EXHIBIT 4.3  
LOAN AND SECURITY AGREEMENT  
No. V07107  
This Loan and Security Agreement (this “Loan Agreement”), made as of May 31, 2007 by and between BlueCrest Capital Finance, L.P. (“Lender”), a Delaware limited partnership with its principal place of business at 000 Xxxx Xxxxxxxxxx Xxxxxx, Xxxxx 000, Xxxxxxx, Xxxxxxxx 00000, and Bioheart, Inc. (“Borrower”), a Florida corporation with its principal place of business at 00000 XX 0xx Xxxxxx, Xxxxx 000, Xxxxxxx, Xxxxxxx 00000.  
In consideration of the promises set forth herein, Lender and Borrower agree upon the following terms and conditions:  
1. General Definitions  
The following words, terms and /or phrases shall have the meanings set forth thereafter and such meanings shall be applicable to the singular and plural form thereof giving effect to the numerical difference:  
 A. “Account” means any “account,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest and, in any event, shall include all accounts receivable, book debts, rights to payment, and other forms of obligations now owned or hereafter received or acquired by or belonging or owing to Borrower (including under any trade name, style or division thereof), whether or not arising out of goods or software sold or licensed or services rendered by Borrower or from any other transaction (including any such obligation that may be characterized as an account or contract right under the UCC), and all of Borrower’s rights in, to and under all purchase orders or receipts now owned or hereafter acquired by it for goods or services, and all of Borrower’s rights to any goods represented by any of the foregoing (including unpaid seller’s rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), and all monies due or to become due to Borrower under all purchase orders and contracts for the sale of goods or the performance of services or both by Borrower or in connection with any other transaction (whether or not yet earned by performance on the part of Borrower), now in existence or hereafter occurring, including the right to receive the proceeds of said purchase orders and contracts, and all collateral security and guarantees of any kind given by any Person with respect to any of the foregoing.  
 B. “Account Control Agreement” means control agreement, by and among Lender, Borrower and Bank of America, relating to Account No. 0036 6244 3811 of Borrower at Bank of America.  
 C. “Account Debtor” means any Person obligated on an Account.  
 D. “Affiliate” means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote 10% or more of the securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.  
 E. “Bank of America” means Bank of America, N.A.  
 F. “Bank of America Aggregation Account” has the meaning set forth in Section 5.1.  
 G. “Bank of America Loan Guarantee Agreements” means the Loan Guarantee, Payment and Security Agreements, each dated as of the date hereof, between the Borrower and each of the Credit Support Providers.  
 H. “Borrower’s Liabilities” means all obligations and liabilities of Borrower to Lender (including without limitation all debts, claims, and indebtedness) whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and/or from time to time hereafter owing, due or payable, however evidenced, created, incurred, acquired or owing arising under this Loan Agreement, the Note, and/or the “Other Agreements” (hereinafter defined) or by operation of law.  
 I. “Business Day” means any day other than Saturday, Sunday or a day of the year on which banks in New York City, New York or Chicago, Illinois are required or authorized to close.  
 J. “Cash” means all cash, money (as such term is defined in the UCC), currency, and liquid funds, wherever held, in which Borrower now or hereafter acquires any right, title, or interest.  
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 K. “Change of Control” means, at any time, (i) the current shareholders of Borrower shall cease to beneficially own and control, directly or indirectly on a fully diluted basis, a majority of the economic and voting interests in the capital stock or other ownership interests of Borrower or (ii) any Person or group other than the current shareholders of Borrower shall have the right to elect a majority of the seats on Borrower’s board of directors. Notwithstanding the foregoing, in no event shall an initial public offering of the Company’s securities be deemed to be a “Change of Control”, even if such initial public offering results in non-compliance with clauses (i) and (ii).  
 L. “Charges” means all national, federal, state, county, city, municipal and/or other governmental taxes, levies, assessments, charges, liens, claims or encumbrances imposed on or assessed against all or any portion of the Collateral, Borrower’s business, Borrower’s ownership and/or use of any of its assets, and/or Borrower’s income and/or gross receipts.  
 M. “Chattel Paper” means any “chattel paper,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.  
 N. “Cleanup” means all actions required to: (1) clean up, remove, treat or remediate Hazardous Materials in the indoor or outdoor environment; (2) prevent the release of Hazardous Materials so that they do not migrate, endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (3) perform pre-remedial studies and investigations and post-remedial monitoring and care; or (4) respond to any government requests for information or documents in any way relating to cleanup, removal, treatment or remediation or potential cleanup, removal, treatment or remediation of Hazardous Materials in the indoor or outdoor environment.  
 O. “Collateral” has the meaning set forth in Section 5.1 hereof.  
 P. “Controlled Accounts” mean the Deposit Accounts that are covered by the Account Control Agreement.  
 Q. “Copyright License” means any written agreement granting any right to use any Copyright or Copyright registration, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.  
 R. “Copyrights” means all of the following property, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest: (i) all copyrights, whether registered or unregistered, held pursuant to the laws of the United States, any State thereof or of any other country; (ii) all registrations, applications and recordings in the United States Copyright Office or in any similar office or agency of the United States, of any State thereof or of any other country; (iii) all continuations, renewals or extensions thereof; and (iv) all registrations to be issued under any pending applications.  
 S. “Credit Support Providers” means (i) Xxxxxx Xxxxxxxxx and Xxxxxx Xxxxxxxxx, as guarantors under that certain Guaranty between them and Bank of America, dated as of the date hereof, (ii) R&A Xxxxxxx Family Limited Partnership, as sponsor under that certain Letter of Credit, dated as of the date hereof, in favor of Bank of America for benefit of Borrower, (iii) Xxxxxxx Xxxxxx, Jr., M.D., as sponsor under that certain Letter of Credit, dated as of the date hereof, in favor of Bank of America for benefit of Borrower, (iv) Xxxxx Xxxxxx, as sponsor under that certain Letter of Credit, dated as of the date hereof, in favor of Bank of America for benefit of Borrower, and (v) Magellan, as pledgor under that certain Pledge Agreement, dated as of the date hereof, in favor of Bank of America.  
 T. “Default” means any condition or event that, after notice or lapse of time or both, would constitute an Event of Default.  
 U. “Deposit Accounts” means any “deposit accounts,” as such term is defined in the UCC, and in any event includes any checking account, savings account, or certificate of deposit now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.  
 V. “Documents” means any “documents,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.  
 W. “Environmental Claim” means any claim, action, cause of action, investigation or notice (written or oral) by any Person alleging potential liability (including, without limitation, an obligation to conduct a Cleanup or potential liability for investigatory costs, Cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from (a) the presence or  
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 release of any Hazardous Materials at any location, whether or not owned, leased or operated by Borrower or any of its Subsidiaries, or (b) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.  
 X. “Environmental Laws” means all federal, state, local and foreign laws and regulations relating to pollution or protection of human health or the environment, including, without limitation, laws relating to releases or threatened releases of Hazardous Materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, release, disposal, transport or handling of Hazardous Materials, laws and regulations with regard to recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Materials and laws relating to the management or use of natural resources.  
 Y. “Equipment” means any “equipment”, as such term is defined in the UCC, and in any event shall include but not be limited to computers and peripherals, laboratory equipment, manufacturing equipment, networking equipment, switching and backbone equipment, servers and routers and other hardware including disk drives and laser printers, office furniture, fixtures and office equipment, test and other equipment, and software, and all accessions, additions, attachments, accessories and improvements thereof and all replacements and/or substitutions therefore and all proceeds and products thereof.  
 Z. “Event of Default” has the meaning set forth in Section 8.1 hereof.  
 AA. “Financials” means those financial statements described in Section 7.3 hereof.  
 BB. “Fixtures” means any “fixtures,” as such term is defined in the UCC, together with all right, title and interest of Borrower in and to all extensions, improvements, betterments, accessions, renewals, substitutes, and replacements of, and all additions and appurtenances to any of the foregoing property, and all conversions of the security constituted thereby, immediately upon any acquisition or release thereof or any such conversion, as the case may be, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.  
 CC. “GAAP” means generally accepted accounting principles in the United States, in effect from time to time, consistently applied.  
 DD. “General Intangibles” means any “general intangibles,” as such term is defined in the UCC other than Intellectual Property, and, in any event, shall include all right, title and interest which Borrower may now or hereafter have in or under any rights to payment; payment intangibles; business records and materials; customer lists; interests in partnerships, joint ventures, business associations, corporations, and limited liability companies; permits; claims in or under insurance policies (including unearned premiums and retrospective premium adjustments); and rights to receive tax refunds and other payments and rights of indemnification now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.  
 EE. “Goods” means any “goods,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.  
 FF. “Hazardous Materials” means all substances defined as Hazardous Substances, Oils, Pollutants or Contaminants in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.5, or defined as such by, or regulated as such under, any Environmental Law.  
 GG. “Instruments” means any “instruments,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.  
 HH. “Intellectual Property” means all current and future Copyrights, Trademarks, Patents, Licenses, and applications therefor and reissues, extensions, or renewals thereof, along with all confidential business information including inventions, know how, trade secrets, manufacturing processes, formulae, technical information, specifications, data, technology, plans and drawings and goodwill associated with any of the foregoing; together with rights to xxx for past, present and future infringement of Intellectual Property and the goodwill associated therewith, including (without limitation) Licenses where the Borrower is both licensor and licensee.  
 II. “Inventory” means any “inventory,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest, and, in any event, shall include all Goods and personal property that are held by or on behalf of Borrower for sale or lease or are furnished or are to be furnished under a contract of service, or that constitute raw materials, work in process or materials used or consumed or to be used or consumed in Borrower’s business, or the processing, packaging, promotion, delivery or shipping of the same, and all finished goods, whether or not the same is in transit or in the constructive, actual or exclusive possession of Borrower or is held by others for Borrower’s account, including all property covered by purchase orders and contracts with suppliers and all Goods billed and held by suppliers and all such property that  
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 may be in the possession or custody of any carriers, forwarding agents, truckers, warehousemen, vendors, selling agents or other Persons.  
 JJ. “Investment Property” means all “investment property,” as such term is defined in the UCC and, in any event, includes any certificated security, uncertificated security, money market funds, bonds, mutual funds, and U.S. Treasury bills or notes, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.  
 KK. “Letter of Credit Rights” means any “letter of credit rights,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest, including any right to payment or performance under any letter of credit.  
 LL. “License” means any Copyright License, Patent License, Trademark License or other license of rights or interests now held or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest and any renewals or extensions thereof.  
 MM. “Magellan” means Magellan Group Investments L.L.C.  
 NN. “Material Adverse Effect” means a material adverse effect upon (i) the business operations, properties, assets, business prospects, results of operations or condition (financial or otherwise) of Borrower, (ii) the prospect of repayment of any portion of Borrower’s Liabilities; provided that, the Borrower’s execution of a promissory note and a loan agreement, evidencing the Subordinated Debt and the Subordinated Debt — Bank, the Borrower’s execution of the Bank of America Loan Guarantee Agreement shall not constitute a material adverse effect on the Borrower’s ability to repay the Borrower’s Liabilities so long as the Subordination Agreements delivered by Bank of America and each of the Credit Support Providers remain in effect, (iii) the validity, perfection, or priority of Lender’s security interest in the Collateral, (iv) the enforceability of any material provision of this Loan Agreement or any Other Agreement or (v) the ability of Lender to enforce its rights and remedies under this Loan Agreement or any Other Agreement.  
 OO. “Material Agreement” means, with respect to any Person, any written contract that is material to the business, operations, properties, assets, business prospects, results of operations or condition (financial or otherwise) of such Person.  
 PP. “Note” has the meaning ascribed to such term in Section 2.2 hereof.  
 QQ. “Other Agreements” means the Warrant, the Note and any other documents or instruments evidencing or relating to the Term Loan or the Collateral or any other security which may now or hereafter be given as further security for or in connection with the Term Loan, as each may be amended, superseded or replaced from time to time.  
 RR. “Ordinary Course Indebtedness” means (i) accounts payable incurred in the ordinary course of business; (ii) unsecured indebtedness not to exceed, in the aggregate, $20,000; and (iii) leases or other financing or the acquisition of equipment or property incurred in the ordinary course of business not to exceed, in the aggregate, $250,000 during the term of the Loan Agreement.  
 SS. “Patent License” means any written agreement granting any right with respect to any invention on which a Patent is in existence or a Patent application is pending, in which agreement Borrower now holds or hereafter acquires any interest.  
 TT. “Patents” means all of the following property, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest: (a) all letters patent of, or rights corresponding thereto, in the United States or in any other country or jurisdiction, all registrations and recordings thereof, and all applications for letters patent of, or rights corresponding thereto, in the United States or any other country or jurisdiction, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or jurisdiction; (b) all reissues, continuations, continuations-in-part or extensions thereof; (c) all xxxxx patents, divisionals, and patents of addition; and (d) all patents to be issued under any such applications.  
 UU. “Payroll Account” has the meaning set forth in Section 5.1.  
 VV. “Permitted Liens” means any and all of the following (i) Charges for amounts not yet delinquent or being contested in good faith by appropriate proceedings and for which adequate reserves have been made in accordance with GAAP; (ii) statutory liens of landlords, carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for sums not yet delinquent or that are being contested in good faith by appropriate proceedings being diligently conducted and for which Borrower maintains adequate reserves in  
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 accordance with GAAP; (iii) liens arising from judgments, decrees or attachments in circumstances which do not constitute an Event of Default hereunder; (iv) the following deposits, to the extent made in the ordinary course of business: deposits under worker’s compensation, unemployment insurance, social security and other similar laws, or to secure the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure statutory obligations (other than liens arising under ERISA or environmental liens) or surety or appeal bonds, or to secure indemnity, performance or other similar bonds; (v) banker’s liens, rights of setoff and similar liens arising by operation of law on deposits made in the ordinary course of business, provided such liens do not arise in respect of borrowed money; (vi) non-exclusive licenses or sublicenses of Intellectual Property in the ordinary course of business; (vii) licenses or sub-licenses of Intellectual Property in connection with joint ventures and corporate collaborations (provided that any proceeds from such licenses described in this clause (vii) be used to pay down Borrower’s Liabilities hereunder); and (viii) liens arising in connection with clause (iii) of the definition of Ordinary Course Indebtedness for leasing or financing the acquisition of equipment or property, if the liens are confined to the equipment or property so leased or financed and the proceeds of such equipment or property.  
 WW. “Person” means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, institution, entity, party or government (whether national, federal, state, county, city, municipal or otherwise, including without limitation, any instrumentality, division, agency, body or department thereof).  
 XX. “Proceeds” means “proceeds,” as such term is defined in the UCC.  
 YY. “Receivables” means (i) all of Borrower’s Accounts, Instruments, Documents, Chattel Paper, Supporting Obligations, letters of credit, proceeds of any letter of credit, and Letter of Credit Rights, and (ii) all customer lists, software, and business records related thereto.  
 ZZ. “Securities Account” means any “securities account” as such term is defined in the UCC, and in any event includes any account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.  
 AAA. “Subordinated Debt” means any indebtedness of Borrower (other than Subordinated Debt — Bank (as defined below)) to a third party, subordinated to the rights of Lender hereunder pursuant to the terms and conditions of a subordination agreement satisfactory to Lender in its sole discretion, which indebtedness shall not be secured by any of the Collateral.  
 BBB. “Subordinated Debt — Bank” means any indebtedness of Borrower to Bank of America, subordinated to the rights of Lender hereunder pursuant to the terms and conditions of a subordination agreement of an even date herewith, mutually acceptable to Bank of America and Lender, in their reasonable discretion, which indebtedness shall not be secured by any of the Collateral, and any obligations to third parties under any letters of credit, guarantees, reimbursement agreements or other credit support given in connection with such indebtedness, provided the rights of such credit support providers are also subordinated to the rights of Lender hereunder pursuant to the terms and conditions of a subordination agreement acceptable to Lender, in its sole discretion.  
 CCC. “Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof.  
 DDD. “Supporting Obligations” means any “supporting obligations,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.  
 EEE. “Term Loan” has the meaning set forth in Section 2.1 hereof.  
 FFF. “Trademark License” means any written agreement granting any right to use any Trademark or Trademark registration, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.  
 GGG. “Trademarks” means all of the following property, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest: (a) all trademarks (registered, common law or  
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 otherwise), tradenames, corporate names, business names, trade styles, service marks, logos, other source or business identifiers (and all goodwill associated therewith), prints and labels on which any of the foregoing have appeared or appear, and designs of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and any applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or jurisdiction or any political subdivision thereof, and (b) all reissues, extensions or renewals thereof.  
 HHH. “UCC” means the Uniform Commercial Code as in effect from time to time in the State of Illinois, provided that if by reason of mandatory provisions of law, the perfection, the effect of perfection or non-perfection or the priority of the security interest granted hereunder in any Collateral (as hereinafter defined) or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect on or after the date hereof in other jurisdiction(s), then “UCC” means the Uniform Commercial Code as in effect on or after the date hereof in such other jurisdiction(s) for the purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection, or priority or availability of such remedy.  
