

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

FORM 8-K

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

Date of Report (Date of earliest event reported):
August 4, 2003

BIOSANTE PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation)

0-28637
(Commission File Number)

58-2301143
(I.R.S. Employer Identification
Number)

111 Barclay Boulevard
Lincolnshire, Illinois
(Address of Principal Executive Offices)

60069
(Zip Code)

(847) 478-0500
(Registrant's Telephone Number, Including Area Code)

N/A
(Former Name or Former Address, If Changed Since Last Report)

Item 5. Other Events

On August 6, 2003, BioSante Pharmaceuticals, Inc. issued a press release, a copy of which is attached as an exhibit hereto, announcing the completion of a private placement of an aggregate of 4,791,982 shares of its common stock and warrants to purchase an aggregate of 2,395,993 shares of its common stock, at a purchase price of \$2.15 per unit, or an aggregate purchase price of \$10,302,763.80. The units were sold to accredited investors, including certain existing stockholders, directors and officers of BioSante. Each unit sold consists of one share of common stock and a warrant to purchase 0.50 shares of common stock, at an exercise price of \$2.15 per share. As compensation to its placement agent, BioSante also issued warrants to purchase 371,373 shares of common stock, at an exercise price of \$2.15 per share. BioSante granted the investors and its placement agent demand and piggyback registration rights with respect to the shares of its common stock issued and the shares issuable upon exercise of the warrants. In addition, BioSante agreed to register the resale of these shares on a registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933.

Item 7. Financial Statements and Exhibits.

- (a) Financial Statements of Businesses Acquired.

Not Applicable

- (b) Pro Forma Financial Information.

Not Applicable

- (c) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
Ex. 10.1	Common Stock and Warrant Purchase Agreement dated August 4, 2003 between BioSante Pharmaceuticals, Inc. and the purchasers listed on Schedule 1 attached thereto (filed herewith electronically).
Ex. 10.2	Form of Warrant dated August 4, 2003 (filed herewith electronically).
Ex. 10.3	Investor Rights Agreement dated August 4, 2003 between BioSante Pharmaceuticals, Inc. and the purchasers listed on Schedule 1 attached to the Common Stock and Warrant Purchase Agreement (filed herewith electronically).
Ex. 99.1	Press Release dated August 6, 2003 (filed herewith electronically).

SIGNATURE

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

BIOSANTE PHARMACEUTICALS, INC.

By: /s/ Phillip B. Donenberg
 Phillip B. Donenberg
 Chief Financial Officer, Treasurer and Secretary

Dated: August 6, 2003

BIOSANTE PHARMACEUTICALS, INC.**FORM 8-K****Exhibit Index**

<u>Exhibit No.</u>	<u>Description</u>	<u>Method of Filing</u>
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99.1	Press Release of BioSante Pharmaceuticals, Inc. issued August 6, 2003.	Filed herewith electronically

COMMON STOCK AND WARRANT PURCHASE AGREEMENT

by and among

BioSante Pharmaceuticals, Inc.

and

the parties named herein on Schedule 1, as Purchasers

August 4, 2003

This **COMMON STOCK AND WARRANT PURCHASE AGREEMENT** (this "*Agreement*") is dated as of August 4, 2003, among BioSante Pharmaceuticals, Inc., a Delaware corporation (the "*Company*"), and the purchasers identified on Schedule 1 hereto (each a "*Purchaser*" and collectively the "*Purchasers*").

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(2) of the Securities Act (as defined below), and Rule 506 promulgated thereunder, the Company desires to issue and sell to the Purchasers, and the Purchasers, severally and not jointly, desire to purchase from the Company in the aggregate, 4,791,982 shares of Common Stock and Warrants to purchase 2,395,993 shares of Common Stock.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and each Purchaser agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions.

In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms have the meanings indicated in this Section 1.1:

"*Action*" shall have the meaning ascribed to such term in Section 3.1(j).

"*Affiliate*" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 144. With respect to a Purchaser, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Purchaser will be deemed to be an Affiliate of such Purchaser.

"*Agreement*" shall have the meaning ascribed to such term in the Preamble.

"*Business Day*" means any day except Saturday, Sunday and any day which shall be a federal legal holiday or a day on which banking institutions in the State of Illinois are authorized or required by law or other governmental action to close.

"*Closing*" shall have the meaning ascribed to such term in Section 2.1(a).

"*Closing Date*" shall have the meaning ascribed to such term in Section 2.1(a).

"*Closing Price*" means on any particular date (a) the last reported closing bid price per share of Common Stock on such date on the Trading Market (as reported by Bloomberg L.P. at 4:15 PM (New York time) as the last reported closing bid price for regular session trading on such day), or (b) if there is no such price on such date, then the closing bid price on the Trading Market on the date nearest preceding such date (as reported by Bloomberg L.P. at 4:15 PM (New York time) as the closing bid price for regular session trading on such day), or (c) if the Common Stock is not then listed or quoted on the Trading Market and if prices for the Common Stock are

then reported on the OTC Bulletin Board or in the "pink sheets" published by the National Quotation Bureau Incorporated (or a similar organization or agency succeeding to its functions of reporting prices), the most recent closing bid price per share of the Common Stock so reported, or (d) if the shares of Common Stock are not then publicly traded the fair market value of a share of Common Stock as determined by an appraiser selected in good faith by the Purchasers of a majority in interest of the Shares then outstanding.

"*Commission*" means the Securities and Exchange Commission.

"*Common Stock*" means the common stock of the Company, \$0.0001 par value per share, and any securities into which such common stock may hereafter be reclassified.

“*Common Stock Equivalents*” means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“*Company*” shall have the meaning ascribed to such term in the Preamble.

“*Disclosure Schedules*” means the Disclosure Schedules concurrently delivered herewith.

“*Effective Date*” means the date that the Registration Statement is first declared effective by the Commission.

“*Environmental Laws*” shall have the meaning ascribed to such term in Section 3.1(y).

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

“*FDC Act*” shall have the meaning ascribed to such term in Section 3.1(m).

“*GAAP*” shall have the meaning ascribed to such term in Section 3.1(h).

“*Governmental Authorizations*” shall have the meaning ascribed to such term in Section 3.1(m).

“*Hazardous Substances*” shall have the meaning ascribed to such term in Section 3.1(y).

“*Indemnified Party*” shall have the meaning ascribed to such term in Section 5.3.

“*Indemnifying Party*” shall have the meaning ascribed to such term in Section 5.3.

“*Intellectual Property*” shall have the meaning ascribed to such term in Section 3.1(o).

“*Investor Rights Agreement*” means the Investor Rights Agreement, dated as of the date of this Agreement, among the Company and each of the Purchasers, in the form of Exhibit B hereto.

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“*Lien*” means a lien, charge, security interest, encumbrance, right of first refusal or other restriction, except for a lien for current taxes not yet due and payable and a minor imperfection of title, if any, not material in nature or amount and not materially detracting from the value or impairing the use of the property subject thereto or impairing the operations or proposed operations of the Company.

“*Material Adverse Effect*” shall have the meaning ascribed to such term in Section 3.1(b).

“*Per Share Purchase Price*” equals \$2.15, subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of this Agreement and prior to Closing.

“*Person*” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“*Premises*” shall have the meaning ascribed to such term in Section 3.1(y).

“*Purchaser*” shall have the meaning ascribed to such term in the Preamble.

“*Registration Statement*” means a registration statement meeting the requirements set forth in the Investor Rights Agreement and covering the resale by the Purchasers of the Shares and the Warrant Shares.

“*Rights*” shall have the meaning ascribed to such term in Section 3.1(o).

“*Rule 144*” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“*SEC Reports*” shall have the meaning ascribed to such term in Section 3.1(h).

“*Securities*” means the Shares, the Warrants and the Warrant Shares.

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

“*Shares*” means the shares of Common Stock issued to each Purchaser pursuant to this Agreement.

“*Subscription Amount*” means, as to each Purchaser, the amount set forth beside such Purchaser’s name on Schedule 1 hereto, in United States dollars and in immediately available funds.

“*Subsidiary*” means, with respect to any entity, any corporation or other organization of which securities or other ownership interest having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions, are directly or indirectly owned by such entity or of which such entity is a partner or is, directly or indirectly, the

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beneficial owner of 50% or more of any class of equity securities or equivalent profit participation interests.

“*Trading Day*” means (i) a day on which the Common Stock is traded on a Trading Market, or (ii) if the Common Stock is not listed on a Trading Market, a day on which the Common Stock is traded on the over-the-counter market, as reported by the OTC Bulletin Board, or (iii) if the Common Stock is not quoted on the OTC Bulletin Board, a day on which the Common Stock is quoted in the over-the-counter market as reported by the National Quotation Bureau Incorporated (or any similar organization or agency succeeding to its functions of reporting prices); provided, that in the event that the Common Stock is not listed or quoted as set forth in (i), (ii) and (iii) hereof, then Trading Day shall mean a Business Day.

“*Trading Market*” means the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the American Stock Exchange, the New York Stock Exchange, the Nasdaq National Market or the Nasdaq SmallCap Market.

“*Transaction Documents*” means this Agreement, the Investor Rights Agreement, the Warrants and any other documents or agreements executed in connection with the transactions contemplated hereunder.

“*Warrants*” means the Common Stock Purchase Warrants, in the form of Exhibit C hereto. SCO Securities LLC and/or its designees are receiving warrants as compensation for services rendered in connection with the transaction set forth herein as provided on Schedule 1 attached hereto, which warrants shall also be in the form of Exhibit C hereto. Such warrants shall constitute “Warrants” for all purposes hereunder and SCO Securities LLC and/or its designees and such other persons or entities shall constitute “Purchasers” for all purposes hereunder.

“*Warrant Shares*” means the shares of Common Stock issuable upon exercise of the Warrants.

ARTICLE II

PURCHASE AND SALE

2.1 Closing.

(a) The closing of the transactions contemplated under this Agreement (the “*Closing*”) will take place as promptly as practicable, but no later than five (5) Business Days following satisfaction or waiver of the conditions set forth in Sections 2.2 and 2.3 (other than those conditions which by their terms are not to be satisfied or waived until the Closing), at the offices of Wiggin & Dana LLP, 400 Atlantic Street, Stamford, CT 06901 (or remotely via exchange of documents and signatures) or at such other place or day as may be mutually acceptable to the Purchasers and the Company. The date on which the Closing occurs in the “*Closing Date*”.

(b) At the Closing, the Purchasers shall purchase, severally and not jointly, and the Company shall issue and sell, in the aggregate, 4,791,982 shares of Common Stock and Warrants to purchase 2,395,993 shares of Common Stock on the Closing Date. Each Purchaser shall

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purchase from the Company, and the Company shall issue and sell to each Purchaser, a number of Shares equal to such Purchaser’s Subscription Amount divided by the Per Share Purchase Price and a Warrant to purchase 50% of the number of Shares purchased by such Purchaser. The Purchase Price paid by each Purchaser for which SCO Securities LLC is entitled to a fee as placement agent shall be placed in escrow pending the Closing pursuant to a Closing Escrow Agreement among the Company, SCO Securities LLC and Wiggin & Dana LLP (the “*Escrow Agent*”), which agreement shall be in the form attached hereto as Exhibit D (the “*Closing Escrow Agreement*”).

2.2 Conditions to Obligations of Purchasers to Effect the Closing.

The obligations of each Purchaser to effect the Closing and the transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived, in writing, by such Purchaser:

(a) At the Closing (unless otherwise specified below) the Company shall deliver or cause to be delivered to each Purchaser the following:

(i) this Agreement, duly executed by the Company;

(ii) a certificate evidencing a number of Shares equal to such Purchaser’s Subscription Amount divided by the Per Share Purchase Price as set forth on Schedule 1 hereto, registered in the name of such Purchaser;

(iii) a Warrant, registered in the name of such Purchaser, pursuant to which such Purchaser shall have the right to acquire up to the number of shares of Common Stock equal to 50% of the Shares to be issued to such Purchaser at such Closing, as set forth on Schedule 1 hereto;

(iv) the Investor Rights Agreement, duly executed by the Company;

(v) a legal opinion of Oppenheimer Wolff & Donnelly LLP, securities counsel to the Company, in the form of Exhibit A hereto; and

(vi) a certificate of the Secretary of the Seller (the “*Secretary’s Certificate*”), attaching a true copy of the Certificate of Incorporation and Bylaws of the Seller, as amended to the Closing Date, and attaching true and complete copies of the resolutions of the Board of Directors of the Seller authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents.

(b) All representations and warranties of the Company contained herein shall remain true and correct as of the Closing Date as though such representations and warranties were made on such date (except those representations and warranties that address matters only as of a particular date will remain true and correct as of such date), except for any inaccuracies that have not had, and could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. For purposes of this Section 2.2(b), all representations and warranties contained in Section 3.1 qualified by “Material Adverse Effect” or reference to “material” or “in all material respects” or like variations will not be deemed so qualified.

(c) As of the Closing Date, there shall have been no Material Adverse Effect with respect to the Company since the date hereof.

(d) From the date hereof to the Closing Date, trading in the Common Stock shall not have been suspended by the Commission (except for any suspension of trading of limited duration agreed to by the Company, which suspension shall be terminated prior to the Closing), and, at any time prior to the Closing Date, trading in securities generally as reported by Bloomberg Financial Markets shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities.

2.3. Conditions to Obligations of the Company to Effect the Closing.

(a) The obligations of the Company to effect the Closing and the transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived, in writing, by the Company. At the Closing, each Purchaser shall deliver or cause to be delivered to the Company the following:

(i) this Agreement, duly executed by such Purchaser;

(ii) such Purchaser's Subscription Amount, by wire transfer of immediately available funds to the account of the Company and, in the case of each Purchaser for which SCO Securities LLC is entitled to a fee as placement agent, as provided in the Closing Escrow Agreement; and

(iii) the Investor Rights Agreement, duly executed by such Purchaser.

(b) All representations and warranties of each of the Purchasers contained herein shall remain true and correct as of the Closing Date as though such representations and warranties were made on such date.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company.

Except as set forth under the corresponding section of the Disclosure Schedules delivered concurrently herewith, the Company hereby makes the following representations and warranties as of the date hereof and as of the Closing Date to each Purchaser:

(a) **Subsidiaries.** The Company has no direct or indirect Subsidiaries. Any references in the Transaction Documents to Subsidiaries existing as of the date hereof shall be disregarded.

(b) **Organization and Qualification.** Each of the Company and the Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization (as applicable), with the requisite corporate power and authority to own and use its properties and assets and to carry on its

business as currently conducted. Neither the Company nor any Subsidiary is in violation of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, would not have or reasonably be expected to result in (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the business or financial condition of the Company and the Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document (any of (i), (ii) or (iii), a "*Material Adverse Effect*").

(c) **Authorization; Enforceability.** The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by each of the Transaction Documents and otherwise to carry out its obligations thereunder. The execution and delivery of each of the Transaction Documents by the Company and the consummation by it of the transactions contemplated thereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company in connection therewith. Each Transaction Document has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and rules of law governing specific performance, injunctive relief, or other equitable remedies.

(d) **No Conflicts.** The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated thereby do not and will not (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected, except, in the cases of clause (ii), where such conflict, default or violation would not have or reasonably be expected to result in a Material Adverse Effect.

(e) **Filings, Consents and Approvals.** The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than (a) the filing with the Commission of the Registration Statement, the

application(s) to each Trading Market for the listing of the Shares and Warrant Shares for trading thereon in the time and manner required thereby, Form D and applicable Blue Sky filings and (b) such as have already been obtained or such exemptive filings as are required to be made under applicable securities laws.

(f) **Issuance of the Securities.** The Securities are duly authorized and, when issued and paid for in accordance with the Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens, other than any Liens created by or imposed on the holders thereof through no action of the Company; and provided, however, that the Securities will be subject to restrictions on transfer and state and federal securities laws as provided herein. The Company has reserved from its duly authorized capital stock the maximum number of shares of Common Stock issuable pursuant to this Agreement and the Warrants.

(g) **Capitalization.**

(i) The authorized and outstanding capitalization of the Company is as described in the Company's most recent periodic report filed with the Commission. The Company has not issued any capital stock since such filing, other than pursuant to the exercise of employee stock options under the Company's stock option plans and pursuant to the conversion or exercise of Common Stock Equivalents outstanding on the date thereof. All shares of the Company's issued and outstanding capital stock have been duly authorized, are validly issued and outstanding, and are fully paid and nonassessable. No securities issued by the Company from the date of its incorporation to the date hereof were issued in violation of any statutory or common law preemptive rights. There are no dividends which have accrued or been declared but are unpaid on the capital stock of the Company. All taxes required to be paid by the Company in connection with the issuance and any transfers of the Company's capital stock have been paid. All securities of the Company have been issued in all material respects in accordance with the provisions of all applicable securities and other laws.

(ii) No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as a result of the purchase and sale of the Securities and except for employee and director stock options under the Company's equity compensation plans, outstanding warrants to purchase 1,643,750 shares of Common Stock and 466,602 outstanding shares of class C special stock, there are no outstanding options, warrants, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock, or securities or rights convertible or exchangeable into shares of Common Stock. The issue and sale of the Securities will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Purchasers) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under such securities.

(h) **SEC Reports; Financial Statements; Liabilities.**

(i) The Company has filed all reports required to be filed by it under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) of the Exchange Act, for the 12 months preceding the date hereof (or such shorter period as the Company was required by law to file such material) (the foregoing materials, including the exhibits thereto, being collectively referred to herein as the "SEC Reports") on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective filing dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as the case may be, and the rules and regulations of the Commission promulgated thereunder, as applicable, and none of the SEC Reports, as of their respective filing dates, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(ii) The financial statements of the Company included in the SEC Reports comply with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with generally accepted accounting principles in the United States, applied on a consistent basis during the periods involved ("GAAP"), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, subject to normal year-end audit adjustments. Such financial statements fairly present in all material respects the financial position of the Company and its consolidated subsidiaries, if any, as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal year-end audit adjustments.

(iii) Except as set forth in the SEC Reports, and except for liabilities and obligations incurred since March 31, 2003 in the ordinary course of business, consistent with past practice, as of the date hereof: (i) the Company and its Subsidiaries do not have any material liabilities or obligations (absolute, accrued, contingent or otherwise) and (ii) there has not been any aspect of the prior or current conduct of the business of the Company or its Subsidiaries which may form the basis for any material claim by any third party which if asserted could result in a Material Adverse Effect.

(i) **Material Changes.** Since March 31, 2003, the Company has conducted its business only in the ordinary course, consistent with past practice, and there has not occurred:

- (i) any event that could reasonably be expected to have a Material Adverse Effect on the Company or any of its Subsidiaries;
- (ii) any amendments or changes in the charter documents of the Company and its Subsidiaries;

(iii) any damage, destruction or loss, whether or not covered by insurance, that would, individually or in the aggregate, have or would be reasonably likely to have, a Material Adverse Effect on the Company and its Subsidiaries;

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(iv) any:

(A) incurrence, assumption or guarantee by the Company or its Subsidiaries of any debt for borrowed money other than (i) equipment leases made in the ordinary course of business, consistent with past practice and (ii) any such incurrence, assumption or guarantee with respect to an amount of \$25,000 or less that has been disclosed in the SEC Reports;

(B) issuance or sale of any securities convertible into or exchangeable for securities of the Company other than to directors, employees and consultants pursuant to existing equity compensation or stock purchase plans of the Company;

(C) issuance or sale of options or other rights to acquire from the Company or its Subsidiaries, directly or indirectly, securities of the Company or any securities convertible into or exchangeable for any such securities, other than options issued to directors, employees and consultants in the ordinary course of business, consistent with past practice;

(D) issuance or sale of any stock, bond or other corporate security other than to directors, employees and consultants pursuant to existing equity compensation or stock purchase plans of the Company;

(E) discharge or satisfaction of any material Lien;

(F) declaration or making any payment or distribution to stockholders or purchase or redemption of any share of its capital stock or other security other than to directors, officers and employees of the Company or its Subsidiaries as compensation for services rendered to the Company or its Subsidiary (as applicable) or for reimbursement of expenses incurred on behalf of the Company or its Subsidiary (as applicable);

(G) sale, assignment or transfer of any of its intangible assets except in the ordinary course of business, consistent with past practice, or cancellation of any debt or claim except in the ordinary course of business, consistent with past practice;

(H) waiver of any right of substantial value whether or not in the ordinary course of business;

(I) material change in officer compensation, except in the ordinary course of business and consistent with past practice; or

(J) other commitment (contingent or otherwise) to do any of the foregoing.

(v) any creation, sufferance or assumption by the Company or any of its Subsidiaries of any Lien on any asset or any making of any loan, advance or capital contribution to or investment in any Person, in an aggregate amount which exceeds \$25,000 outstanding at any time;

(vi) any entry into, amendment of, relinquishment, termination or non-renewal by the Company or its Subsidiaries of any material contract, license, lease, transaction, commitment or other right or obligation, other than in the ordinary course of business, consistent with past practice; or

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(vii) any transfer or grant of a right with respect to the patents, trademarks, trade names, service marks, trade secrets, copyrights or other intellectual property rights owned or licensed by the Company or its Subsidiaries, except as among the Company and its Subsidiaries.

