

# PATENT ASSIGNMENT

Electronic Version v1.1  
Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
<b>CONVEYING PARTY DATA</b>	
Name	Execution Date
CardioVascular BioTherapeutics, Inc.	03/19/2009
<b>RECEIVING PARTY DATA</b>	
Name:	Phage Biotechnology Corporation
Street Address:	6868 Nancy Ridge Road, Suite 100
City:	San Diego
State/Country:	CALIFORNIA
Postal Code:	92121
<b>PROPERTY NUMBERS Total: 7</b>	
Property Type	Number
Patent Number:	6268178
Patent Number:	6642026
Patent Number:	6773899
Patent Number:	6794162
PCT Number:	US0040020
PCT Number:	US0125537
PCT Number:	US0125477
<b>CORRESPONDENCE DATA</b>	
Fax Number:	(866)733-0843
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Email:	rbokhari@phagebiotech.com
Correspondent Name:	Phage Biotechnology Corporation
Address Line 1:	6868 Nancy Ridge Road, Suite 100
Address Line 4:	San Diego, CALIFORNIA 92121
ATTORNEY DOCKET NUMBER:	JPA-ASS0GEN

OP \$280.00 6268178

**500990339**

**PATENT**  
**REEL: 023379 FRAME: 0723**

NAME OF SUBMITTER:

Raazia Bokhari

**Total Attachments: 35**

source=Phage#121 OrderRejectPatentAgreementBW#page1.tif  
source=Phage#121 OrderRejectPatentAgreementBW#page2.tif  
source=Phage#100MotRejectCardioAgmt (1)#page1.tif  
source=Phage#100MotRejectCardioAgmt (1)#page2.tif  
source=Phage#100MotRejectCardioAgmt (1)#page3.tif  
source=Phage#100MotRejectCardioAgmt (1)#page4.tif  
source=Phage#100MotRejectCardioAgmt (1)#page5.tif  
source=Phage#100MotRejectCardioAgmt (1)#page6.tif  
source=Phage#100MotRejectCardioAgmt (1)#page7.tif  
source=Phage#100MotRejectCardioAgmt (1)#page8.tif  
source=Phage#100MotRejectCardioAgmt (1)#page9.tif  
source=Phage#100MotRejectCardioAgmt (1)#page10.tif  
source=Phage#100MotRejectCardioAgmt (1)#page11.tif  
source=Phage#100MotRejectCardioAgmt (1)#page12.tif  
source=Phage#100MotRejectCardioAgmt (1)#page13.tif  
source=Phage#100MotRejectCardioAgmt (1)#page14.tif  
source=Phage#100MotRejectCardioAgmt (1)#page15.tif  
source=Phage#100MotRejectCardioAgmt (1)#page16.tif  
source=Phage#100MotRejectCardioAgmt (1)#page17.tif  
source=Phage#100MotRejectCardioAgmt (1)#page18.tif  
source=Phage#100MotRejectCardioAgmt (1)#page19.tif  
source=Phage#100MotRejectCardioAgmt (1)#page20.tif  
source=Phage#100MotRejectCardioAgmt (1)#page21.tif  
source=Phage#100MotRejectCardioAgmt (1)#page22.tif  
source=Phage#100MotRejectCardioAgmt (1)#page23.tif  
source=Phage#100MotRejectCardioAgmt (1)#page24.tif  
source=Phage#100MotRejectCardioAgmt (1)#page25.tif  
source=Phage#100MotRejectCardioAgmt (1)#page26.tif  
source=Phage#100MotRejectCardioAgmt (1)#page27.tif  
source=Phage#100MotRejectCardioAgmt (1)#page28.tif  
source=Phage#100MotRejectCardioAgmt (1)#page29.tif  
source=Phage#100MotRejectCardioAgmt (1)#page30.tif  
source=Phage#100MotRejectCardioAgmt (1)#page31.tif  
source=Phage#100MotRejectCardioAgmt (1)#page32.tif  
source=Phage#100MotRejectCardioAgmt (1)#page33.tif

Case 08-09859-LA11 Filed 03/19/09 Doc 121 Pg. 1 of 2

CSD 1001A [11/15/04]

Name, Address, Telephone No. &amp; I.D. No.

Marc J. Winthrop - State Bar No. 163218

Winthrop Couchot Professional Corporation

660 Newport Center Dr., Suite 400

Newport Beach, CA 92660

Tel: (949) 720-4100 Fax: (949) 720-4111

Order Entered on

March 20, 2009  
by Clerk U.S. Bankruptcy Court  
Southern District of California

## UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

325 West "F" Street, San Diego, California 92101-6991

In Re

PHAGE BIOTECHNOLOGY CORPORATION

Debtor.

BANKRUPTCY NO. 08-09859-LA11

Date of Hearing: None

Time of Hearing: None

Name of Judge: Louise DeCarl Adler

## ORDER ON

## DEBTOR'S MOTION FOR ORDER APPROVING REJECTION OF JOINT PATENT AGREEMENT

IT IS ORDERED THAT the relief sought as set forth on the continuation pages attached and numbered two (2) through 2 with exhibits, if any, for a total of 2 pages, is granted. Motion/Application Docket Entry No. 100

//

//

//

//

//

//

DATED: March 19, 2009

Signature by the attorney constitutes a certification under Fed. R. of Bankr. P. 9011 that the relief in the order is the relief granted by the court.

Submitted by:

Winthrop Couchot P.C.  
(Firm name)By: /s/ Marc WinthropAttorney for ☒ Movant ☐ Respondent

*Louise DeCarl Adler*  
Judge, United States Bankruptcy Court

CSD 1001A

PATENT  
REEL: 023379 FRAME: 0725

Case 08-09859-LA11 Filed 03/19/09 Doc 121 Pg. 2 of 2

CSD 1001A [11/15/04] (Page 2)

ORDER ON DEBTOR'S MOTION FOR ORDER APPROVING REJECTION OF JOINT

DEBTOR: PHAGE BIOTECHNOLOGY CORPORATION

CASE NO: 08-09859-LA11

---

IT IS HEREBY ORDERED that:

1. The Motion is granted; and
2. The Debtor is authorized, effective February 28, 2007, to reject the Joint Patent Agreement between the Debtor and CardioVascular BioTherapeutics, Inc. pursuant to the terms and conditions of the Motion.

CSD 1001A

*Signed by Judge Louise DeCarl Adler March 19, 2009***PATENT  
REEL: 023379 FRAME: 0726**

1 MARC J. WINTHROP – State Bar No. 63218  
2 CHARLES LIU – State Bar No. 190513  
3 **WINTHROP COUCHOT**  
4 **PROFESSIONAL CORPORATION**  
5 660 Newport Center Drive, Ste 400  
6 Newport Beach, CA 92660

7 Telephone: (949) 720-4100  
8 Facsimile: (949) 720-4111

9 Proposed General Insolvency Counsel for  
10 Debtor and Debtor-in-Possession

11 **UNITED STATES BANKRUPTCY COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13  
14 In re

15 PHAGE BIOTECHNOLOGY CORPORATION,  
16  
17  
18  
19 Debtor and Debtor-in-Possession

Case No. 08-09859-LA11

Chapter 11 Proceeding

**DEBTOR'S MOTION FOR ORDER  
APPROVING REJECTION OF JOINT  
PATENT AGREEMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES AND DECLARATION IN  
SUPPORT THEREOF**

[No Hearing Set]

1 Phage Biotechnology Corporation, a Delaware corporation, the debtor and debtor-in-  
2 possession in the above entitled Chapter 11 proceeding (the "Debtor"), hereby moves the Court for  
3 an order authorizing the Debtor to reject the following:

- 4 1. Joint Patent Agreement (the "Agreement"), effective February 28, 2007 between  
5 the Debtor and CardioVascular BioTherapeutics, Inc. ("Cardio"); and
- 6 2. Granting such further relief as the Court deems just and proper.

7 This motion is made on the basis of the Declaration of Thomas Stegmann (the "Stegmann  
8 Declaration"), the within the points and authorities, and on such other evidence as the Court elects  
9 to consider prior to or at the hearing on this matter, should one be requested.

10  
11 DATED: February 27, 2009

**WINTHROP COUCHOT  
PROFESSIONAL CORPORATION**

13 By: /s/ Marc J. Winthrop  
14 Marc J. Winthrop  
15 Charles Liu  
16 Proposed General Insolvency Counsel for  
17 Debtor and Debtor-in-Possession  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I.

**PRELIMINARY STATEMENT**

Phage Biotechnology Corporation, the debtor and debtor-in-possession herein ("Phage" or "Debtor") is in the business of developing and commercializing an efficient method of manufacturing bio-pharmaceuticals with its proprietary technology. On October 2, 2008, certain creditors commenced an involuntary Chapter 7 case against the Debtor (the "Petition Date"). On October 28, 2008, the Debtor converted the case into a voluntary Chapter 11 case.