 III. “Warrant” has the meaning set forth in Section 2.5(b) hereof.  
2. The Loan  
2.1 Term Loan. On the terms and subject to the conditions contained in this Loan Agreement, including those listed in Section 2.5 hereof, Lender shall loan to Borrower on the date hereof, a term loan (the “Term Loan”) in the amount of Five Million Dollars ($5,000,000.00). This is not a revolving line of credit and Borrower may not repay and subsequently re-borrow the amounts advanced or to be advanced under this Section 2.1. The Term Loan shall be made concurrently with the execution of this Agreement. The Term Loan shall be repaid in thirty-six (36) monthly scheduled installments as follows: (i) commencing on the first Business Day of the first full calendar month after the date of the Term Loan and continuing on the first Business Day of the second full calendar month and the third full calendar month after the date of the Term Loan, three (3) monthly payments of interest only (paid in arrears); then (ii) commencing on the first Business Day of the fourth full calendar month after the date of the Term Loan and continuing on the first Business Day of each month thereafter, thirty-three (33) equal monthly payments of principal and interest.  
2.2 Evidence and Nature of Loans. The Term Loan to be made by Lender to Borrower pursuant to this Loan Agreement will be evidenced by a promissory note in the form attached hereto as Exhibit B) (the “Note”) to be executed and delivered by Borrower to Lender concurrently with Lender’s disbursement of such Term Loan to or for the account of Borrower. All of Borrower’s Liabilities (including the Term Loan) shall be secured by Lender’s security interest in the Collateral and by all other security interests, liens, claims and encumbrances now and/or from time to time hereafter granted by Borrower to Lender, whether hereunder or under the Other Agreements.  
2.3 Use of Proceeds. Borrower covenants to Lender that Borrower shall use the proceeds of the Term Loan made by Lender to Borrower pursuant to this Loan Agreement and any advances made pursuant to the Other Agreements for working capital and solely for legal and proper corporate purposes (duly authorized by its Board of Directors) and consistent with all applicable laws and statutes.  
2.4 Direction to Remit. Borrower hereby authorizes and directs Lender to disburse, for and on behalf of Borrower and for Borrower’s account, the proceeds of the Term Loan made by Lender to Borrower pursuant to this Loan Agreement to such Person or Persons as the Executive Chairman, Chief Executive Officer or Chief Financial Officer of Borrower shall direct in writing.  
2.5 Conditions Precedent. The following conditions precedent must be met before the Term Loan is made hereunder: (i) No event, condition or change that has had, or could reasonably be expected to have, a Material Adverse Effect shall have occurred since the date of this Loan Agreement, (ii) The representations and warranties contained in this Loan Agreement and in the Other Agreements shall be true and correct on and as of the date of such Term Loan, (iii) As of the date of such Term Loan, no event shall have occurred and be continuing or would result from such Loan or the application of the proceeds thereof that would constitute an Event of Default or a Default, (iv) Borrower shall have paid all fees required under this Loan Agreement or the Other Agreements, (v) Lender shall have received reasonably satisfactory release documents from any and all conflicting secured creditors (other than holders of Permitted Liens), (vi) Lender shall have received reasonable evidence of a perfected security interest in the Collateral, (vii) Lender shall have received copies of the certificates and evidences of insurance contemplated under Section 5.6 hereof and the Financials described in Section 7.3, (viii) Lender shall have received reasonably adequate proof of free and clear ownership of the Collateral, including but not limited to paid in full invoices and cancelled checks or other means of payment for said invoices, (ix) Borrower and applicable financial institution(s) shall have executed any required account control agreements (in form reasonably satisfactory to Lender) for the benefit of Lender, (x) Borrower shall have delivered to Lender a reasonably satisfactory landlord waiver duly  
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 executed and delivered by Borrower’s Sunrise, Florida landlord, (xi) Lender shall have received a Warrant to purchase 105,264 shares of Borrower’s Common Stock at a purchase price of $4.75 per share, in the form attached hereto as Exhibit C (the “Warrant”), (xii) Borrower shall have successfully closed (A) an equity financing transaction of not less than $3,000,000, and (B) Subordinated Debt and/or Subordinated Debt — Bank transactions (together, in the case of Subordinated Debt and Subordinated Debt — Bank, with the delivery of such subordination agreements from such lender(s) and the Credit Support Providers, each satisfactory to Lender in its sole discretion) of not less than $5,000,000, such that, after consummation of the equity financing transaction and the Subordinated Debt and/or Subordinated Debt — Bank transactions, Borrower held not less than $9,000,000 in cash and cash equivalents on the date of the Term Loan, (xiii) an officer’s certificate of Borrower, reasonably satisfactory to Lender, that its former wholly owned subsidiary, Biopace, Inc., has no assets and has been liquidated; and (xiv) Borrower shall have delivered to Lender a legal opinion of counsel to Borrower relating to this Loan Agreement and the Other Agreements, in form and attached hereto as Exhibit D.  
2.6 Payments and Taxes. Any and all payments made by Borrower under this Loan Agreement or any Other Agreement shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any governmental authority (including any interest, additions to tax or penalties applicable thereto) other than any taxes imposed on or measured by Lender’s overall net income and franchise taxes imposed on it (in lieu of net income taxes), by a jurisdiction (or any political subdivision thereof) as a result of Lender being organized or resident, conducting business (other than a business deemed to arise from Lender having executed, delivered or performed its obligations or received a payment under, or enforced, or otherwise with respect to, this Loan Agreement or any Other Agreement) or having its principal office in such jurisdiction (“Indemnified Taxes”). If any Indemnified Taxes shall be required by law to be withheld or deducted from or in respect of any sum payable under this Loan Agreement or any Other Agreement to Lender (w) an additional amount shall be payable by Borrower as may be necessary so that, after making all required withholdings or deductions (including withholdings or deductions applicable to additional sums payable under this Section) Lender receives an amount equal to the sum it would have received had no such withholdings or deductions been made, (x) Borrower shall make such withholdings or deductions, (y) Borrower shall pay the full amount withheld or deducted to the relevant taxing authority or other authority in accordance with applicable law and (z) Borrower shall deliver to Lender evidence of such payment within thirty (30) days of such payment. Borrower’s obligation hereunder shall survive the termination of this Loan Agreement.  
3. Interest, Fees and Repayment  
3.1 Interest. The Term Loan shall bear interest, payable monthly in arrears on the first Business Day of each month in accordance with Section 2.1 hereof, calculated on the basis of a 360 day year comprised of twelve (12) thirty day months at a per annum rate equal to the interest rate specified in the related note (the “Loan Interest Rate”), which rate shall be the sum of (i) 800 basis points plus (ii) the greater of (a) 4.50% or (b) the yield on Three-Year U.S. Treasury Notes on the date of the Term Loan, as reported in the Federal Reserve Statistical Release H-15 or in such other publication as Lender may reasonably select. In no event shall interest accrue or be payable in connection with the Term Loan in an amount in excess of that permitted under applicable law. If the note so provides, the interest thereunder may be precomputed for the period ending when payments thereunder are due and on the assumption that all payments will be made on their respective due dates. Payments due under the note and not made by their scheduled due date for a period in excess of five (5) days thereafter shall be overdue and shall be subject to a service charge in an amount equal to two percent (2%) of the delinquent amount, but not more than the maximum rate permitted by law, whichever is less. In addition, and notwithstanding the forgoing, during the continuance of an Event of Default all outstanding Borrower Liabilities in respect of the Term Loan shall bear interest (payable on demand) at a rate that is two percent (2%) per annum in excess of the Loan Interest Rate applicable to the Term Loan and other Borrower Liabilities from time to time.  
3.2 Fees. Borrower agrees to pay to Lender a fee of $100,000 to cover due diligence and other costs and expenses incurred in connection with the Term Loan, of which Lender acknowledges prior receipt of $50,000, and the remaining $50,000 of which is to be paid at closing. All fees payable hereunder shall be earned when due and payable hereunder, and shall not be refundable in whole or in part.  
3.3 Repayment. Borrower’s Liabilities under this Loan Agreement are absolute and unconditional. Except as provided elsewhere in this Loan Agreement, including, but not limited to, with respect to the payment of interest pursuant to the payment schedule set forth in Section 2.1, any and all costs, fees and expenses payable pursuant to this Loan Agreement or any of the Other Agreements shall be payable by Borrower to Lender or to such other person or persons designated by Lender, on demand. All payments to Lender shall be payable by 2:00 p.m. (prevailing Chicago time) at Lender’s principal place of business specified at the beginning of this Loan Agreement or at such other place or places as Lender may designate in writing to Borrower. All payments to Persons other than Lender shall be payable at such place or places as Lender may designate in writing to Borrower.  
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 3.4 Application of Payments. Except where an Event of Default has occurred and is continuing, the application of payments received by Lender pursuant to this Loan Agreement shall be applied first to any and all late charges, fees and expenses then due and payable; second to interest then due and payable hereunder; third to the principal amount of the Term Loan then due and payable, fourth to any other Borrower Liabilities then outstanding and finally, to the remaining Term Loan then outstanding. From and after an Event of Default that is continuing, Lender shall have the continuing and exclusive right to apply any and all such payments received by Lender to any portion of Borrower’s Liabilities, including to any of Borrower’s Liabilities arising under any of the Other Agreements. Solely for the purpose of computing interest earned by Lender, payments received by Lender shall be applied as aforesaid on the Business Day following receipt by Lender. Checks or other items of payment received after 2:00 p.m. prevailing Chicago, Illinois time shall be deemed received the following Business Day.  
3.5 Accuracy of Statements Each statement of account by Lender delivered to Borrower relating to Borrower’s Liabilities shall be presumed correct and accurate (absent manifest error) and shall constitute an account stated between Borrower and Lender unless thereafter waived in writing by Lender, in Lender’s discretion. Any objection to the statement that Borrower may have must be delivered to Lender, by registered or certified mail, within thirty (30) days after Borrower’s receipt of said statement.  
4. Term and Prepayment  
4.1 Term. This Loan Agreement shall be in effect until the indefeasible payment in full to Lender of all of Borrower’s Liabilities. Except as provided below, Borrower has no right to prepay the principal amount of the Term Loan. Notwithstanding the foregoing, Borrower may prepay the Borrower Liabilities other than the Term Loan at any time without penalty.  
4.2 Voluntary Prepayment. Borrower may, upon at least thirty (30) days prior written notice to Lender (stating the proposed date of prepayment, which date shall then be the due date for the Term Loan), prepay the outstanding principal amount of the Term Loan then outstanding in whole, but not in part by paying to Lender, in immediately available funds, an amount equal to the sum of (i) the outstanding principal amount of the Term Loan then outstanding, (ii) all accrued and unpaid interest, fees and expenses on the Term Loan through the date of prepayment, and (iii) (A) in the event that such prepayment is made on or prior to the first anniversary of the Term Loan, a prepayment premium equal to 3.0% of the principal amount only of the Term Loan being prepaid, (B) in the event that such prepayment is made after the first anniversary but on or prior to the second anniversary of the Term Loan, a prepayment premium equal to 2.0% of the principal amount only of the Term Loan being prepaid, and (C) in the event that such prepayment is made after the second anniversary but on or prior to the third anniversary of the Term Loan, a prepayment premium equal to 1.0% of the principal amount only of the Term Loan being prepaid.  
5. Collateral and Security  
5.1 Grant of Security Interest. To further secure to Lender the prompt full and faithful payment and performance of Borrower’s Liabilities and the prompt, full and complete performance by Borrower of each of its covenants and duties under this Loan Agreement and the Other Agreements, Borrower grants to Lender, a valid, first priority continuing security interest in and lien upon all of the following (except as to assets or property with Permitted Liens, upon which a lien which may be other than a first priority lien is granted), whether now owned or hereafter acquired and wherever located:  
 (i) All Receivables;  
 (ii) All Equipment;  
 (iii) All Fixtures;  
 (iv) All General Intangibles (excluding Intellectual Property);  
 (v) All Inventory;  
 (vi) All Investment Property;  
 (vii) All Deposit Accounts and Securities Accounts (other than Account Numbers 2290 0834 6165 and 2290 0834 6178 of the Borrower at Bank of America (the “Bank of America Aggregation Account” and the “Payroll Account”, respectively));  
 (viii) All Cash;  
 (ix) All Documents;  
 (x) All Proceeds from the sale, transfer or other disposition of Intellectual Property;  
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 (xi) All other Goods and tangible and intangible personal property of Borrower (other than Intellectual Property), whether now or hereafter owned or existing, leased, consigned by or to, or acquired by, Borrower and wherever located, and  
 (xii) to the extent not otherwise included, all Proceeds of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of each of the foregoing and all attachments, accessories, accessions, replacements, substitutions, additions or improvements to any of the foregoing, wherever located and all products and proceeds of the foregoing including without limitation proceeds of insurance policies insuring the foregoing and all books and records with respect thereto;  
(all of the foregoing personal property is hereinafter sometimes individually and sometimes collectively referred to as “Collateral”). Notwithstanding anything herein contained or construed to the contrary, Borrower is not granting to Lender, and Lender is not receiving from Borrower and the term “Collateral” shall not include, any grant of a security interest in any of Borrower’s now owned or hereafter acquired Intellectual Property (other than a security interest in the Proceeds from the sale, transfer or other disposition of Intellectual Property), the Bank of America Aggregation Account (and any payments from the Credit Support Providers to the Borrower under any of the Bank of America Loan Guarantee Agreements received therein), or the Payroll Account; provided, however, that software, firmware and operating systems that cannot be removed from the Collateral without rendering the Collateral inoperable shall be deemed to be part of the “Collateral” unless such construction is prohibited by or inconsistent with any relevant license or other agreement respecting such software, firmware or operating system. Borrower shall make appropriate entries upon its financial statements and its books and records disclosing Lender’s security interest in the Collateral.  
Borrower hereby further agrees that, except as expressly permitted herein including with respect to Permitted Liens, Borrower shall not hereafter grant a security interest in or pledge any of its Intellectual Property to any other party.  
5.2 Further Assurances. Borrower shall execute and/or deliver to Lender, at any time and from time to time hereafter at the request of Lender, all agreements, instruments, UCC financing statements (or other required perfection instruments), documents and other written matter (hereinafter individually and/or collectively, referred to as “Additional Documentation”) that Lender reasonably may request, in a form and substance reasonably acceptable to Lender, to perfect and maintain Lender’s perfected security interest in the Collateral and to consummate the transactions contemplated in or by this Loan Agreement and the Other Agreements. Borrower, irrevocably, (a) hereby makes, constitutes and appoints Lender (and all Persons designated by Lender for that purpose) as Borrower’s true and lawful attorney (and agent-in-fact) to sign the name of Borrower on the Additional Documentation and to deliver the Additional Documentation to such Persons as Lender, in its sole and absolute discretion, may elect, (b) authorizes completion and filing of any such Additional Documentation by Lender or its agents, whether paper or electronic, (c) hereby ratifies and confirms the completion and filing of Additional Documentation by Lender or its agent, paper or electronic, occurring prior to the date hereof, and (d) declares that Borrower has the present intention to authenticate and process any such Additional Documentation, whether paper or electronic, and whether or not completed and filed by Lender or its agents before or after the date hereof.  
5.3 Inspection of Collateral. Lender (by any of its officers, employees and/or agents) shall have the right, at any time or times during Borrower’s usual business hours, to inspect the Collateral and all related records (and the premises upon which it is located) and to verify the amount and condition of or any other and all financial records and matters whether or not relating to the Collateral. During the continuance of an Event of Default, all costs, fees and expenses incurred by Lender, or for which Lender has become obligated, in connection with such inspection and/or verification shall be payable by Borrower to Lender. Borrower agrees to use its best efforts to cause its employees and agents to cooperate with Lender in all inspections.  
5.4 Controlled Accounts; Proceeds of Collateral. (a) Borrower shall deliver, or cause to be delivered to Lender the Account Control Agreement; provided, however, that Lender will not exercise its right to control amounts in a Controlled Account unless an Event of Default hereunder has occurred and is continuing.  
 (b) All proceeds arising from the disposition of any Collateral by Borrower shall be deposited in a Controlled Account within one Business Day after receipt by Borrower. Nothing in this Section limits the restrictions on disposition of Collateral set forth elsewhere in this Loan Agreement.  
5.5 Third Party Claims. Lender, in its sole and absolute discretion, without waiving or releasing any obligation, liability or duty of Borrower under this Loan Agreement or the Other Agreements or any Event of Default, may (but shall be under no obligation to) at any time or times hereafter, pay, acquire and/or accept an assignment of any security interest, lien, encumbrance or claim asserted (other than Permitted Liens) by any Person against the Collateral. All sums paid by Lender in respect thereof and all costs, fees and expenses, including reasonable  
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 attorneys’ fees, court costs, expenses and other charges relating thereto incurred by Lender on account thereof shall be payable by Borrower to Lender.  
5.6 Insurance. Borrower shall at all times throughout the term of this Loan Agreement and any extension hereof procure and maintain at its own expense the following minimum insurance coverages which shall be provided by insurance carriers with an AM Best rating of A, Class C or as otherwise acceptable to Lender and with such deductibles and exclusions as approved by Lender: (1) All risk property damage insurance covering the Collateral which shall include but not be limited to fire and extended coverage and where applicable mechanical breakdown and electrical malfunction, and which shall be written in amount not less than the greater of (x) the outstanding loan balance or (y) the current replacement cost; and, (2) Commercial general liability insurance which may include excess liability insurance written on occurrence basis with a limit of not less than $2,000,000, and (3) Workers’ compensation insurance in accordance with statutory limits and employers’ liability coverage which may include excess liability in an amount not less than $2,000,000.  