(j) Litigation. There is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an "Action") which (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor, to the knowledge of the Company, any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. To the knowledge of the Company, there has not been and there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(k) Labor Relations. No material labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company which could reasonably be expected to result in a Material Adverse Effect.

(l) Compliance. Neither the Company nor any Subsidiary (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any order of any court, arbitrator or governmental body, or (iii) is or has been in violation of any statute, rule or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws applicable to its business, except in the case of clauses (i) and (iii) as would not have or reasonably be expected to result in a Material Adverse Effect.

(m) Licenses; Compliance With FDA and Other Regulatory Requirements.

(i) The Company holds all material authorizations, consents, approvals, franchises, licenses and permits required under applicable law or regulation for the operation of the business of the Company and its Subsidiaries as presently operated (the "Governmental Authorizations"). All the

Governmental Authorizations have been duly issued or obtained and are in full force and effect, and the Company and its Subsidiaries are in material compliance with the terms of all the Governmental Authorizations. The Company and its Subsidiaries have not engaged in any activity that, to their knowledge, would cause revocation or suspension of any such Governmental Authorizations. The Company has no knowledge of any facts which could reasonably be expected to cause the Company to believe that the Governmental Authorizations will not be renewed by the appropriate governmental authorities in the ordinary course. Neither

the execution, delivery nor performance of this Agreement shall adversely affect the status of any of the Governmental Authorizations.

(ii) Without limiting the generality of the representations and warranties made in sub-paragraph (i) above, the Company represents and warrants that (i) the Company and each of its Subsidiaries is in material compliance with all applicable provisions of the United States Federal Food, Drug, and Cosmetic Act and the rules and regulations promulgated thereunder (the “FDC Act”) and equivalent laws, rules and regulations in jurisdictions outside the United States in which the Company or its Subsidiaries do business, (ii) its products and those of each of its Subsidiaries that are in the Company’s control are not adulterated or misbranded and are in lawful distribution, (iii) all of the products marketed by and within the control of the Company comply in all material respects with any conditions of approval and the terms of the application by the Company to the appropriate Regulatory Authorities, (iv) no Regulatory Authority has initiated legal action with respect to the manufacturing of the Company’s products, such as seizures or required recalls, and the Company uses commercially reasonable efforts to comply with applicable good manufacturing practice regulations, (v) its products are labeled and promoted by the Company and its representatives in substantial compliance with the applicable terms of the marketing applications submitted by the Company to the Regulatory Authorities and the provisions of the FDC Act and foreign equivalents, (vi) all adverse events that were known to and required to be reported by Company to the Regulatory Authorities have been reported to the Regulatory Authorities in a timely manner, (vii) neither the Company nor any of its Subsidiaries is, to their knowledge, employing or utilizing the services of any individual who has been debarred under the FDC Act or foreign equivalents, (viii) all stability studies required to be performed for products distributed by the Company or any of its Subsidiaries have been completed or are ongoing in material compliance with the applicable Regulatory Authority requirements, (ix) any products exported by the Company or any of its Subsidiaries have been exported in compliance with the FDC Act and (x) the Company and its Subsidiaries are in compliance in all material respects with all applicable provisions of the Controlled Substances Act. For purposes of this Section 3.1(m), “Regulatory Authority” means any governmental authority in a country or region that regulates the manufacture or sale of Company’s products, including, but not limited to, the United States Food and Drug Administration.

(n) **Title to Assets.** The Company and the Subsidiaries do not own any real property, and have good and marketable title to all personal property owned by them that is material to the business of the Company and the Subsidiaries, taken as a whole, in each case free and clear of all Liens, except those, if any, reflected in the Company’s financial statements. Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases (subject to laws of general application relating to bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights generally and rules of law governing specific performance, injunctive relief, or other equitable remedies) with which the Company and the Subsidiaries are in material compliance.

(o) **Intellectual Property.**

(i) The Company or a Subsidiary thereof has the right to use or is the sole and exclusive owner of all right, title and interest in and to all foreign and domestic patents, patent rights, trademarks, service marks, trade names, brands and copyrights (whether or not registered and, if applicable, including pending applications for registration) owned, used or controlled by

the Company and its Subsidiaries (collectively, the “Rights”) and in and to each material invention, software, trade secret, technology, product, composition, formula and method of process used by the Company or its Subsidiaries (the Rights and such other items, the “Intellectual Property”), and, to the Company’s knowledge, has the right to use the same, free and clear of any claim or conflict with the rights of others;

(ii) other than as set forth in the SEC Reports, no royalties or fees (license or otherwise) are payable by the Company or its Subsidiaries to any Person by reason of the ownership or use of any of the Intellectual Property;

(iii) there have been no claims made against the Company or its Subsidiaries asserting the invalidity, abuse, misuse, or unenforceability of any of the Intellectual Property, and, to the best of the Company’s knowledge, there are no reasonable grounds for any such claims;

(iv) neither the Company nor its Subsidiaries have made any claim of any violation or infringement by others of its rights in the Intellectual Property, and to the best of the Company’s knowledge, no reasonable grounds for such claims exist; and

(v) neither the Company nor its Subsidiaries have received notice that it is in conflict with or infringing upon the asserted rights of others in connection with the Intellectual Property.

(p) **Insurance.** The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiaries are engaged. All of the insurance policies of the Company and its Subsidiaries are in full force and effect and are valid and enforceable in accordance with their terms, and the Company and its Subsidiaries have complied with all material terms and conditions thereof. Neither the Company nor any Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

(q) **Transactions With Affiliates and Employees.** None of the officers or directors of the Company and, to the knowledge of the Company, none of the employees of the Company is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner, other than (a) for payment of

salary or consulting fees for services rendered, (b) reimbursement for expenses incurred on behalf of the Company and (c) for other employee benefits, including stock option agreements and other stock awards under any equity compensation plan of the Company.

(r) **Internal Accounting Controls.** The Company and each of the Subsidiaries maintains a system of internal accounting controls sufficient in the judgment of the Company's management to provide reasonable assurance that (i) transactions are executed in accordance

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with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company has established disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the Company and designed such disclosure controls and procedures to ensure that material information relating to the Company, including its Subsidiaries, is made known to the certifying officers by others within those entities, particularly during the period in which the Company's Form 10-KSB or 10-QSB, as the case may be, is being prepared. The Company's certifying officers have evaluated the effectiveness of the Company's controls and procedures as of a date within 90 days prior to the filing date of the Form 10-QSB for the quarter ended March 31, 2003. The Company presented in its Form 10-QSB for the quarter ended March 31, 2003, the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the March 31, 2003. Since March 31, 2003, there have been no significant changes in the Company's internal controls (as such term is defined in Item 307(b) of Regulation S-K under the Exchange Act) or, to the Company's knowledge, in other factors that could significantly affect the Company's internal controls.

(s) **Certain Fees.** Except for fees payable to SCO Securities LLC, no brokerage or finder's fees or commissions are or will be payable by the Company to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by this Agreement. The Purchasers shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by this Agreement.

(t) **Private Placement; Integrated Offering.** Assuming the accuracy of the Purchasers representations and warranties set forth in Section 3.2, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Purchasers as contemplated hereby. The issuance and sale of the Securities hereunder does not contravene the rules and regulations of the Trading Market. Neither the Company, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of the Securities Act and would as a result require registration under the Securities Act or trigger any applicable shareholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated.

(u) **Charter, Bylaws and Corporate Records.** The minute books of the Company and its Subsidiaries contain in all material respects complete and accurate records of all meetings and other corporate actions of the board of directors, committees of the board of directors, incorporators and stockholders of the Company and its Subsidiaries from the date of incorporation of each such entity to the date hereof. All material corporate decisions and actions have been validly made or taken. All corporate books, including without limitation the share

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transfer register, comply in all material respects with applicable laws and regulations and have been regularly updated.

(v) **Registration Rights.** Other than the parties to that certain Registration Rights Agreement dated May 6, 1999 among the Company and the parties thereto and those certain Subscription Agreements between the Company and the subscribers thereto executed in connection with the Company's April 2001 private placement, no Person has any right to cause the Company to effect the registration under the Securities Act of any securities of the Company.

(w) **Listing and Maintenance Requirements.** The Company has not, in the 12 months preceding the date hereof, received notice from any Trading Market on which the Common Stock is or has been listed or quoted to the effect that the Company is not in compliance with the listing or maintenance requirements of such Trading Market. The Company is, and has no reason to believe that it will not in the foreseeable future continue to be, in compliance with all such listing and maintenance requirements.

(x) **Taxes.** All tax returns and tax reports required to be filed with respect to the income, operations, business or assets of the Company and its Subsidiaries have been timely filed (or appropriate extensions have been obtained) with the appropriate governmental agencies in all jurisdictions in which such returns and reports are required to be filed, and all of the foregoing as filed are, in all material respects, correct and complete and, in all material respects, reflect accurately all liability for taxes of the Company and its Subsidiaries for the periods to which such returns relate, and all amounts shown as owing thereon have been paid. All income, profits, franchise, sales, use, value added, occupancy, property, excise, payroll, withholding, FICA, FUTA and other taxes (including interest and penalties), if any, collectible or payable by the Company and its Subsidiaries or relating to or chargeable against any of its material assets, revenues or income or relating to any employee, independent contractor, creditor, stockholder or other third party through the Closing Date, were fully collected and paid by such date if due by such date or provided for by adequate reserves in the financial statements contained in the SEC Reports as of and for the periods ended March 31, 2003 (other than taxes accruing after such date) and all similar items due through the Closing Date will have been fully paid by that date or provided for by adequate reserves, whether or not any such taxes were reported or reflected in any tax returns or filings. No taxation authority has sought to audit the records of the Company or any of its Subsidiaries for the purpose of verifying or disputing any tax returns, reports or related information and disclosures provided to such taxation authority, or for the Company's or any of its Subsidiaries' alleged failure to provide any such tax returns, reports or related information and disclosure. No material claims or deficiencies have been asserted against or inquiries raised with the Company or any of its Subsidiaries with respect to any taxes or other governmental charges or levies which have not been paid or otherwise satisfied, including claims that, or inquiries whether, the Company or any of its Subsidiaries has not filed a tax return that it was required to file, and, to the best of the Company's knowledge, there exists no reasonable basis for the making of any such claims or inquiries. Neither the Company nor any of its Subsidiaries has waived any restrictions on assessment or collection of taxes or consented to the extension of any statute of limitations relating to taxation.

(y) **Environmental Matters.** None of the premises or any properties owned, occupied or leased by the Company or its Subsidiaries (the "Premises") has been used by the Company or the Subsidiaries or, to the Company's knowledge, by any other Person, to

manufacture, treat, store, or dispose of any substance that has been designated to be a “hazardous substance” under applicable Environmental Laws (hereinafter defined) (“*Hazardous Substances*”) in violation of any applicable Environmental Laws. To its knowledge, the Company has not disposed of, discharged, emitted or released any Hazardous Substances which would require, under applicable Environmental Laws, remediation, investigation or similar response activity. No Hazardous Substances are present as a result of the actions of the Company or, to the Company’s knowledge, any other Person, in, on or under the Premises which would give rise to any liability or clean-up obligations of the Company under applicable Environmental Laws. The Company and, to the Company’s knowledge, any other Person for whose conduct it may be responsible pursuant to an agreement or by operation of law, are in compliance with all laws, regulations and other federal, state or local governmental requirements, and all applicable judgments, orders, writs, notices, decrees, permits, licenses, approvals, consents or injunctions in effect on the date of this Agreement relating to the generation, management, handling, transportation, treatment, disposal, storage, delivery, discharge, release or emission of any Hazardous Substance (the “*Environmental Laws*”). Neither the Company nor, to the Company’s knowledge, any other Person for whose conduct it may be responsible pursuant to an agreement or by operation of law has received any written complaint, notice, order, or citation of any actual, threatened or alleged noncompliance with any of the Environmental Laws, and there is no proceeding, suit or investigation pending or, to the Company’s knowledge, threatened against the Company or, to the Company’s knowledge, any such Person with respect to any violation or alleged violation of the Environmental Laws, and, to the knowledge of the Company, there is no basis for the institution of any such proceeding, suit or investigation.

(z) **Disclosure.** The Company confirms that neither the Company nor any other Person acting on its behalf and at the direction of the Company, has provided any of the Purchasers or their agents or counsel with any information that in the Company’s reasonable judgment, at the time such information was furnished, constitutes material, non-public information. The Company understands and confirms that the Purchasers will rely on the foregoing representations and covenants in effecting transactions in securities of the Company. All disclosure provided to the Purchasers regarding the Company, its business and the transactions contemplated hereby, including the Disclosure Schedules to this Agreement, furnished by or on behalf of the Company are true and correct and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

3.2 **Representations and Warranties of the Purchasers.**

Each Purchaser hereby, for itself and for no other Purchaser, represents and warrants as of the date hereof and as of the Closing Date to the Company as follows:

(a) **Organization; Authority; Enforceability.** Such Purchaser is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with full power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations thereunder. The execution, delivery and performance by such Purchaser of the transactions contemplated by this Agreement has been duly authorized by all necessary corporate or similar action on the part of such Purchaser. Each Transaction Document to which it is a party has been

duly executed by such Purchaser, and when delivered by such Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of such Purchaser, enforceable against it in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights generally and rules of law governing specific performance, injunctive relief, or other equitable remedies.

(b) **General Solicitation.** Such Purchaser is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general solicitation or general advertisement.

(c) **No Public Sale or Distribution.** Such Purchaser is (i) acquiring the Shares and Warrants and (ii) upon exercise of the Warrants will acquire the Warrant Shares, for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the Securities Act; *provided, however*, that by making the representations herein, such Purchaser does not agree to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption under the Securities Act. Such Purchaser is acquiring the Securities hereunder in the ordinary course of its business. Such Purchaser does not have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Securities.

(d) **Accredited Investor Status.** Such Purchaser is an “accredited investor” as that term is defined in Rule 501(a) of Regulation D.

(e) **Residency.** Such Purchaser is a resident of the jurisdiction set forth below such Purchaser’s name on Schedule 1 attached hereto.

(f) **Reliance on Exemptions.** Such Purchaser understands that the Shares and Warrants are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and such Purchaser’s compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Purchaser set forth herein in order to determine the availability of such exemptions and the eligibility of such Purchaser to acquire the Common Stock and Warrants.

(g) **Information.** Such Purchaser and its advisors, if any, have been furnished with all publicly available materials relating to the business, finances and operations of the Company and such other publicly available materials relating to the offer and sale of the Shares and Warrants as have been requested by such Purchaser. Such Purchaser and its advisors, if any, have been afforded the opportunity to ask questions of the Company. Neither such inquiries nor any other due diligence investigations conducted by such Purchaser or its advisors, if any, or its representatives shall modify, amend or affect such Purchaser’s right to rely on the Company’s representations and warranties contained herein. Such Purchaser understands that its investment in the Shares and Warrants involves a high degree of risk.

(h) **No Governmental Review.** Such Purchaser understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Shares and Warrants or the fairness or suitability of the investment in the Shares and Warrants, nor have such authorities passed upon or endorsed the merits of the offering of the Shares and Warrants.

(i) **Experience of Such Purchaser.** Such Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters, including investing in companies engaged in the business in which the Company is engaged, so as to be capable of evaluating the merits and risks of the prospective investment in the Shares and Warrants, and has so evaluated the merits and risks of such investment. Such Purchaser is able to bear the economic risk of an investment in the Shares and Warrants and, at the present time, is able to afford a complete loss of such investment.

The Company acknowledges and agrees that each Purchaser does not make or has not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in this Section 3.2.

ARTICLE IV

OTHER AGREEMENTS OF THE PARTIES

4.1 **Transfer Restrictions.**

(a) The Securities may only be disposed of in compliance with state and federal securities laws. In connection with any transfer of Securities other than pursuant to an effective registration statement, to the Company, to an Affiliate of a Purchaser (who is an accredited investor and executes a customary representation letter) or in connection with a pledge as contemplated in Section 4.1(b), the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act, *provided, however*, that in the case of a transfer pursuant to Rule 144, no opinion shall be required if the transferor provides the Company with a customary seller's representation letter, and if such sale is not pursuant to subsection (k) of Rule 144, a customary broker's representation letter and a Form 144. As a condition of transfer, any such transferee shall agree in writing to be bound by the terms of this Agreement and the Investor Rights Agreement, and shall have the rights of a Purchaser under this Agreement and the Investor Rights Agreement. Except as required by federal securities laws and the securities law of any state or other jurisdiction within the United States, the Securities may be transferred, in whole or in part, by any of the Purchasers at any time. The Company shall reissue certificates evidencing the Securities upon surrender of certificates evidencing the Securities being transferred in accordance with this Section 4.1(a).

(b) The Purchasers agree to the imprinting, so long as is required by this Section 4.1(b), of a legend on any of the Securities in the following form:

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE

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IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THESE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT WITH A REGISTERED BROKER-DEALER OR OTHER LOAN WITH A FINANCIAL INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT.

The Company acknowledges and agrees that a Purchaser may from time to time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of the Securities to a financial institution that is an "accredited investor" as defined in Rule 501(a) under the Securities Act and, if required under the terms of such arrangement, such Purchaser may transfer pledged or secured Securities to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith; provided, however, that such Purchaser shall provide the Company with such documentation as is reasonably requested by the Company to ensure that the pledge is pursuant to a bona fide margin agreement with a registered broker-dealer or a security interest in some or all of the Securities to a financial institution that is an "accredited investor" as defined in Rule 501(a) under the Securities Act. At the appropriate Purchaser's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of the Securities, including the preparation and filing of any required prospectus supplement under Rule 424(b)(3) under the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of selling stockholders thereunder.

(c) Certificates evidencing the Shares and Warrant Shares shall not contain any legend (including the legend set forth in Section 4.1(b)), (i) following any sale of such Shares or Warrant Shares pursuant to Rule 144, or (ii) if such Shares or Warrant Shares are eligible for sale under Rule 144(k), or (iii) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the Staff of the Commission). The Company shall cause its counsel to issue a legal opinion to the Company's transfer agent promptly upon the occurrence of any of the events in clauses (i), (ii) or (iii) above to effect the removal of the legend hereunder and shall also cause its counsel to issue a "blanket" legal opinion to the Company's transfer agent promptly after the Effective Date, if required by the Company's transfer agent, to allow sales pursuant to an effective Registration Statement. The Company agrees that at such time as such legend is no longer required under this Section 4.1(c), it will, no later than three Trading Days following the delivery by a Purchaser to the Company or the Company's transfer agent of a certificate representing Shares or Warrant Shares, as the case may be, issued with a restrictive legend, deliver or cause to be delivered to such Purchaser a certificate representing such Securities that is free from all restrictive and other legends. The

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Company may not make any notation on its records or give instructions to any transfer agent of the Company that enlarge the restrictions on transfer set forth in this Section.

(d) Each Purchaser, severally and not jointly, agrees that the removal of the restrictive legend from certificates representing Securities as set forth in this Section 4.1 is predicated upon the Company's reliance on, and the Purchaser's agreement that, and each Purchaser hereby agrees that, the Purchaser will not sell any Securities except pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom.

4.2 Furnishing of Information.

As long as any Purchaser owns Securities, the Company covenants to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act. Upon the request of any such holder of Securities, the Company shall deliver to such holder a written certification of a duly authorized officer as to whether it has complied with the preceding sentence. As long as any Purchaser owns Securities, if the Company is not required to file reports pursuant to the Exchange Act, it will prepare and furnish to the Purchasers and make publicly available in accordance with Rule 144(c), such information as is required for the Purchasers to sell the Securities under Rule 144. The Company further covenants that it will take such further action as any holder of Securities may reasonably request, all to the extent required from time to time to enable such Person to sell such Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144.

4.3 Integration.

The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the sale of the Securities to the Purchasers or that would be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market.

4.4 Limitation on Future Financing.

From the date hereof until the earlier of 120 calendar days after the Closing Date or 15 calendar days after the Effective Date, the Company shall not effect an issuance of its Common Stock or Common Stock Equivalents. Notwithstanding anything to the contrary herein, this Section 4.4 shall not apply to the following: (a) the granting of options or other equity compensation awards or the issuance of Common Stock or Common Stock Equivalents to employees, independent contractors, officers and directors of the Company pursuant to any equity compensation plan duly adopted by a majority of the non-employee members of the Board of Directors of the Company or a majority of the members of a committee of non-employee directors established for such purpose (and the exercise of such options or Common Stock Equivalents), or (b) the exercise of any security issued by the Company in connection with the offer and sale of the Company's securities pursuant to this Agreement, or (c) the exercise of or conversion of any convertible securities, options or warrants issued and outstanding on the date hereof, or (d) the issuance of Common Stock or Common Stock Equivalents in connection with

acquisitions or strategic investments, partnerships, business relationship or joint venture, the primary purpose of which is not to raise capital, or (e) the issuance of securities pursuant to a stock split or stock dividend or similar capital modification, or (f) the issuance of securities upon the authorization of the Company's Board of Directors in connection with business conducted by the Company with vendors, lessors or financial institutions in connection with financing transactions.

4.5 Publicity.

The Company shall, within five Business Days following the Closing Date, file a Current Report on Form 8-K, disclosing the transactions contemplated hereby and make such other filings and notices in the manner and time required by the Commission. The Company and SCO Securities LLC shall consult with each other in issuing any press releases with respect to the transactions contemplated hereby, and neither the Company nor any Purchaser nor SCO Securities LLC shall issue any such press release or otherwise make any such public statement without the prior consent of the Company, with respect to any press release of any Purchaser or SCO Securities LLC, or without the prior consent of SCO Securities LLC, with respect to any press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication.

