or could do, hereby ratifying all that said attorney shall do or cause to be done by virtue of this Agreement. No power of attorney set forth in this Agreement shall be affected by any disability or incapacity suffered by Borrower and each shall survive the same. All powers conferred upon Lender by this Agreement, being coupled with an interest, shall be irrevocable until this Agreement is terminated.

9.6 Lender's Costs and Expenses. Borrower shall pay on demand all Costs of Collection and all reasonable expenses of Lender in connection with the preparation, execution, and delivery of this Agreement, and any and all documents, instruments and agreements delivered to Lender in connection herewith, whether evidencing the Obligations, or granting Lender certain rights with respect to Borrower, and of any Loan Documents, whether now existing or hereafter arising, and all other reasonable expenses which may be incurred by Lender in preparing or amending this Agreement and all other agreements, instruments, and documents related thereto, or otherwise incurred with respect to the Obligations. Borrower specifically authorizes Lender to pay all such fees and expenses.

9.7 Copies and Facsimiles. This Agreement and all documents which relate hereto, which have been or may be hereinafter furnished to Lender may be reproduced by Lender by any

photographic, microfilm, xerographic, digital imaging, or other process, and Lender may destroy any document so reproduced. Any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business).

9.8 Governing Law. This Agreement and all rights and obligations hereunder, including matters of construction, validity, and performance, shall be governed by the laws of the Commonwealth of Virginia.

9.9 Consent to Jurisdiction. Borrower agrees that any legal action, proceeding, case, or controversy against Borrower with respect to any Loan Document may be brought in the City of Norfolk in the Commonwealth of Virginia, as Lender may elect in Lender's sole discretion. By execution and delivery of this Agreement, Borrower, for itself and in respect of its property, accepts, submits, and consents generally and unconditionally, to the jurisdiction of the aforesaid courts.

9.10 Indemnification. Borrower shall indemnify, defend, and hold Lender and any Affiliate, employee, officer, or agent of Lender (each, an "Indemnified Person") harmless of and from any claim brought or threatened against any Indemnified Person by Borrower, any guarantor or endorser of the Obligations, or any other Person (as well as from reasonable attorneys' fees and expenses in connection therewith) on account of Lender's relationship with Borrower or any other guarantor or endorser of the Obligations (each of which may be defended, compromised, settled, or pursued by the Indemnified Person with counsel of Lender's selection, but at the expense of Borrower) other than any claim as to which a final determination is made in a judicial proceeding (in which Lender and any other Indemnified Person has had an opportunity to be heard), which determination includes a specific finding that the Indemnified Person seeking indemnification had acted in a grossly negligent manner or in actual bad faith. This indemnification obligation shall survive payment of the Obligations and/or any termination, release, or discharge executed by Lender in favor of Borrower.

9.11 Agreement Controlling. The Loan Documents shall be construed and interpreted in a harmonious manner, provided, however, that in the event of any inconsistency between the provisions of this Agreement and any other Loan Document, the provisions of this Agreement shall govern and control.

9.12 Right of Set-Off. Borrower and any guarantor hereby grant to Lender a Lien, security interest and right of setoff as security for all Obligations and obligations to Lender, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Lender or any entity under the control of Lender, or in transit to any of them. At any time without demand or notice, Lender or any Affiliate of Lender may set off the same or any part thereof and apply the same to any liability or obligation of Borrower and any guarantor even though unmatured and regardless of the adequacy of any other collateral securing the loan. ANY AND ALL RIGHTS TO REQUIRE LENDER TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS



OR OTHER PROPERTY OF BORROWER OR ANY GUARANTOR, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED BY BORROWER.

9.13 Waivers.

(a) Borrower (and all guarantors, endorsers, and sureties of the Obligations) make each of the waivers included in Section 9.13(b), below, knowingly, voluntarily, and intentionally, and understands that Lender, in entering into the financial arrangements contemplated hereby and in providing loans and other financial accommodations to or for the account of Borrower as provided herein, whether now or in the future, is relying on such waivers.