Any insurance carried and maintained in accordance with this Loan Agreement by Borrower shall be endorsed to provide that: (i) Lender shall be additional insured and loss payee with respect to the property insurance described in subsection (1) of the prior paragraph (and such insurance shall provide that the interest of Lender shall not be invalidated by any act or neglect of Lender, Borrower or other person), and Lender shall be an additional insured with respect to the liability insurance described in subsection (2) of the prior paragraph; and (ii) The insurers thereunder waive all rights of subrogation against Lender, any right of setoff and counterclaim and any other right to deduction due to outstanding premiums, whether by attachment or otherwise; and (iii) Such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of Lender; and (iv) Inasmuch as such policies are written to cover more than one insured, all terms, conditions, insuring agreements and endorsements (other than the limits of liability) shall operate in the same manner as if there were a separate policy covering each insured; and (v) If such insurance is canceled for any reason whatsoever, including nonpayment of premium, or any substantial change is made in the coverage that affects the interests of Lender, such cancellation or change shall not be effective as to Lender until thirty (30) days after receipt by Lender of written notice sent by registered mail from such insurer of such cancellation or change; providing, however, that such thirty (30) day period shall be reduced to ten (10) days in the case where cancellation results from the nonpayment of premiums. Borrower, irrevocably, appoints Lender as Borrower’s true and lawful attorney (and agent-in fact) for the purpose of making, settling and adjusting claims under such policies, endorsing the name of Borrower on any check, draft, instrument or other item of payment for the proceeds of such policies and for making all determinations and decisions with respect to such policies, and such appointment will be immediately effective upon the occurrence of an Event of Default hereunder.  
On or before the initial funding by Lender hereunder, and at each policy anniversary date, Borrower shall arrange to furnish Lender with appropriate Certificates of Insurance. Such Certificates of Insurance shall be executed by each insurer or by an authorized representative of each insurer, and shall identify insurers, the type of insurance, the insurance limits and the policy term and shall specifically list the special endorsements (i) through (v) above.  
In case of the failure to procure or maintain such insurance, Lender shall have the right, but not the obligation, to obtain such insurance and any premium paid by Lender shall be immediately due and payable by Borrower to Lender. The maintenance of any policy or policies of insurance pursuant to this Section shall not limit any obligation or liability of Borrower pursuant to any other Sections or provisions of this Loan Agreement.  
5.7 Charges on Collateral. Borrower shall not permit any Charges (other than Permitted Liens) to arise, or to remain, and Borrower shall pay promptly when due, and discharge, such Charges. In the event Borrower, at any time or times hereafter, shall fail to pay such Charges when due or to obtain such discharges, Borrower shall so advise Lender thereof in writing. Lender may, without waiving or releasing any obligation or liability of Borrower hereunder or Event of Default, in its sole and absolute discretion, at any time or times thereafter, make such payment, or any part thereof, or obtain such discharge and take any other action with respect thereto which Lender deems advisable. All sums so paid by Lender and any expenses, including reasonable attorneys’ fees, court costs, expenses and other charges relating thereto, shall be payable by Borrower to Lender upon demand.  
5.8 UCC Filing Authorization. Borrower hereby authorizes Lender and its counsel and other representatives to file, at any time on or after the date hereof, Uniform Commercial Code financing statements and continuation statements, and amendments to financing statements, in any jurisdictions and with any filing offices as Lender may reasonably determine, in its sole discretion, are necessary or advisable to perfect the security interests granted to Lender hereunder and under the Other Agreements. Such financing statements may describe the Collateral in the same manner as described herein or therein or may contain an indication or description of Collateral that describes such property in any other manner as Lender may reasonably determine is necessary or advisable to ensure the  
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 perfection of the security interest in the Collateral.  
5.9 Accounts. So long as no Event of Default has occurred and is continuing, subject to Section 7.4 hereof, Borrower may settle, adjust or compromise any claim, offset, counterclaim or dispute with any Account Debtor. At any time that an Event of Default has occurred and is continuing, Lender may, at its option, notify Borrower that Lender intends to have the exclusive right to settle, adjust or compromise any claim, offset, counterclaim or dispute with Account Debtors or grant any credits, discounts or allowances and on and after such notice from Lender to Borrower, Lender shall have such exclusive right.  
6. Warranties and Representations  
6.1 Borrower Representations. Borrower warrants and represents to Lender, as of the date hereof and as of the date of the Term Loan made hereunder, and agrees and covenants to Lender that:  
 (a) Borrower’s legal name is “Bioheart, Inc.” Borrower is a corporation (i) duly organized and existing and in good standing under the laws of the state of its organization as set forth above and (ii) qualified or licensed to do business in all other states in which the laws require Borrower to be so qualified and/or licensed;  
 (b) Borrower is duly authorized and empowered to enter into, execute, deliver and perform this Loan Agreement and the Other Agreements and the execution, delivery and/or performance by Borrower of this Loan Agreement and the Other Agreements, and the use by Borrower of the proceeds of the Loans hereunder, shall not, by the lapse of time, the giving of notice or otherwise, conflict with or constitute a violation of any applicable law (including, without limitation, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation thereof) or a breach of any provision contained in Borrower’s organizational documents or contained in any Material Agreement to which Borrower is a party or by which it is bound or give rise to or result in any default thereunder;  
 (c) This Loan Agreement is (and when executed or delivered, each Other Agreement will be) the legally valid and binding obligation of Borrower, enforceable against Borrower in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors’ rights generally or by equitable principles (whether enforcement is sought in equity or at law).  
 (d) Except as disclosed to Lender in writing prior to the date hereof, there are no actions or proceedings which are pending, or to its knowledge threatened, against Borrower which, if adversely determined, could reasonably be expected to have a Material Adverse Effect. Borrower is not in breach of any Material Agreement or subject to any charge, restriction, judgment, decree or order which has or could reasonably be expected to have a Material Adverse Effect, nor is Borrower in default with respect to any indenture, security agreement, mortgage, deed or other similar agreement relating to the borrowing of monies to which it is a party or by which it is bound;  
 (e) Except as disclosed to Lender in writing prior to the date hereof, Borrower has and is in good standing with respect to all licenses, patents, copyrights, trademarks, trade names, governmental permits, certificates, consents and franchises necessary to continue to conduct its business as previously conducted by it and to own or lease and operate its properties as now owned or leased by it;  
 (f) The financial statements delivered by Borrower to Lender prior to the date hereof and the date of the Term Loan fairly and accurately present the assets, liabilities and financial conditions and results of operations of Borrower as of the dates and for the periods stated therein and have been prepared in accordance with GAAP, and no event, condition or change that has had, or could reasonably be expected to have, a Material Adverse Effect has occurred since the date of this Loan Agreement;  
 (g) As to the Accounts and other Collateral, (i) Borrower has good, indefeasible and merchantable title to and ownership of the Collateral and the Accounts described and/or listed on any certificate or schedule relating to the Accounts delivered to Lender, free and clear of all liens, claims, security interests and encumbrances, except those of Lender and Permitted Liens.  
 (h) As to Lender’s security interest, (i) Lender’s security interest in the Collateral is perfected and is of first priority (subject to Permitted Liens); (ii) the offices and/or locations where Borrower keeps the Collateral and Borrower’s books and records concerning the Collateral are at the locations identified to Lender in writing; and (iii) the addresses identified to Lender in writing as Borrower’s chief executive office and principal place(s) of business are Borrower’s sole offices and place(s) of business.  
 (i) Borrower is not an “investment company” or a company “controlled” by an “investment company” as such terms are defined in the Investment Company Act of 1940, as amended.  
 (j) All income and other tax returns and reports required to be filed by Borrower have been timely filed, and all  
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 taxes shown on such tax returns to be due and payable and all other assessments, fees and governmental charges upon Borrower and its properties, assets, income, businesses and franchises have been paid when due and payable except to the extent that (A) such taxes, assessments, charges or claims (i) are being contested in good faith by appropriate proceedings (promptly instituted and diligently conducted) so long as such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made therefor and (ii) such proceeding shall stay the attachment, sale, disposition, foreclosure or forfeiture of any asset of Borrower in connection with any such contested tax, assessment, charge or claim or, (B) the failure to timely pay such taxes, assessments, charges or claims could not reasonably be expected to have a Material Adverse Effect. All necessary and appropriate estimated payments (including any interest and penalties) in respect of assessed tax liability under Borrower’s state and federal tax returns have been made on a timely basis.  
 (k) As of the date hereof and of the Term Loan (i) the sum of Borrower’s debt (including contingent liabilities) does not exceed the present fair saleable value of Borrower’s present assets; (ii) Borrower’s capital is not unreasonably small in relation to its business as it exists and as is contemplated at such time; and (iii) Borrower has not incurred and does not intend to incur, or believe that it will incur, debts beyond its ability to pay such debts as they become due.  
 (l) No information furnished in writing to Lender by or on behalf of Borrower for use in connection with the transactions contemplated hereby contains or will contain, any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections contained in such materials are based upon good faith estimates and assumptions believed by Borrower to be reasonable at the time made. There are no facts known to Borrower that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.  
 (m) Borrower has provided to Lender on or prior to the date hereof a schedule that correctly identifies the ownership interest (including all options, warrants and other rights to acquire capital stock) of Borrower and each of its Subsidiaries as of the date hereof.  
 (n) (i) Borrower (A) has been and is in compliance in all material respects with all applicable Environmental Laws; (B) has not received any communication, whether from a governmental authority or otherwise, alleging that Borrower is not in such compliance, and there are no past or present actions, activities, circumstances conditions, events or incidents that may prevent or interfere with such compliance in the future; (ii) there is no Environmental Claim pending or, to the best knowledge of Borrower, threatened against Borrower or against any Person whose liability for any Environmental Claim Borrower has or may have retained or assumed either contractually or by operation of law; and (iii) there are no past or present actions, activities, circumstances, conditions, events or incidents, including, without limitation, the release, threatened release or presence of any Hazardous Material, which could reasonably be expected to form the basis of any Environmental Claim against Borrower or, to the best knowledge of Borrower, against any Person whose liability for any Environmental Claim Borrower has or may have retained or assumed either contractually or by operation of law.  
 (o) (i) Borrower is an “operating company” within the meaning of the regulations of the United States Department of Labor included within 29 CFR Section 2510.3-101 (the “DOL Regulations”) or is in compliance with such other exception as may be available under such regulations to prevent the assets of Borrower from being treated as the assets of any employee benefit plan for purposes of the DOL Regulations and (ii) neither Borrower nor any subsidiary of Borrower maintains or is obligated to make contributions to any employee benefit plan that is subject to Title IV of the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor statute (“ERISA”).  
7. Affirmative and Negative Covenants  
7.1 Affirmative Covenants. Borrower covenants with Lender that Borrower shall, and shall cause each of its Subsidiaries to: (a) preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business, (b) pay all income and other taxes and assessments imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, (c) comply in all material respects with the requirements of all applicable laws, rules, regulations and orders of any governmental authority, (d) keep adequate books of record and account, in which complete entries shall be made of all financial transactions and the assets and of its business, (e) on or prior to June 30, 2007, deliver to Lender duly executed landlord or collateral access agreements, in form and substance reasonably satisfactory to Lender, for all premises (including offices and co-location facilities) at which any Collateral is located (other than Borrower’s offices in Sunrise, Florida for which a landlord agreement was delivered to Lender on or prior to the date hereof), (f) promptly take any and all necessary Cleanup action on, under or affecting any property owned,  
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 leased or operated by Borrower in accordance with all laws and the policies, orders and directives of all federal, state and local governmental authorities, and conduct and complete such Cleanup action in material compliance with all applicable Environmental Laws, (g) keep and/or maintain the Collateral and the books and records relating thereto at the addresses identified in writing to Lender, unless Borrower gives Lender written notice thereof at least thirty (30) days prior thereto and the same is within the contiguous forty-eight (48) states of the United States of America; (h) deliver to Lender any and all evidence of ownership of, including without limitation, vendor invoices and proofs of payment thereof, certificates of title to and applications for title to, any Collateral promptly following any request by Lender, (i) keep and maintain the Collateral in good operating condition and repair and make all necessary replacements thereof and renewals thereto so that the value and operating efficiency thereof shall at all times be maintained and preserved and (j) provide written notice to Lender of any change in the addresses of Borrower’s chief executive office and principal place of business at least thirty (30) days prior thereto.  
7.2 Negative Covenants Borrower covenants with Lender that Borrower shall not, and shall not permit any of its Subsidiaries to: (a) grant a security interest in, assign sell of transfer any of the Collateral or any of its Intellectual Property to any person or permit, grant, or suffer or permit a lien, claim or encumbrance upon any of the Collateral or Intellectual Property, except for (i) Permitted Liens, (ii) the sale of Inventory in the ordinary course of business and the sale of obsolete or unneeded Equipment or (iii) the transfer to a currently operating or newly formed wholly-owned subsidiary of any Intellectual Property related to a product candidate other than Borrower’s MyoCell or MyoCell II with SDF-1 product candidates; (b) permit or suffer any Charges to attach to or affect any of the Collateral (other than Permitted Liens); (c) permit or suffer any receiver, trustee or assignee for the benefit of creditors to be appointed to take possession of any of the Collateral; (d) merge or consolidate with or acquire any Person except in a transaction in which Borrower is the surviving Person or, if Borrower is not the surviving Person, such transaction does not result in a Change of Control; (e) other than Subordinated Debt — Bank, Subordinated Debt, Ordinary Course Indebtedness or payments under the Bank of America Loan Guarantee Agreements (payable only upon the occurrence of a Trigger Date, as defined therein), incur or permit or suffer to exist any indebtedness for borrowed money or for the deferred purchase price for property or services, provided, however, that notwithstanding the foregoing, Borrower may not pay any principal, interest or other costs, expenses or liabilities (other than origination fees and legal expenses in connection with such origination, not to exceed $425,000 in the aggregate) arising under or in connection with Subordinated Debt — Bank or any Subordinated Debt prior to the payment in full of all Borrower’s Liabilities and the termination of any commitments of Lender hereunder; (f) with the exception of Ordinary Course Indebtedness, voluntarily prepay any indebtedness prior to its scheduled maturity other than pursuant to the terms hereof; provided that, notwithstanding the foregoing, if Borrower receives at least $30 million of net proceeds from an initial public offering of its common stock occurring on or before January 31, 2008, Borrower may voluntarily prepay up to $5.7 million of the outstanding principal and interest on the Subordinated Debt and/or Subordinated Debt- Bank using proceeds from such initial public offering; (g) except in connection with a share repurchase pursuant to which the Borrower offers to pay its then existing shareholders an amount, in the aggregate, not more than $250,000 during the term of the Loan Agreement, make or pay (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of stock of Borrower (other than dividends which are payable solely in capital stock of Borrower) or (ii) any redemption, retirement or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock of Borrower or any outstanding warrants, options or other rights to acquire such shares; (h) enter into any transaction with any Affiliate, which transaction is not carried out or otherwise consummated in writing and on a basis at least as favorable to the Borrower as a transaction could be carried out on an arms-length basis with a similarly situated third party; (i) enter into any transaction relating to the sale of substantially all of the assets of the Borrower not in the ordinary course of its business, (j) make any change in any of its business objectives, purposes and operations, which has, or could reasonably be expected to have, a Material Adverse Effect; (k) without thirty (30) days’ prior written notice to Lender, make any change in its legal name or state of formation or organization; (l) adopt or otherwise become obligated to contribute to any employee benefit plan that is subject to Title IV of ERISA; (m) take any action or fail to take an action if, as a result of such action or inaction, Borrower would fail to qualify as an “operating company” within the meaning of the DOL Regulations or otherwise comply with such other exception as may be available under such regulations to prevent the assets of Borrower from being treated as the assets of any employee benefit plan for purposes of the DOL Regulations; (n) transfer any cash, directly or indirectly, to the Bank of America Aggregation Account; or (o) after the occurrence of an Event of Default which is then continuing, transfer any cash to the Payroll Account (other a single transfer in an amount equal to the lesser of $100,000 or the salary obligations of Borrower to its employees for the then current two-week payroll period).  
7.3 Covenants regarding Financial Statements. Borrower shall cause to be furnished to Lender, (i) no later than 120 days after the end of each fiscal year, the unqualified, audited financial statements of Borrower as of the end of such year (which financial statements shall not contain any “going concern” exception or any exception relating to scope of review, except for any going concern exception attributable to the Borrower’s perceived need to raise  
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 additional capital), (ii) no later than 30 days after the end of each month unaudited interim financial statements of Borrower as of the end of such month, certified, on behalf of Borrower and not in any personal capacity, by Borrower’s chief financial officer to the effect that such financial statements present fairly in all material respects the financial condition and results of operations of the Borrower in accordance with GAAP, each containing consolidated and consolidating profit and loss statements for the month then ended and for Borrower’s fiscal year to date, consolidated and consolidating balance sheets as at the last day of such month and a consolidated statement of cash flows for the month then ended and for Borrower’s fiscal year to date, (iii) summary monthly bank statements, no later than 30 days after the related month end, reflecting month-end cash balances, (iv) concurrently with the delivery of the financial statements required to be delivered by Section 7.3(ii), a monthly Compliance and Disclosure Certificate, substantially in the form of Exhibit A attached hereto and made a part hereof, (v) promptly upon Borrower’s Board of Directors approval thereof, copies of Borrower’s annual operating plan, if any, and any revisions thereto and (vi) such other financial and business information of Borrower as Lender may reasonably require, including such other financial and operating performance data as is provided by Borrower to its outside investors or commercial lenders and, if applicable, required to be provided to shareholders by the Securities and Exchange Commission. Each financial statement to be furnished to Lender must be prepared in accordance with GAAP; provided, however, non-audited interim financial statements need not include financial notes. Borrower also agrees to promptly provide to Lender notice of, and such other data and information (financial and otherwise) at any time and from time to time reasonably requested by Lender relating to, any legal actions or proceedings pending, or to its knowledge, threatened in writing, against Borrower or the occurrence of any event or change that has, or could reasonably be expected to have, a Material Adverse Effect. Notwithstanding anything to the contrary contained herein, Borrower may refuse to provide any information required to be provided pursuant to this Section 7.3 if the disclosure would result in a waiver of Borrower’s attorney-client privilege. Financial statements may be delivered via electronic mail to Lender.  