4.6 Shareholders Rights Plan.

No claim will be made or enforced by the Company or any other Person that any Purchaser is an "acquiring person" under any shareholders rights plan or similar plan or arrangement in effect or hereafter adopted by the Company, or that any Purchaser could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Securities under the Transaction Documents or under any other agreement between the Company and the Purchasers.

4.7 Non-Public Information.

The Company covenants and agrees that neither it nor any other Person acting on its behalf will provide any Purchaser or its agents or counsel with any information that the Company believes constitutes material non-public information, unless prior thereto such Purchaser shall have executed a written agreement regarding the confidentiality and use of such information. The Company understands and confirms that each Purchaser shall be relying on the foregoing representations in effecting transactions in securities of the Company.

4.8 Use of Proceeds.

The Company covenants and agrees that the proceeds from the sale of the Common Stock and Warrants shall be used by the Company for working capital and general corporate purposes; under no circumstances shall any portion of the proceeds be applied to:

- (i) accelerated repayment of debt existing on the date hereof;
- (ii) the payment of dividends or other distributions on any capital stock of the Company;

- (iii) increased executive compensation (other than in the ordinary course of business) or loans to officers, employees, stockholders or directors, unless approved by a majority of the disinterested members of the Board of Directors;
- (iv) the purchase of debt or equity securities of any Person, including the Company and its Subsidiaries, except in connection with investment of excess cash in high quality (A1/P1 or better) money market instruments having maturities of one year or less; or
- (v) any expenditure not directly related to the business of the Company.

4.9 Reservation of Common Stock.

As of the date hereof, the Company has reserved and the Company shall continue to reserve and keep available at all times, free of preemptive rights, a sufficient number of shares of Common Stock for the purpose of enabling the Company to issue Shares pursuant to this Agreement and Warrant Shares pursuant to the Warrants.

4.10 Listing of Common Stock.

The Company hereby agrees to use commercially reasonable efforts to maintain the listing of the Common Stock on the OTC Bulletin Board or any applicable Trading Market, and, if required, as soon as reasonably practicable following the Closing to list the applicable Shares and Warrant Shares on the OTC Bulletin Board or any applicable Trading Market. The Company further agrees, if the Company applies to have the Common Stock traded on any other Trading Market, it will include in such application the Shares and the Warrant Shares, and will take such other action as is necessary to cause the Shares and Warrant Shares to be listed on such other Trading Market as promptly as possible.

4.11 Intentionally Omitted.

4.12 Business Operations. Until the earlier of: (i) the third year anniversary of the Closing Date and (ii) the date that the Purchasers own less than 50% of the Shares originally issued pursuant to this Agreement, the Company shall comply with the following covenants:

(a) Insurance. The Company and its Subsidiaries shall maintain insurance policies such that the representations contained in the first sentence of Section 3.1(p) hereof continue to be true and correct and shall, from time to time upon the written request of the Purchasers, promptly furnish or cause to be furnished to the Purchasers evidence, in form and substance reasonably satisfactory to the Purchasers, of the maintenance of all insurance maintained by it.

(b) Corporate Existence; Licenses. So long as a Purchaser owns Securities, the Company shall preserve and maintain and cause its Subsidiaries to preserve and maintain their corporate existence and good standing in the jurisdiction of their incorporation and the rights, privileges and franchises of the Company and its Subsidiaries (except, in each case, in the event of a merger or consolidation in which the Company or its Subsidiaries, as applicable, is not the surviving entity) in each case where the failure to so preserve or maintain could have a Material Adverse Effect on the financial condition, business or operations of the Company and its

Subsidiaries taken as a whole. The Company shall, and shall cause its Subsidiaries to, maintain at all times all material licenses or permits necessary to the conduct of its business and as required by any governmental agency or instrumentality thereof, including without limitation all FDA clearances and approvals.

(c) Taxes and Claims. The Company and its Subsidiaries shall duly pay and discharge (a) all taxes, assessments and governmental charges upon or against the Company or its properties or assets prior to the date on which penalties attach thereto, unless and to the extent that such taxes are being diligently contested in good faith and by appropriate proceedings, and appropriate reserves therefor have been established, and (b) all lawful claims, whether for labor, materials, supplies, services or anything else which might or could, if unpaid, become a lien or charge upon the properties or assets of the Company or its Subsidiaries, unless and to the extent only that the same are being contested in good faith and by appropriate proceedings and appropriate reserves therefor have been established.

(d) Affiliate Transactions. Except for transactions approved by a majority of the disinterested members of the board of directors of the Company, neither the Company nor any of its Subsidiaries shall enter into any transaction with any (i) director, officer, employee or holder of more than 5% of the outstanding capital stock of any class or series of capital stock of the Company or any of its Subsidiaries, (ii) member of the immediate family of any such person, or (iii) corporation, partnership, trust or other entity in which any such person, or member of the immediate family of any such person, is a director, officer, trustee, partner or holder of more than 5% of the outstanding capital stock thereof.

4.13 Securities Law Compliance.

(a) Securities Act. The Company shall timely prepare and file with the Securities and Exchange Commission the form of notice of the sale of securities pursuant to the requirements of Regulation D regarding the sale of the Common Stock and Warrants under this Agreement.

(b) State Securities Law Compliance — Sale. The Company shall timely prepare and file such applications, consents to service of process (but not including a general consent to service of process) and similar documents and take such other steps and perform such further acts as shall be required by the state securities law requirements of each jurisdiction where a Purchaser resides, as indicated on Schedule 1, with respect to the sale of the Common Stock and Warrants under this Agreement.

(c) **State Securities Law Compliance —Resale.** Beginning no later than 30 days following the date of this Agreement and continuing until either (i) the purchasers have sold all of their Common Stock under a registration statement pursuant to the Investor Rights Agreement or (ii) the Common Stock becomes a “covered security” under Section 18(b)(1)(A) of the Securities Act, the Company shall maintain within either Moody’s Industrial Manual or Standard and Poor’s Standard Corporation Descriptions (or any successors to these manuals which are similarly qualified as “recognized securities manuals” under state Blue Sky laws) an updated listing containing (i) the names of the officers and directors of the Company, (ii) a balance sheet of the Company as of a date that is no time older than eighteen months and (iii) a profit and

loss statement of the Company for either the preceding fiscal year or the most recent year of operations.

ARTICLE V

INDEMNIFICATION, TERMINATION AND DAMAGES

5.1 **Survival of Representations.**

Except as otherwise provided herein, the representations and warranties of the Company and the Purchasers contained in or made pursuant to this Agreement shall survive the execution and delivery of this Agreement and the Closing Date and shall continue in full force and effect for a period of two (2) years from the Closing Date; *provided, however*, that the Company’s warranties and representations under Sections 3.1(a) (Subsidiaries), 3.1(g) (Capitalization), 3.1(x) (Taxes) and 3.1(y) (Environmental Matters) shall survive the Closing Date and continue in full force and effect until the expiration of all applicable statutes of limitation. The Company’s and the Purchasers’ warranties and representations shall in no way be affected or diminished in any way by any investigation of (or failure to investigate) the subject matter thereof made by or on behalf of the Company or the Purchasers.

5.2 **Indemnification.**

(a) The Company agrees to indemnify and hold harmless the Purchasers, their Affiliates, each of their officers, directors, employees and agents and their respective successors and assigns, from and against any losses, damages, or expenses which are caused by or arise out of (i) any breach or default in the performance by the Company of any covenant or agreement made by the Company in this Agreement or in any of the Transaction Documents; (ii) any breach of warranty or representation made by the Company in this Agreement or in any of the Transaction Documents; and/or (iii) any and all third party actions, suits, proceedings, claims, demands, judgments, costs and expenses (including reasonable legal fees and expenses) incident to any of the foregoing.

(b) The Purchasers, severally and not jointly, agree to indemnify and hold harmless the Company, its Affiliates, each of their officers, directors, employees and agents and their respective successors and assigns, from and against any losses, damages, or expenses which are caused by or arise out of (A) any breach or default in the performance by the Purchasers of any covenant or agreement made by the Purchasers in this Agreement or in any of the Transaction Documents; (B) any breach of warranty or representation made by the Purchasers in this Agreement or in any of the Transaction Documents; and (C) any and all third party actions, suits, proceedings, claims, demands, judgments, costs and expenses (including reasonable legal fees and expenses) incident to any of the foregoing; *provided, however*, that a Purchaser’s liability under this Section 5.2(b) shall not exceed the Purchase Price paid by such Purchaser hereunder.

5.3 **Indemnity Procedure.**

A party or parties hereto agreeing to be responsible for or to indemnify against any matter pursuant to this Agreement is referred to herein as the “*Indemnifying Party*” and the other party or parties claiming indemnity is referred to as the “*Indemnified Party*”. An Indemnified

Party under this Agreement shall, with respect to claims asserted against such party by any third party, give written notice to the Indemnifying Party of any liability which might give rise to a claim for indemnity under this Agreement within sixty (60) Business Days of the receipt of any written claim from any such third party, but not later than twenty (20) days prior to the date any answer or responsive pleading is due, and with respect to other matters for which the Indemnified Party may seek indemnification, give prompt written notice to the Indemnifying Party of any liability which might give rise to a claim for indemnity; *provided, however*, that any failure to give such notice will not waive any rights of the Indemnified Party except to the extent the rights of the Indemnifying Party are materially prejudiced.

The Indemnifying Party shall have the right, at its election, to take over the defense or settlement of such claim by giving written notice to the Indemnified Party at least fifteen (15) days prior to the time when an answer or other responsive pleading or notice with respect thereto is required. If the Indemnifying Party makes such election, it may conduct the defense of such claim through counsel of its choosing (subject to the Indemnified Party’s approval of such counsel, which approval shall not be unreasonably withheld), shall be solely responsible for the expenses of such defense and shall be bound by the results of its defense or settlement of the claim. The Indemnifying Party shall not settle any such claim without prior notice to and consultation with the Indemnified Party, and no such settlement involving any equitable relief or which might have an adverse effect on the Indemnified Party may be agreed to without the written consent of the Indemnified Party (which consent shall not be unreasonably withheld). So long as the Indemnifying Party is diligently contesting any such claim in good faith, the Indemnified Party may pay or settle such claim only at its own expense and the Indemnifying Party will not be responsible for the fees of separate legal counsel to the Indemnified Party, unless the named parties to any proceeding include both parties or representation of both parties by the same counsel would be inappropriate in the reasonable opinion of the Indemnified Party, due to conflicts of interest or otherwise. If the Indemnifying Party does not make such election, or having made such election does not, in the reasonable opinion of the Indemnified Party proceed diligently to defend such claim, then the Indemnified Party may (after written notice to the Indemnifying Party), at the expense of the Indemnifying Party, elect to take over the defense of and proceed to handle such claim in its discretion and the Indemnifying Party shall be bound by any defense or settlement that the Indemnified Party may make in good faith with respect to such claim. In connection therewith, the Indemnifying Party will fully cooperate with the Indemnified Party should the Indemnified Party elect to take over the defense of any such claim. The parties agree to cooperate in defending such third party claims and the Indemnified Party shall provide such cooperation and such access to its books, records and properties as the Indemnifying Party shall reasonably request with respect to any matter for which indemnification is sought hereunder; and the parties hereto agree to cooperate with each other in order to ensure the proper and adequate defense thereof.

With regard to claims of third parties for which indemnification is payable hereunder, such indemnification shall be paid by the Indemnifying Party upon the earlier to occur of: (i) the entry of a judgment against the Indemnified Party and the expiration of any applicable appeal period, or if earlier, five (5) days prior to the date that the judgment creditor has the right to execute the judgment; (ii) the entry of an unappealable judgment or final appellate decision against the Indemnified Party; or (iii) a settlement of the claim. Notwithstanding the foregoing, the reasonable expenses of counsel to the Indemnified Party shall be reimbursed on a current basis by the Indemnifying Party. With regard to other claims for which indemnification is

payable hereunder, such indemnification shall be paid promptly by the Indemnifying Party upon demand by the Indemnified Party.

ARTICLE VI

MISCELLANEOUS

6.1 Fees and Expenses.

The Company shall be responsible for the payment of the Purchasers' reasonable and documented legal fees and other third-party expenses relating to the preparation, negotiation and execution of this Agreement and the Transaction Documents and the consummation of the transactions contemplated herein, and therein, in an amount not to exceed \$50,000.

6.2 Entire Agreement.

The Transaction Documents, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

6.3 Notices.

Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified on the signature pages attached hereto prior to 5:00 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number on the signature pages attached hereto on a day that is not a Trading Day or later than 5:00 p.m. (New York City time) on any Trading Day, (c) the Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as follows:

If to the Purchasers, at each Purchaser's address set forth under its name on Schedule 1 attached hereto, or with respect to the Company, addressed to:

BioSante Pharmaceuticals, Inc.
111 Barclay Boulevard
Lincolnshire, Illinois 60069
Attention: Stephen M. Simes, President and Chief Executive Officer
Facsimile No. (847) 478-9260

or to such other address or addresses or facsimile number or numbers as any such party may most recently have designated in writing to the other parties hereto by such notice. Copies of notices to the Company shall be sent to:

Oppenheimer Wolff & Donnelly LLP
Plaza VII Building, Suite 3300
45 South Seventh Street
Minneapolis, Minnesota 55402
Attention: Amy E. Culbert, Esq.
Facsimile No.: (612) 607-7100

Copies of notices to any Purchaser shall be sent to the addresses, if any, listed on Schedule 1 attached hereto.

6.4 Amendments; Waivers.

No provision of this Agreement may be waived or amended except in a written instrument signed, in the case of an amendment, by the Company and each Purchaser or, in the case of a waiver, by the party against whom enforcement of any such waiver is sought. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

6.5 Construction.

The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of

strict construction will be applied against any party.

6.6 Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of each Purchaser. Any Purchaser may assign any or all of its rights under this Agreement to any Person, provided such transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions hereof that apply to the Purchasers.

6.7 No Third-Party Beneficiaries.

This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in Article V.

6.8 Governing Law.

All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof.

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6.9 Jurisdiction; Venue; Service of Process.

This Agreement shall be subject to the exclusive jurisdiction of the Federal District Court, Southern District of New York and if such court does not have proper jurisdiction, the State Courts of New York County, New York. The parties to this Agreement agree that any breach of any term or condition of this Agreement shall be deemed to be a breach occurring in the State of New York by virtue of a failure to perform an act required to be performed in the State of New York and irrevocably and expressly agree to submit to the jurisdiction of the Federal District Court, Southern District of New York and if such court does not have proper jurisdiction, the State Courts of New York County, New York for the purpose of resolving any disputes among the parties relating to this Agreement or the transactions contemplated hereby. The parties irrevocably waive, to the fullest extent permitted by law, any objection which they may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement, or any judgment entered by any court in respect hereof brought in New York County, New York, and further irrevocably waive any claim that any suit, action or proceeding brought in Federal District Court, Southern District of New York and if such court does not have proper jurisdiction, the State Courts of New York County, New York has been brought in an inconvenient forum. Each of the parties hereto consents to process being served in any such suit, action or proceeding, by mailing a copy thereof to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing in this Section 6.9 shall affect or limit any right to serve process in any other manner permitted by law.

6.10 Execution.

This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile signature page were an original thereof.

6.11 Severability.

If any provision of this Agreement is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt to agree upon a valid and enforceable provision that is a reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Agreement.

6.12 Replacement of Securities.

If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof, or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and customary and reasonable indemnity, if requested by the Company. The

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applicants for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs associated with the issuance of such replacement Securities.

6.13 Remedies.

In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Purchasers and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations described in the foregoing sentence and hereby agrees to waive in any action for specific performance of any such obligation the defense that a remedy at law would be adequate.

6.14 Payment Set Aside.

To the extent that the Company makes a payment or payments to any Purchaser pursuant to any Transaction Document or a Purchaser enforces or exercises its rights thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently

Amount of Investment:\$ 999,999.40

Print Exact Name: North Sound Legacy Fund LLC

By: /s/ Andrew Wilder

Name: Andrew Wilder

Title: Chief Financial Officer

Amount of Investment:\$ 44,999.50

Print Exact Name: North Sound Legacy Institutional Fund LLC

By: /s/ Andrew Wilder

Name: Andrew Wilder

Title: Chief Financial Officer

Amount of Investment:\$ 455,000.20

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Print Exact Name: North Sound Legacy International Ltd.

By: /s/ Andrew Wilder

Name: Andrew Wilder

Title: Chief Financial Officer

Amount of Investment:\$ 499,999.70

Print Exact Name: Perceptive Life Sciences Master Fund, Ltd.

By: /s/ Andrew C. Sankin

Name: Andrew C. Sankin

Title: Director

Amount of Investment:\$ 2,365,000.00

Print Exact Name: Joseph Edelman

By: /s/ Joseph Edelman

Name: Joseph Edelman

Title:

Amount of Investment:\$ 483,750.00

Print Exact Name: Multi-National Consulting Services, IV, LLC

By: /s/ Andrew Sankin

Name: Andrew C. Sankin

Title: Executive Director

Amount of Investment:\$ 49,450.00

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Print Exact Name: Daniel B. Heller

By: /s/ Daniel B. Heller

Name: Daniel B. Heller

Title:

Amount of Investment:\$ 24,725.00

Print Exact Name: Paul Scharfer
By: /s/ Paul Scharfer
Name: Paul Scharfer
Title:
Amount of Investment:\$ 357,975.00

Print Exact Name: Quogue Capital LLC
By: /s/ Wayne Philip Rothbaum
Name: Wayne Philip Rothbaum
Title: Principal
Amount of Investment:\$ 623,500.00

Print Exact Name: Orion Biomedical Offshore Fund, LP
By: /s/ Lindsay A. Rosenwald, MD
Name: Lindsay A. Rosenwald, MD
Title: Managing Member
Amount of Investment:\$ 178,456.45

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Print Exact Name: Orion Biomedical Fund, LP
By: /s/ Lindsay A. Rosenwald, MD
Name: Lindsay A. Rosenwald, MD
Title: Managing Member
Amount of Investment:\$ 821,293.55

Print Exact Name: Richard Stone
By: /s/ Richard Stone
Name: Richard Stone
Title:
Amount of Investment:\$ 43,000.00

Print Exact Name: Steven M. Oliveira 1998 Charitable
Remainder Unitrust
By: /s/ Steven M. Oliveira
Name: Steven M. Oliveira
Title: Trustee
Amount of Investment:\$ 499,875.00

Print Exact Name: Morningstar Trust
By: /s/ Fay Morgenstern
Name: Fay Morgenstern
Title: Trustee
Amount of Investment:\$ 301,000.00

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Print Exact Name: Victor A. Morgenstern

By: /s/ Victor A. Morgenstern

Name: Victor A. Morgenstern

Title: _____

Amount of Investment:\$ 328,950.00

Print Exact Name: Panacea Fund, LLC,

By: William Harris Investors, Inc. as Manager

By: /s/ Jack Polsky

Name: Jack Polsky

Title: CEO

Amount of Investment:\$ 322,500.00

Print Exact Name: Irving B. Harris Revocable Trust

By: /s/ Irving B. Harris

Name: Irving B. Harris

Title: Trustee

Amount of Investment:\$ 124,700.00

Print Exact Name: Virginia H. Polsky Trust

By: /s/ Jack R. Polsky

Name: Jack R. Polsky, By Delegation of Authority dated 6/6/96

Title: _____

Amount of Investment:\$ 62,350.00

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Print Exact Name: Roxanne H. Frank Trust

By: /s/ Jack R. Polsky

Name: Jack R. Polsky, By Delegation of Authority dated 12/3/99

Title: _____

By: /s/ Jerome Kahn, Jr.

Name: Jerome Kahn, Jr., By Delegation of Authority dated 12/3/99

Title: _____

Amount of Investment:\$ 82,775.00

Print Exact Name: Couderay Partners

By: /s/ Michael S. Resnick

Name: Michael S. Resnick

Title: Managing Agent

By: /s/ Jerome Kahn, Jr.

Name: Jerome Kahn, Jr.

Title: Co-Managing Agent

Amount of Investment:\$ 82,775.00

Print Exact Name: JO & Co

By: /s/ Ross J. Mangano

Name: Ross J. Mangano

Title: Partner

Amount of Investment:\$ 630,000.00

Print Exact Name: Crestview Capital Fund II, LP

By: /s/ Richard Levy

Name: Richard Levy

Title: Managing Member

Amount of Investment:\$ 200,000.00

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Print Exact Name: James S. Levy Living Trust

By: /s/ James S. Levy

Name: James S. Levy

Title:

Amount of Investment:\$ 34,400.00

Print Exact Name: Mitchell I. Dolins as Trustee of the
Mitchell I. Dolins Revocable Trust U/A/D 12/24/91

By: /s/ Mitchell Dolins

Name: Mitchell Dolins

Title:

Amount of Investment:\$ 20,000.00

Print Exact Name: Bradley S. Glaser and Amy E. Glaser,
as Tenant by the Entirety

By: /s/ Bradley S. Glaser and Amy E. Glaser

Name: Bradley S. Glaser and Amy E. Glaser

Title:

Amount of Investment:\$ 20,000.00

Print Exact Name: Dr. Hermann S. Graf Zu Munster

By: /s/ Dr. Hermann S. Graf Zu Munster

Name: Dr. Hermann S. Graf Zu Munster

Title:

Amount of Investment:\$ 17,200.00

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Print Exact Name: Richard Sheiner

By: /s/ Richard Sheiner

Name: Richard Sheiner

Title:

Amount of Investment:\$ 17,200.00

Print Exact Name: Roscoe F. Nicholson II for Roscoe F.
Nicholson II Profit Sharing Plan (Mesirow Financial Inc.)