(b) BORROWER, AND EACH SUCH GUARANTOR, ENDORSER, AND SURETY, RESPECTIVELY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE FOLLOWING:

(i) Except as otherwise specifically required hereby, notice of non-payment, demand, presentment, protest and all forms of demand and notice, with respect to the Obligations;

(ii) Except as otherwise specifically required hereby, the right to notice and/or hearing prior to Lender's exercising of Lender's rights upon default; and

(iii) THE RIGHT TO A JURY IN ANY TRIAL OF ANY CASE OR CONTROVERSY IN WHICH LENDER IS OR BECOMES A PARTY (WHETHER SUCH CASE OR CONTROVERSY IS INITIATED BY OR AGAINST LENDER OR IN WHICH LENDER IS JOINED AS A PARTY LITIGANT), WHICH CASE OR CONTROVERSY ARISES OUT OF OR IS IN RESPECT OF, ANY RELATIONSHIP AMONGST OR BETWEEN BORROWER OR ANY OTHER PERSON AND LENDER (AND LENDER LIKEWISE WAIVES THE RIGHT TO A JURY IN ANY TRIAL OR ANY SUCH CASE OR CONTROVERSY). THIS WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR LENDER TO ACCEPT THIS AGREEMENT AND MAKE THE ADVANCES HEREUNDER.

9.14 Usury Laws. All agreements between Borrower and any guarantor and Lender are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the indebtedness evidenced hereby or otherwise, shall the amount paid or agreed to be paid to Lender for the use or the forbearance of the indebtedness evidenced hereby exceed the maximum permissible under applicable law. As used herein, the term "applicable law" shall mean the law in effect as of the date hereof provided, however, that in the event there is a change in the law which results in a higher permissible rate of interest, then this Agreement shall be governed by such new law as of its effective date. In this regard, it is expressly agreed that it is the intent of Borrower and Lender in the execution, delivery and acceptance of this Agreement to contract in strict compliance with the laws of the Commonwealth of Virginia from time to time in effect. If, under or from any circumstances whatsoever, fulfillment of any provision hereof or of any of the Loan Documents at the time of performance of such provision shall be due, shall involve transcending the limit of such validity prescribed by applicable law, then the obligation to be fulfilled shall automatically be reduced to

the limits of such validity, and if under or from circumstances whatsoever Lender should ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the principal balance evidenced hereby and not to the payment of interest. This provision shall control every other provision of all agreements between Borrower and any guarantor and Lender.

9.15 Notices. All notices and other communications hereunder shall be (a) in writing; (b) delivered by telecopy, by commercial overnight or same-day delivery service with all delivery costs paid by sender, or by registered or certified mail with postage prepaid, return receipt requested; (c) deemed given on the date and at the time shown on the telecopy confirmation of receipt (if delivered by telecopy), on the date and at the time (if recorded) of delivery by commercial delivery service, as shown in the records thereof (if delivered by commercial overnight or same-day delivery service), or on the date shown on the return receipt (if delivered by registered or certified mail); and (d) addressed to the parties at their addresses specified in the Preamble to this Agreement (or at such other address for a party as shall be specified by like notice).

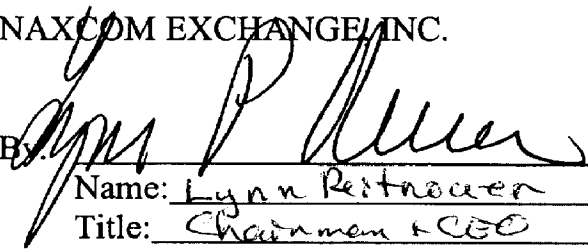
9.16 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –  
SIGNATURE PAGE FOLLOWS]

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


**Borrower:**

NAXCOM EXCHANGE, INC.

By:   
Name: Lynn Restnover  
Title: Chairman & CEO

**Lender:**

LANDMARK COMMUNICATIONS, INC.

By:   
Name: Guy B. Friddell, III  
Title: Executive Vice President

**ANNEX I**  
**DEFINITIONS**

As herein used, the following terms have the following meanings or are defined in the section of the within Agreement so indicated:

**“Account Debtor”**: has the meaning given that term in the UCC (as defined below).

**“Accounts”** and **“Accounts Receivable”**: include, without limitation, “accounts” as defined in the UCC, and also all: accounts, accounts receivable, credit card receivables, notes, drafts, acceptances, and other forms of obligations and receivables and rights to payment for credit extended and for goods sold or leased, or services rendered, whether or not yet earned by performance.

**“Affiliate”**: means, with respect to any two Persons, a relationship in which (a) one holds, directly or indirectly, not less than twenty five percent (25%) of the capital stock, beneficial interests, partnership interest, or other equity interests of the other; or (b) one has, directly or indirectly, Control of the other; or (c) not less than twenty five percent (25%) of their respective ownership is directly or indirectly held by the same third Person.