The Debtor's turnaround effort contemplates maximizing the value of the estate's assets. As part of this effort, the Debtor seeks to reject the Joint Patent Agreement (the "Agreement") with Cardio returning full ownership of certain jointly owned patents and patent applications to the Debtor and eliminating certain cross licensing that will expand the scope of the fields in which the Debtor can practice the inventions covered by the patents and patent applications, thereby increasing the value of the Debtor's assets and enhancing the viability of the Debtor's business. A copy of the Agreement is attached to the Declaration of Thomas Stegmann (the "Stegmann Declaration") as Exhibit "1."

II.

**GENERAL BACKGROUND FACTS REGARDING THE DEBTOR**

A) **The Debtor.**

The Debtor is a Delaware corporation with its corporate office and research and manufacturing facilities located in San Diego, California. The Debtor generates manufacturing and R&D revenue for work performed at the request of a related company, CardioVascular Biotherapeutics ("Cardio"). The revenue generated from this sole customer is not enough to produce a cash profit. The Debtor currently employs 11 people, including part time employees and consultants of various kinds. From the Debtor's inception until October 7, 2008, the Debtor's Chairman, President, and CEO was Daniel Montano ("Montano"). Mr. Montano resigned from all positions with the Debtor on or about October 7, 2008. The Debtor's current CEO is Dr. Thomas J. Stegmann.

1           **B)     The Debtor's Business.**

2           The Debtor was founded in 1998 to commercialize an efficient method of manufacturing  
3 bio-pharmaceuticals which was invented by a group of Ukrainian scientists. As a development  
4 stage company which is still not generating significant revenue, the Debtor depends significantly on  
5 external funding for survival and progress. A majority of the external funding provided to date has  
6 come from the holders (the "Noteholders") of the Debtor's promissory notes (the "Notes"). The  
7 Debtor's promissory notes were issued at various dates from 2001 through to 2004 with a three  
8 year maturity date. The Debtor raised a total of \$16.7 million in the period from 2001 to 2005 from  
9 two series of convertible promissory notes. Series I totaled \$11.6 million principal with 233  
10 Noteholders and Series II totaled \$5.1 million of principal with 20 Noteholders. The principal and  
11 accrued interest of these Notes now total approximately \$23.5 million, or approximately 75% of the  
12 Debtor's total debt. The corporate books of record of the Debtor are unaudited.

13           The Debtor has a contractual relationship with Phage Biotech Ukraine LLC, located in  
14 Kiev, Ukraine ("Phage Ukraine"), which employs a research team and supports the San Diego  
15 manufacturing facility. Substantially all of the Debtor's original intellectual property was sourced  
16 from Phage Ukraine.

17           The Debtor's intellectual property includes six U.S. patents and related foreign patent  
18 approvals in European countries with large markets for the Debtor's drugs. In Japan, three of the  
19 Debtor's U.S. Patents are currently being examined.

20           The Debtor's main route to commercialization and profitability is to seek further revenue  
21 generating activities for its licensed San Diego manufacturing facility, and to gain U.S. Food and  
22 Drug Administration ("FDA") approval for its bio-generic and proprietary drug portfolio to be  
23 manufactured by the Phage process. At present two compounds are in FDA clinical trials: Phage's  
24 Human Growth Hormone ("HGH") and Cardio's Fibroblast Growth Factor ("FGF").

25           **C)     Events Precipitating This Chapter 11 Filing.**

26           The Debtor's financial problems and the consequent need to file this bankruptcy proceeding  
27 were primarily caused by the following problems:  
28



1 As a start up company, the Debtor has minimal income and thus needs infusions of outside  
2 capital in order to fund its operations of developing and commercializing its intellectual property.  
3 From 1998 to 2008, the Debtor raised net capital proceeds of \$24.5 million in common and  
4 preferred stock, and note and loan financing. However, from late summer 2005 until summer of  
5 2008, the Debtor only raised net proceeds of \$6.0 million of outside capital which was grossly  
6 inadequate in relation to the Debtor's needs, maturing Note obligations, and the scale of its  
7 opportunity. This failure to raise sufficient capital in the last several years led to the Debtor  
8 defaulting on its Note obligations as well as obligations to other creditors.

9 **D) The Involuntary Bankruptcy Filing and Conversion to Chapter 11.**

10 Because of the Debtor's default under the Notes as well as the Debtor's default of its  
11 obligations to one of its board members, on October 2, 2008 the following creditors of the Debtor  
12 filed an involuntary Chapter 7 petition against the Debtor: Sergiy Buryak; International Legal  
13 Consultants; Clifton Melvin; Simon Kornberg; Jon Kornberg; Forest Nominees Ltd.; Shellac  
14 Limited; Alex Catto; Iain Little; Colin Abraham; Pang Yen Chen; Colin MacNab; Robert &  
15 Katrina Chanson; Lalique Holdings; Fabio Pelli; Russel Earl Wayne Lotherington; Jonathan  
16 Bonsey; Paul Murray; and Lindsey Fuller (collectively, "Petitioning Creditors").

17 Concurrently with the involuntary petition on October 2, 2008, the Petitioning Creditors  
18 filed a motion for the appointment of an interim trustee. On October 7, 2008, Mr. Montano  
19 resigned and the Debtor appointed one of its board members, Dr. Stegmann, to be the Debtor's new  
20 CEO. Because the Petitioning Creditors have great confidence in Dr. Stegmann, the Petitioning  
21 Creditors withdrew the motion for appointment of an interim trustee. The Debtor also appointed  
22 two of the Petitioning Creditors, Richard Ritter and Robert Chanson, to the Debtor's board. The  
23 Debtor's new board decided it is in the Debtor's best interest to reorganize in a Chapter 11 case so  
24 the Debtor converted its involuntary Chapter 7 case to a voluntary Chapter 11 case.

25 **E) The General Outline of Turnaround Plan.** The Debtor's turnaround effort, which  
26 is now substantially underway, will focus first on obtaining emergency capital to pay the Debtor's  
27 operating expenses and protect its property. Thus stabilized, the Debtor will pursue long term  
28 capital to develop and commercialize its intellectual property.

F) **The Joint Patent Agreement.** Intellectual property is the most important and valuable asset of the Debtor. On August 2004 the Debtor entered into a Joint Patent Ownership and License Agreement with Cardio that was later amended and restated on May 23, 2006, that was later superseded in its entirety by the Joint Patent Agreement (the “Agreement”) to further define and clarify the obligations and expectations of the parties. The Agreement provides for, among other things, 1) a transfer from the Debtor to Cardio of a Fifty Percent (50%) ownership interest in certain patents and patent applications in exchange for ongoing obligations on each party to file, pay, prosecute and maintain the patents and patent applications in order to maintain joint ownership, 2) certain manufacturing services the Debtor would provide to Cardio at the Debtor’s cost with no profit component with a future royalty stream to the Debtor of Four Percent (4%) of sales of commercialized products as consideration for the Debtor manufacturing drug product at its own cost for Cardio with no profit to the Debtor, and 3) the cross licensing of the inventions covered under the patents and patent applications to allow Cardio the exclusive right to practice the inventions within the defined field of angiogenesis (the “Field”) and allow the Debtor the exclusive right to practice the inventions in all areas outside the Field in exchange for a future royalty stream to the Debtor of Six Percent (6%) of Cardio’s sales of commercialized products as consideration for the license granted to Cardio.

## III

**THE BANKRUPTCY CODE ACCORDS SIGNIFICANT DEFERENCE TO THE**  
**DEBTOR'S DECISION TO REJECT A PREPETITION CONTRACT**

The primary goal of Chapter 11 is rehabilitation of the debtor. Eastern Airlines, Inc. v. International Assoc. of Machinists & Aerospace Workers, AFL-CIO, et al. (In re Ionosphere Clubs, Inc.), 108 B.R. 901, 937 (Bankr. S.D.N.Y. 1989) ("The paramount policy and goal of Chapter 11, to which all other bankruptcy policies are subordinated, is the rehabilitation of the debtor."), citing N.L.R.B. v. Bildisco & Bildisco, 465 U.S. 513 (1984) ("The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources."). Another predominant policy of bankruptcy law is equality of treatment of creditors with similar claims. Union Bank v. Wolas, 112 S. Ct. 527, 533

1 (1991). In furtherance of this goal, there is a long-standing principle of bankruptcy law that a  
2 trustee (or debtor-in-possession in a Chapter 11 case) for the debtor's estate should not be  
3 compelled to assume (perform or pay) the debtor's obligations under a prebankruptcy contract that  
4 is executory and burdensome to the estate. *Bildisco & Bildisco*, 465 U.S. at 528 ("[T]he authority  
5 to reject an executory contract is vital to the basic purpose to a Chapter 11 reorganization, because  
6 rejection can release a debtor's estate from burdensome obligations that can impede a successful  
7 reorganization.").

8 Section 365 of the Bankruptcy Code authorizes a trustee and, therefore, a debtor-in-  
9 possession, subject to court approval, to reject any executory contract or unexpired lease of the  
10 debtor. Bankruptcy Code section 365 states in pertinent part:

11 (a) Except as provided in sections 765 and 766 of this title and in subsections  
12 (b), (c), and (d) of this section, the trustee, subject to the court's approval, may  
assume or reject any executory contract or unexpired lease of the debtor.