7.4 Further Covenants. (a) Borrower may not grant any credit, discount, allowance or extension, or enter into any agreement for any of the foregoing, except for credits, discounts, allowances or extensions made or given in the ordinary course of Borrower’s business in accordance with Borrower’s historic credit and collection practices and policies without the prior consent of Lender.  
 (b) Lender shall have the right at any time or times, 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 Accounts, by mail, telephone, facsimile transmission or otherwise.  
7.5 Indemnification and Liability. Borrower hereby agrees to indemnify Lender and hold Lender harmless from and against any and all claims, debts, liabilities, demands, obligations, actions, causes of action, penalties, reasonable costs and expenses (including reasonable attorneys’ fees), of every nature, character and description, which Lender may sustain or incur based upon or arising out of the Collateral, any of Borrower’s Liabilities or under this Loan Agreement (except any such actual damage amounts sustained or incurred by Borrower as the result of the gross negligence or willful misconduct of Lender). Should any third-party suit or proceeding be instituted by or against Lender with respect to any Collateral or relating to Borrower, Borrower shall, without expense to Lender, make available Borrower and its officers, employees and agents and Borrower’s books and records, to the extent that Lender may deem them reasonably necessary in order to prosecute or defend any such suit or proceeding. Borrower’s obligation hereunder shall survive termination of this Loan Agreement.  
8. Default  
8.1 Events of Default. The occurrence of any one of the following events shall constitute a default (“Event of Default”) by Borrower under this Loan Agreement: (a) if Borrower fails to pay any principal of the Term Loan when due and payable or fails, within five (5) days after the same are due and payable, to pay any other Borrower’s Liabilities; (b) if any representation, warranty, financial statement, statement, report or certificate made or delivered by Borrower, or any of its officers, employees or agents, to Lender is not true and correct in any material respect, when made or deemed made or delivered; (c) if Borrower fails or neglects to perform, keep or observe any term, provision, condition or covenant contained in this Loan Agreement or in the Other Agreements, which is required to be performed, kept or observed by Borrower, other than the payment of Borrower’s Liabilities, and, in the case of any covenant contained in Section 7.1 hereof, the same is not cured within fifteen (15) days; provided, however, that if the default cannot by its nature be cured within the fifteen (15) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default; (d) if any portion of the Collateral or any other of Borrower’s other assets are attached, seized, subjected to a writ or distress warrant, or are levied upon, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors and the attachment, seizure, writ or warrant is not  
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 removed within fifteen (15) days; (e) if any event, condition or change shall occur that has had a Material Adverse Effect; (f) if a petition under any section or chapter of the Bankruptcy Code or any similar law or regulation shall be filed by or against Borrower or if Borrower shall make an assignment for the benefit of its creditors or if any case or proceeding is filed by Borrower for its dissolution or liquidation; (g) if Borrower is enjoined, restrained or in any way prevented by court order from conducting all or any material part of its business affairs; (h) if an application is made by Borrower or any Person for the appointment of a receiver, trustee or custodian for the Collateral or any other of Borrower’s assets; (i) if a notice of lien or Charges are filed of record with respect to any of the Collateral by any Person and not paid within fifteen (15) days after Borrower receives notice; provided, however, that an Event of Default will not be deemed to have occurred if stayed or if a bond is posted pending contest by Borrower within such fifteen (15) day period; (j) if any Change of Control shall occur; (k) if any money judgment, writ or warrant of attachment or similar process in excess of $100,000 (if not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against Borrower or any of its Subsidiaries or any of their respective assets; (l) this Loan Agreement or any Other Agreement shall for any reason fail or cease to be valid and binding on, or enforceable against, Borrower or any other party thereto in accordance with its terms, or Borrower shall so assert; (m) this Loan Agreement or any Other Agreement shall cease to create a valid and enforceable lien and security inte rest on any Collateral purported to be covered thereby or any such lien and security interest shall fail or cease to be a perfected and first priority lien and security interest (subject to Permitted Liens); or (n) if Borrower is in default in the payment of any debt to any Person other than Lender in excess of $100,000 or any other default or breach shall occur under any agreement or instrument relating to any such debt and such default, condition or event gives the holders of such debt (or any agent or trustee on their behalf) the then current right to accelerate such indebtedness; provided, that, Borrower shall not be considered to be in default under any loan or other agreement relating to the Subordinated Debt — Bank if (i) such default relates solely to the failure to pay principal or interest thereunder and (ii) (A) there is sufficient collateral under such loan or other agreement to cover amounts owed by Borrower thereunder, or (B) such amounts are paid by the Credit Support Providers within fifteen (15) days after the occurrence of such default. Borrower shall provide written notice of any events or circumstances which would give rise to an Event of Default under this Section 8.1 promptly (but in no event more than two (2) Business Days) after becoming aware of such events or circumstances. Failure of Borrower to give such notice promptly shall constitute an Event of Default hereunder.  
8.2 Lender’s Rights and Remedies. Upon an Event of Default under Section 8.1(f), without notice by Lender to, or demand by Lender of, Borrower, all of Borrower’s Liabilities shall be automatically accelerated and shall be due and payable forthwith and any other commitments to provide any financing hereunder shall automatically terminate, and upon any other Event of Default, without notice by Lender, to or demand by Lender of, Borrower, Lender may accelerate all of Borrower’s Liabilities and same shall be due and payable forthwith and/or Lender may terminate any other commitments to provide any financing hereunder. Lender may, in its sole and absolute discretion: (a) exercise any one or more of the rights and remedies accruing to a Lender under the Uniform Commercial Code or other applicable law of the relevant state or states or other applicable jurisdiction, and in equity, and under any other instrument or agreement now or in the future entered into between Lender and Borrower, including under this Loan Agreement and the Other Agreements; (b) enter, with or without process of law and without breach of the peace, any premises where the Collateral or the books and records of Borrower related thereto is or may be located, and without charge or liability to Lender therefor seize and remove the Collateral (and copies of Borrower’s books and records relating to the Collateral) from said premises and/or remain upon said premises and use the same (together with said books and records) for the purpose of collecting, preparing and disposing of the Collateral; (c) sell, lease, license or otherwise dispose of the Collateral or any part thereof by one or more contracts at one or more public or private sales for cash or credit, provided, however, that Borrower shall be credited with the net proceeds of such sale(s) only when such proceeds are actually received by Lender; and (d) require Borrower to assemble the Collateral and make it available to Lender at a place or places to be designated by Lender which is reasonably convenient to Lender and Borrower.  
In addition, at any time an Event of Default has occurred and is continuing, Lender may, in its discretion, enforce the rights of Borrower against any Account Debtor, secondary obligor or other obligor in respect of any of the Accounts. Without limiting the generality of the foregoing, at any time or times that an Event of Default has occurred and is continuing, Lender may, in its discretion, at such time or times (1) notify any or all Account Debtors, secondary obligors or other obligors in respect thereof 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, secondary obligors and other obligors to make payment of Accounts directly to Lender, (2) 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 obligations included in the Collateral and thereby discharge or release the account debtor or any secondary obligors or other obligors in respect thereof without affecting any of Borrower’s Liabilities, (3) demand, collect or enforce payment of any Accounts or such other obligations, but without any duty to do so, and Lender  
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 shall not be liable for any failure to collect or enforce the payment thereof nor for the negligence of its agents or attorneys with respect thereto and (4) take whatever other action Lender may deem necessary or desirable for the protection of its interests. At any time that an Event of Default 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 obligations have been assigned to Lender and are payable directly and only to Lender and Borrower 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.  
All of Lender’s rights and remedies under this Loan Agreement and the Other Agreements are cumulative and non-exclusive. Exercise or partial exercise by Lender of one or more of its rights or remedies shall not be deemed an election, nor bar Lender from subsequent exercise or partial exercise of any other rights or remedies. Lender agrees to give notice of any sale to Borrower at least ten (10) days prior to any public sale or at least ten (10) days before the time after which any private sale may be held. Borrower agrees that Lender may purchase any such Collateral (including by way of credit bid), and may postpone or adjourn any such sale from time to time by an announcement at the time and place of sale or by announcement at the time and place of such postponed or adjourned sale, without being required to give a new notice of sale. Borrower agrees that Lender has no obligation to preserve rights against prior parties to the Collateral.  
8.3 Power of Attorney. Upon the occurrence of any Event of Default, without limiting Lender’s other rights and remedies, Borrower grants to Lender an irrevocable power of attorney coupled with an interest (in addition to such other powers of attorney granted to Lender elsewhere in this Loan Agreement), authorizing and permitting Lender at any time, at its option, but without obligation, with or without notice to Borrower, and at Borrower’s expense, to execute on behalf of Borrower any Additional Documentation, or such other instruments or documents as may be reasonably necessary in order to exercise a right of Borrower or Lender, including but not limited to the execution of any proof of claim in bankruptcy, any notice of lien, claim of mechanic’s or other lien, or assignment or satisfaction of mechanic’s or other lien, or to take control in any manner of any cash or non-cash proceeds of Collateral and take any action or pay any sum required of Borrower pursuant to this Loan Agreement and any Other Agreement. In no event shall Lender’s rights under the foregoing power of attorney or any of Lender’s other rights under this Loan Agreement be deemed to indicate that Lender is in control of the business, management or properties of Borrower.  
9. General Provisions  
9.1 Notices. All notices, demands or other communications required or permitted to be given or delivered under or by reason of the provisions hereof shall be in writing and shall be deemed to have been given when (i) delivered personally to the recipient, (ii) sent via facsimile transmission, (iii) the next Business Day after having been sent to the recipient by reputable overnight courier service (charges prepaid) or (iv) four Business Days after having been mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid. Such notices, demands and other communications shall be sent to the parties hereunder at their respective addresses and transmission numbers indicated on the signature page hereof, or to such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party.  
9.2 Severability. Should any provision of this Loan Agreement be held by any court of competent jurisdiction to be void or unenforceable, such defect shall not affect the remainder of this Loan Agreement, which shall continue in full force and effect.  
9.3 Integration; Modification. This Loan Agreement, the Other Agreements and such other written agreements, documents and instruments as may be executed in connection herewith or pursuant hereto are the final, entire and complete agreement between Borrower and Lender and supersede all prior and contemporaneous negotiations and oral representations and agreements, all of which are merged and integrated in this Loan Agreement and the Other Agreements. There are no oral understandings, representations or agreements between the parties which are not set forth in this Loan Agreement or the Other Agreements or in other written instruments, documents or agreements signed by the parties in connection herewith. If any provision contained in this Loan Agreement is in conflict with, or inconsistent with, any provision in the Other Agreements, the provision contained in this Loan Agreement shall govern and control, it being the intent of the parties, however, that the terms of each of the Loan Agreement and the Other Agreements shall be remain in full force and effect. This Loan Agreement and the Other Agreements may not be modified, altered or amended except by an agreement in writing signed by Borrower and Lender.  
9.4 Time of Essence. Time is of the essence in the performance by Borrower of each and every obligation under this Loan Agreement.  
9.5 Attorneys’ Fees and Other Costs. Borrower shall reimburse Lender for all out-of-pocket costs and  
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 expenses, including but not limited to reasonable attorneys’ fees and all filing, recording, search, title insurance, appraisal, audit, and other reasonable costs incurred by Lender in connection with any amendment or waiver to this Loan Agreement or any Other Agreement; seeking to enforce any of its rights hereunder against Borrower or the Collateral, including in bankruptcy; enforcing Lender’s security interest in the Collateral, and representing Lender in all such matters. Borrower shall also pay Lender’s standard charges for returned checks in effect from time to time. Borrower’s obligation hereunder shall survive termination of this Loan Agreement.  
9.6 Benefit of Agreement; Assignment. The provisions of this Loan Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, heirs, beneficiaries and representatives of Borrower and Lender; provided, however, that Borrower may not assign or transfer any of its rights under this Loan Agreement without the prior written consent of Lender, and any prohibited assignment shall be void. Borrower hereby consents to Lender’s sale, assignment, transfer or other disposition, at any time and from time to time hereafter, of this Loan Agreement, or the Other Agreements, or of any portion thereof, including without limitation Lender’s rights, titles, interests, remedies, powers and/or duties. Borrower shall establish and maintain a record of ownership (the “Register”) in which it agrees to register by book entry Lender’s and each initial and subsequent assignee’s interest in the Term Loan, and in the right to receive any payments hereunder and any assignment of any such interest. Notwithstanding anything to the contrary contained in this Loan Agreement, the Term Loan (including the Note in respect of such Term Loan) are registered obligations and the right, title, and interest of Lender and its assignees in and to such Term Loan shall be transferable upon notation of such transfer in the Register, pursuant to Borrower’s obligation above. In no event is any note to be considered a bearer instrument or bearer obligation. This Section shall be construed so that the Term Loan is at all times maintained in “registered form” within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Internal Revenue Code and any related regulations (or any successor provisions of the Code or such regulations).  
9.7 Paragraph Headings. Paragraph headings are only used in this Loan Agreement for convenience. The term “including”, whenever used in this Loan Agreement, shall mean “including but not limited to”. This Loan Agreement has been fully reviewed and negotiated between the parties and no uncertainty or ambiguity in any term or provision of this Loan Agreement shall be construed strictly against Lender or Borrower under any rule of construction or otherwise.  
9.8 Interest Laws. Notwithstanding any provision to the contrary contained in this Loan Agreement or any Other Agreement, Borrower shall not be required to pay, and Lender shall not be permitted to collect, any amount of interest in excess of the maximum amount of interest permitted by applicable law (“Excess Interest”). If any Excess Interest is provided for or determined by a court of competent jurisdiction to have been provided for in this Loan Agreement or in any Other Agreement, then in such event: (1) the provisions of this subsection shall govern and control; (2) Borrower shall not be obligated to pay any Excess Interest; (3) any Excess Interest that Lender may have received hereunder or under any Other Agreement shall be, at such Lender’s option, (a) applied as a credit against the outstanding principal balance of Borrower’s Liabilities or accrued and unpaid interest (not to exceed the maximum amount permitted by law), (b) refunded to the payor thereof, or (c) any combination of the foregoing; (4) the interest rate(s) provided for herein or in any Other Agreement shall be automatically reduced to the maximum lawful rate allowed from time to time under applicable law (the “Maximum Rate”), and this Loan Agreement and the Other Agreements shall be deemed to have been and shall be, reformed and modified to reflect such reduction; and (5) Borrower shall not have any action against Lender for any damages arising out of the payment or collection of any Excess Interest.  
9.9 No Implied Waivers. Lender’s failure at any time or times hereafter to exercise any rights or remedies or to require strict performance by Borrower of any provision of this Loan Agreement shall not waive, affect or diminish any right of Lender thereafter to demand strict compliance and performance therewith and all rights and remedies shall continue in full force and effect until all of Borrower’s Liabilities have been fully and indefeasibly paid and performed. Any suspension or waiver by Lender of an Event of Default by Borrower under this Loan Agreement or the Other Agreements shall not suspend, waive or affect any other Event of Default by Borrower under this Loan Agreement or the Other Agreements, whether the same is prior or subsequent thereto and whether of the same or of a different type. No waiver by Lender of any Event of Default or of any of the undertakings, agreements, warranties, covenants and representations of Borrower contained in this Loan Agreement or the Other Agreements shall be effective unless specifically waived by an instrument in writing signed by an officer of Lender.  
9.11 Acceptance by Lender. This Loan Agreement shall become effective upon acceptance by Lender, in writing, at its principal place of business as set forth above. If so accepted by Lender, this Loan Agreement and the Other Agreements shall be deemed to have been made at said place of business.  
9.12 LAW AND VENUE. THIS LOAN AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS AND DECISIONS OF THE STATE OF ILLINOIS. BORROWER  
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 CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF XXXX, STATE OF ILLINOIS. BORROWER WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST BORROWER BY LENDER OR TO ASSERT THAT ANY ACTION INSTITUTED BY LENDER OR BORROWER IN SUCH COURT IS AN IMPROPER VENUE OR SUCH ACTION SHOULD BE TRANSFERRED TO A MORE CONVENIENT FORUM.  
9.13 WAIVER OF TRIAL BY JURY. BORROWER AND LENDER EACH WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO, THIS LOAN AGREEMENT WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE.  