**“Agreement”**: is defined in the Preamble.

**“Assignee”**: is defined in Section 9.2(b).

**“Bankruptcy Code”**: Title 11, U.S.C., as amended from time to time.

**“Borrower”**: is defined in the Preamble.

**“Borrowing Certificate”**: means any certificate delivered by Borrower to Lender in connection with an advance.

**“Business Day”**: any day other than (a) a Saturday, Sunday; or (b) a day which shall be in the State of New York a legal holiday or day on which banking institutions are required or authorized to close.

**“Capital Lease”**: any lease which may be capitalized in accordance with GAAP.

**“Change of Control”**: shall mean (i) the sale, lease or transfer of all or substantially all of the assets of Borrower to any Person (including, without limitation, any “person” or “group” within the meaning of Sections 13(d)(3) and 14(d)(2) of the Exchange Act, or any successor provision to either of the foregoing, including any group acting for the purpose of acquiring, holding or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act), (ii) the approval by the requisite stockholders of Borrower of a plan of liquidation or dissolution of Borrower, (iii) any Person (including, without limitation, any “person” or “group” within the meaning of Sections 13(d) and 14(d)(2) of the Exchange Act, or any successor provision to either of the foregoing, including any group acting for the purpose of acquiring,

holding or disposing of securities within the meaning of Rule 13d- 5(b)(1) under the Exchange Act) becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act) of more than fifty percent (50%) of the total voting power of all classes of the voting stock of Borrower and/or warrants or options to acquire such voting stock, calculated on a fully diluted basis, unless, as a result of such transaction, the ultimate direct or indirect ownership of Borrower is substantially the same immediately after such transaction as it was immediately prior to such transaction, or (iv) any consolidation or merger of Borrower pursuant to which common stock in Borrower would be converted into cash, securities or other property, in each case other than a consolidation or merger of Borrower in which the holders of common stock in Borrower and other capital stock of Borrower entitled to vote in the election of directors of Borrower, immediately prior to the consolidation or merger have, directly or indirectly, at least a majority of the total voting power in the aggregate of capital stock entitled to vote in the election of directors of the continuing or surviving corporation immediately after the consolidation or merger.

“**Chattel Paper**”: has the meaning given that term in the UCC.

“**Collateral**”: is defined in Section 3.1.

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

“**Contract Rights**”: includes, without limitation, “contract rights” as now or formerly defined in the UCC and also any right to payment under a contract not yet earned by performance and not evidenced by an instrument or Chattel Paper.

“**Control**”: Person(s) shall be deemed to Control another Person if such Person(s) directly or indirectly possess the power to direct or cause the direction of the management and policies of such other Person, whether through ownership of voting securities, by contract, or otherwise.

**“Costs of Collection”**: includes, without limitation, all attorneys’ reasonable fees and reasonable out-of-pocket expenses incurred by Lender’s attorneys, and all reasonable costs incurred by Lender in the administration of the Obligations and/or the Loan Documents, including, without limitation, reasonable costs and expenses associated with travel on behalf of Lender, which costs and expenses are directly or indirectly related to or in respect of Lender’s: administration and management of the Obligations; negotiation, documentation, and amendment of any Loan Document; or efforts to preserve, protect, collect, or enforce the Collateral, the Obligations, and/or Lender’s Rights and Remedies and/or any of Lender’s rights and remedies against or in respect of any guarantor or other person liable in respect to the Obligations (whether or not suit is instituted in connection with such efforts). The Costs of Collection are Obligations, and at Lender’s option may bear interest at the highest post-default rate which Lender may charge Borrower hereunder as if such had been lent, advanced, and credited by Lender to, or for the benefit of, Borrower.

**“Deposit Account”**: has the meaning given the term in the UCC.

**“Documents”**: has the meaning given that term in the UCC.

**“Documents of Title”**: has the meaning given that term in the UCC.

**“Encumbrance”**: each of the following:

(a) security interest, mortgage, pledge, hypothecation, lien, attachment, or charge of any kind (including any agreement to give any of the foregoing); conditional sale or other title retention agreement; sale of accounts receivable or chattel paper; or other arrangement pursuant to which any Person is entitled to any preference or priority with respect to the property or assets of another Person or the income or profits of such other Person or which constitutes an interest in property to secure an obligation; each of the foregoing whether consensual or non-consensual and whether arising by way of agreement, operation of law, legal process or otherwise.

(b) The filing of any financing statement under the UCC or comparable law of any jurisdiction.