13 11 U.S.C. § 365(a).

14 Rejection of an executory contract or unexpired lease is appropriate when the best interests  
15 of the estate and its creditors will be served by such rejection, because the contract or lease is a  
16 burden on the estate. *In re Robert Helms Construction*, 110 F.3d 1470, 1474 (9<sup>th</sup> Cir. 1997). In  
17 examining whether rejection is appropriate in a given case, courts typically inquire whether or not  
18 the proposed rejection is within the sound "business judgment" of the trustee or debtor in  
19 possession. *In re Orion Pictures Corp.*, 4 F.3d 1095, 1099 (2<sup>nd</sup> Cir. 1993), *cert. denied*, 114 S.Ct.  
20 1418 (1994); *In re Lubrizol Enterprises*, 756 F.2d 1043 (4<sup>th</sup> Cir. 1985) *cert. denied*, 475 U.S. 1057  
21 (1986); *In re Huang*, 23 B.R. 798, 800 (9<sup>th</sup> Cir. BAP 1982); *In re Minges*, 602 F.2d 38, 43 (3<sup>d</sup> Cir.  
22 1979).

23 The "business judgment" test provides a flexible standard for determining whether a debtor  
24 may reject an executory contract or unexpired lease. Courts addressing the question of whether  
25 rejection would be advantageous to the estate must start with the proposition that the debtor's  
26 decision is to be accorded the deference mandated by the sound business-judgment rule as  
27 generally applied by courts to discretionary actions or decisions of corporate directors. *Lubrizol*  
28 *Enterprises, supra*. As stated by the Fourth Circuit:

1 As generally formulated and applied in corporate litigation, the rule is that  
2 courts should defer to--should not interfere with--decisions of corporate  
3 directors upon matters entrusted to their business judgment except upon a  
4 finding of bad faith or gross abuse of their "business discretion." Transposed  
5 to the bankruptcy context, the rule as applied to a bankrupt's decision to reject  
6 an executory contract because of perceived business advantage requires that  
7 the decision be accepted by courts unless it is shown that the bankrupt's  
8 decision was one taken in bad faith or in gross abuse of the bankrupt's retained  
9 business discretion.

10 In bankruptcy litigation the issue is of course first presented for judicial  
11 determination when a debtor, having decided that rejection will be beneficial  
12 within contemplation of § 365(a), moves for approval of the rejection. The issue  
13 thereby presented for first instance judicial determination by the bankruptcy  
14 court is whether the decision of the debtor that rejection will be advantageous is  
15 so manifestly unreasonable that it could not be based on sound business  
16 judgment, but only on bad faith, or whim or caprice. That issue is one of fact to  
17 be decided as such by the bankruptcy court by the normal processes of fact  
18 adjudication. And the resulting fact determination by the bankruptcy court is  
19 perforce then reviewable up the line under the clearly erroneous standard.

20 Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc., 756 F.2d 1043, 1046-1047. *See also*  
21 In re Thinking Machines Corp., 182 B.R. 365, 368 (D.Mass. 1995) ("The application of the  
22 business judgment rule to requests for approval, and the high degree of deference usually afforded  
23 purely economic decisions of trustees, makes court refusal unlikely, or at least sufficiently remote  
24 to impose the slight burden of uncertainty upon the lessor."); In re Bullet Jet Charter, Inc., 177  
25 B.R. 593, 601 (Bankr.N.D.Ill. 1995) ("bankruptcy judge should have a deferential view of the  
26 debtor's business judgment"); In re G Survivor Corp., 171 B.R. 755, 757 (Bankr.S.D.N.Y. 1994)  
27 ("Generally, absent a showing of bad faith, or an abuse of business discretion, the debtor's business  
28 judgment will not be altered.").

#### IV

### **A SOUND BASIS EXISTS FOR THE REJECTION OF THE JOINT PATENT AGREEMENT**

29 The Debtor has determined that it is in the best interest of creditors to maximize the  
30 bankruptcy estate by rejecting the Agreement and therefore increasing the use, value and ownership  
31 of the Debtor's intellectual property.

1       1. Ownership. Cardio has persistently failed to satisfy its ongoing obligation to file, pay,  
2 prosecute and maintain the jointly owned patents and jointly owned patent applications, which  
3 Cardio is expressly responsible to do according to Section 13.1 of the Agreement. The first  
4 sentence of Section 13.1 clearly makes the joint ownership executory because in order to maintain  
5 its ownership interest, each party is responsible for the filing, payment, prosecution and  
6 maintenance of the patents and patent applications, the obligation of which for each patent and  
7 patent application currently exists and will continue for many years up to the date each currently  
8 issue patent expires and up to the date the patent arising out of any of the patent applications, if  
9 granted, expires. Because Cardio has failed and continues to fail in its obligations, the full cost and  
10 burden has fallen on the Debtor to file, pay, prosecute and maintain the patents and patent  
11 applications. Having failed to live up to its obligation, Cardio has failed to satisfy a material term  
12 required to have its ownership interest and therefore Cardio has forfeited its ownership interest.  
13 Filing, payment, prosecution and maintenance of the patents and patent applications is the  
14 consideration for which the ownership interest was transferred. Cardio has never satisfied the  
15 consideration, and therefore the joint ownership aspects of the Agreement have failed for lack of  
16 consideration. Phage is entitled to full ownership of the patents and patent applications because it  
17 has satisfied and continues to satisfy the full burden of filing, paying, prosecuting and maintaining  
18 the patents and patent applications. The patents and patent applications that are the subject of the  
19 Agreement are valuable intellectual property. An increase in the Debtor's ownership interest in  
20 this intellectual property increases the value of the Debtor's estate.

21       2. Manufacturing. Cardio has failed to pay for certain drug product that the Debtor  
22 recently manufactured for Cardio even after several demands for payment. The Debtor is aware  
23 that Cardio is financially distressed and cannot reasonably expect Cardio to pay. Related to this,  
24 Cardio has failed to place any further orders for drug product even in the face of written inquiry  
25 from the Debtor. The Debtor does not believe that Cardio will place any further orders and that  
26 even if Cardio does place an order, there is no assurance that Cardio will be able to pay. Therefore,  
27 the Debtor anticipates it will not be manufacturing drug product for Cardio pursuant to the  
28 Agreement. Furthermore, because Cardio is unable to place orders or pay for drug product, the

1 Debtor has no assurances that Cardio will ever get a drug candidate commercialized, and therefore  
2 the Debtor has no expectation that the royalty streams related thereto will ever come to bear.

3       3. Licensing. The fact that Cardio has been unable to pay and is unable to place orders  
4 draws into question Cardio's viability and in the face of other provisions of the Agreement failing,  
5 the Debtor does not believe it makes economic sense to continue the cross licensing under the  
6 Agreement because it limits the Debtor's use of the inventions and the Debtor does not anticipate  
7 that the future royalty stream will ever be realized. Therefore, terminating the cross licensing  
8 would allow the Debtor the full exploitation of the inventions covered under the patents and patent  
9 applications, thereby increasing the scope of its efforts and increasing its asset value and  
10 marketability. The Debtor is aware that despite rejection of the Agreement, Cardio may elect to  
11 preserve some of its rights as licensee under Bankruptcy Code Section 365(n). However, Section  
12 365(n) requires Cardio to continue to pay its obligations under the Agreement, including royalties,  
13 in order to retain any rights under the Agreement. Based on the Cardio's refusal or inability to pay  
14 its obligations under the Agreement, the Debtor believes it is unlikely that Cardio can meet the  
15 conditions necessary to retain any rights under Section 365(n).

16       As set forth above, and in the Stegmann Declaration, the Debtor has determined that in its  
17 business judgment, it must terminate the Agreement. The Agreement sought to be rejected by this  
18 Motion provides no benefit of the estate and only further impairs the Debtor's assets.  
19 Accordingly, the immediate rejection of the Agreement is important.

20       The Agreement being rejected by this Motion was subjected to a careful analysis as a part  
21 of the overall recovery plan. Management concluded that the Agreement is unprofitable, limits the  
22 Debtor's ownership and use of its intellectual property and has little or no value. In summary, the  
23 Agreement obligations are burdens on the estate and consequently the merits of rejecting the  
24 Agreement are compelling.

V

**THE JOINT PATENT AGREEMENT SHOULD BE DEEMED REJECTED AS OF THE  
DATE OF NOTIFICATION TO CARDIOVASCULAR BIOTHERAPY**

Courts have held that the rejection of a contract is effective as of the date the debtor/trustee communicates an unequivocal intention to assume or reject. In In re 1 Potato 2, Inc., 58 B.R. 752, 755-56 (Bankr.D.Minn. 1986), the court stated that the lease is rejected when the debtor clearly conveyed its intention to reject the unexpired lease in an unequivocal manner such as by letter or a motion to reject. This is in accord with the recent Ninth Circuit authority which held "that a bankruptcy court may approve retroactively the rejection of an unexpired nonresidential lease," and that the retroactive date may even be earlier than the date on which the landlord retakes possession. In re At Home Corporation, 392 F.3d 1064 (9<sup>th</sup> Cir. 2004).