9.14 CONFIDENTIALITY. Each party acknowledges that certain information exchanged by the parties hereunder is confidential or proprietary in nature (the “Confidential Information”). Accordingly, each party receiving Confidential Information hereunder (the “receiving party”) agrees that any Confidential Information it may obtain shall be received in confidence and shall not be disclosed to any other person or entity in any manner whatsoever, in whole or in part, without the prior written consent of the party disclosing such information (the “disclosing party”), except that the receiving party may disclose any such information: (a) to its own directors, officers, employees, accountants, counsel and other professional advisors and to its Affiliates (collectively, “Representatives”), if receiving party in its reasonable discretion determines that any such Representatives should have access to such information and, provided that such Representative has been informed of the confidential nature of such Confidential Information prior to its exposure thereto; (b) if such information is generally available to the public when first disclosed to the receiving party; (c) if required, in any report, statement or testimony submitted to any governmental authority having or claiming to have jurisdiction over the disclosing party; (d) if legally required in response to any summons or subpoena or in connection with any litigation, to the extent permitted or deemed advisable by counsel to the receiving party; (e) to comply with any legal requirement or law applicable to Lender; (f) to the extent reasonably necessary in connection with the exercise of any right or remedy under any this Loan Agreement or any Other Agreement, including Lender’s sale, lease, or other disposition of Collateral after default, which Collateral constitutes or is reasonably related to Confidential Information;(g) to any participant or assignee of Lender or any prospective participant or assignee, provided such participant or assignee or prospective participant or assignee agrees in writing to be bound by this Section prior to disclosure; or (h) otherwise with the prior consent of the disclosing party; provided, that any disclosure made in violation of this Agreement shall not affect the obligations of Borrower or any of its Affiliates.  
[Signature Page Follows]  
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 In Witness Whereof, this Loan and Security Agreement has been duly executed as of the day and year first above written.  
 Borrower:  
 Accepted By:   
 Borrower:  
 BIOHEART, INC. Lender: BlueCrest capital finance, l.p.  
 By: BlueCrest Capital Finance GP,  
 LLC, its general partner  
 By:  
 By:   
 Name:  
 Name:   
Title:  
 Title:   
 Address for  
 00000 XX 0xx Xxxxxx Address for 000 Xxxx Xxxxxxxxxx Xxxxxx  
Notices:  
 Suite 212 Notices: Suite 200  
 Sunrise, Florida 33325 Xxxxxxx, XX 00000  
 Attention: Legal Department  
Telephone:  
 (000)-000-0000 Telephone: 000-000-0000  
Facsimile:  
 (000)-000-0000 Facsimile: 312-443-0126  
 with a copy to:  
 000 Xxxx Xxxxxxxxxx  
 Xxxxxxx, XX 00000  
 Attention: Xxxx Xxxx  
 Telephone: 000-000-0000  
 Facsimile: 000-000-0000  
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 EXHIBIT A  
Officer’s Compliance and Disclosure Certificate  
(attachment to monthly financial reports)  
 Reference is hereby made to certain Loan and Security Agreement (the “Loan Agreement”) (together with all instruments, documents and agreements entered into in connection therewith, the “Loan Documents”) by and between BlueCrest Capital Finance, L.P. (“Lender “) and Bioheart, Inc. (“Borrower”). Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Loan Agreement. The undersigned, , hereby certifies to Lender that he/she is the duly elected and acting of Borrower and that:  
 (i) FINANCIAL STATEMENTS — General. The attached financial statements fairly reflect the financial condition and results of operations of Borrower in all material respects in accordance with GAAP, except as disclosed on the attached Schedule of Financial Statement Exceptions (if none, so state on said Schedule) and, except as disclosed on the Schedule of Events, since \_\_\_, 200\_\_\_, there has been no event or change that has, or could reasonably be expected to have, a Material Adverse Effect;  
 (ii) FINANCIAL STATEMENTS — Off-Balance Sheet. All material financial obligations and contingent obligations of Borrower not otherwise listed and itemized on the attached financial statements, are disclosed on the attached Schedule of Financial Statement Exceptions, including but not limited to material off-balance sheet leasing obligations, and guarantees of financial obligations of Borrower, its affiliates, subsidiaries, officers and related parties (if none, so state on said Schedule);  
 (iii) FINANCIAL STATEMENTS — Related Party Transactions. All material related party transactions, including but not limited to loans, receivables or payables due to/from Borrower’s officers or employees, affiliates, subsidiaries, or other related parties, are disclosed on the attached Schedule of Financial Statement Exceptions (if none, so state on said Schedule);  
 (iv) COMPLIANCE WITH APPLICABLE LAW. Except as noted on the attached Schedule of Compliance Issues, there are no material events whereby Borrower or, to the knowledge of Borrower, Borrower’s directors, employees, affiliates, subsidiaries or other related parties are acting or conducting business contrary to applicable local, state, or national laws in the country or countries in which said parties are conducting business;  
 (v) ABSENCE OF DEFAULT. Except as noted on the attached Schedule of Compliance Issues, no Default or Event of Default exists on the date hereof; and  
 (vi) LITIGATION. Except as disclosed on the Schedule of Compliance Issues, there are no actions, suits or proceedings pending or, to the knowledge of Borrower and the undersigned, threatened against or affecting Borrower in any court or before any governmental commission, board or authority which, if adversely determined could reasonably be expected to have Material Adverse Effect. Borrower is involved in such litigation and other disputes as are listed on the attached Schedule of Compliance Issues (if none, so state on said Schedule).  
The undersigned has executed this certificate as of , 200.  
 Signature:   
 By (printed name and title):   
A-1  
 SCHEDULE OF FINANCIAL STATEMENT EXCEPTIONS  
 Category of Disclosure Financial Date Comments (if none, state “none”)  
 General Exceptions:  
 Off-Balance Sheet:  
 Related Party Transactions:  
 SCHEDULE OF COMPLIANCE ISSUES  
 Parties Involved Date of filing/incident Nature of Dispute or Issue (if none, state “none)”  
 Compliance Issues:  
 Litigation Issues:  
 Signatory Initials:   
A-2  
 EXHIBIT B  
FORM OF NOTE  
PROMISSORY NOTE  
Dated: June 1, 0000 Xxxxxxx, Xxxxxxxx  
The undersigned, Bioheart, Inc., a Florida corporation with its principal place of business at 00000 XX 0xx Xxxxxx, Xxxxxxx, XX 00000 (hereinafter referred to as “Borrower”), promises to pay to BlueCrest Capital Finance, L.P. (“Lender”) or its registered assigns Five Million and 00/100 Dollars ($5,000,000.00) at its office at Chicago, Illinois, or at such other place as Lender or its registered assigns may appoint, plus interest thereon as set forth herein. Capitalized terms used herein but not defined shall have the meaning ascribed to such terms in the Loan Agreement between Borrower and Lender, dated as of May 31, 2007 (the “Loan Agreement”).  
Interest on the principal amount outstanding shall accrue at the rate equal to 12.85% per annum, computed on the basis of a 360-day year of twelve 30-day months, and on the assumption that each payment of principal shall be made in a timely manner (the “Loan Interest Rate”).  
Principal and interest hereunder shall be payable on the first calendar day of each month, or, if the first calendar day of any month is not a business day, then on the next succeeding business day (each a “Payment Date”), in the amounts set forth below. Borrower agrees to make (i) three (3) monthly payments of interest only (paid in arrears) of $53,541.67 each commencing on the first Business Day of the first full calendar month occurring after the date of this Note (each, an “Interest Only Payment”) and (ii) thirty-three (33) payments of principal and interest (paid in arrears) in the amount of $180,660.87 each, commencing on the first Business Day of the fourth full calendar month occurring after the date of this Note (each, a “Periodic Payment”) and continuing on each Payment Date thereafter until the amounts of principal and interest owing under this Note are paid in full; provided, however, that the final Periodic Payment shall additionally include any accrued and unpaid interest and other charges then outstanding. The foregoing payments include interest at the Loan Interest Rate, which is precomputed for the period ending when such payments are due and on the assumption that all payments will be made on their respective due dates.  
Any Interest Only Payment or Periodic Payment which is past due for a period in excess of five (5) days after its due date shall be overdue and shall be subject to a service charge in an amount equal to two percent (2 %) of the delinquent amount, but not more than the maximum rate permitted by law, whichever is less. In addition, and notwithstanding the forgoing, during the continuance of an Event of Default all outstanding Borrower Liabilities in respect of the Loan Agreement (including the Term Loan evidenced by this Promissory Note) shall bear interest (payable on demand) at a rate that is two percent (2%) per annum in excess of the Loan Interest Rate (the “Default Interest Rate”) and the monthly payment of principal and interest shall be recalculated at the Default Interest Rate during such time. Borrower shall additionally be liable for any reasonable costs or expenses incurred by Lender in collecting any sums due from Borrower to Lender including all reasonable attorneys’ fees and reasonable legal expenses incurred by Lender if this note is placed with an attorney for collection.  
Demand, presentment for payment, notice of non-payment and protest are hereby waived by the undersigned.  
This Note is made by Borrower and delivered to Lender in relation to that certain Funding Request No. 1 issued by Borrower pursuant to the Loan Agreement. This Note is issued under the terms of and is entitled to the benefits of the Loan Agreement, to which reference is hereby made for a statement of the nature and extent of the protection and security afforded and the rights of the payee hereof and the rights and obligations of the undersigned. Lender’s books and records shall be dispositive evidence of the amount disbursed pursuant to this Note and the Loan Agreement.  
Upon an “Event of Default,” as defined in the Loan Agreement, this Note may become or be declared due in the manner and with the effect provided in the Loan Agreement.  
Lender (or its registered assigns) shall not be required to look to any collateral for the payment of this Note, but may proceed against Borrower, or any guarantor hereof in such manner as it deems desirable. None of the rights or remedies of Lender (or its registered assigns) hereunder or under the Loan Agreement are to be deemed waived or affected by any failure to exercise same.  
All remedies conferred upon Lender (or its registered assigns) under this Note, the Loan Agreement or any other instrument or agreement to which the undersigned or any guarantor hereof is a party or under any or all of them is bound, shall be cumulative and not exclusive, and such remedies may be exercised concurrently or consecutively at the option of Lender or its registered assigns.  
THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS AND DECISIONS OF THE STATE OF ILLINOIS. AT THE ELECTION OF LENDER AND WITHOUT LIMITING LENDER’S RIGHT TO COMMENCE AN ACTION IN OTHER JURISDICTION, BORROWER HEREBY SUBMITS TO THE EXCLUSIVE JURISDICTION AND VENUE OF ANY  
COURT (FEDERAL, STATE OR LOCAL) HAVING SITUS WITHIN XXXX COUNTY IN THE STATE OF ILLINOIS, EXPRESSLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO SERVICE BY CERTIFIED MAIL, POSTAGE PREPAID, DIRECTED TO THE LAST KNOWN ADDRESS OF BORROWER, WHICH SERVICE SHALL BE DEEMED COMPLETED WITHIN TEN (10) DAYS AFTER THE DATE OF MAILING HEREOF. BORROWER HEREBY WAIVES ANY RIGHT TO ASSERT THAT ANY ACTION INSTITUTED BY LENDER OR BORROWER IN SUCH COURT IS AN IMPROPER VENUE OR SUCH ACTION SHOULD BE TRANSFERRED TO A MORE CONVENIENT FORUM. LENDER AND BORROWER EACH HEREBY WAIVE THE RIGHT TO TRIAL BY JURY.  
BORROWER AGREES THAT ALL PAYMENTS AND OTHER OBLIGATIONS DUE AND OWING UNDER THIS NOTE AND EACH OTHER DOCUMENT EXECUTED IN CONNECTION HEREWITH SHALL BE PAID IN FULL WITHOUT OFFSET OR DEDUCTION FOR ANY REASON, AND BORROWER HEREBY WAIVES ANY RIGHT OF OFFSET ARISING FOR ANY REASON WITH RESPECT TO ANY PAYMENT OR OTHER OBLIGATION DUE AND OWING UNDER THIS NOTE AND EACH OTHER DOCUMENT EXECUTED IN CONNECTION HEREWITH.  
IN WITNESS WHEREOF, the undersigned hereunto sets its hand and seal as of the date first set forth above.  
 Bioheart, Inc.  
Borrower  
 By:   
 Name:   
 Title:   
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 EXHIBIT C  
FORM OF WARRANT  
NEITHER THIS WARRANT NOR THE COMMON STOCK WHICH MAY BE ACQUIRED UPON EXERCISE HEREOF HAS BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR ANY APPLICABLE STATE SECURITIES LAWS, AND MAY NOT BE SOLD, OFFERED FOR SALE, TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT WITH RESPECT THERETO UNDER THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS, OR AN EXEMPTION THEREFROM EXISTS.  
 No. W — \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Warrant to Purchase 105,264 Shares of Common Stock  
(subject to adjustment)  
WARRANT TO PURCHASE SHARES OF COMMON STOCK  
of  
BIOHEART, INC.  
 This certifies that, for value received, BlueCrest Capital Finance, L.P., a Delaware limited partnership (“BlueCrest”), or its assigns (the “Holder”) is entitled, subject to the terms set forth below, to purchase from Bioheart, Inc. (the “Company”), a Florida corporation, up to 105,264 shares (the “Warrant Shares”) of the common stock of the Company, par value $.001 per share (the “Common Stock”), as constituted on the date hereof (the “Warrant Issue Date”), upon surrender hereof, at the principal office of the Company referred to below, with the duly executed Notice of Exercise, attached hereto as Exhibit A (the “Notice of Exercise Form”), and simultaneous payment therefor in lawful money of the United States or otherwise as hereinafter provided, at the Exercise Price set forth in Section 2 below. The number of Warrant Shares and the Exercise Price are subject to adjustment as provided below. The term “Warrant” as used herein shall include this Warrant, and any warrants delivered in substitution or exchange therefor as provided herein. This Warrant is issued in connection with the Loan and Security Agreement (the “Loan Agreement”), made as of May 31, 2007 by and between BlueCrest and the Company.  
 1. Term of Warrant. Subject to the terms and conditions set forth herein, this Warrant shall be exercisable, in whole or in part, at any time, or from time to time, during the term commencing on the Warrant Issue Date and ending at 5:00 p.m., New York City time, on the ten year anniversary of the Warrant Issue Date (the “Expiration Date”), and shall be void thereafter; provided, however, that in the event that during calendar year 2007 the Company either (a) closes its initial underwritten public offering of shares of its Common Stock registered under the Securities Act (the “Initial Public Offering”) or (b) undertakes a merger or other similar transaction or series of transactions whereby the Company merges with and into a publicly traded corporation, then the Expiration Date shall be 5:00 p.m., New York City time, on the five year anniversary of the Warrant Issue Date.  
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 2. Exercise Price. The price at which this Warrant may be exercised shall be $4.75 per share of Common Stock, as may be adjusted from time to time pursuant to Section 14 hereof (the “Exercise Price”).  
 3. Exercise of Warrant.  
 (a) In accordance with the procedures set forth in Section 1(c) below, this Warrant may be exercised, in whole or in part, at any time, or from time to time during the period commencing on the date that is three hundred and sixty-six (366) days following the Warrant Issue Date (the “One Year Exercise Date”).  
 (b) During the period that this Warrant is exercisable in accordance with Sections 1(a) above, the Holder may exercise this Warrant by presentation and surrender of this Warrant and the delivery of the Notice of Exercise Form duly completed and executed on behalf of the Holder and, if the date of exercise is prior to an Initial Public Offering, the Shareholders Agreement, attached hereto as Exhibit B, duly completed and executed on behalf of the Holder, at the principal office of the Company (or such other office or agency of the Company as it may designate by notice in writing to the Holder at the address of the Holder appearing on the books of the Company), accompanied by payment of the Exercise Price for the number of shares specified in such Notice of Exercise Form. Payment may be made (i) in cash or by certified or official bank check, payable to the order of the Company, (ii) by cancellation by the Holder of indebtedness or other obligations of the Company to the Holder, or (iii) by a combination of the consideration described in sub-clauses (i) and (ii) above. Notwithstanding the foregoing, in the event that the Company undertakes undergoes a sale or merger transaction, then (A) if the Fair Market Value (as defined in Section 3(d) below) of one share of Common Stock is greater than the Exercise Price in effect on such date, then this Warrant shall be deemed automatically exercised pursuant to Section 3(d) below or (B) if the Fair Market Value of one Share is less than the Exercise Price in effect on such date, then this Warrant shall automatically terminate and be of no further force and effect.  
 (c) This Warrant shall be deemed to have been exercised immediately prior to the close of business on the date of its surrender for exercise as provided above, and the person entitled to receive the Warrant Shares shall be treated for all purposes as the holder of record of such Warrant Shares as of the close of business on such date. As promptly as practicable on or after such date and in any event within ten (10) days thereafter, the Company at its expense shall issue and deliver to the person or persons entitled to receive the same a certificate or certificates for the number of shares issuable upon such exercise. In the event that this Warrant is exercised in part, the Company at its expense will execute and deliver a new Warrant of like tenor exercisable for the number of shares for which this Warrant may then be exercised.  
 (d) Net Issue Exercise. Notwithstanding any provisions herein to the contrary, if the Fair Market Value of one share of Common Stock is greater than the Exercise Price (at the date of calculation as set forth below), in lieu of making payment of the consideration provided for in Section 3(a) above upon the exercise of all or any part of this Warrant, the Holder may surrender this Warrant at the principal office of the Company, together with the duly executed Notice of Exercise Form and, if the date of exercise is prior to the Initial Public Offering, the  
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 duly executed Shareholders Agreement, in which event the Company shall issue to the Holder a number of shares of Common Stock computed using the following formula:  
 X =  
 Y (A - B)  
 A  
 X =  
the number of shares of Common Stock to be issued to the Holder upon exercise  
 Y =  
the number of shares of Common Stock purchasable under the Warrant or, if only a portion of the Warrant is being exercised, the portion of the Warrant being exercised (at the date of such calculation)  
 A =  
the Fair Market Value of one share of the Company’s Common Stock (at the date of such calculation)  
 B =  
the Exercise Price (as adjusted to the date of such calculation)  
For purposes of the above calculation, the term “Fair Market Value” shall mean (i) if the principal market for the Common Stock is The NASDAQ Stock Market or any other national securities exchange, the last sales price of the Common Stock on such day as reported by such exchange or market, or on a consolidated tape reflecting transactions on such exchange or market, (ii) if the principal market for the Common Stock is not a national securities exchange or The NASDAQ Stock Market and the Common Stock is quoted on the National Association of Securities Dealers Automated Quotations System, the mean between the closing bid and the closing asked prices for the Common Stock on such day as quoted on such System or (iii) if the Common Stock is not quoted on the National Association of Securities Dealers Automated Quotations System, the mean between the highest bid and lowest asked prices for the Common Stock on such day as reported by Pink Sheets LLC; provided, however, that if none of (i), (ii) or (iii) above is applicable, or if no trades have been made or no quotes are available for such day, the Fair Market Value of the Common Stock shall be reasonably determined, in good faith, by the Board of Directors of the Company.  