**“Equipment”**: includes, without limitation, “equipment” as defined in the UCC, and also all motor vehicles, rolling stock, machinery, office equipment, plant equipment, tools, dies, molds, store fixtures, furniture, and other goods, property, and assets which are used and/or were purchased for use in the operation or furtherance of Borrower’s business, and any and all accessions, additions thereto, and substitutions therefore.

**“Events of Default”**: is defined in ARTICLE 7.

**“Exchange Act”**: is the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

**“Fixtures”**: has the meaning given that term in the UCC.

**“GAAP” or “Generally Accepted Accounting Principles”**: principles which are consistent with those promulgated or adopted by the Financial Accounting Standards Board and

its predecessors (or successors) in effect and applicable to that accounting period in respect of which reference to GAAP or Generally Accepted Accounting Principles is being made.

**“General Intangibles”**: includes, without limitation, “general intangibles” as defined in the UCC; and also all: rights to payment for credit extended; deposits; amounts due to Borrower; credit memoranda in favor of Borrower; warranty claims; tax refunds and abatements; insurance refunds and premium rebates; all means and vehicles of investment or hedging, including, without limitation, options, warrants, and futures contracts; records; customer lists; telephone numbers; goodwill; causes of action; judgments; payments under any settlement or other agreement; literary rights; rights to performance; royalties; license and/or franchise fees; rights of admission; licenses; franchises; license agreements, including all rights of Borrower to enforce same; permits, certificates of convenience and necessity, and similar rights granted by any governmental authority; patents, patent applications, patents pending, and other intellectual property; developmental ideas and concepts; proprietary processes; blueprints, drawings, designs, diagrams, plans, reports, and charts; catalogs; manuals; technical data; computer software programs (including the source and object codes therefor), computer records, computer software, rights of access to computer record service bureaus, service bureau computer contracts, and computer data; tapes, disks, semi-conductors chips and printouts; trade secrets rights, copyrights, mask work rights and interests, and derivative works and interests; user, technical reference, and other manuals and materials; trade names, trademarks, service marks, and all goodwill relating thereto; applications for registration of the foregoing; and all other general intangible property of Borrower in the nature of intellectual property; proposals; cost estimates, and reproductions on paper, or otherwise, of any and all concepts or ideas, and any matter related to, or connected with, the design, development, manufacture, sale, marketing, leasing, or use of any or all property produced, sold, or leased, by Borrower or credit extended or services performed, by Borrower, whether intended for an individual customer or the general business of Borrower, or used or useful in connection with research by Borrower.

**“Goods”**: has the meaning given that term in the UCC.

**“Governmental Authorizations”**: means the material governmental licenses, franchises, permits, privileges, immunities, approvals and other governmental authorizations that are required in connection with the operation of the Business.

**“Indebtedness”**: all indebtedness and obligations (including without limitation any Contingent Obligations) of or assumed by any Person including, without limitation, any indebtedness or obligation: (i) in respect of money borrowed (including any indebtedness which is non-recourse to the credit of such Person but which is secured by an Encumbrance on any asset of such Person) or evidenced by a promissory note, bond, debenture or other written obligation to pay money; (ii) for the payment, deferred or other written obligation to pay money; (ii) for the payment, deferred for more than Thirty (30) days, of the purchase price of goods or services (other than current trade liabilities of such Person incurred in the ordinary course of business and payable in accordance with customary practices); (iii) in connection with any letters of credit or acceptance transaction (including, without limitation, the face amount of all letters of credit and acceptances issued for the account of such Person or reimbursement on account of which such Person would be obligated); (iv) in connection with the sale or discount of accounts receivable or chattel paper of Borrower; (v) on account of deposits or advances; and (vi) as

lessee under Capital Leases. "Indebtedness" of any Person shall also include: (x) Indebtedness of others secured by an Encumbrance on any asset of such Person; (y) Any guaranty, endorsement, suretyship or other undertaking pursuant to which that Person may be liable on account of any obligation of any third party; and (z) the Indebtedness of a partnership or joint venture in which such Person is a general partner or joint venturer.

**"Indemnified Person"**: is defined in Section 9.10.

**"Instruments"**: has the meaning given that term in the UCC.

**"Inventory"**: includes, without limitation, "inventory" as defined in the UCC and also all: packaging, advertising, and shipping materials related to any of the foregoing, and all names or marks affixed or to be affixed thereto for identifying or selling the same; Goods held for sale or lease or furnished or to be furnished under a contract or contracts of sale or service by Borrower, or used or consumed or to be used or consumed in Borrower's business; Goods of said description in transit: returned, repossessed and rejected Goods of said description; and all documents (whether or not negotiable) which represent any of the foregoing.