In this case, circumstances warrant retroactive rejection. On February 20, 2009, the Debtor has already provided notice of its intention to reject the Agreement to Cardio. Attached to the Stegmann Declaration as Exhibit "2" is a copy of the Debtor's unequivocal notice of intent to reject the Agreement. Based on the foregoing, the Agreement described herein should be deemed rejected as of the date Cardio was notified of the Debtor's intent to reject the Agreement

VI

**CONCLUSION**

For the foregoing reasons, the Debtor would respectfully request that the Court grant the relief prayed for herein.

DATED: February 27, 2009

**WINTHROP COUCHOT  
PROFESSIONAL CORPORATION**

By: /s/ Marc J. Winthrop

Marc J. Winthrop

Charles Liu

General Insolvency Counsel for  
Debtor and Debtor-in-Possession

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

2

3  
4  
5  
6  
7

8  
9  
0

1  
2

34

5  
6  
7  
8  
9  
0

1  
2

3  
4  
5  
6  
7



1           11.     The Debtor's turnaround effort, which is now underway, will focus first on  
2 obtaining emergency capital to pay the Debtor's operating expenses and protect its property. Thus  
3 stabilized, the Debtor will pursue long term capital to develop and commercialize its intellectual  
4 property.

5           12.     The Agreement, the subject of this Motion, covers both domestic and international  
6 issued and pending patent applications.

7           13.     Cardio has persistently failed to satisfy its ongoing obligation to file, pay, prosecute  
8 and maintain the jointly owned patents and jointly owned patent applications, which Cardio is  
9 expressly responsible to do according to the Agreement.

10          14.     The Debtor does not believe that Cardio will place any further orders and that even  
11 if Cardio does place an order, there is no assurance that Cardio will be able to pay. Furthermore,  
12 because Cardio is unable to place orders or pay for drug product, the Debtor has no assurances that  
13 Cardio will ever get a drug candidate commercialized, and therefore the Debtor has no expectation  
14 that the royalty streams related thereto will ever come to bear.

15          15.     Based on the Cardio's refusal or inability to pay its obligations under the  
16 Agreement, the Debtor believes it is unlikely that Cardio can meet the conditions necessary to  
17 retain any rights under Section 365(n).

18          16.     The Agreement being rejected by this Motion was subjected to a careful analysis as  
19 a part of the overall recovery plan. The Debtor concluded that in its effort to maximize its  
20 bankruptcy estate for the benefit of the creditors, the Agreement should be rejected.

21           I declare that the foregoing is true and correct under the penalty of perjury.

22           Executed this \_\_th day of February 2009, in Petersberg, Germany.

23  
24                               /s/ To be provided  
25                               Thomas Stegmann, CEO  
26                               Phage Biotechnology Corporation  
27  
28

**Exhibit “1”**

**PATENT  
REEL: 023379 FRAME: 0740**

## JOINT PATENT AGREEMENT

February 28, 2007

This Joint Patent Agreement (the "**Agreement**") entered into as of the 28th day of February 2007 (the "**Effective Date**") between CardioVascular BioTherapeutics, Inc. ("**CARDIO**"), whose principal place of business is at 1635 Village Center Circle, Suite 250, Las Vegas, NV 89134, and Phage Biotechnology Corporation ("**PHAGE**"), whose principal place of business is at 1635 Village Center Circle, Suite 260, Las Vegas, NV 89134.

WHEREAS, CARDIO plans to develop and commercialize therapeutic methods related to the induction of angiogenesis or wound healing by administration of Fibroblast Growth Factor ("**FGF**"); and,

WHEREAS, PHAGE plans to develop and commercialize recombinant DNA methods for producing peptides/proteins; and

WHEREAS, CARDIO and PHAGE entered into a Joint Patent Ownership and License Agreement dated as of August 16, 2004, which was later amended and restated as of May 23, 2006 (the "**Joint Ownership Agreement**"), for consideration the sufficiency of which was acknowledged in each agreement, pursuant to which PHAGE granted CARDIO a fifty percent (50%) ownership interest in certain patents and patent applications listed in the Joint Ownership Agreement, as well as certain future patent rights, and the parties acknowledged that CARDIO would have exclusive rights within a defined Field, while PHAGE would have exclusive rights outside that Field; and

WHEREAS, CARDIO and PHAGE now wish to enter a new agreement superseding the Joint Ownership Agreement so as to specify those future patents and patent applications that are to be subject to joint ownership and so as to restate the licenses granted in the Joint Ownership Agreement; and

WHEREAS, CARDIO and PHAGE acknowledge that the jointly owned and cross-licensed rights are key to the parties' respective plans for development and commercialization and wish to further clarify the parties' respective rights and provide for continued access to the necessary rights in the event of insolvency;

NOW THEREFORE, in consideration of the supersession of the Joint Ownership Agreement, the grant of ownership interests in future patent applications herein, the patent licenses restated herein, the continuing security interests granted herein and other valuable considerations, the sufficiency of which is acknowledged, the parties agree as follows:

1. **Supersession of Joint Ownership Agreement.** As of the Effective Date, the Joint Ownership Agreement is superseded.

## 2. Definitions.

2.1 **"Field"** shall encompass any angiogenic or wound healing compositions, (including in particular, but without limitation, all FGF species, fragments, derivatives, and analogs thereof, nucleic acid sequences encoding angiogenic or wound healing proteins/peptides), vectors and host cells comprising said DNA sequences, methods of making the angiogenic or wound healing compositions, and methods of inducing angiogenesis or wound healing employing the said compositions. CARDIO-developed devices and methods of use thereof for delivery of angiogenic or wound healing compositions are NOT included within the Field, and are NOT subject to joint ownership or any other terms of this Agreement.

2.2 **"Territory"** shall mean worldwide.

2.3 **"Jointly Owned Patent Applications"** shall mean the pending Foreign Patent Applications listed below, including any foreign national patent applications which claim priority to the Foreign Patent Applications and any Future Patent Applications, including any continuations, divisionals, re-exams, reissues and continuations-in-part and any other forms of related applications, that claim domestic or international priority to any of the Issued United States or foreign patents, or pending international or foreign patent applications, specifically listed by patent or application number herein.

### (a) Issued US Patents:

(i) U.S. 6,268,178 entitled "Phage-Dependent Super-Production of Biologically Active Protein and Peptides;" and

(ii) U.S. 6,642,026 entitled "Method of Producing Biologically Active Human Acidic Fibroblast Growth Factor and its Use in Promoting Angiogenesis."

(iii) U.S. 6,773,899 entitled "Phage-Dependent Super-Production of Biologically Active Protein and Peptides";

(iv) U.S. 6,794,162, entitled "Phage-Dependent Super-Production of Biologically Active Protein and Peptides;"

### (b) Foreign Patent Applications

(i) International Patent Applications. All foreign patent applications related to the above-referenced U.S. patents and applications and claiming priority to the following international patent applications under the Patent Cooperation Treaty (PCT):

A. International Patent Application No. PCT/US00/40020, published as International Publication No. WO 00/71731 A2 on November 30, 2000 entitled "Phage-Dependent Super-Production of Biologically Active Protein and Peptides"

B. International Patent Application No. PCT/US01/25537, published as International Publication No. WO 02/14471 A2 on February 21, 2002 entitled "Method of Producing Biologically Active Human Acidic Fibroblast Growth Factor and its Use in Promoting Angiogenesis"

C. International Patent Application No. PCT/US01/25477, published as International Publication No. WO 02/14468 A2 on February 21, 2002, entitled "Phage-Dependent Super-Production of Biologically Active Protein and Peptides;"

(ii) **Foreign National or Regional Patent Applications.** Following is a list of foreign national and regional patent applications, issued or pending as of February 28, 2007, which claim priority to the International Patent Applications mentioned above.