By: /s/ Roscoe F. Nicholson

Name: Roscoe F. Nicholson

Title:

Amount of Investment:\$ 12,040.00

Print Exact Name: Shirley M. Nicholson for IRA Shirley
M. Nicholson at Mesirow Financial

By: /s/ Shirley M. Nicholson
Name: Shirley M. Nicholson
Title:

Amount of Investment:\$ 4,300.00

Print Exact Name: Dr. Terry L. Lazarus

By: /s/ Dr. Terry L. Lazarus
Name: Dr. Terry L. Lazarus
Title: Private Investor

Amount of Investment:\$ 17,200.00

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Print Exact Name: Charles Burns

By: /s/ Charles Burns
Name: Charles Burns
Title:

Amount of Investment:\$ 17,200.00

Print Exact Name: John E. Urheim

By: /s/ John E. Urheim
Name: John E. Urheim
Title:

Amount of Investment:\$ 17,200.00

Print Exact Name: Stephen M. Simes, Rev. Trust U/A/D 7/6/98

By: /s/ Stephen M. Simes
Name: Stephen M. Simes
Title: Trustee

Amount of Investment:\$ 2,150.00

Print Exact Name: Leah M. Lehman

By: /s/ Leah M. Lehman
Name: Leah M. Lehman
Title:

Amount of Investment:\$ 2,150.00

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Print Exact Name: Phillip B. Donenberg

By: /s/ Phillip B. Donenberg
Name: Phillip B. Donenberg
Title:

Schedule 1**to Common Stock and Warrant Purchase Agreement****Purchasers and Shares of Common Stock and Warrants**

Name, Address and Fax Number of Purchaser	Copies of Notices to	Shares of Common Stock Purchased	Common Stock Underlying Warrants	Purchase Price
SCO Capital Partners LLC 1285 Avenue of the Americas, 35th Floor New York, NY 10019 Steven H. Rouhandeh T: 212-554-4158 F: 212-554-4058 Srouhandeh@SCOGroup.com	Michael Grunde, Esq. Wiggin & Dana LLP 400 Atlantic Street Stamford, CT 06901 Tel: 203-363-7630 Fax: 203-363-7676 Email: mgrunde@wiggin.com	250,000	125,000	\$ 537,500.00
SDS Merchant Fund, LP 53 Forest Ave., 2nd Floor Old Greenwich, CT 06870 Attn: Scott Derby T: 203-967-5880 F: 203-967-5851 scott@sdscapital.com		465,116	232,558	\$ 999,999.40

Name, Address and Fax Number of Purchaser	Copies of Notices to	Shares of Common Stock Purchased	Common Stock Underlying Warrants	Purchase Price
North Sound Legacy Fund LLC 53 Forest Avenue Suite 202 Old Greenwich, CT 06870 Attn: Andrew Wilder T: 203-967-5700 F: 203-967-5701 Andrew@northsound.com		20,930	10,465	\$ 44,999.50
North Sound Legacy Institutional Fund LLC 53 Forest Avenue Suite 202 Old Greenwich, CT 06870 Attn: Andrew Wilder T: 203-967-5700 F: 203-967-5701 Andrew@northsound.com		211,628	105,814	\$ 455,000.20
North Sound Legacy International Ltd. 53 Forest Avenue Suite 202 Old Greenwich, CT 06870 Attn: Andrew Wilder T: 203-967-5700 F: 203-967-5701 Andrew@northsound.com		232,558	116,279	\$ 499,999.70

Name, Address and Fax Number of Purchaser	Copies of Notices to	Shares of Common Stock Purchased	Common Stock Underlying Warrants	Purchase Price
Perceptive Life Sciences Master Fund, Ltd. 5437 Connecticut Ave., NW Suite 100		1,100,000	550,000	\$ 2,365,000

Washington, DC 20015
 Attn: Andrew Sankin
 P: 202-537-0029
 F: 202-537-0030
 sankin@hedgesource.org

Deliver Securities to:

Perceptive Life Sciences Master Fund, Ltd.
 c/o First New York Securities
 850 Third Ave, 17th Floor
 New York, NY 10022
 Attn: Kenny Kountouras

<u>Name, Address and Fax Number of Purchaser</u>	<u>Copies of Notices to</u>	<u>Shares of Common Stock Purchased</u>	<u>Common Stock Underlying Warrants</u>	<u>Purchase Price</u>
Joseph Edelman 300 Central Park West Apt. 25-G New York, NY 10024 T: 202-537-0029 F: 202-537-0030 sankin@hedgesource.org		225,000	112,500	\$ 483,750.00

Deliver Securities to:

Northeast Securities
 2425 Post Road
 Southport, CT 06890
 Attn: Nick DiFalco

Multi-National Consulting Services, IV, LLC
 5437 Connecticut Ave., NW
 Suite 100
 Washington, DC 20015
 Attn: Andrew Sankin
 P: 202-537-0029
 F: 202-537-0030
 sankin@hedgesource.org

		23,000	11,500	\$ 49,450.00
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Deliver Securities to:

Multi-National Consulting Services, IV, LLC

<u>Name, Address and Fax Number of Purchaser</u>	<u>Copies of Notices to</u>	<u>Shares of Common Stock Purchased</u>	<u>Common Stock Underlying Warrants</u>	<u>Purchase Price</u>
c/o Punk Ziegel 520 Madison Avenue 7 th Floor New York, NY 10022 Attn: John Bligh				
Daniel B. Heller 48 CardinalFlower Lane West Windsor, NJ 08550 T: 609-448-8760 F: 212-331-6777 d.heller@fnysllc.com		11,500	5,750	\$ 24,725.00
Paul Scharfer 265 East 66th Street, Apt. 6C New York, NY 10021 T: 917-763-2015 F: PSCHARFER@aol.com		166,500	83,250	\$ 357,975.00
Quogue Capital LLC		290,000	145,000	\$ 623,500.00

1285 Avenue of the Americas, 35th Floor
New York, NY 10019
Attn: Wayne Philip Rothbaum
T: 212-554-4475
F: 212-554-4450

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<u>Name, Address and Fax Number of Purchaser</u>	<u>Copies of Notices to</u>	<u>Shares of Common Stock Purchased</u>	<u>Common Stock Underlying Warrants</u>	<u>Purchase Price</u>
wrothbaum@quoguecapital.com				
Orion Biomedical Offshore Fund, LP 787 Seventh Avenue, 48 th Floor New York, NY 10019 Attn: Lindsay A. Rosenwald, MD T: 212-554-4284 F: 212-554-4314 jkazam@paramountcapital.com		83,003	41,502	\$ 178,456.45
Orion Biomedical Fund, LP 787 Seventh Avenue, 48 th Floor New York, NY 10019 Attn: Lindsay A. Rosenwald, MD T: 212-554-4284 F: 212-554-4314 jkazam@paramountcapital.com		381,997	190,999	\$ 821,293.55
Richard Stone 44 West 77th Street New York, NY 10024 T: 917-502-2809 F: 212-750-7277		20,000	10,000	\$ 43,000.00
Steven M. Oliveira 1998 Charitable Remainder Unitrust		232,500	116,250	\$ 499,875.00

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<u>Name, Address and Fax Number of Purchaser</u>	<u>Copies of Notices to</u>	<u>Shares of Common Stock Purchased</u>	<u>Common Stock Underlying Warrants</u>	<u>Purchase Price</u>
18 Fieldstone Court New City, NY 10956 T: 845-634-5620 F: Steve_oliveira@yahoo.com				
Morningstar Trust By Fay Morgenstern, Trustee 106 Vine Avenue Highland Park, IL 60035 T: 847-432-8632 F: vmstar@msn.com		140,000	70,000	\$ 301,000.00
Victor A. Morgenstern 106 Vine Avenue Highland Park, IL 60035 T: 847-432-8632 F: vmstar@msn.com		153,000	76,500	\$ 328,950.00

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<u>Name, Address and Fax Number of Purchaser</u>	<u>Copies of Notices to</u>	<u>Shares of Common Stock Purchased</u>	<u>Common Stock Underlying Warrants</u>	<u>Purchase Price</u>
Panacea Fund, LLC		150,000	75,000	\$ 322,500.00

c/o William Harris Investors, Inc.
 2 North LaSalle Street, Suite 400
 Chicago, IL 60602
 T: 312-621-0590
 F: 312-621-0984

Irving B. Harris Revocable Trust
 c/o William Harris Investors, Inc.
 2 N. LaSalle Street, Suite 400
 Chicago, IL 60602
 T: 312-621-0590
 F: 312-621-0984

58,000 29,000 \$ 124,700.00

Virginia H. Polsky Trust
 c/o William Harris Investors, Inc.
 2 N. LaSalle Street, Suite 400
 Chicago, IL 60602
 T: 312-621-0590
 F: 312-621-0984

29,000 14,500 \$ 62,350.00

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<u>Name, Address and Fax Number of Purchaser</u>	<u>Copies of Notices to</u>	<u>Shares of Common Stock Purchased</u>	<u>Common Stock Underlying Warrants</u>	<u>Purchase Price</u>
Roxanne H. Frank Trust c/o William Harris Investors, Inc. 2 N. LaSalle Street, Suite 400 Chicago, IL 60602 T: 312-621-0590 F: 312-621-0984		38,500	19,250	\$ 82,775.00
Couderay Partners c/o William Harris Investors, Inc. 2 N. LaSalle Street, Suite 400 Chicago, IL 60602 T: 312-621-0590 F: 312-621-0984		38,500	19,250	\$ 82,775.00
JO & Co P.O. Box 1655 South Bend, IN 46634 Attn: Ross Mangano T: 574-232-8213 F: 574-232-8223		293,023	146,512	\$ 630,000.00

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<u>Name, Address and Fax Number of Purchaser</u>	<u>Copies of Notices to</u>	<u>Shares of Common Stock Purchased</u>	<u>Common Stock Underlying Warrants</u>	<u>Purchase Price</u>
Crestview Capital Fund II, LP 95 Revere Drive, Suite F Northbrook, IL 60062 Attn: Richard Levy T: 847-559-0060 F: 847-559-5807 Richard@crestviewcap.com		93,023	46,512	\$ 200,000.00
James S. Levy Living Trust 1349 N. Thatcher Avenue River Forest, IL 60305 Attn: James S. Levy T: 312-595-6475 F: 312-595-6139 jlevy@mesirovfinancial.com		16,000	8,000	\$ 34,400.00
Mitchell I. Dolins as Trustee of the Mitchell I. Dolins Revocable Trust U/A/D 12/24/91 427 Brierhill Road Deerfield, IL 60015 T: 847-940-1228		9,302	4,651	\$ 20,000.00

<u>Name, Address and Fax Number of Purchaser</u>	<u>Copies of Notices to</u>	<u>Shares of Common Stock Purchased</u>	<u>Common Stock Underlying Warrants</u>	<u>Purchase Price</u>
Bradley S. Glaser and Amy E. Glaser, as Tenant by the Entirety 204 Berans Road Owings Mills, MD 21117 T: 410-252-2766 F: 410-296-0973 bglaser@vanguardequities.com		9,302	4,651	\$ 20,000.00
Dr. Hermann S. Graf Zu Munster Umweger Str. 66 D-76488 Baden-Baden Germany T: 011-49 7223 60014 F: 011-49 7223 60016 hs.muenster@t-online.de		8,000	4,000	\$ 17,200.00
Richard Sheiner 4771 Trenton Court Long Grove, IL 60047 T: 312-364-8752 F: 847-913-9256 deployant@aol.com		8,000	4,000	\$ 17,200.00

<u>Name, Address and Fax Number of Purchaser</u>	<u>Copies of Notices to</u>	<u>Shares of Common Stock Purchased</u>	<u>Common Stock Underlying Warrants</u>	<u>Purchase Price</u>
Roscoe F. Nicholson II for Roscoe F. Nicholson II Profit Sharing Plan (Mesirow Financial Inc.) 1222 Forest Hill Drive Hendersonville, NC 28791 T: 828-692-4433 F: 828-693-9032 roscoei@ioa.com		5,600	2,800	\$ 12,040.00
Shirley M. Nicholson for IRA Shirley M. Nicholson at Mesirow Financial 1222 Forest Hill Drive Hendersonville, NC 28791 T: 828-692-4433 F: 828-693-9032 roscoei@ioa.com		2,000	1,000	\$ 4,300.00
Dr. Terry L. Lazarus 1951-A Weston Road Weston, Ontario M9N 1W8 Canada T: 416-241-3472 F: tllaz@rogers.com		8,000	4,000	\$ 17,200.00

<u>Name, Address and Fax Number of Purchaser</u>	<u>Copies of Notices to</u>	<u>Shares of Common Stock Purchased</u>	<u>Common Stock Underlying Warrants</u>	<u>Purchase Price</u>
Charles Burns 245 Waterloo Avenue Toronto, Ontario M3H 3Z5 Canada T: 416-398-5995		8,000	4,000	\$ 17,200.00

F: 905-762-2386
caburns@rogers.com

John E. Urheim
5417 Taylor Lane
Fort Collins, CO 80528
T: 970-282-8108
F: 970-282-8384
jeurheim@aol.com

8,000 4,000 \$ 17,200.00

Stephen M. Simes, Rev. Trust U/A/D 7/6/98
Stephen M. Simes, Trustee
111 Barclay Blvd, Suite 280
Lincolnshire, IL 60069
T: 847-478-0500 x100
F: 847-478-9260
ssimes@biosantepharma.com

1,000 500 \$ 2,150.00

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<u>Name, Address and Fax Number of Purchaser</u>	<u>Copies of Notices to</u>	<u>Shares of Common Stock Purchased</u>	<u>Common Stock Underlying Warrants</u>	<u>Purchase Price</u>
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Leah M. Lehman
14308 W. Braemore Close
Libertyville, IL 60048
T: 847-816-8921
F: 847-478-9263
llehman@biosantepharma.com

1,000 500 \$ 2,150.00

Phillip B. Donenberg
2090 Sheridan Road
Buffalo Grove, IL 60089
T: 847-821-0922
F: 847-478-9263
donenber@biosantepharma.com

1,000 500 \$ 2,150.00

Totals: 4,791,982 2,395,993 \$ 10,302,763.80

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<u>Name, Address and Fax Number of Purchaser</u>	<u>Copies of Notices to</u>	<u>Shares of Common Stock Purchased</u>	<u>Common Stock Underlying Warrants</u>	<u>Purchase Price</u>
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Placement Agent Warrants

SCO Securities LLC
1285 Avenue of the Americas, 35th Floor
New York, NY 10019
Steven H. Rouhandeh
T: 212-554-4158
F: 212-554-4058
Srouhandeh@SCOGroup.com

Michael Grundei, Esq.
Wiggin & Dana LLP
400 Atlantic Street
Stamford, CT 06901
Tel: 203-363-7630
Fax: 203-363-7676
Email: mgrundei@wiggin.com

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THIS WARRANT AND THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE OFFERED, SOLD, ASSIGNED OR TRANSFERRED, IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER SAID ACT OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY THAT REGISTRATION UNDER SAID ACT IS NOT REQUIRED.

Warrant No. W-

FORM OF COMMON STOCK PURCHASE WARRANT

To Purchase «Shares» Shares of Common Stock of
BIOSANTE PHARMACEUTICALS, INC.

THIS IS TO CERTIFY THAT «Name», or registered assigns (the “Holder”), is entitled, during the Exercise Period (as hereinafter defined), to purchase from BioSante Pharmaceuticals, Inc., a Delaware corporation (the “Company”), the Warrant Stock (as hereinafter defined and subject to adjustment as provided herein), in whole or in part, at a purchase price of \$2.15 per share, all on and subject to the terms and conditions hereinafter set forth.

1. **Definitions.** As used in this Warrant, the following terms have the respective meanings set forth below:

“**Affiliate**” means any person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a person or entity, as such terms are used in and construed under Rule 144 under the Securities Act. With respect to a Holder of Warrants, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Holder will be deemed to be an Affiliate of such Holder.

“**Appraised Value**” means, in respect of any share of Common Stock on any date herein specified, the fair saleable value of such share of Common Stock (determined without giving effect to the discount for (i) a minority interest or (ii) any lack of liquidity of the Common Stock or to the fact that the Company may have no class of equity registered under the Exchange Act) as of the last day of the most recent fiscal month ending prior to such date specified, based on the value of the Company on a fully-diluted basis, as determined by a nationally recognized investment banking firm selected by the Company’s Board of Directors and having no prior relationship with the Company.

“**Business Day**” means any day except Saturday, Sunday and any day which shall be a legal holiday or a day on which banking institutions in the State of Illinois generally are authorized or required by law or other government actions to close.

“**Change of Control**” means the (i) acquisition by an individual or legal entity or group (as set forth in Section 13(d) of the Exchange Act) of more than one-half of the voting rights or equity interests in the Company; or (ii) sale, conveyance, or other disposition of all or

substantially all of the assets, property or business of the Company or the merger into or consolidation with any other corporation (other than a wholly owned subsidiary corporation) or effectuation of any transaction or series of related transactions where holders of the Company’s voting securities prior to such transaction or series of transactions fail to continue to hold at least 50% of the voting power of the Company.

“**Closing Date**” means August 4, 2003.

“**Commission**” means the Securities and Exchange Commission or any other federal agency then administering the Securities Act and other federal securities laws.

“**Common Stock**” means (except where the context otherwise indicates) the Common Stock, \$0.0001 par value per share, of the Company as constituted on the Closing Date, and any capital stock into which such Common Stock may thereafter be changed or converted, and shall also include (i) capital stock of the Company of any other class (regardless of how denominated) issued to the holders of shares of Common Stock upon any reclassification thereof which is also not preferred as to dividends or assets on liquidation over any other class of stock of the Company and which is not subject to redemption and (ii) shares of common stock of any successor or acquiring corporation received by or distributed to the holders of Common Stock of the Company in the circumstances contemplated by Section 4.3.

“**Current Market Price**” means, in respect of any share of Common Stock on any date herein specified,

(1) if there shall not then be a public market for the Common Stock, the higher of

(a) the book value per share of Common Stock at such date, and

(b) the Appraised Value per share of Common Stock at such date,

or

(2) if there shall then be a public market for the Common Stock, the average of the daily market prices for the 20 consecutive trading days immediately before such date. The daily market price for each such trading day shall be (i) the closing bid price on such day on the principal stock exchange (including Nasdaq) on which such Common Stock is then listed or admitted to trading, or quoted, as applicable, (ii) if no sale takes place on such day on any such exchange, the last reported closing bid price on such day as officially quoted on any such exchange (including Nasdaq), (iii) if the Common Stock is not then listed or admitted to trading on any stock exchange, the last reported closing bid price on such day in the over-the-counter market, as furnished by the National Association of Securities Dealers Automatic Quotation System or the National Quotation Bureau, Inc., (iv) if neither such corporation at the time is engaged in the business of reporting such prices, as furnished by any similar firm then engaged in such business, or (v) if there is no such firm, as furnished by any member of the NASD selected mutually by the holder of this Warrant and the Company or, if they cannot agree upon such selection, as selected by two such members of the NASD, one of which shall be selected by holder of this Warrant and one of which shall be selected by the Company.

“Current Warrant Price” means, in respect of a share of Common Stock at any date herein specified, the price at which a share of Common Stock may be purchased pursuant to this Warrant on such date. Unless and until the Current Warrant Price is adjusted pursuant to the terms herein, the initial Current Warrant Price shall be \$2.15 per share of Common Stock.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, or any similar federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect from time to time.

“Exercise Period” means the period during which this Warrant is exercisable pursuant to Section 2.1.

“Expiration Date” means August 3, 2008.

“GAAP” means generally accepted accounting principles in the United States of America as from time to time in effect.

“NASD” means the National Association of Securities Dealers, Inc., or any successor corporation thereto.

“Other Property” has the meaning set forth in Section 4.3.

“Person” means any individual, sole proprietorship, partnership, joint venture, trust, incorporated organization, association, corporation, limited liability company, institution, public benefit corporation, entity or government (whether federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof).

“Purchase Agreement” means that certain Common Stock and Warrant Purchase Agreement dated as of August 4, 2003 among the Company and the other parties named therein, pursuant to which this Warrant was originally issued.

“Restricted Common Stock” means shares of Common Stock which are, or which upon their issuance upon the exercise of any Warrant would be required to be, evidenced by a certificate bearing the restrictive legend set forth in Section 3.2.

“Securities Act” means the Securities Act of 1933, as amended, or any similar federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

“Trading Day” means any day on which the primary market on which shares of Common Stock are listed is open for trading.

“Transfer” means any disposition of any Warrant or Warrant Stock or of any interest in either thereof, which would constitute a sale thereof within the meaning of the Securities Act.