 4. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. In lieu of any fractional share to which the Holder would otherwise be entitled, the Company shall make a cash payment equal to the Exercise Price multiplied by such fraction.  
 5. Replacement of Warrant. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and substance to the Company or, in the case of mutilation, on surrender and cancellation of this Warrant, the Company at its expense shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor and amount.  
 6. Rights of Shareholders. Subject to Sections 12, 14 and 16 of this Warrant, the Holder shall not be entitled to vote or receive dividends or be deemed the holder of Common Stock or  
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 any other securities of the Company that may at any time be issuable on the exercise hereof for any purpose, nor shall anything contained herein be construed to confer upon the Holder, as such, any of the rights of a shareholder of the Company or any right to vote for the election of directors or upon any matter submitted to shareholders at any meeting thereof, or to give or withhold consent to any corporate action (whether upon any recapitalization, issuance of stock, reclassification of stock, change of par value, or change of stock to no par value, consolidation, merger, conveyance, or otherwise) or to receive notice of meetings, or to receive dividends or subscription rights or otherwise until the Warrant shall have been exercised as provided herein.  
 7. Transfer of Warrant.  
 (a) Warrant Register. The Company will maintain a register (the “Warrant Register”) containing the names and addresses of the Holder or Holders. Any Holder of this Warrant or any portion thereof may change his or her address as shown on the Warrant Register by written notice to the Company, requesting such change. Any notice or written communication required or permitted to be given to the Holder may be delivered or given by mail to such Holder as shown on the Warrant Register and at the address shown on the Warrant Register. Until this Warrant is transferred on the Warrant Register of the Company, the Company may treat the Holder as shown on the Warrant Register as the absolute owner of this Warrant for all purposes, notwithstanding any notice to the contrary.  
 (b) Warrant Agent. The Company may, by written notice to the Holder, appoint an agent for the purpose of maintaining the Warrant Register referred to in Section 7(a) above, issuing the Common Stock or other securities then issuable upon the exercise of this Warrant, exchanging this Warrant, replacing this Warrant, or any or all of the foregoing. Thereafter, any such registration, issuance, exchange, or replacement, as the case may be, shall be made at the office of such agent.  
 (c) Transferability and Nonnegotiability of Warrant.  
 (i) The Holder hereby acknowledges that neither this Warrant nor the Warrant Shares have been registered under the Securities Act of 1933, as amended (the “Act”) and are “restricted securities” under the Act inasmuch as they are being acquired in a transaction not involving a public offering. The Holder hereby agrees not to sell, transfer, assign, distribute, offer to sell, hypothecate or otherwise dispose of this Warrant or the Warrant Shares in the absence of: (i) an effective registration statement under the Act as to this Warrant or the Warrant Shares and the registration and/or qualification of this Warrant or the Warrant Shares under any applicable federal or state securities laws then in effect, or (ii) an exemption therefrom exists.  
 (ii) Subject to compliance with Section 7(c)(i) above and the provisions of Section 9(f) of this Warrant, this Warrant may be transferred by the Holder with respect to any or all of the shares purchasable hereunder. Upon surrender of this Warrant to the Company, together with the Assignment Form, attached hereto as Exhibit C duly executed, and funds sufficient to pay any transfer tax, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees and in the denomination or denominations specified in the Assignment Form and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned. Thereafter, this Warrant shall promptly be cancelled. This Warrant may be divided or combined with other  
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 Warrants that carry the same rights upon presentation hereof at the office of the Company or at the office of its stock transfer agent, if any, together with a written notice specifying the names and denominations in which new Warrants are to be issued and signed by the Holder hereof. Notwithstanding the foregoing, the Company shall not be required to issue a Warrant covering less than 1,000 shares of Common Stock.  
 8. Representations and Warranties of Company. In connection with the transactions provided for herein, the Company hereby represents and warrants to the Holder that:  
 (a) Organization, Good Standing, and Qualification. The Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of Florida and has all requisite corporate power and authority to carry on its business as now conducted. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have a material adverse effect on its business or properties.  
 (b) Authorization. The Company has all necessary corporate power and authority to execute, deliver and perform its obligations under this Warrant. All corporate action has been taken on the part of the Company, its officers, directors, and shareholders necessary for the due authorization, execution and delivery of this Warrant by the Company and the performance by the Company of its obligations hereunder. This Warrant has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors’ rights. The Warrant Shares have been duly and validly authorized and reserved for issuance by the Company.  
 (c) Compliance with Other Instruments. The authorization, execution and delivery of this Warrant by the Company, the consummation of the transactions contemplated hereby and the performance by the Company of its obligations hereunder will not (i) violate any judgment, order, decree, injunction, law or regulation applicable to the Company; (ii) violate any term or provision of the Articles of Incorporation (the “Articles”) or bylaws; (iii) violate, or result in a breach or default under, any other agreement or instrument to which the Company is a party or by which it is bound or to which its properties or assets are subject, except for such violations, breaches or defaults under clauses (i), (ii) or (iii) above which, individually or in the aggregate, will not result in a material adverse effect upon the business operations, properties, assets, results of operations or condition (financial or otherwise) of the Company, the enforceability of any material provision of this Warrant or the ability of the Holder to enforce its rights and remedies under this Warrant; or (iv) result in the creation of any lien, claim or other encumbrance on any of the property or other assets of the Company.  
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 (d) Valid Issuance of Common Stock. When the Warrant Shares have been delivered in accordance with the terms of this Warrant, such Warrant Shares will be duly authorized and validly issued, fully paid and nonassessable.  
 (e) Representations and Warranties in the Loan Agreement. As of the date hereof, each of the representations and warranties made in the Loan Agreement by the Company are materially true and correct.  
 9. Representations and Covenants of the Holder.  
 The Holder hereby represents and covenants to the Company that:  
 (a) This Warrant and any Warrant Shares purchased upon exercise of this Warrant will be purchased for its own account for investment and not with a view to the offering or distribution thereof within the meaning of the Act and any applicable state securities laws;  
 (b) The Holder has sufficient knowledge and expertise in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Company. The Holder understands that this investment involves a high degree of risk and could result in a substantial or complete loss of its investment. The Holder is capable of bearing the economic risks of such investment;  
 (c) The Holder is an “Accredited Investor” as such term is defined under Regulation D promulgated pursuant to the Act;  
 (d) Any subsequent sale of any Warrant Shares shall be made either pursuant to an effective registration statement under the Act and any applicable state securities laws, or pursuant to an exemption from registration under the Act and any such state securities laws;  
 (e) If requested by the Company, the Holder shall submit a written statement, in form reasonably satisfactory to the Company, to the effect that the representations set forth in paragraphs (a) through (d) above are (x) true and correct as of the date of purchase of any Warrant Shares hereunder or (y) true and correct as of the date of any sale of any Warrant Shares, as applicable; and  
 (f) The Holder hereby agrees that, during the period of duration (not to exceed one hundred eighty (180) days) specified by the Company and an underwriter of Common Stock or other securities of the Company in an agreement in connection with any offering of the Company’s securities, following the effective date of the registration statement for a public offering of the Company’s securities filed under the Act, it shall not, to the extent requested by the Company and such underwriter, directly or indirectly sell, offer to sell, contract to sell (including, without limitation, any short sale), grant any option to purchase or otherwise transfer or dispose of (other than to donees who agree to be similarly bound) any securities of the Company held by it at any time during such period, except Common Stock, if any, included in such registration; provided, that such “lock-up” period applicable to the Holder shall not be greater than the shortest lock-up period restricting any other shareholder of the Company executing lock-up agreements in connection with such registration (including Xxxxxx X. Xxxxxxxxx).  
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 10. Legend. Unless the Warrant Shares or other securities issuable hereunder have been registered under the Act, upon exercise of any of the Warrants and the issuance of any of the Warrant Shares or other securities, all certificates representing such securities shall bear on the face thereof substantially the following legend:  
“The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended (the “Securities Act”) and may not be sold or transferred in the absence of an effective registration statement under the Securities Act or an exemption from such registration. The securities represented by this certificate are subject to certain restrictions and agreements contained in, that certain Warrant Agreement dated June \_\_\_, 2007, by and between BlueCrest Capital Finance, L.P. and the Company and, may not be sold, assigned, transferred, encumbered, pledged or otherwise disposed of except upon compliance with the provisions of such Warrant Agreement. By the acceptance of the shares of capital stock evidenced by this certificate, the holder agrees to be bound by such Warrant Agreement and all amendments thereto. A copy of such Warrant Agreement has been filed at the office of the Company.”  
In the event the date the certificates referenced above are issued prior to an Initial Public Offering, such certificates shall include the following additional legend:  
“The securities represented by this certificate and the holder of such securities are subject to the terms and conditions (including, without limitation, voting agreements and restrictions on transfer) set forth in a Shareholders Agreement, dated as of \_\_\_\_\_\_\_\_\_\_\_\_, 200\_\_\_, a copy of which may be obtained from the Company. No transfer of such securities will be made on the books of the Company unless accompanied by evidence of compliance with the terms of such agreement.”  
 11. Reservation of Stock. The Company covenants that during the term this Warrant is exercisable, the Company will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of Common Stock upon the exercise of this Warrant and, from time to time, will take all steps necessary to amend its Articles to provide sufficient reserves of shares of Common Stock issuable upon exercise of the Warrant. The Company further covenants that all shares that may be issued upon the exercise of rights represented by this Warrant and payment of the Exercise Price, all as set forth herein, will be free from all taxes, liens and charges in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously or otherwise specified herein). The Company agrees that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of executing stock certificates to execute and issue the necessary certificates for shares of Common Stock upon the exercise of this Warrant.  
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 12. Notices.  
 (a) Whenever the Exercise Price or number of shares purchasable hereunder shall be adjusted pursuant to Section 14 hereof, the Company shall issue a certificate signed by its Chief Executive Officer or Chief Financial Officer setting forth, in reasonable detail, the event requiring the adjustment, the amount of the adjustment, the method by which such adjustment was calculated, and the Exercise Price and number of shares purchasable hereunder after giving effect to such adjustment, and shall cause a copy of such certificate to be mailed (by first-class mail, postage prepaid) to the Holder of this Warrant.  
 (b) in case:  
 (i) The Company shall take a record of the holders of its Common Stock (or other stock or securities at the time receivable upon the exercise of this Warrant) for the purpose of entitling them to receive any dividend or other distribution, or any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right, or  
 (ii) of any capital reorganization of the Company, any reclassification of the capital stock of the Company, any consolidation or merger of the Company with or into another corporation, or any conveyance of all or substantially all of the assets of the Company to another corporation, or  
 (iii) of any voluntary dissolution, liquidation or winding-up of the Company,  
 (c) then, and in each such case, the Company will mail or cause to be mailed to the Holder or Holders a notice specifying, as the case may be, (A) the date on which a record is to be taken for the purpose of such dividend, distribution or right, and stating the amount and character of such dividend, distribution or right, or (B) the date on which such reorganization, reclassification, consolidation, merger, conveyance, dissolution, liquidation or winding-up is to take place, and the time, if any is to be fixed, as of which the holders of record-of Common Stock (or such stock or securities at the time receivable upon the exercise of this Warrant) shall be entitled to exchange their shares of Common Stock (or such other stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, conveyance, dissolution, liquidation or winding-up. Such notice shall be mailed by overnight delivery at least 15 days prior to the date therein specified.  
 (d) All such notices, advices and communications shall be deemed to have been received (i) in the case of personal delivery, on the date of such delivery and (ii) in the case of mailing, on the next business day following the date of such mailing by overnight delivery.  
 13. Amendments.  
 (a) Any term of this Warrant may be amended with the written consent of the Company and the Holder.  
 (b) No waivers of, or exceptions to, any term, condition or provision of this Warrant, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, condition or provision.  
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 14. Adjustments. The Exercise Price and the number of Warrant Shares purchasable hereunder are subject to adjustment from time to time as follows:  
 (a) Reclassification, etc. In case of any reorganization of the Company (or any other corporation, the securities of which are at the time receivable on the exercise of this Warrant) after the Warrant Issue Date or in case after such date the Company (or any such other corporation) shall consolidate with or merge into another corporation or convey all or substantially all of its assets to another corporation, then, and in each such case, the Holder of this Warrant upon the exercise thereof as provided herein at any time after the consummation of such reorganization, consolidation, merger or conveyance, shall be entitled to receive, in lieu of the securities and property receivable upon the exercise of this Warrant prior to such consummation, the securities or property to which such Holder would have been entitled upon such consummation if such Holder had exercised this Warrant immediately prior thereto; in each such case, the terms of this Warrant shall be applicable to the securities or property receivable upon the exercise of this Warrant after such consummation.  
 (b) Split, Subdivision or Combination of Shares. If the Company at any time while this Warrant, or any portion hereof, remains outstanding and unexpired shall split, subdivide or combine the securities as to which purchase rights under this Warrant exist, into a different number of securities of the same class, the Exercise Price for such securities shall be proportionately decreased in the case of a split or subdivision or proportionately increased in the case of a combination.  
 (c) Adjustments for Dividends in Stock or Other Securities or Property. If while this Warrant, or any portion hereof, remains outstanding and unexpired, the holders of the securities as to which purchase rights under this Warrant exist at the time shall have received, or, on or after the record date fixed for the determination of eligible shareholders, shall have become entitled to receive, without payment therefor, other or additional stock or other securities or property (other than cash) of the Company by way of dividend, then and in each case, this Warrant shall represent the right to acquire, in addition to the number of shares of the security receivable upon exercise of this Warrant, and without payment of any additional consideration therefor, the amount of such other or additional stock or other securities or property (other than cash) of the Company that such holder would hold on the date of such exercise had it been the holder of record of the security receivable upon exercise of this Warrant on the date hereof and had thereafter, during the period from the date hereof to and including the date of such exercise, retained such shares and/or all other additional stock available by it as aforesaid during such period, giving effect to all adjustments called for during such period by the provisions of this Section 14.  
 (d) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment pursuant to this Section 14, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each Holder of this Warrant a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon the written request, at any time, of any such Holder, furnish or cause to be furnished to such Holder a like certificate setting forth: (i) such adjustments and readjustments; (ii) the Exercise Price at the time in effect; and (iii) the number of Warrant Shares and the amount, if any, of other property that at the time would be received upon the exercise of the Warrant.  
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 (e) No Impairment. The Company will not, by any voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Section 14 and in the taking of all such action as may be reasonably necessary or appropriate in order to protect the rights of the Holder of this Warrant against impairment.  
 15. Piggyback Registration Rights  
 15.1. If at any time during the period commencing on the Six Month Post-IPO Exercise Date and ending on the Expiration Date (the “Piggyback Registration Period”), the Company proposes to register any shares of its Common Stock under the Securities Act on any form for registration thereunder (the “Registration Statement”) for its own account or the account of shareholders (other than a registration solely relating to (i) shares of Common Stock underlying a stock option, restricted stock, stock purchase or compensation or incentive plan or of stock issued or issuable pursuant to any such plan, or a dividend investment plan; (ii) a registration of securities proposed to be issued in exchange for securities or assets of, or in connection with a merger or consolidation with, another corporation or other entity; or (iii) a registration of securities proposed to be issued in exchange for other securities of the Company), it will at such time give prompt written notice to the Holder of its intention to do so (the “Section 15.1 Notice”). Upon the written request of the Holder given to the Company within ten (10) days after the giving of any Section 15.1 Notice setting forth the number of shares of Warrant Shares intended to be disposed of by the Holder and the intended method of disposition thereof, the Company will include or cause to be included in the Registration Statement the shares of Warrant Shares which the Holder has requested to register, to the extent provided in this Section 15 (a “Piggyback Registration”). Notwithstanding the foregoing, the Company may, at any time, withdraw or cease proceeding with any registration pursuant to this Section 15.1 if it shall at the same time withdraw or cease proceeding with the registration of all of the Common Stock originally proposed to be registered. The Company shall be obligated to file and cause the effectiveness of only one (1) Piggyback Registration; provided however, that to the extent that shares for which registration is requested pursuant hereto are excluded under Section 15.5, such shares shall be eligible for Piggyback Registration, notwithstanding the one Piggyback Registration limit. The shares of Warrant Shares set forth in the Section 15.1 Notice are referred to for purposes of this Section 15 as the “Registrable Shares”.  