No.	Appl. No.	Patent No.	Filing Date	Country	Title	Status
1	00932819.6	1180153	May 24, 2000	AT	Phage-Dependent Super-Production Of Biologically Active Protein And Peptides	Issued
2	00932819.6	1180153	May 24, 2000	BE	Phage-Dependent Super-Production Of Biologically Active Protein And Peptides	Issued
3	00932819.6	1180153	May 24, 2000	CH	Phage-Dependent Super-Production Of Biologically Active Protein And Peptides	Issued
4	00932819.6	1180153	May 24, 2000	DE	Phage-Dependent Super-Production Of Biologically Active Protein And Peptides	Issued
5	00932819.6	1180153	May 24, 2000	EP	Phage-Dependent Super-Production Of Biologically Active Protein And Peptides	Issued
6	00932819.6	1180153	May 24, 2000	FR	Phage-Dependent Super-Production Of Biologically Active Protein And Peptides	Issued
7	00932819.6	1180153	May 24, 2000	UK	Phage-Dependent Super-Production Of Biologically Active Protein And Peptides	Issued
8	00932819.6	1180153	May 24, 2000	IE	Phage-Dependent Super-Production Of Biologically Active Protein And Peptides	Issued
9	00932819.6	1180153	May 24, 2000	LI	Phage-Dependent Super-Production Of Biologically Active Protein And Peptides	Issued

10	2000-620108		May 24, 2000	JP	Phage-Dependent Super-Production Of Biologically Active Protein And Peptides	Pending
11	2001 284914	2001 284914	August 15, 2001	AU	Phage-Dependent Super-Production Of Biologically Active Protein And Peptides	Issued
12	2419203		August 15, 2001	CA	Phage-Dependent Super-Production Of Biologically Active Protein And Peptides	Pending
13	01964014.3		August 15, 2001	EP	Phage-Dependent Super-Production Of Biologically Active Protein And Peptides	Pending
14	2002-519596		August 15, 2001	JP	Phage-Dependent Super-Production Of Biologically Active Protein And Peptides	Pending
15	2003-7002240		August 15, 2001	KR	Phage-Dependent Super-Production Of Biologically Active Protein And Peptides	Pending
16	2001 288256	2001 288256	August 15, 2001	AU	Method of Producing Biologically Active Human Acidic Fibroblast Growth Factor and its Use in Promoting Angiogenesis	Issued
17	2419338		August 15, 2001	CA	Method of Producing Biologically Active Human Acidic Fibroblast Growth Factor and its Use in Promoting Angiogenesis	Pending
18	01967977.8		August 15, 2001	EP	Method of Producing Biologically Active Human Acidic Fibroblast Growth Factor and its Use in Promoting Angiogenesis	Pending
19	2002-519599		August 15, 2001	JP	Method of Producing Biologically Active Human Acidic Fibroblast Growth Factor and its Use in Promoting Angiogenesis	Pending

20	2003-7002239		August 15, 2001	KR	Method of Producing Biologically Active Human Acidic Fibroblast Growth Factor and its Use in Promoting Angiogenesis	Pending
----	--------------	--	-----------------	----	---	---------

(c) **Future Patent Applications:**

All U.S. and foreign patent applications, including continuations, divisionals, re-exams, reissues and continuations-in-part, and any other forms of related applications, that claim domestic or international priority to any of the issued United States or foreign patents, or pending United States, international, or foreign patent applications, specifically listed by patent or application number in Section 2.3.

2.4 **"Jointly Owned Patents"** shall mean the Issued US Patents listed above, patents issued on the Foreign National or Regional Patent Applications listed above, and any patents that issue directly from any Jointly Owned Patent Application.

2.5 **"Patent Rights"** shall mean the rights to make, use, practice, sell, offer to sell, and import the Products and/or Processes covered by any issued, unexpired claim of a Jointly Owned Patent or a pending claim of a Jointly Owned Patent Application.

2.6 **"Product"** shall mean any product which:

(a) is covered in whole or in part by an issued, unexpired claim of a Jointly Owned Patent or a pending claim of a Jointly Owned Patent Application; or

(b) is manufactured by using a process which is covered in whole or in part by an issued, unexpired claim of a Jointly Owned Patent or a pending claim of a Jointly Owned Patent Application.

2.7 **"Process"** shall mean any process which is covered in whole or in part by an issued, unexpired claim of a Jointly Owned Patent or a pending claim of a Jointly Owned Patent Application.

2.8 **"Affiliate"** means, with respect to any person or entity, any other person or entity which, directly or indirectly, controls, is controlled by or is under common control with such entity. The various forms of the term "control", as used in the immediately preceding sentence, means the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the equity of the subject entity or the possession, directly or indirectly, of power to direct or cause the direction of management or policies of the subject entity.

2.9 **"Confidential Information"** as used herein means any and all information provided by either PHAGE or CARDIO or either of their Affiliates (the "Provider") to the other party to this Agreement or its Affiliates (the "Recipient") regarding the technology, business, operations and/or assets of the Provider, and shall include drawings, product requirements, designs, plans, ideas, formulae, compositions, blends, processes, know-how, processes and techniques, systems, research and

development information, proposals, technical data, financial and accounting data, business and marketing plans, and customer and supplier lists and related information; or information relating to devices, methods, apparatus, research, yields or specifications; provided that, notwithstanding the foregoing, the term "Confidential Information" shall not include (a) information which is or becomes a part of the public domain through no act or omission of the Recipient; (b) information which was in the Recipient's lawful possession prior to the disclosure and had not been obtained by the Recipient either directly or indirectly from the disclosing party; (c) information which is lawfully disclosed to the Recipient by a third party without restriction on disclosure; or (d) information which the Recipient can show, through documented evidence, to have been independently developed by the Recipient.

2.10 "**Liabilities**" shall mean any and all obligations, liabilities and indebtedness of PHAGE or CARDIO or to any parent, affiliate or subsidiary of PHAGE or CARDIO of any and every kind and nature, howsoever created, arising or evidenced and howsoever owned, held or acquired, whether now or hereafter existing, whether now due or to become due, whether primary, secondary, direct, indirect, absolute, contingent or otherwise (*including, without limitation, obligations of performance*), whether several, joint or joint and several, and whether arising or existing under written or oral agreement or by operation of law.

### 3. **Patent Assignments.**

To the extent that Future Patent Applications are not already the subject of one or more preexisting assignments perfecting joint title in PHAGE and CARDIO, PHAGE and CARDIO agree that all such Future Patent Applications will be assigned by the respective inventors to PHAGE and CARDIO jointly, with each party having a 50% ownership interest. PHAGE and CARDIO anticipate that these inventors will be under a contractual or employment-based obligation to assign either to PHAGE or to CARDIO. PHAGE and CARDIO agree to compel such inventors to execute any documents that may be necessary to effectuate the joint assignment to PHAGE and CARDIO. Upon such assignment, a jointly assigned Future Patent Application shall be included in the defined Jointly Owned Patent Applications.

### 4. **License Grant**

4.1 **Within the Field.** PHAGE hereby grants to CARDIO a non-revocable, royalty-bearing (subject to Section 11), exclusive right within the Territory to the Patent Rights in the Field, including the right to sublicense to third parties within the Field, provided that any third party sublicensee shall be subject to all of CARDIO's obligations under Sections 14, 15, 17 and 18.

4.2 **Outside the Field.** CARDIO hereby grants to PHAGE a non-revocable, royalty free, exclusive right within the Territory to the Patent Rights in all other fields outside of the Field, including the right to sublicense to third parties outside of the Field. The license is royalty free as agreed between the parties in exchange for PHAGE's grant to CARDIO of a fifty percent (50%) ownership interest in the Jointly Owned Patents.

5. **KBDC License.** CARDIO's rights and obligations under this agreement are subject to a pre-existing agreement between CARDIO and Korea Biotechnology Development Co., Ltd. ("KBDC") granting exclusive rights to manufacture and market certain Products within the Field in the territories of Korea, China and Taiwan.



**6. Grant of Security Interest.**

6.1 As security for the payment of PHAGE's Liabilities to CARDIO under this Agreement, including performance of all contractual obligations, PHAGE hereby grants to CARDIO a continuing security interest in the Jointly Owned Patents and Jointly Owned Patent Applications. PHAGE agrees to execute: (i) a UCC-1 financing statement to evidence and perfect this security interest; and (ii) any other documents reasonably requested by CARDIO to permit creation of an enforceable, perfected security interest (collectively, the "CARDIO Security Documentation"). PHAGE hereby appoints CARDIO as its attorney-in-fact to execute, file and otherwise deliver the CARDIO Security Documentation on PHAGE's behalf, provided that CARDIO, as applicable, must give contemporaneous notice to PHAGE of the filing, and give PHAGE a copy of any filed CARDIO Security Document within thirty (30) days of receiving a stamped copy.

6.2 As security for the payment of CARDIO's Liabilities to PHAGE under this Agreement, including performance of all contractual obligations, CARDIO hereby grants to PHAGE a continuing security interest in the Jointly Owned Patents and Jointly Owned Patent Applications. CARDIO agrees to execute: (i) a UCC-1 financing statement to evidence and perfect this security interest; and (ii) any other documents reasonably requested by PHAGE to permit creation of an enforceable, perfected security interest (collectively, the "PHAGE Security Documentation"). CARDIO hereby appoints PHAGE as its attorney-in-fact to execute, file and otherwise deliver the PHAGE Security Documentation on CARDIO's behalf, provided that PHAGE, as applicable, must give contemporaneous notice to CARDIO of the filing, and give CARDIO a copy of any filed PHAGE Security Document within thirty (30) days of receiving a stamped copy.

**7. Rights Upon Insolvency.** The parties acknowledge that each party reposes trust and confidence in the other within the meaning of Sections 365(c) and (f) of the United States Bankruptcy Code ("Bankruptcy Code") so that, in the event of the bankruptcy of (i) PHAGE, CARDIO will be excused from accepting performance of PHAGE's obligations under this Agreement from anyone other than an assignee approved in writing by CARDIO; or (ii) CARDIO, PHAGE will be excused from accepting performance of CARDIO's obligations under this Agreement from anyone other than an assignee approved in writing by PHAGE.