“Warrants” means this Warrant and all warrants issued upon transfer, division or combination of, or in substitution for, any thereof. All Warrants shall at all times be identical as

to terms and conditions and date, except as to the number of shares of Common Stock for which they may be exercised.

“Warrant Price” means an amount equal to (i) the number of shares of Common Stock being purchased upon exercise of this Warrant pursuant to Section 2.1, multiplied by (ii) the Current Warrant Price.

“Warrant Stock” means the «Shares» shares of Common Stock to be purchased upon the exercise hereof, subject to adjustment as provided herein.

2. Exercise of Warrant.

2.1. Manner of Exercise. From and after the Closing Date, and until 5:00 P.M., New York time, on the Expiration Date (the “Exercise Period”), the Holder may exercise this Warrant, on any Business Day, for all or any part of the number of shares of Warrant Stock purchasable hereunder.

In order to exercise this Warrant, in whole or in part, the Holder shall deliver to the Company at its principal office or at the office or agency designated by the Company pursuant to Section 12, (i) a written notice of Holder’s election to exercise this Warrant, which notice shall specify the number of shares of Warrant Stock to be purchased, (ii) payment of the Warrant Price as provided herein, and (iii) this Warrant. Such notice shall be substantially in the form of the subscription form appearing at the end of this Warrant as Exhibit A, duly executed by the Holder or its agent or attorney. Upon receipt thereof, the Company shall, as promptly as practicable, and in any event within three Business Days thereafter, execute or cause to be executed and deliver or cause to be delivered to the Holder a certificate or certificates representing the aggregate number of full shares of Warrant Stock issuable upon such exercise, together with cash in lieu of any fraction of a share, as hereinafter provided. The stock certificate or certificates so delivered shall be, to the extent possible, in such denomination or denominations as the Holder shall request in the notice and shall be registered in the name of the Holder or if permitted pursuant to the terms of this Warrant such other name as shall be designated in the notice. This Warrant shall be deemed to have been exercised and such certificate or certificates shall be deemed to have been issued, and the Holder or any other Person so designated to be named therein shall be deemed to have become a Holder of record of such shares for all purposes, as of the date when the notice, together with the payment of the Warrant Price and this Warrant, is received by the Company as described above. If this Warrant shall have been exercised in part, the Company shall, at the time of delivery of the certificate or certificates representing Warrant Stock, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased shares of Common Stock called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant, or at the request of the Holder, appropriate notation may be made on this Warrant and the same returned to the Holder.

Payment of the Warrant Price may be made at the option of the Holder by: (i) certified or official bank check payable to the order of the Company, (ii) wire transfer of immediately available funds to the account of the Company or (iii) the surrender and cancellation of a portion of shares of Common Stock then held by the Holder or issuable upon such exercise of this Warrant, which shall be valued and credited toward the total Warrant Price due the Company for

the exercise of the Warrant based upon the Current Market Price of the Common Stock. All shares of Common Stock issuable upon the exercise of this Warrant pursuant to the terms hereof shall be validly issued and, upon payment of the Warrant Price, shall be fully paid and nonassessable and not subject to any preemptive rights.

2.2. Fractional Shares. The Company shall not be required to issue a fractional share of Common Stock upon exercise of any Warrant. As to any fraction of a share which the Holder of one or more Warrants, the rights under which are exercised in the same transaction, would otherwise be entitled to purchase upon such exercise, the Company shall pay an amount in cash equal to the Current Market Price per share of Common Stock on the date of exercise multiplied by such fraction.

2.3. Continued Validity. A Holder of shares of Common Stock issued upon the exercise of this Warrant, in whole or in part (other than a Holder who acquires such shares after the same have been publicly sold pursuant to a Registration Statement under the Securities Act or sold pursuant to Rule 144 thereunder), shall continue to be entitled with respect to such shares to all rights to which it would have been entitled as the Holder under Sections 10 and 13 of this Warrant.

2.4. Restrictions on Exercise Amount.

(i) Unless a Holder delivers to the Company irrevocable written notice prior to the date of issuance hereof or sixty-one days prior to the effective date of such notice that this Section 2.4(i) shall not apply to such Holder, the Holder may not acquire a number of shares of Warrant Stock to the extent that, upon such exercise, the number of shares of Common Stock then beneficially owned by such holder and its Affiliates and any other persons or entities whose beneficial ownership of Common Stock would be aggregated with the Holder's for purposes of Section 13(d) of the Exchange Act (including shares held by any "group" of which the holder is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) exceeds 4.95% of the total number of shares of Common Stock of the Company then issued and outstanding. For purposes hereof, "group" has the meaning set forth in Section 13(d) of the Exchange Act and applicable regulations of the Securities and Exchange Commission, and the percentage held by the holder shall be determined in a manner consistent with the provisions of Section 13(d) of the Exchange Act. Each delivery of a notice of exercise by a Holder will constitute a representation by such Holder that it has evaluated the limitation set forth in this paragraph and determined, based on the most recent public filings by the Company with the Commission, that the issuance of the full number of shares of Warrant Stock requested in such notice of exercise is permitted under this paragraph.

(ii) In the event the Company is prohibited from issuing shares of Warrant Stock as a result of any restrictions or prohibitions under applicable law or the rules or regulations of any stock exchange, interdealer quotation system or other self-regulatory organization, the Company shall as soon as possible seek the approval of its stockholders and take such other action to authorize the issuance of the full number of shares of Common Stock issuable upon exercise of this Warrant.

3. Transfer, Division and Combination.

3.1. Transfer. The Warrants and the Warrant Stock shall be freely transferable, subject to compliance with this Section 3.1 and all applicable laws, including, but not limited to the Securities Act. If, at the time of the surrender of this Warrant in connection with any transfer of this Warrant or the resale of the Warrant Stock, the transfer of this Warrant or the resale of the Warrant Stock, as applicable, shall not be registered under the Securities Act, the Company may require, as a condition of allowing such transfer (i) that the Holder or transferee of this Warrant or the Warrant Stock as the case may be, furnish to the Company a written opinion of counsel that is reasonably acceptable to the Company to the effect that such transfer may be made without registration under the Securities Act, (ii) that the Holder or transferee execute and deliver to the Company an investment letter in form and substance acceptable to the Company and substantially in the form attached as Exhibit C hereto and (iii) that the transferee be an "accredited investor" as defined in Rule 501(a) promulgated under the Securities Act. Transfer of this Warrant and all rights hereunder, in whole or in part, in accordance with the foregoing provisions, shall be registered on the books of the Company to be maintained for such purpose, upon surrender of this Warrant at the principal office of the Company referred to in Section 2.1 or the office or agency designated by the Company pursuant to Section 12, together with a written assignment of this Warrant substantially in the form of Exhibit B hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees and in the denomination specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Following a transfer that complies with the requirements of this Section 3.1, the Warrant may be exercised by a new Holder for the purchase of shares of Common Stock regardless of whether the Company issued or registered a new Warrant on the books of the Company.

3.2. Restrictive Legends. Each certificate for Warrant Stock initially issued upon the exercise of this Warrant, and each certificate for Warrant Stock issued to any subsequent transferee of any such certificate, shall be stamped or otherwise imprinted with legends in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AS AMENDED, AND MAY NOT BE OFFERED, SOLD, ASSIGNED OR TRANSFERRED, IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER SAID ACT OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY THAT REGISTRATION UNDER SAID ACT IS NOT REQUIRED."

"THE SALE, TRANSFER OR ASSIGNMENT OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN INVESTOR RIGHTS AGREEMENT DATED AS OF AUGUST 4, 2003, AS AMENDED FROM TIME TO TIME,

NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE COMPANY.”

3.3. Division and Combination; Expenses; Books. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office or agency of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 3.1 as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. The Company shall prepare, issue and deliver at its own expense the new Warrant or Warrants under this Section 3. The Company agrees to maintain, at its aforesaid office or agency, books for the registration and the registration of transfer of the Warrants.

4. Adjustments. The number of shares of Common Stock for which this Warrant is exercisable, and the price at which such shares may be purchased upon exercise of this Warrant, shall be subject to adjustment from time to time as set forth in this Section 4. The Company shall give the Holder notice of any event described below which requires an adjustment pursuant to this Section 4 in accordance with Sections 5.1 and 5.2.

4.1. Stock Dividends, Subdivisions and Combinations. If at any time while this Warrant is outstanding the Company shall:

- (i) declare a dividend or make a distribution on its outstanding shares of Common Stock in shares of Common Stock,
- (ii) subdivide its outstanding shares of Common Stock into a larger number of shares of Common Stock, or
- (iii) combine its outstanding shares of Common Stock into a smaller number of shares of Common Stock, then:

(1) the number of shares of Common Stock acquirable upon exercise of this Warrant immediately after the occurrence of any such event shall be adjusted to equal the number of shares of Common Stock which a record holder of the same number of shares of Common Stock that would have been acquirable under this Warrant immediately prior to the record date for such dividend or distribution or the effective date of such subdivision or combination would own or be entitled to receive after such record date or the effective date of such subdivision or combination, as applicable, and

(2) the Warrant Price shall be adjusted to equal:

(A) the Current Warrant Price in effect at the time of the record date for such dividend or distribution or of the effective date of such subdivision or combination, multiplied by the number of shares of Common Stock into which this Warrant is exercisable immediately prior to the adjustment, divided by

(B) the number of shares of Common Stock into which this Warrant is exercisable immediately after such adjustment.

Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clauses (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination.

4.2. Other Provisions Applicable to Adjustments. The following provisions shall be applicable to the making of adjustments of the number of shares of Common Stock into which this Warrant is exercisable and the Current Warrant Price provided for in Section 4:

(a) When Adjustments to Be Made. The adjustments required by Section 4 shall be made whenever and as often as any specified event requiring an adjustment shall occur, except that any that would otherwise be required may be postponed (except in the case of a subdivision or combination of shares of the Common Stock, as provided for in Section 4.1) up to, but not beyond the date of exercise if such adjustment either by itself or with other adjustments not previously made adds or subtracts less than 1% of the shares of Common Stock into which this Warrant is exercisable immediately prior to the making of such adjustment. Any adjustment representing a change of less than such minimum amount (except as aforesaid) which is postponed shall be carried forward and made as soon as such adjustment, together with other adjustments required by this Section 4 and not previously made, would result in a minimum adjustment or on the date of exercise. For the purpose of any adjustment, any specified event shall be deemed to have occurred at the close of business on the date of its occurrence.

(b) Fractional Interests. In computing adjustments under this Section 4, fractional interests in Common Stock shall be taken into account to the nearest 1/100th of a share.

(c) When Adjustment Not Required. If the Company undertakes a transaction contemplated under this Section 4 and as a result takes a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or distribution or subscription or purchase rights or other benefits contemplated under this Section 4 and shall, thereafter and before the distribution to stockholders thereof, legally abandon its plan to pay or deliver such dividend, distribution, subscription or purchase rights or other benefits contemplated under this Section 4, then thereafter no adjustment shall be required by reason of the taking of such record and any such adjustment previously made in respect thereof shall be rescinded and annulled.

(d) Escrow of Stock. If after any property becomes distributable pursuant to Section 4 by reason of the taking of any record of the holders of Common Stock, but prior to the occurrence of the event for which such record is taken, a holder of this Warrant exercises the Warrant during such time, then such holder shall continue to be entitled to receive any shares of Common Stock issuable upon exercise hereunder by reason of such adjustment and such shares or other property shall be held in escrow for the holder of this Warrant by the Company to be issued to holder of this Warrant upon and to the extent that the event actually takes place. Notwithstanding any other provision to the contrary herein, if the event for which such record was taken fails to occur or is rescinded, then such escrowed shares shall be canceled by the Company and escrowed property returned to the Company.

4.3. Reorganization, Reclassification, Merger, Consolidation or Disposition of Assets.

(a) If there shall occur a Change of Control and, pursuant to the terms of such Change of Control, shares of common stock of the successor or acquiring corporation, or any cash, shares of stock or other securities or property of any nature whatsoever (including warrants or other subscription or purchase rights) in addition to or in lieu of common stock of the successor or acquiring corporation (“Other Property”), are to be received by or distributed to the holders of Common Stock of the Company, then the Holder of this Warrant shall have the right thereafter to receive, upon the exercise of the Warrant, the number of shares of common stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and the Other Property receivable upon or as a result of such Change of Control by a holder of the number of shares of Common Stock into which this Warrant is exercisable immediately prior to such event.

(B) In case of any such Change of Control described in Section 4.3(a) above, the successor or acquiring corporation (if other than the Company) shall expressly assume the due and punctual observance and performance of each and every covenant and condition of contained in this Warrant to be performed and observed by the Company and all the obligations and liabilities hereunder, subject to such modifications as may be deemed appropriate (as determined by resolution of the Board of Directors of the Company) in order to provide for adjustments of shares of the Common Stock into which this Warrant is exercisable which shall be as nearly equivalent as practicable to the adjustments provided for in Section 4. For purposes of Section 4, common stock of the successor or acquiring corporation shall include stock of such corporation of any class which is not preferred as to dividends or assets on liquidation over any other class of stock of such corporation and which is not subject to redemption and shall also include any evidences of indebtedness, shares of stock or other securities which are convertible into or exchangeable for any such stock, either immediately or upon the arrival of a specified date or the happening of a specified event and any warrants or other rights to subscribe for or purchase any such stock. The foregoing provisions of this Section 4 shall similarly apply to successive Change of Control transactions.

4.4. Other Action Affecting Common Stock. In case at any time or from time to time the Company shall take any action in respect of its Common Stock, other than the payment of dividends permitted by Section 4 or any other action described in Section 4, then, unless such action will not have a materially adverse effect upon the rights of the holder of this Warrant, the number of shares of Common Stock or other stock into which this Warrant is exercisable and/or the purchase price thereof shall be adjusted in such manner as may be equitable in the circumstances.

4.5. Certain Limitations. Notwithstanding anything herein to the contrary, the Company agrees not to enter into any transaction which, by reason of any adjustment hereunder, would cause the Current Warrant Price to be less than the par value per share of Common Stock.

4.6. Stock Transfer Taxes. The issue of stock certificates upon exercise of this Warrant shall be made without charge to the holder for any tax in respect of such issue. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares in any name other than that of the holder of

this Warrant, and the Company shall not be required to issue or deliver any such stock certificate unless and until the person or persons requesting the issue thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

5. Notices to Warrant Holders.

5.1. Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Current Warrant Price, the Company, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to the 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 the Holder of this Warrant, furnish or cause to be furnished to such Holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Current Warrant Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, or other property which at the time would be received upon the exercise of Warrants owned by such Holder.

5.2. Notice of Corporate Action. If at any time:

(a) the Company shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend (other than a cash dividend payable out of earnings or earned surplus legally available for the payment of dividends under the laws of the jurisdiction of incorporation of the Company) or other distribution, or any right to subscribe for or purchase any evidences of its indebtedness, any shares of stock of any class or any other securities or property, or to receive any other right, or

(b) there shall be any capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company or any consolidation or merger of the Company with, or any sale, transfer or other disposition of all or substantially all the property, assets or business of the Company to, another corporation, or

(c) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Company;

(d) the Company shall cause the holders of its Common Stock to be entitled to receive (i) any dividend or other distribution of cash, (ii) any evidences of its indebtedness, or (iii) any shares of stock of any class or any other securities or property or assets of any nature whatsoever (other than cash or additional shares of Common Stock as provided in Section 4.1 hereof); or (iv) any warrants or other rights to subscribe for or purchase any evidences of its indebtedness, any shares of stock of any class or any other securities or property or assets of any nature whatsoever;

then, in any one or more of such cases, the Company shall give to the Holder (i) at least 15 days’ prior written notice of the date on which a record date shall be selected for such dividend, distribution or right or for determining rights to vote in respect of any such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, dissolution, liquidation or winding up, and (ii) in the case of any such reorganization, reclassification, merger,

consolidation, sale, transfer, disposition, dissolution, liquidation or winding up, at least 15 days' prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause also shall specify (i) the date on which any such record is to be taken for the purpose of such dividend, distribution or right, the date on which the holders of Common Stock shall be entitled to any such dividend, distribution or right, and the amount and character thereof, and (ii) the date on which any such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, dissolution, liquidation or winding up is to take place and the time, if any such time is to be fixed, as of which the holders of Common Stock shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, dissolution, liquidation or winding up. Each such written notice shall be sufficiently given if addressed to the Holder at the last address of the Holder appearing on the books of the Company and delivered in accordance with Section 15.2.

5.3. No Rights as Stockholder. This Warrant does not entitle the Holder to any voting or other rights as a stockholder of the Company prior to exercise and payment for the Warrant Price in accordance with the terms hereof.

6. No Impairment. The Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of the Holder against impairment. Without limiting the generality of the foregoing, the Company will (a) not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the amount payable therefor upon such exercise immediately prior to such increase in par value, (b) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant, and (c) use its best efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof as may be necessary to enable the Company to perform its obligations under this Warrant. Upon the request of the Holder, the Company will at any time during the period this Warrant is outstanding acknowledge in writing, in form satisfactory to the Holder, the continuing validity of this Warrant and the obligations of the Company hereunder.

7. Reservation and Authorization of Common Stock; Registration With Approval of Any Governmental Authority. From and after the Closing Date, the Company shall at all times reserve and keep available for issue upon the exercise of Warrants such number of its authorized but unissued shares of Common Stock as will be sufficient to permit the exercise in full of all outstanding Warrants (without regard to any ownership limitations provided in Section 2.4(i)). All shares of Common Stock which shall be so issuable, when issued upon exercise of any Warrant and payment therefor in accordance with the terms of such Warrant, shall be duly and validly issued and fully paid and nonassessable, and not subject to preemptive rights. Before taking any action which would cause an adjustment reducing the Current Warrant Price below the then par value, if any, of the shares of Common Stock issuable upon exercise of the Warrants, the Company shall take any corporate action which may be necessary in order that the

Company may validly and legally issue fully paid and non-assessable shares of such Common Stock at such adjusted Current Warrant Price. Before taking any action which would result in an adjustment in the number of shares of Common Stock for which this Warrant is exercisable or in the Current Warrant Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof. If any shares of Common Stock required to be reserved for issuance upon exercise of Warrants require registration or qualification with any governmental authority under any federal or state law before such shares may be so issued (other than as a result of a prior or contemplated distribution by the Holder of this Warrant), the Company will in good faith and as expeditiously as possible and at its expense endeavor to cause such shares to be duly registered.

8. Taking of Record; Stock and Warrant Transfer Books. In the case of all dividends or other distributions by the Company to the holders of its Common Stock with respect to which any provision of Section 4 refers to the taking of a record of such holders, the Company will in each such case take such a record and will take such record as of the close of business on a Business Day. The Company will not at any time, except upon dissolution, liquidation or winding up of the Company, close its stock transfer books or Warrant transfer books so as to result in preventing or delaying the exercise or transfer of any Warrant.

9. Registration Rights. The resale of the Warrant Stock shall be registered in accordance with the terms and conditions contained in that certain Investor Rights Agreement dated of even date hereof, among the Holder, the Company and the other parties named therein (the "Investor Rights Agreement"). The Holder acknowledges that pursuant to the Investor Rights Agreement, the Company has the right to request that the Holder furnish information regarding such Holder and the distribution of the Warrant Stock as is required by law or the Commission to be disclosed in the Registration Statement (as such term is defined in the Investor Rights Agreement), and the Company may exclude from such registration the shares of Warrant Stock acquirable hereunder if Holder fails to furnish such information within a reasonable time prior to the filing of each Registration Statement, supplemented prospectus included therein and/or amended Registration Statement.

10. Supplying Information. Upon any default by the Company of its obligations hereunder or under the Investor Rights Agreement, the Company shall cooperate with the Holder in supplying such information as may be reasonably necessary for such Holder to complete and file any information reporting forms presently or hereafter required by the Commission as a condition to the availability of an exemption from the Securities Act for the sale of any Warrant or Restricted Common Stock.

11. Loss or Mutilation. Upon receipt by the Company from the Holder of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of this Warrant and indemnity or security reasonably satisfactory to it and reimbursement to the Company of all reasonable expenses incidental thereto and in case of mutilation upon surrender and cancellation hereof, the Company will execute and deliver in lieu hereof a new Warrant of like tenor to the Holder; provided, however, that in the case of mutilation, no indemnity shall be required if this Warrant in identifiable form is surrendered to the Company for cancellation.

12. Office of the Company. As long as any of the Warrants remain outstanding, the Company shall maintain an office or agency (which may be the principal executive offices of the Company) where the Warrants may be presented for exercise, registration of transfer, division or combination as provided in this Warrant.

13. Financial and Business Information.

13.1. Quarterly Information. The Company will deliver to the Holder, as soon as available and in any event within 45 days after the end of each of the first three quarters of each fiscal year of the Company, one copy of an unaudited consolidated balance sheet of the Company and its subsidiaries as at the end of such quarter, and the related unaudited consolidated statements of income, retained earnings and cash flow of the Company and its subsidiaries for such quarter and, in the case of the second and third quarters, for the portion of the fiscal year ending with such quarter, setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year. Such financial statements shall be prepared by the Company in accordance with GAAP (except as may be indicated thereon or in the notes thereto) and accompanied by the certification of the Company's chief executive officer or chief financial officer that such financial statements present fairly the consolidated financial position, results of operations and cash flow of the Company and its subsidiaries as at the end of such quarter and for such year-to-date period, as the case may be; provided, however, that the Company shall have no obligation to deliver such quarterly information under this Section 13.1 to the extent it is publicly available.