 15.2 Company Covenants. Whenever required under this Section 15 to include Registrable Shares in a Registration Statement, the Company shall, as expeditiously as reasonably possible:  
 (a) Use its commercially reasonable efforts to cause such Registration Statement to become effective and cause such Registration Statement to remain effective until the earlier of the Holder having completed the distribution of all its Registrable Shares described in the Registration Statement or six (6) months from the effective date of the Registration Statement (or such later date by reason of suspensions the effectiveness as provided hereunder). The Company will also use its commercially reasonable efforts to, during the period that such Registration  
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 Statement is required to be maintained hereunder, file such post-effective amendments and supplements thereto as may be required by the Securities Act and the rules and regulations thereunder or otherwise to ensure that the Registration Statement does not contain any untrue statement of material fact or omit to state a fact required to be stated therein or necessary to make the statements contained therein, in light of the circumstances under which they are made, not misleading; provided, however, that if applicable rules under the Securities Act governing the obligation to file a post-effective amendment permits, in lieu of filing a post-effective amendment that (i) includes any prospectus required by Section 10(a)(3) of the Securities Act or (ii) reflects facts or events representing a material or fundamental change in the information set forth in the Registration Statement, the Company may incorporate by reference information required to be included in (i) and (ii) above to the extent such information is contained in periodic reports filed pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) in the Registration Statement.  
 (b) Prepare and file with the Unites States Securities and Exchange Commission (the “SEC”) such amendments and supplements to such Registration Statement, and the prospectus used in connection with such Registration Statement, as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement.  
 (c) Furnish to the Holder such numbers of copies of a prospectus, including a preliminary prospectus as amended or supplemented from time to time, in conformity with the requirements of the Securities Act, and such other documents as it may reasonably request in order to facilitate the disposition of Registrable Shares owned by the Holder; provided that, in no event, shall the Company be required to incur printing expenses in excess of $1,000 in complying with its obligations under this Section 15.2(c).  
 (d) Use its commercially reasonable efforts to register and qualify the securities covered by such Registration Statement under such other federal or state securities laws of such jurisdictions as shall be reasonably requested by the Holder; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act.  
 (e) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter of such offering.  
 (f) Notify the Holder, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, (a) when the Registration Statement or any post-effective amendment and supplement thereto has become effective; (b) of the issuance by the SEC of any stop order or the initiation of proceedings for that purpose (in which event the Company shall make use commercially reasonable efforts to obtain the withdrawal of any order suspending effectiveness of the Registration Statement. at the earliest possible time or prevent the entry thereof); (c) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Shares for sale in any jurisdiction or the initiation of any proceeding for such purpose; and (d) of the happening of any event as a result of which the prospectus included in such Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing.  
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 (g) Cause all such Registrable Shares registered hereunder to be listed on each exchange or quotation service on which similar securities issued by the Company are then listed or quoted.  
 (h) Provide a transfer agent and registrar for all Registrable Shares registered pursuant hereunder and CUSIP number for all such Registrable Shares, in each case not later than the effective date of such registration.  
 15.3 Furnish Information. In connection with a registration in which the Holder is participating, such Holder agrees to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriter. In addition, if requested by the Company or the representative of the underwriters of Common Stock (or other securities) of the Company, the Holder shall provide, within ten (10) days of such request, such information related to such Holder as may be required by the Company or such representative in connection with the completion of any public offering of the Company’s securities pursuant to a registration statement filed under the Securities Act.  
 15.4 Expenses of Company Registration. All expenses other than underwriting discounts and commissions incurred in connection with registrations, filings or qualifications pursuant to Section 15.1, including, without limitation, all registration, filing and qualification fees, printers’ and accounting fees and fees, disbursements of counsel for the Company and disbursements of counsel for the Holder up to $10,000 (the “Registration Expenses”) shall be borne by the Company.  
 15.5 Underwriting Requirements. In connection with any offering involving an underwriting of shares of the Company’s capital stock, the Company shall not be required under Section 15.1 to include any of the Holder’s Registrable Shares in such underwriting unless the Holder accepts the terms of the underwriting as agreed upon between the Company and the underwriters selected by it (or by other persons entitled to select the underwriters), and then only in such quantity as the underwriters determine in their sole and reasonable discretion will not materially jeopardize the success of the offering by the Company, and the Holder enters into such lock-up agreements as may be reasonably required of other selling shareholders in such Registration Statement. If the total amount of securities, including Registrable Shares, requested by shareholders to be included in such offering exceeds the amount of securities sold other than by the Company that the underwriters determine in their sole and reasonable discretion is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Shares, which the underwriters determine in their sole and reasonable discretion will not materially jeopardize the success of the offering (the securities so included to be apportioned pro rata among the selling shareholders according to the total amount of securities entitled to be included therein owned by each selling shareholder or in such other proportions as shall mutually be agreed to by such  
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 selling shareholders). For purposes of the preceding parenthetical concerning apportionment, for any selling shareholder who is a holder of Registrable Shares and is a partnership or corporation, the partners, retired partners and shareholders of such holder, or the estates and family members of any such partners and retired partners and any trusts for the benefit of any of the foregoing persons shall be deemed to be a single “selling shareholder”, and any pro-rata reduction with respect to such “selling shareholder” shall be based upon the aggregate amount of shares carrying registration rights owned by all entities and individuals included in such “selling shareholder”, as defined in this sentence.  
 15.6 Indemnification. In the event that any Registrable Shares are included in a Registration Statement under this Section 15.  
 (a) To the extent permitted by law, the Company will promptly indemnify and hold harmless the Holder, any underwriter (as defined in the Securities Act) for the Holder and each person, if any, who controls the Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any losses, claims, damages, or liabilities (joint or several) to which they may become subject under the Securities Act, or the Exchange Act, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a “Violation”): (i) any untrue statement or alleged untrue statement of a material fact contained in such Registration Statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, or any rule or regulation promulgated under the Securities Act, or the Exchange Act, and the Company will pay to the Holder, underwriter or controlling person, as incurred, any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this Section 15.6(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld), nor shall the Company be liable in any such case for any such loss, claim, damage, liability, or action incurred by the Holder, underwriter or controlling person to the extent that such party’s loss, claim, damage, liability or action arises out of or is based upon a Violation which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by such party.  
 (b) To the extent permitted by law, the Holder will indemnify and hold harmless the Company, its directors, officers, and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act, any underwriter, any other holder selling securities in such Registration Statement and any controlling person of any such underwriter or other holder, against any losses, claims, damages, or liabilities (joint or several) to which any of the foregoing persons may become subject, under the Securities Act, or the Exchange Act, insofar as such losses, claims, damages, or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information  
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 furnished by the Holder expressly for use in connection with such registration; and the Holder will pay, as incurred, any legal or other expenses reasonably incurred by any person intended to be indemnified pursuant to this Section 15.6(b), in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this Section 15.6(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; provided, further, that, in no event shall any indemnity under this Section 15.6(b) exceed 20% of the cash value of the gross proceeds from the offering received by the Holder.  
 (c) Promptly after receipt by an indemnified party under this Section 15.6 of notice of the commencement of any action (including any governmental action), such indemnified party shall, if a claim in respect thereof is to be made against any indemnifying party under this Section 15.6, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly notified, to assume the defense thereof with counsel selected by the indemnifying party and approved by the indemnified party (whose approval shall not be unreasonably withheld); provided, however, that an indemnified party (together with all other indemnified parties which may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if prejudicial to its ability to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 15.6, but the omission so to deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 15.6.  
 (d) If the indemnification provided for in this Section 15.6 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage, or expense referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage, or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage, or expense as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the alleged omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties’ relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.  
 (e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.  
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 (f) The obligations of the Company and the Holder under this Section 15.6 shall survive the completion of any offering of Registrable Shares in a Registration Statement under this Section 15, and otherwise.  
 15.7. Reports Under Securities Exchange Act of 1934. With a view to making available to the Holder the benefits of Rule 144 under the Securities Act (“Rule 144”) and any other rule or regulation of the SEC that may at any time permit the Holder to sell shares of the Company’s Common Stock to the public without registration, commencing immediately after the date on which a registration statement filed by the Company under the Securities Act becomes effective, the Company agrees to use its best efforts to:  
 (a) make and keep public information available, as those terms are understood and defined in Rule 144;  
 (b) file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and  
 (c) furnish to the Holder, so long as the Holder owns any Registrable Shares, forthwith upon request (i) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (ii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC which permits the selling of any such securities without registration or pursuant to such form.  
 15.8. Permitted Transferees. The rights to cause the Company to register Registrable Shares granted to the Holder by the Company under this Section 15 may be assigned in full by a Holder in connection with a transfer by the Holder of its Registrable Shares or Warrants if: (a) the Holder gives prior written notice to the Company; (b) such transferee agrees to comply with and be bound by the terms and provisions of this Agreement; (c) such transfer is otherwise in compliance with this Agreement and (d) such transfer is otherwise effected in accordance with applicable securities laws. Except as specifically permitted by this Section 15.8, the rights of a Holder with respect to Registrable Shares as set out herein shall not be transferable to any other person, and any attempted transfer shall cause all rights of the Holder therein to be forfeited.  
 15.9 Termination of Registration Rights. The Holder shall no longer be entitled to exercise any registration rights provided for in Section 15.1 after such time at which all Registrable Shares held by the Holder can be sold in any three-month period without registration in compliance with Rule 144 of the Act.  
 16. Information. So long as the Holder holds the Warrant and/or shares of Common Stock, the Company shall deliver to the Holder, promptly after mailing, copies of all notices, reports, financial statements, proxies or other written communication delivered or mailed to the holders of the Common Stock.  
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 17. Descriptive Headings. The description headings of the several sections and paragraphs of this Warrant are inserted for convenience only and do not constitute a part of this Warrant.  
 18. Governing Law. This Warrant shall be construed and enforced under the laws of the State of Florida without regard to conflicts of law provisions  
 19. Waiver of Jury Trial. THE COMPANY AND THE HOLDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY THE HOLDER AND THE COMPANY.  
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 IN WITNESS WHEREOF, the parties have executed this Warrant as of the date set forth below.  
Dated: May 31, 2007  
 BLUECREST CAPITAL FINANCE, L.P.  
 By: BlueCrest Capital Finance GP, LLC,   
 Its General Partner  
   
   
 By:   
 Name:   
 Title:   
 BIOHEART  
   
   
   
 By:   
 Name:   
 Title:   
   
  
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 EXHIBIT A  
NOTICE OF EXERCISE FORM  
 To: Bioheart Inc.  
 (1) The undersigned hereby (A) elects to purchase \_\_\_shares of Common Stock of Bioheart Inc., pursuant to the provisions of Section 3(b) of the attached Warrant, and tenders herewith payment of the purchase price for such shares in full, or (B) elects to exercise this Warrant for the purchase of\_\_\_shares of Common Stock, pursuant to the provisions of Section 3(d) of the attached Warrant.  
 (2) In exercising this Warrant, the undersigned hereby confirms and acknowledges that the shares of Common Stock to be issued are being acquired solely for the account of the undersigned and not as a nominee for any other party, and for investment, and that the undersigned will not offer, sell or otherwise dispose of any such shares of Common Stock except under circumstances that will not result in a violation of the Securities Act of 1933, as amended, or any applicable state securities laws.  
 (3) Please issue a certificate or certificates representing said shares of Common Stock in the name of the undersigned or in such other name as is specified below:  
 Name   
 (4) Please issue a new Warrant for the unexercised portion of the attached Warrant in the name of the undersigned or in such other name as is specified below:  
 Name:   
Date:   
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 EXHIBIT B  
FORM OF SHAREHOLDERS’ AGREEMENT  
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 EXHIBIT C  
ASSIGNMENT FORM  
 FOR VALUE RECEIVED, the undersigned registered owner of this Warrant hereby sells, assigns and transfers unto the Assignee named below all of the rights of the undersigned under the within Warrant, with respect to the number of shares of Common Stock set forth below:  
 Name of Assignee Address No. of Shares  
and does hereby irrevocably constitute and appoint \_\_\_Attorney to make such transfer on the books of Bioheart Inc. maintained for the purpose, with full power of substitution in the premises.  
The undersigned also represents that, by assignment hereof, the Assignee acknowledges that this Warrant and the shares of stock to be issued upon exercise hereof are being acquired for investment and that the Assignee will not offer, sell or otherwise dispose of this Warrant or any shares of stock to be issued upon exercise hereof except under circumstances which will not result in a violation of the Securities Act of 1933, as amended, or any state securities laws. Further, the Assignee has acknowledged that upon exercise of this Warrant, the Assignee shall, if requested by the Company, confirm in writing, in a form satisfactory to the Company, that the shares of stock so purchased are being acquired for investment and not with a view toward distribution or resale.  
 Name:   
Dated:   
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 EXHIBIT D  
FORM OF LEGAL OPINION  
June 1, 2007  
BlueCrest Capital Finance, L.P.  
000 Xxxx Xxxxxxxxxx, Xxxxx 000  
Xxxxxxx, XX 00000  
Ladies and Gentlemen:  
 We have acted as Florida counsel to Bioheart, Inc., a Florida corporation (the “Borrower”), in connection with the transactions contemplated by the Loan and Security Agreement, dated May 31, 2007 (the “Loan Agreement”) by and between the Borrower and BlueCrest Capital Finance, L.P., a Delaware limited partnership (the “Lender”). This opinion is being furnished to you pursuant to Section 2.5(xiii) of the Loan Agreement. Capitalized terms used herein and not otherwise defined herein have the meanings assigned to them in the Loan Agreement.  
 This opinion is delivered at Borrower’s request as required by Lender in connection with the closing of the Loan. In our capacity as counsel to the Borrower, we have examined the following documents:  
 a) the Loan Agreement;  
 b) the Promissory Note, dated May 31, 2007, by the Borrower in favor of Lender in respect of Term Loan (the “Term Note”);  
 c) the Warrant Agreement, dated May 31, 2007, issued by the Borrower in favor of Lender (the “Warrant”);  
 d) the Deposit Account Control Agreement, dated May 31, 2007;  
 e) the form of UCC-1 financing statement to be filed with the Florida Secured Transactions Registry (the “Filing Office”) naming Lender as secured party and Borrower as debtor (the “Financing Statement”);  
 f) a certificate of the Chief Executive Officer, Chief Financial Officer and Executive Chairman of the Borrower, dated as of June 1, 2007 (the “Officers’ Certificate”), to which the following documents, among others, are attached: (i) the Articles of  
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 Incorporation (the “Articles”) of the Borrower, as amended, as certified on August 16, 2006, by the Secretary of State of the State of Florida; (ii) the Amended and Restated Bylaws of the Borrower (the “Bylaws” and with the Articles, the “Organizational Documents”); (iii) resolutions of the Board of Directors of the Borrower dated as of May 16, 2007; and (iv) minutes of a joint meeting of the Board of Directors and Audit Committee of the Borrower dated as of May 29, 2007; and  
 g) a certificate dated May 31, 2007 issued by the Secretary of State of the State of Florida to the effect that the Borrower is incorporated under the laws of the State of Florida and is in good standing.  
 The Loan Agreement, the Term Note, the Warrant and the Deposit Account Control Agreement are hereinafter collectively called the “Loan Documents.” The documents and instruments listed in (a) through (h) above are collectively referred to as the “Documents.”  
 We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such other documents, agreements, certificates, corporate records, certificates of public officials and other instruments as we have deemed necessary or appropriate for the purposes of this opinion.  
 We are relying solely on the Loan Documents and the Organizational Documents in rendering the opinions set forth in this letter, subject to the limitations, assumptions and qualifications set forth below.  
 As to questions of fact material to the opinions expressed in this letter, we have relied upon, without independent investigation, and have assumed the correctness of the representations and warranties made in the Loan Documents and upon the certificates and documents referred to above, although we have no actual knowledge that they are true and correct.  
 In rendering the opinions expressed in this letter, we have assumed, and do not express an opinion with respect to (a) the power of each party (other than Borrower) to the agreements and documents submitted, (b) the due authorization of the execution, delivery and performance of each agreement and document submitted to us by each party thereto (other than Borrower), (c) the validity and binding nature of each agreement and document submitted to us on each party thereto (other than Borrower), (d) the genuineness of all signatures not witnessed by us and the authority of all persons signing each of the agreements and documents examined by us on which a signature appears (other than the authority of the officers of Borrower to execute and deliver the Loan Documents), (e) the accuracy, completeness and authenticity of all documents submitted to us as originals, (f) the conformity to original documents of all documents submitted  
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 to us as certified or photostatic copies and that each such document has been duly executed and delivered by each party thereto pursuant to due authorization (other than the due execution and delivery by Borrower), (g) the veracity of all documents, affidavits and certificates submitted to us, (h) the legal capacity of natural persons and (i) the valid existence and good standing of all parties to the Loan Documents (other than the valid existence and good standing of Borrower). In further rendering the opinions expressed in this letter, we do not express an opinion with respect to the following and we have assumed that (i) the signed Loan Documents to which we opine will be in substantially the same form as the drafts submitted to us for our review, (ii) there have been no further modifications to the documents described above, (iii) the execution and delivery of the Loan Documents are free from any fraud, unconscionability, misrepresentation, mistake of fact, duress or criminal activity, (iv) there are no other documents or agreements among the Lender and the Borrower which would expand, modify or otherwise alter the respective obligations and rights of the parties to the Loan Documents, (v) in the event the Lender ever seeks to enforce its rights under the Loan Documents, the Lender will not itself be in breach thereof nor will any applicable statute of limitations have expired, (vi) the Lender shall act in a commercially reasonable manner and in compliance with all laws applicable to the Lender, and (vii) valid and adequate consideration has been received in connection with the transactions contemplated by the Loan Documents. We have also assumed, without investigation, that all conditions precedent to closing the transactions contemplated by the Loan Documents have been satisfied in all material respects.  