The parties agree that each party is a "licensee of intellectual property" as that term is defined in §365(n) of the Bankruptcy Code and will continue to have all of the rights relating to technology licensed hereunder as provided in this Agreement, at its election, notwithstanding any bankruptcy by the other party, even if PHAGE or CARDIO attempts to reject this Agreement as an "executory contract" under the Bankruptcy Code.

**8. Right of First Refusal.**

8.1 As to CARDIO. In the event that PHAGE files a voluntary petition for bankruptcy pursuant to title 11 of the United States Code (the "Bankruptcy Code") or is the subject of an involuntary bankruptcy petition pursuant to the Bankruptcy Code, if at any time during such a bankruptcy proceeding PHAGE shall receive an offer from any party to purchase PHAGE's ownership interests in any of the Jointly Owned Patents or Jointly Owned Patent Applications, or PHAGE's rights as a licensee or licensor of the Patent Rights under this Agreement, which offer PHAGE intends to accept, then PHAGE shall deliver to CARDIO a copy of said offer or proposed contract (with the name

of the proposed purchaser deleted, if PHAGE so desires), and CARDIO shall have the right, for a period of fourteen (14) days after delivery of such offer or contract, to purchase such ownership interests or license rights on the same terms and provisions as set forth in such offer or contract. CARDIO shall exercise this right, if at all, by delivering its written notice of exercise to PHAGE on or before the expiration of said fourteen (14) day period. Upon such an exercise, PHAGE and CARDIO shall proceed to close in accordance with such contract. PHAGE shall have and retain any and all of its rights under this Agreement applicable to the period prior to such closing. If CARDIO does not so exercise its right of first refusal with respect to such offer or contract within said 14 day period, then PHAGE shall be free to consummate the transaction in accordance with the terms of such offer or contract, and any amendments thereto which do not vary any of the material business terms in any significant degree. If PHAGE shall fail to consummate such transaction within one hundred eighty (180) days after PHAGE's notice to CARDIO (or later, if the offer or contract contained a later closing date), then this right of first refusal shall again apply to any further offer which PHAGE intends to accept.

(a) Nothing herein shall be deemed to prevent or prohibit PHAGE's first accepting the offer or proposed contract with the proposed purchaser, expressly subject to CARDIO's right of first refusal, and then proceeding to notify CARDIO as set forth above.

(b) All information or copies of offers or contracts submitted to CARDIO hereunder shall be treated by CARDIO as strictly confidential, and shall not be disclosed to any other party, other than CARDIO's professional advisors.

8.2 As to PHAGE. In the event that CARDIO files a voluntary petition for bankruptcy pursuant to title 11 of the United States Code (the "Bankruptcy Code") or is the subject of an involuntary bankruptcy petition pursuant to the Bankruptcy Code, if at any time during such a bankruptcy proceeding CARDIO shall receive an offer from any party to purchase CARDIO's ownership interests in any of the Jointly Owned Patents or Jointly Owned Patent Applications, or CARDIO's rights as a licensee or licensor of the Patent Rights under this Agreement, which offer CARDIO intends to accept, then CARDIO shall deliver to PHAGE a copy of said offer or proposed contract (with the name of the proposed purchaser deleted, if CARDIO so desires), and PHAGE shall have the right, for a period of fourteen (14) days after delivery of such offer or contract, to purchase such ownership interests or license rights on the same terms and provisions as set forth in such offer or contract. PHAGE shall exercise this right, if at all, by delivering its written notice of exercise to CARDIO on or before the expiration of said fourteen (14) day period. Upon such an exercise, CARDIO and PHAGE shall proceed to close in accordance with such contract. CARDIO shall have and retain any and all of its rights under this Agreement applicable to the period prior to such closing. If PHAGE does not so exercise its right of first refusal with respect to such offer or contract within said 14 day period, then CARDIO shall be free to consummate the transaction in accordance with the terms of such offer or contract, and any amendments thereto which do not vary any of the material business terms in any significant degree. If CARDIO shall fail to consummate such transaction within one hundred eighty (180) days after CARDIO's notice to PHAGE (or later, if the offer or contract contained a later closing date), then this right of first refusal shall again apply to any further offer which CARDIO intends to accept.

(a) Nothing herein shall be deemed to prevent or prohibit CARDIO's first accepting the offer or proposed contract with the proposed purchaser, expressly subject to PHAGE's right of first refusal, and then proceeding to notify PHAGE as set forth above.

(b) All information or copies of offers or contracts submitted to PHAGE hereunder shall be treated by PHAGE as strictly confidential, and shall not be disclosed to any other party, other than PHAGE's professional advisors.

**9. Technical Development Services.**

9.1 Scope. PHAGE agrees to provide technical development services to CARDIO for the development and regulatory approvals of FGF, including, but not limited to, lab work, testing, and production of FGF for clinical trials, all at the direction and request of CARDIO.

9.2 Compensation. CARDIO agrees to pay PHAGE for any Technical Development Services performed by PHAGE at CARDIO's direction. Payment for such services will be limited to PHAGE's actual cost of service including direct, indirect and overhead costs, with no profit component. Any such amounts will be billed to CARDIO on a monthly basis. Payments for Technical Development Services are in addition to the compensation set forth in Section 10 and the royalties set forth in Section 11.

**10. FGF Manufacturing.**

10.1 Scope. If CARDIO so requests, PHAGE will produce FGF in commercial quantities for CARDIO, including any other Products.

10.2 Compensation. CARDIO shall purchase FGF from PHAGE by paying Four Percent (4%) of CARDIO's net sales price of finished Product to end customer or distributor.

11. Royalty. In consideration for the grant of the exclusive right to the Patent Rights in the Field, CARDIO shall pay PHAGE a six percent (6%) royalty on the net sales price of finished Product to end customer or distributor.

12. Term. Unless terminated under Section 20, the rights and obligations set forth in this Agreement shall commence as of the effective date of this Agreement and end upon the later of (a) the expiration of the last to expire Jointly Owned Patent and (b) the abandonment of the last pending Jointly Owned Patent Application.

**13. Patent Prosecution and Maintenance.**

13.1 During the Term of this Agreement, CARDIO and PHAGE will be jointly responsible for the filing, payment, prosecution and maintenance of all Jointly Owned Patents and Jointly Owned Patent Applications, irrespective of whether the inventions resulting in the Jointly Owned Patents and Jointly Owned Patent Applications were developed jointly or individually by either party. A party can, at its sole discretion, assign its entire right, title and interest in a particular Jointly Owned Patent or Jointly Owned Patent Application to the other party, in which case, the assigning party shall bear no further responsibility for the filing, payment, prosecution and maintenance of such Jointly Owned Patent or Jointly Owned Patent Application, and it shall lose its rights in such Jointly Owned Patent or Jointly Owned Patent Application.

13.2 The parties shall jointly agree on patent counsel. In the event that the parties can not agree on patent counsel, each party shall have the right to appoint its own counsel, pursuant to the Manual of Patent Examining Procedure (MPEP) § 402.10 with each party bearing the cost of its own patent counsel.

13.3 The parties agree that patent counsel shall implement instructions from both parties to the extent that such instructions are not inconsistent.

13.4 In the event that the parties cannot agree on instructions for the filing, payment, prosecution and/or maintenance of a Jointly Owned Patent or Jointly Owned Patent Application:

(a) for a Jointly Owned Patent or Jointly Owned Patent Application covering an invention developed by one party, the developing party shall control the prosecution and/or maintenance of such patent or application;

(b) for a Jointly Owned Patent or Jointly Owned Patent Application covering an invention jointly developed by both parties, CARDIO shall control the prosecution and/or maintenance of such patent or application.

14. **Patent Infringement.** Upon learning of any infringement of any Jointly Owned Patent by a third party or parties in any country, CARDIO and PHAGE will promptly inform each other, as the case may be, in writing of that fact and will supply the other with any available evidence pertaining to the infringement. In the event that CARDIO and PHAGE mutually agree to bring suit, costs and expenses shall be shared equally and any recovery in excess of expenses shall be shared equally. In such event, no settlement, consent, judgment or other voluntary final disposition of the suit may be entered into without the consent of both parties, which shall not be unreasonably withheld. In the event that one party does not agree to take steps to stop the infringement ("non-moving party"), the other party ("moving party") shall have the right to bring suit at its own expense, wherein any recovery shall be solely owned by the party bringing suit, and that party shall have the right to enter into settlement, consent, judgment or other voluntary final disposition without the consent of the other party. In such case, the moving party shall bear all reasonable costs and fees including attorney fees incurred by the non-moving party as result of being joined in the suit or otherwise participating in such suit.