13.2. Annual Information. The Company will deliver to the Holder as soon as available and in any event within 90 days after the end of each fiscal year of the Company, one copy of an audited consolidated balance sheet of the Company and its subsidiaries as at the end of such year, and audited consolidated statements of income, retained earnings and cash flow of the Company and its subsidiaries for such year; setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year; all prepared in accordance with GAAP, and which audited financial statements shall be accompanied by an opinion thereon of the independent certified public accountants regularly retained by the Company, or any other firm of independent certified public accountants of recognized national standing selected by the Company; provided, however, that the Company shall have no obligation to deliver such annual information under this Section 13.2 to the extent it is publicly available.

13.3. Filings. The Company will file on or before the required date all regular or periodic reports (pursuant to the Exchange Act) with the Commission and will deliver to Holder promptly upon their becoming available one copy of each report, notice or proxy statement sent by the Company to its stockholders generally.

14. Limitation of Liability. No provision hereof, in the absence of affirmative action by the Holder to purchase shares of Common Stock, and no enumeration herein of the rights or privileges of the Holder hereof, shall give rise to any liability of the Holder for the purchase price of any Common Stock, whether such liability is asserted by the Company or by creditors of the Company.

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15. Miscellaneous.

15.1. Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of the Holder shall operate as a waiver of such right or otherwise prejudice Holder's rights, powers or remedies. If the Company fails to make, when due, any payments provided for hereunder, or fails to comply with any other material provision of this Warrant, the Company shall pay to the Holder such amounts as shall be sufficient to cover any reasonable and documented third party costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

15.2. Notice Generally. All notices, requests, demands or other communications provided for herein shall be in writing and shall be given in the manner and to the addresses set forth in the Purchase Agreement.

15.3. Successors and Assigns. Subject to compliance with the provisions of Section 3.1, this Warrant and the rights evidenced hereby shall inure to the benefit of and be binding upon the successors of the Company and the successors and assigns of the Holder. The provisions of this Warrant are intended to be for the benefit of all Holders from time to time of this Warrant, and shall be enforceable by any such Holder.

15.4. Amendment. This Warrant may be modified or amended or the provisions of this Warrant waived with the written consent of both the Company and the Holder.

15.5. Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be modified to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Warrant.

15.6. Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

15.7. Governing Law. This Warrant and the transactions contemplated hereby shall be deemed to be consummated in the State of New York and shall be governed by and interpreted in accordance with the local laws of the State of New York without regard to the provisions thereof relating to conflicts of laws. The Company hereby irrevocably consents to the exclusive jurisdiction of the State and Federal courts located in New York City, New York in connection with any action or proceeding arising out of or relating to this Warrant. In any such litigation the Company agrees that the service thereof may be made by certified or registered mail directed to the Company pursuant to Section 15.2.

[Signature Page Follows]

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BIOSANTE PHARMACEUTICALS, INC.

By: _____
Name: Stephen M. Simes
Title: President and Chief Executive Officer

Attest:

By: _____
Name: Phillip B. Donenberg
Title: Secretary

EXHIBIT A

SUBSCRIPTION FORM

[To be executed only upon exercise of Warrant]

1. The undersigned hereby elects to purchase _____ shares of the Common Stock of BioSante Pharmaceuticals, Inc. pursuant to the terms of the attached Warrant, and tenders herewith payment of the purchase price of such shares in full.
2. The undersigned hereby elects to convert the attached Warrant into Common Stock of BioSante Pharmaceuticals, Inc. through "cashless exercise" in the manner specified in the Warrant. This conversion is exercised with respect to _____ of the Shares covered by the Warrant.
3. Please issue a certificate or certificates representing said shares in the name of the undersigned or in such other name as is specified below:

(Name)

(Address)

[and, if such shares of Common Stock shall not include all of the shares of Common Stock issuable as provided in this Warrant, that a new Warrant of like tenor and date for the balance of the shares of Common Stock issuable hereunder be delivered to the undersigned.]

(Name of Registered Owner)

(Signature of Registered Owner)

(Street Address)

(State) (Zip Code)

NOTICE: The signature on this subscription must correspond with the name as written upon the face of the Warrant in every particular, without alteration or enlargement or any change whatsoever.

EXHIBIT B

ASSIGNMENT FORM

FOR VALUE RECEIVED the undersigned registered owner of this Warrant for the purchase of shares of common stock of BioSante Pharmaceuticals, Inc. hereby sells, assigns and transfers unto the Assignee named below all of the rights of the undersigned under this Warrant, with respect to the number of shares

of common stock set forth below:

(Name and Address of Assignee)

(Number of Shares of Common Stock)

and does hereby irrevocably constitute and appoint _____ attorney-in-fact to register such transfer on the books of the Company, maintained for the purpose, with full power of substitution in the premises.

Dated: _____

(Print Name and Title)

(Signature)

(Witness)

NOTICE: The signature on this assignment must correspond with the name as written upon the face of the Warrant in every particular, without alteration or enlargement or any change whatsoever.

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EXHIBIT C

FORM OF INVESTMENT REPRESENTATION LETTER

In connection with the acquisition of [warrants (the "Warrants") to purchase _____ shares of common stock of BioSante Pharmaceuticals, Inc. (the "Company"), par value \$0.0001 per share (the "Common Stock")][_____ shares of common stock of BioSante Pharmaceuticals, Inc. (the "Company"), par value \$0.0001 per share (the "Common Stock") upon the exercise of warrants by _____], by _____ (the "Holder") from _____, the Holder hereby represents and warrants to the Company as follows:

The Holder (i) is an "Accredited Investor" as that term is defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended (the "Act"); and (ii) has the ability to bear the economic risks of such Holder's prospective investment, including a complete loss of Holder's investment in the Warrants and the shares of Common Stock issuable upon the exercise thereof (collectively, the "Securities").

The Holder, by acceptance of the Warrants, represents and warrants to the Company that the Warrants and all securities acquired upon any and all exercises of the Warrants are purchased for the Holder's own account, and not with view to distribution of either the Warrants or any securities purchasable upon exercise thereof in violation of applicable securities laws.

[The Holder acknowledges that (i) the Securities have not been registered under the Act, (ii) the Securities are "restricted securities" and the certificate(s) representing the Securities shall bear the following legend, or a similar legend to the same effect, until (i) in the case of the shares of Common Stock underlying the Warrants, such shares shall have been registered for resale by the Holder under the Act and effectively been disposed of in accordance with a registration statement that has been declared effective; or (ii) in the opinion of counsel for the Company such Securities may be sold without registration under the Act:

"[NEITHER] THE SECURITIES REPRESENTED BY THIS CERTIFICATE [NOR THE SECURITIES INTO WHICH THEY ARE EXERCISABLE] HAVE [NOT] BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND ALL SUCH SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AS SET FORTH IN THIS CERTIFICATE. [NEITHER] THE SECURITIES REPRESENTED HEREBY [NOR THE SECURITIES INTO WHICH THEY ARE EXERCISABLE] MAY [NOT] BE SOLD, TRANSFERRED, OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN OPINION OF COUNSEL, REASONABLY ACCEPTABLE TO COUNSEL FOR THE COMPANY, TO THE EFFECT THAT THE PROPOSED SALE, TRANSFER, OR DISPOSITION MAY BE EFFECTUATED WITHOUT REGISTRATION UNDER THE ACT.]"*

* Bracketed language to be inserted if applicable.

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IN WITNESS WHEREOF, the Holder has caused this Investment Representation Letter to be executed this _____ day of _____, 200 .

[Name]

By: _____

Name:

Title:

INVESTOR RIGHTS AGREEMENT

This Investor Rights Agreement (this “Agreement”) is made and entered into as of August 4, 2003 among BioSante Pharmaceuticals, Inc., a Delaware corporation (the “Company”), and each of the purchasers executing this Agreement and listed on Schedule 1 attached hereto (collectively, the “Purchasers”).

This Agreement is being entered into pursuant to the Common Stock and Warrant Purchase Agreement, dated as of the date hereof, by and among the Company and the Purchasers (the “Purchase Agreement”).

The Company and the Purchasers hereby agree as follows:

1. Definitions.

Capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

“Advice” shall have the meaning set forth in Section 3(m).

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly controls or is controlled by or under common control with such Person. For the purposes of this definition, “control,” when used with respect to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the terms of “affiliated,” “controlling” and “controlled” have meanings correlative to the foregoing.

“Blackout Period” shall have the meaning set forth in Section 3(n).

“Board” shall have the meaning set forth in Section 3(n).

“Business Day” means any day except Saturday, Sunday and any day which shall be a legal holiday or a day on which banking institutions in the State of Illinois generally are authorized or required by law or other government actions to close.

“Commission” means the Securities and Exchange Commission.

“Common Stock” means the Company’s Common Stock, par value \$0.0001 per share.

“Effectiveness Period” shall have the meaning set forth in Section 2.

“Event” shall have the meaning set forth in Section 7(e).

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

“Filing Date” means the 35th day following the Closing Date.

“Holder” or “Holders” means the holder or holders, as the case may be, from time to time of Registrable Securities, including without limitation the Purchasers and their assignees.

“Indemnified Party” shall have the meaning set forth in Section 5(c).

“Indemnifying Party” shall have the meaning set forth in Section 5(c).

“Losses” shall have the meaning set forth in Section 5(a).

“Person” means an individual or a corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or political subdivision thereof) or other entity of any kind.

“Proceeding” means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“Prospectus” means the prospectus included in any Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference in such Prospectus.

“Purchased Shares” means the shares of Common Stock purchased by the Purchasers pursuant to the Purchase Agreement.

“Registrable Securities” means (a) the Purchased Shares and the Warrant Shares (without regard to any limitations on beneficial ownership contained in the Purchase Agreement or Warrants) or other securities issued or issuable to each Purchaser or its transferee or designee (i) upon exercise of the Warrants, or (ii) upon any distribution with respect to, any exchange for or any replacement of such Purchased Shares or Warrants or (iii) upon any conversion, exercise or exchange of any securities issued in connection with any such distribution, exchange or replacement; (b) securities issued or issuable upon any stock split, stock dividend, recapitalization or similar event with respect to the foregoing; and (c) any other security issued as a dividend or other distribution with respect to, in exchange for, in replacement or redemption of, or in reduction of the liquidation value of, any of the securities referred to in the preceding clauses;

provided, however, that such securities shall cease to be Registrable Securities when such securities have been sold to or through a broker or dealer or underwriter in a public distribution or a public securities transaction or when such securities may be sold without any restriction pursuant to Rule 144(k) as determined by the counsel to the Company pursuant to a written opinion letter, addressed to the Company's transfer agent to such effect as described in Section 2 of this Agreement.

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“Registration Statement” means the registration statements and any additional registration statements contemplated by Section 2, including (in each case) the Prospectus, amendments and supplements to such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference in such registration statement.

“Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“Rule 158” means Rule 158 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“Rule 415” means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

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

“Special Counsel” means one special counsel to the Holders selected by a majority in interest of the Holders with notice of such selection given to the Company.

“Warrant Shares” means the shares of Common Stock issuable upon the exercise of the warrants issued or to be issued to the Purchasers or their assignees or designees in connection with the offering consummated under the Purchase Agreement.

2. Registration. As soon as possible following the Closing Date (but not later than the Filing Date), the Company shall prepare and file with the Commission a “shelf” Registration Statement covering all Registrable Securities for a secondary or resale offering to be made on a continuous basis pursuant to Rule 415. The Registration Statement shall be on Form S-3 (or if such form is not available to the Company on another form appropriate for such registration in accordance herewith). The Company shall use its reasonable best efforts to cause the Registration Statement to be declared effective under the Securities Act not later than ninety (90) days after the Closing Date (including filing with the Commission a request for acceleration of effectiveness in accordance with Rule 12d1-2 promulgated under the Exchange Act within five (5) Business Days of the date that the Company is notified (orally or in writing, whichever is earlier) by the Commission that a Registration Statement will not be “reviewed,” or not be subject to further review) and to keep such Registration Statement continuously effective under the Securities Act until such date as is the earlier of (x) the date when all Registrable Securities covered by such Registration Statement have been sold or (y) with respect to any Holder, such time as all Registrable Securities held by such Holder may be sold without any restriction pursuant to Rule 144(k) as determined by the counsel to the Company pursuant to a written opinion letter, addressed to the Company's

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transfer agent to such effect (the “Effectiveness Period”). Such Registration Statement also shall cover, to the extent allowable under the Securities Act and the Rules promulgated thereunder (including Securities Act Rule 416), such indeterminate number of additional shares of Common Stock resulting from stock splits, stock dividends or similar transactions with respect to the Registrable Securities. The Registration Statement filed in accordance with Section 2 may include other shares of the Company with respect to which registration rights have been granted, and may include shares of the Company being sold for the account of the Company; provided, however, that such inclusions do not adversely affect the registration of the Registrable Securities.

3. Registration Procedures.

In connection with the Company's registration obligations hereunder, the Company shall:

(a) Prepare and file with the Commission on or prior to the Filing Date, a Registration Statement on Form S-3 (or if such form is not available to the Company on another form appropriate for such registration in accordance herewith) (which shall include a Plan of Distribution substantially in the form of Exhibit A attached hereto), and cause the Registration Statement to become effective and remain effective as provided herein; provided, however, that not less than three (3) Business Days prior to the filing of the Registration Statement or any related Prospectus or any amendment or supplement thereto, the Company shall (i) furnish to the Special Counsel, copies of all such documents proposed to be filed, which documents (other than those incorporated by reference) will be subject to the review of such Special Counsel, and (ii) at the request of any Holder cause its officers and directors, counsel and independent certified public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of counsel to such Holders, to conduct a reasonable investigation within the meaning of the Securities Act. The Company shall not file the Registration Statement or any such Prospectus or any amendments or supplements thereto to which the Holders of a majority of the Registrable Securities or the Special Counsel shall reasonably object within three (3) Business Days after their receipt thereof. In the event of any such objection, the Holders shall provide the Company with any requested revisions to such prospectus or supplement within two (2) Business Days of such objection.

(b) (i) Prepare and file with the Commission such amendments, including post-effective amendments, to the Registration Statement as may be necessary to keep the Registration Statement continuously effective as to the applicable Registrable Securities for the Effectiveness Period and to the extent any Registrable Securities are not included in such Registration Statement for reasons other than the failure of the Holder to comply with Section 3(m) hereof, shall prepare and file with the Commission such additional Registration Statements in order to register for resale under the Securities Act all Registrable Securities; (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement, and as so supplemented or amended to be filed pursuant to Rule 424 (or any similar provisions then in force) promulgated under the Securities Act; (iii) respond as promptly as reasonably possible to any comments received from the Commission with respect to the Registration Statement or any amendment thereto and as promptly as

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reasonably possible provide the Holders true and complete copies of all correspondence from and to the Commission relating to the Registration Statement; and (iv) comply in all material respects with the provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by the Registration Statement during the applicable period in accordance with the intended methods of disposition by the Holders thereof set forth in the Registration Statement as so amended or in such Prospectus as so supplemented.

(c) Notify the Special Counsel as promptly as reasonably possible (A) when a Prospectus or any Prospectus supplement or post-effective amendment to the Registration Statement is proposed to be filed (but in no event in the case of this subparagraph (A), less than three (3) Business Days prior to date of such filing) and (B) when the Commission notifies the Company whether there will be a "review" of such Registration Statement and whenever the Commission comments in writing on such Registration Statement; and notify the Holders of Registrable Securities to be sold and the Special Counsel as promptly as reasonably possible, with respect to the Registration Statement or any post-effective amendment, when the same has become effective, and after the effectiveness thereof: (i) of any request by the Commission or any other Federal or state governmental authority for amendments or supplements to the Registration Statement or Prospectus or for additional information; (ii) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose; (iii) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose; and (iv) if the financial statements included in the Registration Statement become ineligible for inclusion therein or of the occurrence of any event that makes any statement made in the Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to the Registration Statement, Prospectus or other documents so that, in the case of the Registration Statement or the Prospectus, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(d) Use its reasonable best efforts to avoid the issuance of, or, if issued, use reasonable best efforts to obtain the withdrawal of, (i) any order suspending the effectiveness of the Registration Statement or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest reasonably practicable moment.

(e) If requested by the Holders of a majority in interest of the Registrable Securities, (i) promptly incorporate in a Prospectus supplement or post-effective amendment to the Registration Statement such information as the Company reasonably agrees should be included therein and (ii) make all required filings of such Prospectus supplement or such post-effective amendment as soon as practicable after the Company has received notification of the matters to be incorporated in such Prospectus supplement or post-effective

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amendment; provided, however, that the Company shall not be required to take any action pursuant to this Section 3(e) that would, in the written opinion of counsel for the Company (addressed to the Holder's Special Counsel), violate applicable law.

(f) Furnish to each Holder and the Special Counsel, without charge, at least one conformed copy of each Registration Statement and each amendment thereto, including financial statements and schedules, and all exhibits to the extent requested by such Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission.

(g) Promptly deliver to each Holder and the Special Counsel, without charge, as many copies of the Prospectus or Prospectuses (including each form of prospectus) and each amendment or supplement thereto as such Persons may reasonably request; and the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto.

(h) Prior to any public offering of Registrable Securities, use its reasonable best efforts to register or qualify or cooperate with the selling Holders and the Special Counsel in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions within the United States as any Holder reasonably requests in writing, to keep each such registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Registrable Securities covered by a Registration Statement; provided, however, that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or to take any action that would subject it to general service of process in any jurisdiction where it is not then so subject or subject the Company to any material tax in any such jurisdiction where it is not then so subject.

(i) Cooperate with the Holders to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold pursuant to a Registration Statement, which certificates shall be free, to the extent permitted by applicable law and the Purchase Agreement, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any Holder may request at least two (2) Business Days prior to any sale of Registrable Securities. In connection therewith, the Company shall promptly after the effectiveness of the Registration Statement cause an opinion of counsel to be delivered to and maintained with its transfer agent, together with any other authorizations, certificates and directions required by the transfer agent, which authorize and direct the transfer agent to issue such Registrable Securities without legend upon sale by the Holder of such shares of Registrable Securities under the Registration Statement.

(j) Following the occurrence of any event contemplated by Section 3(c)(iv), as promptly as possible, prepare a supplement or amendment, including a post-effective

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amendment, to the Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither the Registration Statement nor such Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(k) Cause all Registrable Securities relating to such Registration Statement to be listed on any United States securities exchange, quotation system, market or over-the-counter bulletin board, if any, on which similar securities issued by the Company are then listed.

(l) Comply in all material respects with all applicable rules and regulations of the Commission and make generally available to its security holders earnings statements satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 not later than 45 days after the end of any 3-month period (or 90 days after the end of any 12-month period if such period is a fiscal year) commencing on the first day of the first fiscal quarter of the Company after the effective date of the Registration Statement, which statement shall conform to the requirements of Rule 158.

(m) Request each selling Holder to furnish to the Company information regarding such Holder and the distribution of such Registrable Securities as is required by law or the Commission to be disclosed in the Registration Statement (“Holder Information”), and the Company may exclude from such registration the Registrable Securities of any such Holder who fails to furnish such information within a reasonable time prior to the filing of each Registration Statement, supplemented Prospectus and/or amended Registration Statement. Each Holder agrees promptly to furnish to the Company all Holder Information required to be disclosed in such Registration Statement in order to make the information previously furnished to the Company by such Holder not misleading. No Holder of Registrable Securities shall be entitled to liquidated damages pursuant to Section 7(e) hereof unless and until such Holder shall have provided all such Holder Information. Any sale of any Registrable Securities by any Holder shall constitute a representation and warranty by such Holder that the Holder Information does not as of the time of such sale contain any untrue statement of a material fact relating to such Holder or its plan of distribution and that such Prospectus does not as of the time of such sale omit to state any material fact relating to such Holder or its plan of distribution necessary to make the statements in such Prospectus, in the light of the circumstances under which they were made, not misleading.

If the Registration Statement refers to any Holder by name or otherwise as the holder of any securities of the Company, then such Holder shall have the right to require (if such reference to such Holder by name or otherwise is not required by the Securities Act or any similar federal statute then in force) the deletion of the reference to such Holder in any amendment or supplement to the Registration Statement filed or prepared subsequent to the time that such reference ceases to be required.

Each Holder agrees by its acquisition of such Registrable Securities that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in

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Section 3(c)(i), 3(c)(ii), 3(c)(iii), 3(c)(iv), or 3(n), such Holder will forthwith discontinue disposition of such Registrable Securities under the Registration Statement until such Holder’s receipt of the copies of the supplemented Prospectus and/or amended Registration Statement contemplated by Section 3(j), or until it is advised in writing (the “Advice”) by the Company that the use of the applicable Prospectus may be resumed, and, in either case, has received copies of any additional or supplemental filings that are incorporated or deemed to be incorporated by reference in such Prospectus or Registration Statement.