 We have further assumed (a) that the Lender has all requisite power and authority to carry on its business as now being conducted; and (b) that the Lender has duly authorized by all necessary corporate or other applicable action, the execution, delivery and performance of the Loan Documents to which it is a party.  
 Our opinions set forth in this letter as to the legality, validity, binding effect and enforceability of the Loan Documents are specifically qualified to the extent that the legality, validity, binding effect or enforceability of any obligations of the Borrower under the Loan Documents, or the availability or enforceability of any of the remedies provided in the Loan Documents, may be subject to or limited by (a) bankruptcy, insolvency, reorganization, fraudulent conveyance and fraudulent transfer, moratorium and other statutory or decisional laws, now or hereafter in effect, affecting the rights of creditors generally, (b) State of Florida and federal constitutional limitations, including, without limitation, notice and due process requirements, the right to a trial by jury and the right to present permissible counterclaims, cross-claims or other actions, provided that none of such matters affect the overall validity of the Loan Documents or interfere with the practical realization of the principal benefits intended to be provided by the Loan Documents, (c) the exercise of judicial or administrative discretion in accordance with general equitable principles, including, without limitation, concepts of specific  
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 performance, injunctive relief and other equitable remedies (regardless of whether enforcement is sought in a proceeding at law or in equity), (d) the Lender’s implied duty of good faith, (e) the rights of the United States of America pursuant to the Federal Tax Lien Act of 1966, as amended, and (f) the availability or enforceability of particular remedies, of exculpatory provisions, of indemnities and rights of contribution and of waivers contained in the Loan Documents, which particular remedies, exculpatory provisions, indemnities and rights of contribution and waivers may be limited by or subject to equitable principles, applicable laws, rules, regulations, court decisions and constitutional requirements and the discretion of the court before which any proceeding for relief may be brought.  
 No opinion is expressed herein with respect to the existence of or any title to property (real or personal, tangible or intangible), the perfection or priority of any security interest or other lien, environmental laws, antitrust laws, state securities law exemptions or the law of fiduciary duty. No opinion is expressed as to choice of law provisions in any of the Loan Documents or to the adequacy of the description of any of the collateral contained in the Loan Documents. We express no opinion as to the validity or enforceability of a security interest arising out of any transaction not subject to Article 9 of the Uniform Commercial Code as in effect on the date hereof in the State of Florida (the “Florida UCC”), including those described in §§ 679.1091(3) and (4) of the Florida UCC.  
 With respect to the opinions expressed in paragraph 3 below, we note that the perfection of any security interest that has been perfected by the filing of the Financing Statement in Florida will expire upon the earliest to occur of (i) the expiration of four months after the debtor so changes its name that the financing statement becomes seriously misleading under § 9-506 and § 9-507 of the Uniform Commercial Code as in effect in Florida (the “Florida UCC”) as to any collateral acquired more than four months after such change, unless within such four-month period an amendment which renders the financing statement not seriously misleading is filed; (ii) with respect to collateral, a security interest in which has not attached on or prior to the date of change of location, the expiration of the four-month period after a change of the debtor’s location, unless the secured party becomes perfected within such four-month period under the law of the debtor’s new jurisdiction, or (iv) the expiration of one year after the transfer of collateral by the debtor to a person that becomes a debtor and is located in another jurisdiction within the meaning of § 9-307 of the Florida UCC, unless the secured party becomes perfected as to the transferred collateral within the one-year period under the laws of the location of the transferee debtor. To the extent that Florida law continues to govern the effect of the Financing Statement, continuation statements complying with the Florida UCC must be filed in the Filing Office in order to maintain the effectiveness of the Financing Statement, as provided therein.  
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 The opinions set forth in paragraph 3 below also are subject to the following additional limitations and exclusions:  
 (i) We express no opinion as to the validity, perfection or enforceability of a security interest arising out of any transaction not subject to Article 9 of the Florida UCC, including those described in §§ 9-109(c) and (d) of the Florida UCC, and therefore our opinions set forth in paragraph 3 below do not address (A) laws other than Article 9 of the Florida UCC, (B) collateral of a type not subject to Article 9 of the Florida UCC, and (C) what law governs perfection of the security interests granted in the collateral covered by this opinion letter.  
 (ii) We express no opinion with respect to any “commercial tort claim,” “letter-of-credit-right,” collateral arising from a “consumer transaction,” “health-care-insurance-receivable,” “agricultural lien,” “farm products” or “as-extracted collateral,” “investment property” or “manufactured home collateral” (as those terms are defined in Article 9 of the Florida UCC), collateral subject to a certificate of title, goods consigned by or to the Borrower, documents or goods covered by documents, electronic chattel paper (other than perfection by filing as set forth above), or standing timber.  
 (iii) Under §§ 9-315 of the Florida UCC, the continuation of perfection of a security interest in proceeds is limited to the extent set forth in such section.  
 (iv) Under § 9-316 of the Florida UCC, the continuation of perfection of a security interest following a change in the jurisdiction, the laws of which govern perfection, the effect of perfection and non-perfection and priority, is limited to the extent set forth in such section.  
 (v) In the case of property that becomes collateral after the date hereof, Section 552 of the Federal Bankruptcy Code limits the extent to which property acquired by a debtor after the commencement of a case under the Federal Bankruptcy Code may be subject to a security interest arising from a security agreement entered into by the debtor before the commencement of such a case.  
 (vi) The Financing Statement might become ineffective due to events that cause them to be “seriously misleading” under §§ 9-506 through § 9-508 of the Florida UCC.  
 (vii) We note that the secured party’s rights against account debtors will be subject to the terms of the assigned account, chattel paper or general intangible, to dealings between such account debtor and the Borrower, and to the other limitations provided in §§ 9-403, 9-404, 9-405 and 9-406 of the Florida UCC, and will be subject to defenses as provided in § 9-404 of the Florida UCC.  
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 (viii) We express no opinion as to the effectiveness of the secured party’s security interest as to any rights (including rights of payment) under any account or other obligation on which the United States government or any other federal, state, local, foreign or other government or any agency, department or subdivision thereof is an obligor.  
 (ix) We note that pursuant to §§ 9-203(f) and (g) and §§ 9-308(d) and (e) of the Florida UCC, (i) perfection of a security interest in collateral also perfects a security interest in any supporting obligation (as defined in Article 9 of the Florida UCC) for such collateral and (ii) perfection of a security interest in a right to payment or performance also perfects a security interest in any security interest, mortgage or other lien on personal or real property securing such right to payment or performance (a “Supporting Lien”). Except to the extent that any such supporting obligation or Supporting Lien constitutes Collateral, we express no opinion as to the creation or perfection, respectively, of a security interest therein.  
 (x) We express no opinion with respect to the enforceability of a security interest in any security entitlement credited to a securities account or any commodity contract credited to a commodities account.  
 (xi) We express no opinion as to whether any deposit account of the Borrower constitutes a “deposit account” within the meaning of Article 9 of the Florida UCC.  
 For the purposes of the opinions in paragraph 3 below, we also have assumed that:  
 (i) The Borrower is not a “transmitting utility” as defined in § 9-102 of the Florida UCC;  
 (ii) The requirements for enforceability of the security interest under § 9-203(b) of the Florida UCC have been satisfied; and  
 (iii) None of the Collateral has been leased by the Borrower to any third party in what would be characterized as a “lease intended as security” within the meaning of § 1-201(37) of the Florida UCC.  
 For the purposes of the opinions in paragraph 5 below, we have also assumed that:  
 (i) The Lender will file the Financing Statement with the Filing Office; and  
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 (ii) The Lender will pay the documentary stamp taxes on behalf of the Borrower, since the amount of such taxes is to be deducted by the Lender from the proceeds of the Term Loan.  
 We express no opinion regarding (i) the submission of jurisdiction to the extent it relates to the subject matter jurisdiction of any court, (ii) the enforceability of any waiver of a trial by jury or waiver of objection to venue or claim of an inconvenient forum with respect to proceedings, (iii) the waiver of any right to have service of process made in the manner presented by applicable law, (iv) the appointment of any party as attorney in fact insofar as exercise of such power of attorney may be limited by public policy or limitations referred to elsewhere in this opinion, (v) the enforceability of indemnification or contribution provided for in the Loan Documents for claims, losses or liabilities in an unreasonable amount, for claims, losses or liabilities attributable to the indemnified party’s negligence, or to the extent enforceability of such indemnifications may be barred or limited by federal or state securities laws, (vi) the ability of any party to receive the remedies of specific performance, injunctive relief, liquidated damages, penalties or any similar remedy in any proceeding (including, without limitation prepayment penalties and yield maintenance provisions), (vii) any right to the appointment of a receiver or the enforceability of any agreement by the owner of the applicable property to consent to such appointment, (viii) any right to obtain possession of any property or the exercise of self-help remedies or other remedies without judicial process, (ix) any waiver or limitation concerning mitigation of damages, (x) the availability of the right of rescission, (xi) whether a Florida court would enforce provisions of the Loan Documents purporting to override applicable rules of court procedure, evidence or due process of law, (xii) arbitration or mediation provisions, (xiii) provisions to the effect that the Lender’s or any other party’s failure to exercise any right, remedy or option under the Loan Documents shall not operate as a waiver, (xiv) provisions for the reimbursement by the non-prevailing party of the prevailing party’s legal fees and expenses, (xv) the waiver of defenses, rights or remedies or the delay or omission of enforcement thereof, (xvi) waiver of the benefit of any constitutional, statutory or common law right to the extent that such a waiver is deemed to violate public policy, (xvii) the enforceability of any provision modifying the interest rate ipso facto under the Note or other interest “savings” clause to the extent that the interest rate is determined to be usurious, (xviii) waiver or renouncement of the benefits of any moratorium, statute of limitations, reinstatement, marshalling, forbearance, appraisement, exemption or homestead laws, (xix) any rights of set-off, (xx) the payment of interest on interest, or (xxi) the application of foreclosure sales proceeds in any manner contrary to Florida law; (xxii) any release, discharge or covenant not to xxx with respect to unknown act or omissions to act or acts which subsequently accrue or mature; (xxiii) the waiver of any rights, rules or duties imposed upon a secured party under the Florida Uniform Commercial Code which are stated to be non-waivable thereunder; or (xxiv) the imposition of joint and several liability.  
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 We have assumed that there are no oral modifications or written agreements or understandings which limit, modify or otherwise alter the terms, provisions, and conditions of, or relate to, the Loan Documents and the other transactions contemplated by the Loan Documents.  
 The phrases “to our knowledge,” “to the best of our knowledge,” “known to us” or the like mean to the current actual knowledge of the attorneys of this firm who have actively and directly participated in the negotiation and closing of the transactions contemplated by the Loan Documents and who have devoted substantive attention to the transactions contemplated by the Loan Documents and does not include matters of which such attorneys could otherwise be deemed to have constructive knowledge.  
 We have not undertaken or reviewed any search of court or governmental dockets or records in any jurisdiction, any search with respect to the rights or assets of any party to the Loan Documents or any Uniform Commercial Code, suit, judgment, lien or other type of search or investigation, except as stated above.  
 We express no opinion as to the effect on the opinions expressed herein of the compliance or non-compliance of the Borrower or any other party to the Loan Documents with any state, federal or other laws or regulations applicable to it.  
 As to matters of fact relevant to this opinion, we have relied without independent investigation on, and assumed the accuracy and completeness of, the representations and warranties of all parties in the Loan Documents and the Officers’ Certificate. We have not made an investigation as to, and have not independently verified the facts underlying such representations and warranties or the matters covered by the Officers’ Certificate.  
 Except for the opinions expressly set forth in the numbered paragraphs below, we express no opinions and no opinions should be implied or inferred. Based upon and subject to the foregoing, we are of the opinion that:  
 1. The Borrower is a corporation duly organized, validly existing and in good standing under the laws of Florida with corporate powers adequate for the execution, delivery, and performance of the Loan Documents. The Borrower has all requisite corporate power and authority to own and operate its properties and assets and to carry on its business as it is currently being conducted.  
 2. Each of the Loan Documents has been duly authorized, executed and delivered by the Borrower, constitutes the legal, valid, and binding obligation of the Borrower, and is enforceable against the Borrower in accordance with its terms.  
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 3. The Financing Statement is in form suitable for filing. The Filing Office is the only office in which the Financing Statement is required to be filed to publish notice of the security interest in that personal property and other collateral described in the Financing Statement in which a security interest may be perfected solely by filing under the Florida UCC (the “FL UCC Collateral”). The filing of the Financing Statement in the Filing Office will result in the perfection of the security interests in such portions of the Florida UCC Collateral which are described in said Financing Statement and in which a security interest may be perfected solely by filing under Article 9 of the Florida UCC. No opinion is expressed herein with respect to the relative priority of these security interests.  
 4. The execution and delivery by the Borrower of the Loan Documents do not, and the performance by the Borrower of the terms of the Loan Documents will not, (i) result in any violation or breach by the Borrower of any statute, rule or regulation, or, to our knowledge, any judgment, ruling, decree, or order of any court or other governmental agency or body applicable to the business or properties of the Borrower, (ii) violate the Articles of Incorporation, as amended, or the By-Laws, as amended, of the Borrower, or (iii) result in any default under any agreement or instrument listed on Exhibit A hereto.  
 5. Under material provisions of law, no approval or authorization by, or notice to or filing with, any federal or state governmental authority or the Secretary of State of Florida is required to be obtained or performed by the Borrower in connection with the execution, delivery, or performance of the Loan Documents.  
 6. Except as previously disclosed by the Borrower to the Lender, and to the knowledge of the attorneys who have actively and directly participated in the representation of the Borrower, there is no litigation or governmental proceeding or investigation pending, or threatened, against the Borrower which questions the validity or enforceability of the Loan Documents or, if determined adversely to the Borrower, could be reasonably expected to have a material adverse impact on the business or assets of the Borrower.  
 However, while certain members of this firm are admitted to practice in other jurisdictions, in this opinion letter we do not express any opinion covering any law other than the laws of the State of Florida. We are members of the bar of the State of Florida and are not purporting to be experts on, or generally familiar with, or qualified to express legal conclusions based upon, laws of any state or jurisdiction other than the United States of America and the State of Florida.  
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 The opinions expressed above are subject to the exception that the enforceability of any of the documents may be limited by public policy and concepts of materiality, unconscionability, reasonableness, good faith and fair dealing.  
 This opinion is solely for your benefit and it is not to be quoted in whole or in part or otherwise referred to, nor is it to be filed with any governmental agency or any other person, and no person or entity other than you (or any successors or assigns of the Loan Agreement and the Term Note) shall be entitled to rely upon this opinion without our express written consent. This opinion is given as of the date hereof, and we assume no obligation to advise you after the date hereof of facts or circumstances that come to our attention or changes in law that occur which could affect the opinion contained herein. We undertake no duty to inform you of events occurring subsequent to the date hereof.  
CIRCULAR 230 DISCLOSURE  
TO ENSURE COMPLIANCE BY THIS LAW FIRM WITH REQUIREMENTS IMPOSED BY THE INTERNAL REVENUE SERVICE, WE INFORM YOU THAT (A) THIS ADVICE WAS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF AVOIDING UNITED STATES FEDERAL TAX PENALTIES, (B) THIS ADVICE WAS NOT WRITTEN TO SUPPORT THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN, AND (C) ANY PERSON TO WHOM SUCH TRANSACTIONS OR MATTERS ARE BEING PROMOTED, MARKETED OR RECOMMENDED SHOULD SEEK ADVICE BASED ON ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.  
Very truly yours,  
Hunton & Xxxxxxxx LLP  
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 Exhibit A  
 1.  
 1999 Officers and Employees Stock Option Plan  
 2.  
 1999 Directors and Consultants Stock Option Plan  
 3.  
 Form of Option Agreement under Officers and Employees Stock Option Plan  
 4.  
 Form of Option Agreement under Directors and Consultants Stock Option Plan  
 5.  
 Consulting Agreement between the registrant and Xxxxxxx Xxxxxxx III, dated March 18, 2004.  
 6.  
 Employment Letter Agreement between the registrant and Xxxxx Xxxxxxx, dated August 24, 2006.  
 7.  
 Lease Agreement between the registrant and Sawgrass Business Plaza, LLC, as amended, dated November 14, 2006.  
 8.  
 Asset Purchase Agreement between the registrant and Advanced Cardiovascular Systems, Inc., dated June 24, 2003.  
 9.  
 Conditionally Exclusive License Agreement between the registrant, Dr. Xxxxx Xxx and Cell Transplants International, LLC, dated February 7, 2000, as amended.  
 10.  
 Manufacturing and Service Agreement between the registrant and Xxxxxx Medical, Inc., dated September 30, 2005.  
 11.  
 Loan Guarantee, Payment and Security Agreement, dated as of June 1, 2007, by and between the registrant, Xxxxxx X. Xxxxxxxxx and Xxxxxx Xxxxxxxxx  
 12.  
 Loan Guarantee, Payment and Security Agreement, dated as of June 1, 2007, by and between the registrant and Xxxxx Xxxxxx  
 13.  
 Loan Guarantee, Payment and Security Agreement, dated as of June 1, 2007, by and between the registrant and Dr. Xxxxxxx Xxxxxx  
 14.  
 Loan Guarantee, Payment and Security Agreement, dated as of June 1, 2007, by and between the registrant and Xxxxxxx Xxxxxxx, III  
 15.  
 Loan Guarantee, Payment and Security Agreement, dated as of June 1, 2007, by and between the registrant and Magellan Group Investments, LLC  
 16.  
 Loan Agreement, dated as of June 1, 2007, by and between the registrant and Bank of America, N.A.  
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