15. **Indemnification.**

15.1 PHAGE agrees to release, indemnify and hold harmless CARDIO, its Directors, officers, and employees against any and all losses, expenses, claims, actions, lawsuits and judgments thereon (including attorney's fees through the appellate levels) which may be brought against CARDIO as a result of or arising out of any negligent act or omission of PHAGE in its manufacture and supply of FGF or other angiogenic peptides/proteins to CARDIO. CARDIO agrees to release indemnify and hold harmless PHAGE, its Directors, officers, and employees against any and all losses, expenses, claims, actions, lawsuits and judgments thereon (including attorney's fees through the appellate levels) which may be brought against PHAGE as a result of or arising out of any negligent act or omission of CARDIO in its use of the FGF or other angiogenic peptides/proteins that PHAGE manufactures.

15.2 This Agreement to reimburse and indemnify under the circumstances set forth above shall continue after the termination of this Agreement.

**16. Warranties.** CARDIO and PHAGE make NO warranties, express or implied, and hereby disclaim all such warranties, as to any matter whatsoever, including, without limitation, the condition of any Product or Process, whether tangible or intangible, assigned and/or licensed under this Agreement; or the merchantability, or fitness for a particular purpose of the Product or Process; or that the use of the Product or Process will not infringe any patent, copyrights, trademarks, or other rights. CARDIO and PHAGE shall not be liable for any direct, consequential, or other damages suffered by the other party or any third parties resulting from the use, production, manufacture, sale, lease, consumption, or advertisement of the Product or Process. The provisions of this Section shall continue beyond the termination of this Agreement.

**17. Reports and Records.**

17.1 Commencing one year after the first sale, CARDIO shall furnish to PHAGE a report in writing specifying during the preceding calendar quarter:

- (a) the amount of Product sold hereunder by CARDIO;
- (b) the total billings for all Products sold;
- (c) the total royalties due; and
- (d) the names and addresses of all sublicensees.

Such reports shall be due within forty five (45) days following the last day of each calendar quarter in each year during the term of this Agreement. Each such report shall be accompanied by payment in full of the amount due PHAGE in United States dollars.

17.2 For a period of three years from the date of each report pursuant to Section 17.1, CARDIO shall keep records adequate to verify each such report and accompanying payment made to PHAGE under this Agreement, and an independent Certified Public Accountant or Accounting Firm selected by PHAGE and acceptable to CARDIO may have access, on reasonable notice during regular business hours, not to exceed once per year, to such records to verify such reports and payments. Such Accountant or Accounting Firm shall not disclose to PHAGE any information other than that information relating solely to the accuracy of, or necessity for, the reports and payments made hereunder. The fees and expense of the Certified Public Accountant or Accounting Firm performing such verification shall be borne by PHAGE unless in the event that the audit reveals an underpayment of royalty by more than ten (10%) percent, the cost of the audit shall be paid by CARDIO.

**18. Marking and Standards.**

18.1 Prior to the issuance of any Jointly Owned Patent, CARDIO agrees to mark Products (or their containers or labels) made, sold, or otherwise disposed of by it under the license granted in this Agreement with a proper patent notice referencing the patent number of the Jointly Owned Patent as specified under the patent laws of the United States or applicable jurisdiction.

18.2 If CARDIO elects to make FGF or have FGF made for its use under the terms of this Agreement, CARDIO further agrees to maintain satisfactory standards in respect to the nature of the Product manufactured and/or sold by CARDIO. CARDIO agrees that all Products manufactured and/or

sold by it shall be of a quality which is appropriate to products of the type here involved. CARDIO agrees that similar provisions shall be included by sublicenses of all tiers.

19. **Confidentiality.** Neither CARDIO nor PHAGE will publish, reproduce, disclose or release any other party's Confidential Information, in whole or in part, to any third party (including without limitation to any customer, agent, or government agency) without the prior written consent of such other party or being required to do so by a Court of competent jurisdiction. Confidential Information may be disclosed to sublicensees, subcontractors, and Affiliates of Recipient provided that such person has a "need to know" and agrees to be bound by the provisions of this Section. The Recipient will employ at least the same degree of care in protecting the Provider's Confidential Information as it employs in protecting its own confidential information, but not less than a reasonable degree of care. The Recipient will ensure that Confidential Information of Provider is disclosed only to those of its employees or the employees of another party hereto who require access to such information in connection with this Agreement and who have been advised of the confidentiality provisions of this Agreement. Recipient will use the Confidential Information only in connection with this Agreement, and will not otherwise use such Confidential Information for its own benefit or to the Provider's detriment. Upon request by Provider, Recipient will return to Provider all Confidential Information, including all copies, derivatives, or summaries thereof. In the event that Recipient or anyone to whom it transmits the Provider's Confidential Information pursuant to this Agreement becomes legally compelled by a court of competent jurisdiction to disclose any Confidential Information, Recipient will provide Provider with prompt notice so that Provider may seek a protective order or other appropriate remedy, after which Recipient may disclose such Confidential Information to the extent required by law.

20. **Termination.** In the event that PHAGE (i) becomes insolvent; (ii) fails to pay its debts or perform its obligations in the ordinary course of business as they mature; (iii) admits in writing its insolvency or inability to pay its debts or perform its obligations as they mature; or (iv) becomes the subject of any voluntary composition or general assignment for the benefit of creditors that is not dismissed with prejudice within thirty (30) days after the institution of such proceeding, then CARDIO may terminate this Agreement upon written notice ("Notice") to PHAGE setting forth the date the termination will be effective ("Termination Date"). On the Termination Date, PHAGE shall discontinue all use of the Patent Rights, patents and other rights licensed to it hereunder and, within five (5) days, shall return all copies of Confidential Information to CARDIO. All sublicenses duly granted in accordance with the terms of this Agreement before the Termination Date shall continue in full force and effect but PHAGE may not grant or renew any sublicenses after the Termination Date.

21. **Assignability.** None of the parties shall assign this Agreement or any rights, including but not limited to the Patent Rights, or duties hereunder without the written consent of each of the other parties. Neither party shall assign its ownership interest in the Jointly Owned Patents or Jointly Owned Patent Applications to a third party without the written consent of the other party. If either party desires to transfer its ownership interest in the Jointly Owned Patents or Jointly Owned Patent Applications, the non-transferring party shall have first right of refusal of such ownership interest. Neither CARDIO nor PHAGE shall have the right to sublicense any Patent Rights licensed hereunder beyond the scope of the license granted to CARDIO and PHAGE pursuant to this Agreement. Each party is relying on the identity, business, business skill and reputation of the other in entering into this Agreement, and none of the parties have agreed to allow the other parties to assign its respective interests in this Agreement nor to grant sublicenses except as specifically provided in this Agreement. For the purposes of this Agreement, "assignment" is used in its most expansive form and means the sale, disposition, gift,

assignment, pledge, hypothecation, creation of security interest or other transfer, directly or indirectly, voluntary or by operation of law, in whole or in part, of any right, privilege, benefit, or other interest related in any way to the parties' interests in this Agreement. Notwithstanding the foregoing, a party hereunder may transfer its rights hereunder in connection with a merger or consolidation or the assignment or other transfer of all or substantially all of its assets.

22. **Equitable Relief.** The parties recognize that irreparable injury will result from a breach of any provision of this Agreement and that money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement, any party who may be injured (in addition to any other remedies which may be available to that party) will be entitled to one or more preliminary or permanent orders (i) restraining and enjoining any act which would constitute a breach, or (ii) compelling the performance of any obligation which, if not performed, would constitute a breach.

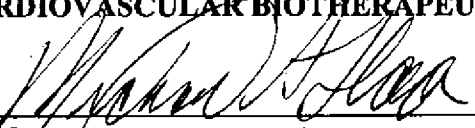
23. **Binding.** This Agreement shall extend to and be binding upon the successors and legal representatives and permitted assigns of CARDIO and PHAGE.

24. **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original copy of the Agreement.

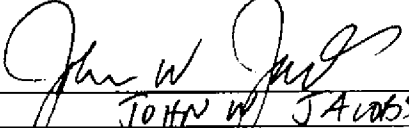
25. **Governing Law.** This Agreement shall be construed without regard to any conflict of laws principles, and interpreted in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CARDIOVASCULAR BIOTHERAPEUTICS, INC.

By:   
Name: MICHAEL A. FLAA  
Title: CMO FINANCIAL OFFICER

PHAGE BIOTECHNOLOGY CORPORATION

By:   
Name: JOHN W. JACOBS  
Title: CEO

**Exhibit “2”**

**PATENT**  
**REEL: 023379 FRAME: 0754**





6868 Nancy Ridge Drive,  
Suite 100  
San Diego, CA 92121  
USA

February 20, 2009

Via ELECTRONIC MAIL to: dan333@aol.com

Daniel C. Montano  
Chief Executive Officer  
CardioVascular BioTherapeutics, Inc.  
1635 Village Center Circle, Suite 250  
Las Vegas, NV 89134

**RE: TERMINATION OF JOINT PATENT AGREEMENT**

Dear Mr. Montano:

As you may know, an involuntary petition for bankruptcy under Chapter 7 of the United States Bankruptcy Code (the "Code") was filed against Phage Biotechnology Corporation ("Phage") that Phage converted to Chapter 11 reorganization under the Code. In its efforts to reorganize Phage has decided to terminate the Joint Patent Agreement entered into February 28, 2007 between CardioVascular BioTherapeutics, Inc. ("Cardio") and Phage. For sake of clarity, this termination of the Joint Patent Agreement is not to resurrect the Joint Patent Ownership and License Agreement entered into on August 16, 2004 or as amended on May 23, 2006, which were superseded by the Joint Patent Agreement. This termination is to cover the entire subject matter addressed among these three documents (collectively, the "Agreement").