(n) If (i) there is material non-public information regarding the Company which the Company’s Board of Directors (the “Board”) reasonably determines not to be in the Company’s best interest to disclose and which the Company is not otherwise required to disclose, or (ii) there is a significant business opportunity (including, but not limited to, the acquisition or disposition of assets (other than in the ordinary course of business) or any merger, consolidation, tender offer or other similar transaction) available to the Company which the Board reasonably determines not to be in the Company’s best interest to disclose and which the Company would be required to disclose under the Registration Statement, then the Company may postpone or suspend filing or effectiveness of a registration statement for a period not to exceed 30 consecutive days, provided that the Company may not postpone or suspend its obligation under this Section 3(n) for more than 60 days in the aggregate during any 12 month period (each, a “Blackout Period”).

4. Registration Expenses.

All fees and expenses incident to the performance of or compliance with this Agreement by the Company shall be borne by the Company whether or not the Registration Statement is filed or becomes effective and whether or not any Registrable Securities are sold pursuant to the Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses (A) with respect to filings required to be made with any securities exchange, quotation system, market or over-the-counter bulletin board on which Registrable Securities are required hereunder to be listed, (B) with respect to filings required to be made with the Commission, and (C) in compliance with state securities or Blue Sky laws (including, without limitation, reasonable and documented fees and disbursements of Special Counsel in connection with Blue Sky qualifications of the Registrable Securities and determination of the eligibility of the Registrable Securities for investment under the laws of such jurisdictions as the Holders of a majority of Registrable Securities may designate)), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities and of printing or photocopying prospectuses), (iii) messenger, telephone and delivery expenses, (iv) Securities Act liability insurance, if the Company so desires such insurance, (v) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement, including, without limitation, the Company’s independent public accountants (including, in the case of an underwritten offering, the expenses of any comfort letters or costs associated with the delivery by independent public accountants of a comfort letter or comfort letters) and legal counsel, and (vi) reasonable and documented fees and expenses of the Special Counsel in connection with any Registration Statement hereunder. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with

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the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit, the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder.

5. Indemnification.

(a) Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless each Holder, the officers, directors, agents, brokers (including brokers who offer and sell Registrable Securities as principal as a result of a pledge or any failure to perform under a margin call of Common Stock), investment advisors and employees of each of them, each Person who controls any such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, agents and employees of each such

controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, costs of preparation and reasonable attorneys' fees) and expenses (collectively, "Losses"), as incurred, arising out of or relating to any untrue or alleged untrue statement of a material fact contained or incorporated by reference in the Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or amendment or supplement thereto, in the light of the circumstances under which they were made) not misleading, except to the extent, but only to the extent, that (i) such untrue statements or omissions are based upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, which information was reasonably relied on by the Company for use therein or to the extent that such information relates to (x) such Holder and was reviewed and expressly approved in writing by such Holder expressly for use in the Registration Statement, such Prospectus or such form of prospectus or in any amendment or supplement thereto or (y) such Holder's proposed method of distribution of Registrable Securities as set forth in Exhibit A (or as such Holder otherwise informs the Company in writing); or (ii) in the case of an occurrence of an event of the type described in Section 3(c)(ii), 3(c)(iii), 3(c)(iv) or 3(n), the use by a Holder of an outdated or defective Prospectus after the delivery to the Holder of written notice from the Company that the Prospectus is outdated or defective and prior to the receipt by such Holder of the Advice contemplated in Section 3(m); provided, however, that the indemnity agreement contained in this Section 5(a) shall not apply to amounts paid in settlement of any Losses if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld. The Company shall notify the Holders promptly of the institution, threat or assertion of any Proceeding of which the Company is aware in connection with the transactions contemplated by this Agreement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of an Indemnified Party (as defined in Section 5(c) to this Agreement) and shall survive the transfer of the Registrable Securities by the Holders.

(b) Indemnification by Holders. Each Holder shall, severally and not jointly,

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indemnify and hold harmless the Company, its directors, officers, agents and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents and employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, arising out of or based upon any untrue statement of a material fact contained in the Registration Statement, any Prospectus, or any form of prospectus, or in any amendment or supplement thereto, or arising out of or based upon any omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or supplement thereto, in the light of the circumstances under which they were made) not misleading, to the extent, but only to the extent, that (i) such untrue statement or omission is contained in or omitted from any information so furnished in writing by such Holder to the Company specifically for inclusion in the Registration Statement or such Prospectus and that such information was reasonably relied upon by the Company for use in the Registration Statement, such Prospectus, or in any amendment or supplement thereto, or to the extent that such information relates to (x) such Holder and was reviewed and expressly approved in writing by such Holder expressly for use in the Registration Statement, such Prospectus, or such form of prospectus or in any amendment or supplement thereto or (y) such Holder's proposed method of distribution of Registrable Securities as set forth in Exhibit A (or as such Holder otherwise informs the Company in writing) or (ii) in the case of an occurrence of an event of the type described in Section 3(c)(ii), 3(c)(iii), 3(c)(iv) or 3(n), the use by a Holder of an outdated or defective Prospectus after the delivery to the Holder of written notice from the Company that the Prospectus is outdated or defective and prior to the receipt by such Holder of the Advice contemplated in Section 3(m); provided, however, that the indemnity agreement contained in this Section 5(b) shall not apply to amounts paid in settlement of any Losses if such settlement is effected without the prior written consent of the Holder, which consent shall not be unreasonably withheld. Notwithstanding anything to the contrary contained herein, the Holder shall be liable under this Section 5(b) for only that amount as does not exceed the net proceeds to such Holder as a result of the sale of Registrable Securities pursuant to such Registration Statement.

(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "Indemnified Party"), such Indemnified Party promptly shall notify the Person from whom indemnity is sought (the "Indemnifying Party") in writing, and the Indemnifying Party shall assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all reasonable fees and expenses incurred in connection with defense thereof; provided, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have proximately and materially adversely prejudiced the Indemnifying Party.

An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses; or (2) the

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Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding; or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and such Indemnified Party shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and such counsel shall be at the reasonable expense of the Indemnifying Party). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding and does not impose any monetary or other obligation or restriction on the Indemnified Party.

All reasonable fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within ten (10) Business Days of written notice thereof to the Indemnifying Party, which notice shall be delivered no more frequently than on a monthly basis (regardless of whether it is ultimately determined that an Indemnified Party is not entitled to indemnification hereunder; provided, that the Indemnifying Party

may require such Indemnified Party to undertake to reimburse all such fees and expenses to the extent it is finally judicially determined that such Indemnified Party is not entitled to indemnification hereunder).

(d) Contribution. If a claim for indemnification under Section 5(a) or 5(b) is unavailable to an Indemnified Party because of a failure or refusal of a governmental authority to enforce such indemnification in accordance with its terms (by reason of public policy or otherwise), then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in Section 5(c), any reasonable attorneys' or other reasonable fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for

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in this Section was available to such party in accordance with its terms. Notwithstanding anything to the contrary contained herein, the Holder shall be required to contribute under this Section 5(d) for only that amount as does not exceed the net proceeds to such Holder as a result of the sale of Registrable Securities pursuant to such Registration Statement.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

The indemnity and contribution agreements contained in this Section are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties. The indemnity and contribution agreements herein are in addition to and not in diminution or limitation of any indemnification provisions under the Purchase Agreement.

6. Rule 144.

As long as any Holder owns Purchased Shares, Warrants or Warrant Shares, the Company covenants to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to Section 13(a) or 15(d) of the Exchange Act. As long as any Holder owns Purchased Shares, Warrants or Warrant Shares, if the Company is not required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act, it will prepare and furnish to the Holders and make publicly available in accordance with Rule 144(c) promulgated under the Securities Act annual and quarterly financial statements, together with a discussion and analysis of such financial statements in form and substance substantially similar to those that would otherwise be required to be included in reports required by Section 13(a) or 15(d) of the Exchange Act, as well as any other information required thereby, in the time period that such filings would have been required to have been made under the Exchange Act. The Company further covenants that it will take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Person to sell Purchased Shares and Warrant Shares without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 promulgated under the Securities Act, including compliance with the provisions of the Purchase Agreement relating to the transfer of the Purchased Shares and Warrant Shares. Upon the request of any Holder, the Company shall deliver to such Holder a written certification of a duly authorized officer as to whether it has complied with such requirements.

7. Miscellaneous.

(a) Remedies. In the event of a breach by the Company or by a Holder, of any of their obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, will be entitled to specific performance of its rights under this Agreement. The Company and each Holder agree that monetary damages would not

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provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate.

(b) No Inconsistent Agreements. Except as otherwise disclosed in the Purchase Agreement, neither the Company nor any of its subsidiaries is a party to an agreement currently in effect, nor shall the Company or any of its subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities that is inconsistent with the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. Without limiting the generality of the foregoing, without the written consent of the Holders of a majority of the then outstanding Registrable Securities, the Company shall not grant to any Person the right to request the Company to register any securities of the Company under the Securities Act unless the rights so granted do not impair the rights of the Holders set forth herein, and are not otherwise in conflict with the provisions of this Agreement. For avoidance of doubt, the subsequent grant of a right to require that the Company file one or more registration statements shall not in and of itself be deemed to impair the rights granted to the Holders hereunder.

(c) Notice of Effectiveness. Within two (2) Business Days after the Registration Statement which includes the Registrable Securities is ordered effective by the Commission, the Company shall deliver, and shall cause legal counsel for the Company to deliver, to the transfer agent for such Registrable Securities (with copies to the Holders whose Registrable Securities are included in such Registration Statement) confirmation that the Registration Statement has been declared effective by the Commission in the form attached hereto as Exhibit B.

(d) Piggy-Back Registrations. If at any time when there is not an effective Registration Statement covering all of the Registrable Securities, the Company shall determine to prepare and file with the Commission a registration statement relating to an offering for its own account or the account of others

under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or its then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with stock option or other employee benefit plans, the Company shall send to each Holder of Registrable Securities written notice of such determination and, if within seven (7) Business Days after receipt of such notice, any such Holder shall so request in writing (which request shall specify the Registrable Securities intended to be disposed of by the Holder), the Company will cause the registration under the Securities Act of all Registrable Securities which the Company has been so requested to register by the Holder, to the extent required to permit the disposition of the Registrable Securities so to be registered, provided that if at any time after giving written notice of its intention to register any securities and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to register or to delay registration of such securities, the Company may, at its election, give written notice of such determination to such Holder and, thereupon, (i) in the case of a determination not to register, shall be relieved of its obligation to register any Registrable Securities in connection

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with such registration (but not from its obligation to pay expenses in accordance with Section 4 hereof), and (ii) in the case of a determination to delay registering, shall be permitted to delay registering any Registrable Securities being registered pursuant to this Section 7(d) for the same period as the delay in registering such other securities. The Company shall include in such registration statement all or any part of such Registrable Securities such Holder requests to be registered. In the case of an underwritten public offering, if the managing underwriter(s) or underwriter(s) should reasonably object to the inclusion of the Registrable Securities in such registration statement, then if the Company after consultation with the managing underwriter should reasonably determine that the inclusion of such Registrable Securities, would materially adversely affect the offering contemplated in such registration statement, and based on such determination recommends inclusion in such registration statement of fewer or none of the Registrable Securities of the Holders, then (x) the number of Registrable Securities of the Holders included in such registration statement shall be reduced pro-rata among such Holders (based upon the number of Registrable Securities requested to be included in the registration), if the Company after consultation with the underwriter(s) recommends the inclusion of fewer Registrable Securities, or (y) none of the Registrable Securities of the Holders shall be included in such registration statement, if the Company after consultation with the underwriter(s) recommends the inclusion of none of such Registrable Securities; provided, however, that if securities are being offered for the account of other persons or entities as well as the Company, such reduction shall not represent a greater fraction of the number of Registrable Securities intended to be offered by the Holders than the fraction of similar reductions imposed on such other persons or entities (other than the Company).

(e) Failure to File Registration Statement and Other Events. The Company and the Holders agree that the Holders will suffer damages if the Registration Statement is not filed on or prior to the thirty-fifth (35th) day following the Closing Date and maintained in the manner contemplated herein during the Effectiveness Period. The Company and the Holders further agree that it would not be feasible to ascertain the extent of such damages with precision. Accordingly, if (i) the Registration Statement is not filed on or prior to the thirty-fifth (35th) day following the Closing Date, or (ii) the Company fails to file with the Commission a request for acceleration in accordance with Rule 12d1-2 promulgated under the Exchange Act within five (5) Business Days of the date that the Company is notified (orally or in writing, whichever is earlier) by the Commission that a Registration Statement will not be “reviewed,” or not subject to further review, or (iii) the Registration Statement is filed with and declared effective by the Commission but thereafter ceases to be effective as to all Registrable Securities at any time prior to the expiration of the Effectiveness Period due to an intentional and willful act by the Company, without being succeeded immediately by a subsequent Registration Statement filed with the Commission, except as otherwise permitted by this Agreement, including pursuant to Section 3(n), or (iv) trading in the Common Stock shall be suspended or if the Common Stock is delisted from any securities exchange, quotation system, market or over-the-counter bulletin board on which Registrable Securities are required hereunder to be listed (each an “Exchange”), without immediately being listed on any other Exchange, for any reason for more than one (1) Business Day, other than pursuant to Section 3(n), due to an intentional and willful act by the Company, or (v) the rights of the Holders to exercise into Warrant Shares are suspended for any reason due to an intentional and willful act by the Company without the consent of the particular

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Holder other than as set forth in the Purchase Agreement (any such failure or breach being referred to as an “Event”), the Company shall pay in cash as liquidated damages for such failure and not as a penalty to each Holder an amount equal to one percent (1%) of such Holder’s pro rata share of the purchase price paid by all Holders for Purchased Shares purchased and then outstanding pursuant to the Purchase Agreement for the initial thirty (30) day period until the applicable Event has been cured, which shall be pro rated for such periods less than thirty (30) days and one percent (1%) of such Holder’s pro rata share of the purchase price paid by all Holders for Purchased Shares purchased and then outstanding pursuant to the Purchase Agreement for each subsequent thirty (30) day period until the applicable Event has been cured which shall be pro rated for such periods less than thirty days (the “Periodic Amount”). Payments to be made pursuant to this Section 7(e) shall be due and payable immediately upon demand in immediately available cash funds. The parties agree that the Periodic Amount represents a reasonable estimate on the part of the parties, as of the date of this Agreement, of the amount of damages that may be incurred by the Holders if an Event as described herein has occurred.

(f) Specific Enforcement, Consent to Jurisdiction.

(i) The Company and the Holders acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which any of them may be entitled by law or equity.

(ii) Each of the Company and the Holders (i) hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts located in New York City, New York for the purposes of any suit, action or proceeding arising out of or relating to this Agreement and (ii) hereby waives, and agrees not to assert in any such suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such court, that the suit, action or proceeding is brought in an inconvenient forum or that the venue of the suit, action or proceeding is improper. Each of the Company and the Holders consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing in this Section 7(f) shall affect or limit any right to serve process in any other manner permitted by law.

(g) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the same shall be in writing and signed by the Company and the Holders of at least a majority of the Registrable Securities. Notwithstanding the foregoing, a waiver or consent to depart from the

that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the immediately preceding sentence.

(h) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earlier of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile telephone number specified for notice prior to 5:00 p.m., New York City time, on a Business Day, (ii) the next Business Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section on a day that is not a Business Day or later than 5:00 p.m., New York City time, on any date and earlier than 11:59 p.m., New York City time, on such date, (iii) the Business Day following the date of mailing, if sent by nationally recognized overnight courier service such as Federal Express or (iv) actual receipt by the party to whom such notice is required to be given. The addresses for such communications shall be with respect to each Holder at its address set forth under its name on Schedule 1 attached hereto, or with respect to the Company, addressed to:

BioSante Pharmaceuticals, Inc.
111 Barclay Boulevard
Lincolnshire, Illinois 60069
Attention: Stephen M. Simes, President and Chief Executive Officer
Facsimile No. (847) 478-9260

or to such other address or addresses or facsimile number or numbers as any such party may most recently have designated in writing to the other parties hereto by such notice. Copies of notices to the Company shall be sent to:

Oppenheimer Wolff & Donnelly LLP
Plaza VII Building, Suite 3300
45 South Seventh Street
Minneapolis, Minnesota 55402
Attention: Amy E. Culbert, Esq.
Facsimile No.: (612) 607-7100

Copies of notices to any Holder shall be sent to the addresses, if any, listed on Schedule 1 attached hereto.

(i) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns and shall inure to the benefit of each Holder and its successors and assigns; provided, that the Company may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Holders holding at least 75% of the Registrable Securities; and provided, further, that each Holder may assign its rights hereunder in the manner and to the Persons as permitted under the Purchase Agreement.

(j) Assignment of Registration Rights. The rights of each Holder hereunder, including the right to have the Company register for resale Registrable Securities in

accordance with the terms of this Agreement, shall be automatically assignable by each Holder to any transferee of such Holder of all or a portion of the Purchased Shares, the Warrants or the Registrable Securities if: (i) the Holder agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment, (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (a) the name and address of such transferee or assignee, and (b) the securities with respect to which such registration rights are being transferred or assigned, (iii) following such transfer or assignment the further disposition of such securities by the transferee or assignees is restricted under the Securities Act and applicable state securities laws, (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this Section 7(j), the transferee or assignee agrees in writing with the Company to be bound by all of the provisions of this Agreement, and (v) such transfer shall have been made in accordance with the applicable requirements of the Purchase Agreement. The rights to assignment shall apply to the Holders (and to subsequent) successors and assigns.

The Company may require, as a condition of allowing such assignment in connection with a transfer of Purchased Shares, Warrants or Registrable Securities (i) that the Holder or transferee of all or a portion of the Purchased Shares, the Warrants or the Registrable Securities as the case may be, furnish to the Company a written opinion of counsel that is reasonably acceptable to the Company to the effect that such transfer may be made without registration under the Securities Act, (ii) that the Holder or transferee execute and deliver to the Company an investment letter in form and substance acceptable to the Company and (iii) that the transferee be an "accredited investor" as defined in Rule 501(a) promulgated under the Securities Act.

(k) Counterparts; Facsimile. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and, all of which taken together shall constitute one and the same Agreement. In the event that any signature is delivered by facsimile transmission, such signature shall create a valid binding obligation of the party executing (or on whose behalf such signature is executed) the same with the same force and effect as if such facsimile signature were the original thereof.

(l) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of law thereof.

(m) Cumulative Remedies. The remedies provided herein are cumulative and not exclusive of any remedies provided by law; provided, however, that the liquidated damages provided in Section 7(e) shall be the Holders exclusive remedy in the event an Event as described in Section 7(e) has occurred.

(n) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable in any respect, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their reasonable efforts to find and employ an

alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(o) Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Investor Rights Agreement to be duly executed by their respective authorized persons as of the date first indicated above.

COMPANY:

BIOSANTE PHARMACEUTICALS, INC.

By: /s/ Stephen M. Simes
Name: Stephen M. Simes
Title: President and Chief Executive Officer

PURCHASERS:

Print Exact Name: SCO Capital Partners LLC

By: /s/ Steven H. Rouhandeh
Name: Steven H. Rouhandeh
Title: Chairman

Print Exact Name: SDS Merchant Fund, LP

By: /s/ Scott E. Derby
Name: Scott E. Derby
Title: General Counsel

Print Exact Name: North Sound Legacy Fund LLC

By: /s/ Andrew Wilder
Name: Andrew Wilder
Title: Chief Financial Officer

Print Exact Name: North Sound Legacy Institutional Fund LLC

By: /s/ Andrew Wilder
Name: Andrew Wilder
Title: Chief Financial Officer

Print Exact Name: North Sound Legacy International Ltd.

By: /s/ Andrew Wilder
Name: Andrew Wilder
Title: Chief Financial Officer

Print Exact Name: Perceptive Life Sciences Master Fund, Ltd.

By: /s/ Andrew C. Sankin

Name: Andrew C. Sankin

Title: Director

20

Print Exact Name: Joseph Edelman

By: /s/ Joseph Edelman

Name: Joseph Edelman

Title:

Print Exact Name: Multi-National Consulting Services, IV, LLC

By: /s/ Andrew C. Sankin

Name: Andrew C. Sankin

Title: Executive Director

Print Exact Name: Daniel B. Heller

By: /s/ Daniel B. Heller

Name: Daniel B. Heller

Title:

Print Exact Name: Paul Scharfer

By: /s/ Paul Scharfer

Name: Paul Scharfer

Title:

Print Exact Name: Quogue Capital LLC

By: /s/ Wayne Philip Rothbaum

Name: Wayne Philip Rothbaum

Title: Principal

Print Exact Name: Orion Biomedical Offshore Fund, LP

By: /s/ Lindsay A. Rosenwald, M.D.

Name: Lindsay A. Rosenwald, M.D.

Title: Managing Member of G.P.

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Print Exact Name: Orion Biomedical Fund, LP

By: /s/ Lindsay A. Rosenwald, MD

Name: Lindsay A. Rosenwald, MD

Title: Managing Member of G.P.