**"Investment Property"**: has the meaning given that term in the UCC.

**"Lender"**: is defined in Preamble.

**"Lender's Rights and Remedies"**: is defined in Section 8.7.

**"Lien"**: any Encumbrance as defined herein.

**"Loan Documents"**: this Agreement, the Note, each Borrowing Certificate and each instrument and document executed and/or delivered in connection with the arrangements contemplated hereby, as each may be amended from time to time.

**"Note"**: is defined in Section 2.2.

**"Obligation" or "Obligations"**: includes, without limitation, all and each of the following, whether now existing or hereafter arising:

(a) Any and all direct and indirect liabilities, debts, and obligations of Borrower to Lender or its affiliates, each of every kind, nature, and description.

(b) Each obligation to repay any loan, advance, indebtedness, note, obligation, overdraft, or amount now or hereafter owing by Borrower to Lender or its affiliates (including all future advances whether or not made pursuant to a commitment by Lender), whether or not any of such are liquidated, unliquidated, primary, secondary, secured, unsecured, direct, indirect, absolute, contingent, or of any other type, nature, or description, or by reason of any cause of action which Lender or its affiliates may hold against Borrower.

(c) All notes and other obligations of Borrower now or hereafter assigned to or held by Lender or its affiliates, each of every kind, nature, and description including, without limitation, the Note.



(d) All interest, fees, and charges and other amounts which may be charged by Lender or its affiliates to Borrower and/or which may be due from Borrower to Lender or its affiliates from time to time.

(e) All costs and expenses incurred or paid by Lender or its affiliates in respect of any agreement between Borrower and Lender or Lender's affiliate or instruments furnished by Borrower to Lender or its affiliates (including, without limitation, Costs of Collection, attorneys' reasonable fees, and all court and litigation costs and expenses).

(f) Any and all covenants of Borrower to or with Lender or its affiliates and any and all obligations of Borrower to act or to refrain from acting in accordance with any agreement between Borrower and Lender or Lender's affiliates or instruments furnished by Borrower to Lender or its affiliates.

**"Permitted Indebtedness"**: means:

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

(c) Subordinated Debt; and

(d) Indebtedness of Borrower under Capital Leases, provided, the aggregate amount financed under all such capital leases (including Capital Leases existing on the date hereof) shall not exceed

**"Permitted Liens"**: means liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings and as to which adequate reserves are maintained on Borrower's Books in accordance with GAAP; provided the same have no priority over Lender's security interests.

**"Person"**: any natural person, and any corporation, trust, partnership, joint venture, or other enterprise or entity.

**"Proceeds"**: include, without limitation, "Proceeds" as defined in the UCC, and each type of property described in Section 3.1.

**"Receivables Collateral"**: Borrower's Accounts, Accounts Receivable, Contract Rights, General Intangibles, Chattel Paper, Instruments, Documents of Title, Documents, Securities, letters of credit for the benefit of Borrower, and bankers' acceptances held by Borrower, and any rights to payment.

**"Related Entity"**: refers to (a) any Affiliate; and (b) any corporation, trust, partnership, joint venture, or other enterprise which: is a parent, brother-sister, Subsidiary, or Affiliate, of Borrower; could have such enterprise's tax returns or financial statements consolidated with Borrower's; could be a member of the same controlled Group of corporation (within the meaning of Section 1563(a)(1), (2) and (3) of the Internal Revenue Code of 1986, as amended from time to time) of which Borrower is a member; Controls or is Controlled by Borrower or any Affiliate of Borrower.

**“Securities”**: has the meaning given that term in the UCC.

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

**“Subsidiary”**: means with respect to any Person, corporation, partnership, company association, joint venture, or any other business entity of which more than fifty percent (50%) of the voting stock or other equity interests is owned or controlled, directly or indirectly, by such Person or one or more Affiliates of such Person.

**“Taxes”**: means all federal, state, local and foreign income, employment, franchise, capital stock, excise, gross receipts, sales, use, property, real estate and stamp taxes, payments in lieu of taxes, levies, duties, assessments and fees of any nature, together with all related penalties, fines or additions to tax or interest thereon.

**“Transfer”**: is defined in Section 6.1.

**“UCC”**: is Uniform Commercial Code as adopted and in effect in the State of Delaware, as amended from time to time.