Print Exact Name: Richard B. Stone

By: /s/ Richard B. Stone

Name: Richard B. Stone

Title:

Print Exact Name: Steven M. Oliveira 1998 Charitable Remainder Unitrust

By: /s/ Steven Oliveira

Name: Steven Oliveira

Title: Trustee

Print Exact Name: Morningstar Trust

By: _____
Name:
Title:

Print Exact Name: Victor A. Morgenstern

By: _____
Name:
Title:

Print Exact Name: Panacea Fund, LLC

By: /s/ William Harris Investors, Inc.
Name: Jack Polsky
Title: Chief Executive Officer

22

Print Exact Name: Irving B. Harris Revocable Trust

By: /s/ Irving B. Harris
Name: Irving B. Harris
Title: Trustee

Print Exact Name: Virginia H. Polsky Trust

By: /s/ Jack R. Polsky
Name: Jack R. Polsky
By: Delegation of Authority dated 6/6/96

Print Exact Name: Roxanne H. Frank Trust

By: /s/ Jack R. Polsky
Name: Jack R. Polsky
By: Delegation of Authority dated 12/3/99

By: /s/ Jerome Kahn, Jr.
Name: Jerome Kahn, Jr.
By: Delegation of Authority dated 12/3/99

Print Exact Name: Couderay Partners

By: /s/ Michael S. Resnick
Name: Michael S. Resnick
Title: Management Agent

By: /s/ Jerome Kahn, Jr.
Name: Jerome Kahn, Jr.
Title: Co-Managing Agent

Print Exact Name: JO & Co.

By: /s/ Ross J. Mangano
Name: Ross J. Mangano
Title: Partner

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Print Exact Name: Crestview Capital Fund II, LP

By: /s/ Richard Levy

Name: Richard Levy
Title: Managing Member

Print Exact Name: James S. Levy Living Trust

By: /s/ James S. Levy
Name: James S. Levy
Title:

Print Exact Name: Mitchell I. Dolins as Trustee of the Mitchell I. Dolins Revocable Trust U/A/D 12/24/91

By: /s/ Mitchell I. Dolins
Name: Mitchell I. Dolins
Title:

Print Exact Name: Bradley S. Glaser and Amy E. Glaser, as Tenant by the Entirety

By: /s/ Amy E. Glaser
Name: Amy E. Glaser
Title:

By: /s/ Bradley S. Glaser
Name: Bradley S. Glaser
Title:

Print Exact Name: Dr. Herman S. Graf Zu Munster

By: Herman S. Graf Zu Munster
Name: Herman S. Graf Zu Munster
Title:

Print Exact Name: Richard Sheiner

By: /s/ Richard Sheiner
Name: Richard Sheiner
Title:

Print Exact Name: Roscoe F. Nicholson II for Roscoe F. Nicholson II Profit Sharing Plan

By: /s/ Roscoe F. Nicholson II
Name: Roscoe F. Nicholson II
Title:

Print Exact Name: Shirley F. Nicholson for IRA Shirley M. Nicholson

By: /s/ Shirley M. Nicholson
Name: Shirley M. Nicholson
Title:

Print Exact Name: Dr. Terry L. Lazarus

By: /s/ Terry Lazarus, D.D.S.
Name: Terry L. Lazarus
Title: Private Investor

Print Exact Name: Charles Burns

By: /s/ Charles Burns
Name: Charles Burns
Title:

Print Exact Name: John E. Urheim

By: /s/ John E. Urheim
Name: John E. Urheim
Title:

Print Exact Name: Stephen M. Simes, Rev. Trust U/A/D. 7/6/98

By: /s/ Stephen M. Simes
Name: Stephen M. Simes
Title: Trustee

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Print Exact Name: Leah M. Lehman

By: /s/ Leah M. Lehman
Name: Leah M. Lehman
Title:

Print Exact Name: Phillip B. Donenberg

By: /s/ Phillip B. Donenberg
Name: Phillip B. Donenberg
Title:

[Omnibus BioSante Pharmaceuticals, Inc. Investor Rights Agreement Signature Page]

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SCHEDULE 1

PURCHASERS

Name and Address

Copy of Notice to:

SCO Capital Partners LLC
1285 Avenue of the Americas, 35th Floor
New York, NY 10019
Steven H. Rouhandeh
T: 212-554-4158
F: 212-554-4058
Srouhandeh@SCOGroup.com

Michael Grundei, Esq.
Wiggin & Dana LLP
400 Atlantic Street
Stamford, CT 06901
Tel: 203-363-7630
Fax: 203-363-7676
Email: mgrundei@wiggin.com

SDS Merchant Fund, LP
53 Forest Ave., 2nd Floor
Old Greenwich, CT 06870
Attn: Scott Derby
T: 203-967-5880
F: 203-967-5851
scott@sdscapital.com

North Sound Legacy Fund LLC
53 Forest Avenue
Suite 202
Old Greenwich, CT 06870
Attn: Andrew Wilder
T: 203-967-5700
F: 203-967-5701
Andrew@northsound.com

North Sound Legacy Institutional Fund LLC
53 Forest Avenue
Suite 202
Old Greenwich, CT 06870
Attn: Andrew Wilder
T: 203-967-5700
F: 203-967-5701
Andrew@northsound.com

Name and Address**Copy of Notice to:**

North Sound Legacy International Ltd.
 53 Forest Avenue
 Suite 202
 Old Greenwich, CT 06870
 Attn: Andrew Wilder
 T: 203-967-5700
 F: 203-967-5701
 Andrew@northsound.com

Perceptive Life Sciences Master Fund, Ltd.
 5437 Connecticut Ave., NW
 Suite 100
 Washington, DC 20015
 Attn: Andrew Sankin
 P: 202-537-0029
 F: 202-537-0030
 sankin@hedgesource.org

Deliver Securities to:

Perceptive Life Sciences Master Fund, Ltd.
 c/o First New York Securities
 850 Third Ave, 17th Floor
 New York, NY 10022
 Attn: Kenny Kountouras

Joseph Edelman
 300 Central Park West
 Apt. 25-G
 New York, NY 10024
 T: 202-537-0029
 F: 202-537-0030
 sankin@hedgesource.org

Deliver Securities to:

Northeast Securities
 2425 Post Road
 Southport, CT 06890
 Attn: Nick DiFalco

Name and Address**Copy of Notice to:**

Multi-National Consulting Services, IV, LLC
 5437 Connecticut Ave., NW
 Suite 100
 Washington, DC 20015
 Attn: Andrew Sankin
 P: 202-537-0029
 F: 202-537-0030
 sankin@hedgesource.org

Deliver Securities to:

Multi-National Consulting Services, IV, LLC
 c/o Punk Ziegel
 520 Madison Avenue
 7th Floor
 New York, NY 10022
 Attn: John Bligh

Daniel B. Heller
 48 CardinalFlower Lane
 West Windsor, NJ 08550
 T: 609-448-8760
 F: 212-331-6777
 d.heller@fnysllc.com

Paul Scharfer
265 East 66th Street, Apt. 6C
New York, NY 10021
T: 917-763-2015
F:
PSCHARFER@aol.com

Quogue Capital LLC
1285 Avenue of the Americas, 35th Floor
New York, NY 10019
Attn: Wayne Philip Rothbaum
T: 212-554-4475
F: 212-554-4450
wrothbaum@quoguecapital.com

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Name and Address

Copy of Notice to:

Orion Biomedical Offshore Fund, LP
787 Seventh Avenue, 48th Floor
New York, NY 10019
Attn: Lindsay A. Rosenwald, MD
T: 212-554-4284
F: 212-554-4314
jkazam@paramountcapital.com

Orion Biomedical Fund, LP
787 Seventh Avenue, 48th Floor
New York, NY 10019
Attn: Lindsay A. Rosenwald, MD
T: 212-554-4284
F: 212-554-4314
jkazam@paramountcapital.com

Richard Stone
44 West 77th Street
New York, NY 10024
T: 917-502-2809
F: 212-750-7277

Steven M. Oliveira 1998 Charitable Remainder Unitrust
18 Fieldstone Court
New City, NY 10956
T: 845-634-5620
F:
Steve_oliveira@yahoo.com

Morningstar Trust
By Fay Morgenstern, Trustee
106 Vine Avenue
Highland Park, IL 60035
T: 847-432-8632
F:
vmstar@msn.com

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Name and Address

Copy of Notice to:

Victor A. Morgenstern
106 Vine Avenue
Highland Park, IL 60035
T: 847-432-8632
F:
vmstar@msn.com

Panacea Fund, LLC
c/o William Harris Investors, Inc.
2 North LaSalle Street, Suite 400
Chicago, IL 60602

T: 312-621-0590
F: 312-621-0984

Irving B. Harris Revocable Trust
c/o William Harris Investors, Inc.
2 N. LaSalle Street, Suite 400
Chicago, IL 60602
T: 312-621-0590
F: 312-621-0984

Virginia H. Polsky Trust
c/o William Harris Investors, Inc.
2 N. LaSalle Street, Suite 400
Chicago, IL 60602
T: 312-621-0590
F: 312-621-0984

Roxanne H. Frank Trust
c/o William Harris Investors, Inc.
2 N. LaSalle Street, Suite 400
Chicago, IL 60602
T: 312-621-0590
F: 312-621-0984

Name and Address

Copy of Notice to:

Couderay Partners
c/o William Harris Investors, Inc.
2 N. LaSalle Street, Suite 400
Chicago, IL 60602
T: 312-621-0590
F: 312-621-0984

JO & Co
P.O. Box 1655
South Bend, IN 46634
Attn: Ross Mangano
T: 574-232-8213
F: 574-232-8223

Crestview Capital Fund II, LP
95 Revere Drive, Suite F
Northbrook, IL 60062
Attn: Richard Levy
T: 847-559-0060
F: 847-559-5807
Richard@crestviewcap.com

James S. Levy Living Trust
1349 N. Thatcher Avenue
River Forest, IL 60305
Attn: James S. Levy
T: 312-595-6475
F: 312-595-6139
jlevy@mesirovfinancial.com

Mitchell I. Dolins as Trustee of the
Mitchell I. Dolins Revocable Trust
U/A/D 12/24/91
427 Brierhill Road
Deerfield, IL 60015
T: 847-940-1228
F: 847-940-1253
mickydd24@aol.com

Name and Address

Copy of Notice to:

Bradley S. Glaser and Amy E. Glaser,
as Tenant by the Entirety

1204 Berans Road
Owings Mills, MD 21117
T: 410-252-2766
F: 410-296-0973
bglaser@vanguardequities.com

Dr. Hermann S. Graf Zu Munster
Umweger Str. 66
D-76488 Baden-Baden
Germany
T: 011-49 7223 60014
F: 011-49 7223 60016
hs.muenster@t-online.de

Richard Sheiner
4771 Trenton Court
Long Grove, IL 60047
T: 312-364-8752
F: 847-913-9256
deployant@aol.com

Name and Address

Copy of Notice to:

Roscoe F. Nicholson II for Roscoe F. Nicholson II Profit Sharing Plan
(Mesirow Financial Inc.)
1222 Forest Hill Drive
Hendersonville, NC 28791
T: 828-692-4433
F: 828-693-9032
roscoei@ioa.com

Shirley M. Nicholson
for IRA Shirley M. Nicholson at Mesirow Financial
1222 Forest Hill Drive
Hendersonville, NC 28791
T: 828-692-4433
F: 828-693-9032
roscoei@ioa.com

Dr. Terry L. Lazarus
1951-A Weston Road
Weston, Ontario M9N 1W8
Canada
T: 416-241-3472
F:
tllaz@rogers.com

Charles Burns
245 Waterloo Avenue
Toronto, Ontario M3H 3Z5
Canada
T: 416-398-5995
F: 905-762-2386
caburns@rogers.com

Name and Address

Copy of Notice to:

John E. Urheim
5417 Taylor Lane
Fort Collins, CO 80528
T: 970-282-8108
F: 970-282-8384
jeurheim@aol.com

Stephen M. Simes, Rev. Trust U/A/D 7/6/98
Stephen M. Simes, Trustee
111 Barclay Blvd, Suite 280
Lincolnshire, IL 60069
T: 847-478-0500 x100

F: 847-478-9260
ssimes@biosantepharma.com

Leah M. Lehman
14308 W. Braemore Close
Libertyville, IL 60048
T: 847-816-8921
F: 847-478-9263
llehman@biosantepharma.com

Phillip B. Donenberg
2090 Sheridan Road
Buffalo Grove, IL 60089
T: 847-821-0922
F: 847-478-9263
donenber@biosantepharma.com

SCO Securities LLC
1285 Avenue of the Americas, 35th Floor
New York, NY 10019
Steven H. Rouhandeh
T: 212-554-4158
F: 212-554-4058
Srouhandeh@SCOGroup.com

Michael Grundei, Esq.
Wiggin & Dana LLP
400 Atlantic Street
Stamford, CT 06901
Tel: 203-363-7630
Fax: 203-363-7676
Email: mgrundei@wiggin.com

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EXHIBIT A

PLAN OF DISTRIBUTION

We are registering the shares of common stock on behalf of the selling security holders. Sales of shares may be made by selling security holders, including their respective donees, transferees, pledgees or other successors-in-interest directly to purchasers or to or through underwriters, broker-dealers or through agents. Sales may be made from time to time on the over-the-counter market or otherwise, at market prices prevailing at the time of sale, at prices related to market prices, or at negotiated or fixed prices. The shares may be sold by one or more of, or a combination of, the following:

- a block trade in which the broker-dealer so engaged will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction (including crosses in which the same broker acts as agent for both sides of the transaction);
- purchases by a broker-dealer as principal and resale by such broker-dealer, including resales for its account, pursuant to this prospectus;
- ordinary brokerage transactions and transactions in which the broker solicits purchases;
- through options, swaps or derivatives;
- in privately negotiated transactions;
- in making short sales or in transactions to cover short sales; and
- put or call option transactions relating to the shares.

The selling security holders may effect these transactions by selling shares directly to purchasers or to or through broker-dealers, which may act as agents or principals. These broker-dealers may receive compensation in the form of discounts, concessions or commissions from the selling security holders and/or the purchasers of shares for whom such broker-dealers may act as agents or to whom they sell as principals, or both (which compensation as to a particular broker-dealer might be in excess of customary commissions). The selling security holders have advised us that they have not entered into any agreements, understandings or arrangements with any underwriters or broker-dealers regarding the sale of their securities.

The selling security holders may enter into hedging transactions with broker-dealers or other financial institutions. In connection with those transactions, the broker-dealers or other financial institutions may engage in short sales of the shares or of securities convertible into or exchangeable for the shares in the course of hedging positions they assume with the selling security holders. The selling security holders may also enter into options or other transactions with broker-dealers or other financial institutions which require the delivery of

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shares offered by this prospectus to those broker-dealers or other financial institutions. The broker-dealer or other financial institution may then resell the shares pursuant to this prospectus (as amended or supplemented, if required by applicable law, to reflect those transactions).

The selling security holders and any broker-dealers that act in connection with the sale of shares may be deemed to be "underwriters" within the meaning of Section 2(11) of the Securities Act of 1933, and any commissions received by broker-dealers or any profit on the resale of the shares sold by them while acting as principals may be deemed to be underwriting discounts or commissions under the Securities Act. The selling security holders may agree to indemnify any agent, dealer or broker-dealer that participates in transactions involving sales of the shares against liabilities, including liabilities arising under

the Securities Act. We have agreed to indemnify each of the selling security holders and each selling security holder has agreed, severally and not jointly, to indemnify us against some liabilities in connection with the offering of the shares, including liabilities arising under the Securities Act.

The selling security holders will be subject to the prospectus delivery requirements of the Securities Act. We have informed the selling security holders that the anti-manipulative provisions of Regulation M promulgated under the Securities Exchange Act of 1934 may apply to their sales in the market.

Selling security holders also may resell all or a portion of the shares in open market transactions in reliance upon Rule 144 under the Securities Act, provided they meet the criteria and conform to the requirements of Rule 144.

Upon being notified by a selling security holder that a material arrangement has been entered into with a broker-dealer for the sale of shares through a block trade, special offering, exchange distribution or secondary distribution or a purchase by a broker or dealer, we will file a supplement to this prospectus, if required pursuant to Rule 424(b) under the Securities Act, disclosing:

- the name of each such selling security holder and of the participating broker-dealer(s);
- the number of shares involved;
- the initial price at which the shares were sold;
- the commissions paid or discounts or concessions allowed to the broker-dealer(s), where applicable;
- that such broker-dealer(s) did not conduct any investigation to verify the information set out or incorporated by reference in this prospectus; and
- other facts material to the transactions.

In addition, if required under applicable law or the rules or regulations of the

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Commission, we will file a supplement to this prospectus when a selling security holder notifies us that a donee or pledgee intends to sell more than 500 shares of common stock.

We are paying all expenses and fees customarily paid by the issuer in connection with the registration of the shares. The selling security holders will bear all brokerage or underwriting discounts or commissions paid to broker-dealers in connection with the sale of the shares.

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EXHIBIT B

FORM OF NOTICE OF EFFECTIVENESS OF REGISTRATION STATEMENT

[Name and Address of Transfer Agent]

Re: BioSante Pharmaceuticals, Inc.

Dear []:

We are counsel to BioSante Pharmaceuticals, Inc., a Delaware corporation (the "Company"), and have represented the Company in connection with that certain Common Stock and Warrant Purchase Agreement (the "Purchase Agreement") dated as of _____, 2003 by and among the Company and the buyers named therein (collectively, the "Holders") pursuant to which the Company issued to the Holders shares of its Common Stock, par value \$0.0001 per share (the "Common Stock"), and warrants to purchase shares of the Common Stock (the "Warrants"). Pursuant to the Purchase Agreement, the Company has also entered into an Investor Rights Agreement with the Holders (the "Investor Rights Agreement") pursuant to which the Company agreed, among other things, to register the shares of Common Stock issued pursuant to the Purchase Agreement and the Common Stock issuable upon exercise of the Warrants, under the Securities Act of 1933, as amended (the "1933 Act"). In connection with the Company's obligations under the Investor Rights Agreement, on _____, 2003, the Company filed a Registration Statement on Form S- _____ (File No. 333- _____) (the "Registration Statement") with the Securities and Exchange Commission (the "SEC") relating to the Registrable Securities which names each of the Holders as a selling securityholder thereunder.

In connection with the foregoing, we advise you that a member of the SEC's staff has advised us by telephone that the SEC has entered an order declaring the Registration Statement effective under the 1933 Act at [ENTER TIME OF EFFECTIVENESS] on [ENTER DATE OF EFFECTIVENESS] and we have no knowledge, after telephonic inquiry of a member of the SEC's staff, that any stop order suspending its effectiveness has been issued or that any proceedings for that purpose are pending before, or threatened by, the SEC and the Registrable Securities are available for resale under the 1933 Act pursuant to the Registration Statement.

Very truly yours,

By: _____
cc: [LIST NAMES OF HOLDERS]

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BioSante Pharmaceuticals, Inc.
 111 Barclay Boulevard, Suite 280
 Lincolnshire, Illinois 60069
www.biosantepharm.com

FOR IMMEDIATE RELEASE

OTC Bulletin Board: BISP

BioSante Pharmaceuticals Raises \$10.3 Million in Private Placement

Lincolnshire, Illinois (August 6, 2003) - BioSante Pharmaceuticals, Inc. (OTCBB: BISP) today announced that it has raised \$10.3 million through the private placement of approximately 4.8 million newly issued shares of BioSante common stock to several new and current institutional and accredited investors. The financing was led by SDS Merchant Fund and included Perceptive Life Sciences Fund, SCO Capital Partners LLC, Quogue Capital LLC, Crestview Capital and the Orion Biomedical Funds. Four BioSante directors also participated. SCO Securities LLC acted as the placement agent for this transaction. Investors also received warrants to purchase approximately 2.4 million shares of common stock.

"We are pleased to have this strong group of sophisticated life-sciences investors participate in this financing," said Stephen M. Simes, president and chief executive officer of BioSante. "These funds will enable us to aggressively manage and complete the pivotal Phase III clinical trial of Bio-E-Gel™ for the treatment of menopausal symptoms, a multi-billion dollar market. We also will use these funds to continue our development of LibiGel™ for the treatment of female sexual dysfunction."

The securities sold in this placement have not been registered under the Securities Act of 1933 or state securities laws and may not be offered or sold in the United States absent registration with the Securities and Exchange Commission or an applicable exemption from the registration requirements. BioSante has agreed to file a registration statement with the SEC for purposes of registering the resale of the shares sold in the placement. This news release is not an offer to sell or the solicitation of an offer to buy the securities discussed herein.

About BioSante Pharmaceuticals, Inc.

BioSante is an emerging pharmaceutical company developing a pipeline of hormone therapy products to treat both men and women. BioSante also is developing its nanoparticulate-based platform technology (CAP) for novel vaccines, vaccine adjuvants and drug delivery systems. Additional information is available online at www.biosantepharm.com.

This news release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. The statements regarding BioSante contained in this press release that are not historical in nature, particularly those that utilize terminology such as "may," "will," "should," "likely," "expects," "anticipates," "estimates," "believes" or "plans," or comparable terminology, are forward-looking statements. Forward-looking statements are based on current expectations and assumptions, and entail various risks and uncertainties that could cause actual results to differ materially from those expressed in such forward-looking statements. Important factors known to BioSante that cause actual results to differ materially from those expressed in such forward-looking statements are the difficulty of developing pharmaceutical products, adverse reports from others about products similar to ours, obtaining regulatory and other approvals and achieving

market acceptance, and other factors identified and discussed from time to time in BioSante's filings with the Securities and Exchange Commission, including those factors discussed on pages 17 to 23 of BioSante's Form 10-KSB, which discussion also is incorporated herein by reference.

Contact:

Phillip Donenberg CFO - 847-478-0500 ext 101; donenber@biosantepharm.com