This is written notice to terminate the Agreement. Despite the absence of a termination provision for Phage in the Agreement, Section 365 of the Code allows Phage, as debtor-in-possession, to reject the Agreement. Pursuant to the Code, this letter constitutes Phage's unequivocal notice of rejection and termination of the Agreement, effective immediately. Phage has a duty to maximize the bankruptcy estate for the benefit of creditors. Furthermore, the United States Bankruptcy Court (the "Court") defers to a debtor-in-possession's discretion under the business judgment rule in determining whether to reject an executory contract.

Cardio has received significant and valuable benefits under the Agreement since its inception until this termination. Among the benefits Cardio received are 1) the enjoyment of joint ownership of the patents and patent applications set forth in the Agreement, 2) exclusive license to practice within the field of angiogenesis, 3) technical development services provided at Phage's costs with no profit component and 4) manufactured drug product provided at Phage's costs with no profit component to Phage.

Cardio received these benefits despite the fact that Cardio has been in material breach of the Agreement since inception. Among the material breaches are: 1) Cardio's persistent failure to satisfy its ongoing obligation to file, pay, prosecute and maintain the jointly owned patents and jointly owned patent applications, which Cardio was expressly responsible to do according to Section 13.1 of the Agreement in order to enjoy joint ownership and 2) Cardio's failure to pay for certain drug product Phage manufactured for Cardio, pursuant to Section 9.2 of the Agreement even after several written demands for payment and Cardio's refusal to pay or even respond.

Phage's decision to terminate this agreement rests on both Cardio's questioned viability because of Cardio's inability to pay Phage and place orders with Phage and on Cardio's breach of the Agreement's terms. Accordingly, it does not make economic sense to continue the cross licensing under the Agreement because it limits Phage's use of the inventions and Phage has no assurance that the future royalty streams under Sections 10.2 and 11 will ever be realized.

Please be advised, upon termination of the Agreement, 1) full ownership of the patents and patent applications covered under the Agreement ceases, 2) the exclusive license to practice in the field of angiogenesis lapses, and 3) manufacturing and technical services will no longer be provided at cost but at prevailing market rates agreeable to the parties if agreement can be reached.

Notwithstanding the unequivocal rejection and termination of the Agreement, please be advised that pursuant to Section 7 of the Agreement, Cardio may elect under §365(n) of the Code, to retain its rights as licensee subject to royalty payment requirements as set out in Section 11 of the Agreement.

We thank you for your understanding and wish you the best with your future endeavors.

Sincerely,



Thomas J. Stegmann, MD, PhD  
CEO, Phage Biotechnology Corporation

cc: Michael A. Flaa, via electronic mail, [mflaa@aol.com](mailto:mflaa@aol.com)

Phone: +1-858-427-9100  
Fax: +1-858-657-9111  
[www.phagebiotech.com](http://www.phagebiotech.com)

**CERTIFICATE OF SERVICE**

I, Viann Corbin, declare as follows:

I am employed in the County of Orange, State of California; I am over the age of eighteen years and am not a party to this action; and my business address is 660 Newport Center Drive, Fourth Floor, Newport Beach, California 92660, in said County and State.

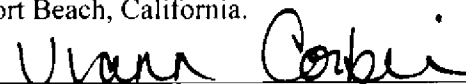
On February 27, 2009, I served the following document: **DEBTOR'S MOTION FOR ORDER APPROVING REJECTION OF JOINT PATENT AGREEMENT; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION IN SUPPORT THEREOF; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION IN SUPPORT THEREOF** on each of the interested parties stated on the attached service list:

**SEE ATTACHED SERVICE LIST**

by the following means of service:

- |                                     |  |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <b>BY MAIL:</b> I placed a true copy in a sealed envelope addressed as indicated above, on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. Under that practice, it would be deposited with the U.S. Postal Service on that same date with postage thereon fully prepaid at Newport Beach, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. |
| <input checked="" type="checkbox"/> | <b>BY ELECTRONIC MAIL:</b> On the date set forth above, from Newport Beach, California, I caused each such document to be transmitted electronically to the parties at the e-mail address indicated. To the best of my knowledge, the transmission was reported as complete, and no error was reported that the electronic transmission was not completed. A return receipt was requested at the time of the transmission of each such document and I did not receive a notice of failure of receipt of each such document.  |
| <input checked="" type="checkbox"/> | I am employed in the office of Winthrop Couchot Professional Corporation. Marc J. Winthrop is a member of the bar of this Court.   |
| <input checked="" type="checkbox"/> | <b>(FEDERAL)</b> I declare under penalty of perjury that the foregoing is true and correct.  |

Executed on February 27, 2009 at Newport Beach, California.

  
Viann Corbin

\_\_\_\_\_  
Initials

## SERVICE LIST

Phage Biotechnology Corporation  
Attn: Loren King, CFO  
1635 Village Center Circle, Suite 260  
Las Vegas, NV 89134  
[stegmann-petersberg@t-online.de](mailto:stegmann-petersberg@t-online.de)  
[Lorenking2002@yahoo.com](mailto:Lorenking2002@yahoo.com)

Via Mail  
U.S. Trustee's Office  
David Ortiz, Esq.  
402 W. Broadway, Suite 600  
San Diego, CA 92101-8511

Phage  
Special Notice/20 Largest/Secured  
Document No. 125972

International Legal Consultants  
Solomon Ward Seidenwurm & Smith,  
LLP  
Michael D. Breslauer, Esq.  
401 "B" Street, #1200  
San Diego, CA 92101  
[mbreslauer@swsslaw.com](mailto:mbreslauer@swsslaw.com)

Via Mail  
Proposed Landlord  
Champion Pacific LP  
Mr. David Johnson  
210 Pasadena Ave.  
South Pasadena, CA 91030

Jawaher Bint Aball  
Malek Al Sheikh  
P.O. Box 5593  
Riyadh 11132 Saudi Arabia  
[jademalikkol@yahoo](mailto:jademalikkol@yahoo)

Shellac Limited  
Attn: Corporate Officer  
2nd Fl. Sixty Circular Rd  
Douglas Isle of Man IM1 ISA UK  
[peter.crompton@abacusiom.com](mailto:peter.crompton@abacusiom.com)

MIC-Bjarne Carlsen c/o Armacup Maritime  
Sves Ltd Lvl 5 Harbour View Bldg 152  
Quay St PO Box 106 001 Dwtwn  
Auckland New Zealand  
[biarnecarlsen@xtra.co.nz](mailto:biarnecarlsen@xtra.co.nz)

VIA MAIL  
Gadah Inc. c/o CICB Finan Ctr  
2nd Fl., PO Box 1170  
George Town, Grand Caymay  
Cayman Islands, KY11-1102

Forest Nominees Limited  
Attn: Corporate Officer  
PO Box 328 St. Peter Port  
Channel Islands GY1 3TY UK 01481 251515  
[caldwell@caldwell.gg](mailto:caldwell@caldwell.gg)

James Donald Greig  
4B Parklane, Matilda Hospital  
41 Mount Kellett Road  
The Peak SAR Hong Kong  
[jdgreig@netvigator.com](mailto:jdgreig@netvigator.com)

Anthony Hall  
c/o Man Invsts Hong Kong Ltd  
#1301 Chrtr Hse-8 Connaught Rd Cnt  
Hong Kong China  
[ahallo888@gmail.com](mailto:ahallo888@gmail.com)

European Pens Mgmt Ltd-Tees Scheme  
11527, Mr. C. Melvin  
Unit 11 Manor Farm, Chilmark  
c/o Mr. Paul Gillham  
Salisbury Wiltshire SP3 5AF UK  
[clifton@melvin.eu.com](mailto:clifton@melvin.eu.com)

TCI Group Holdings  
Attn: Corporate Officer  
Office 2701, 148 Electric Rd  
Hong Kong  
[john@tci.com.hk](mailto:john@tci.com.hk)

Softcapital Inc.  
Attn: Corporate Officer  
7-9 Kyohashi 2 Cho-Me  
Chuo-ku Tokyo 104-0031 Japan  
[mail@softcapital.co.jp](mailto:mail@softcapital.co.jp)

Khalid Dawood Al Faddagh  
Petrone Corp 358 Sen Gil Puyat Ave Makati  
City Metro Manila  
1200 Philippines (63918) 906-8000  
[kdfaddagh@petron.com](mailto:kdfaddagh@petron.com)

2<sup>nd</sup> Amendment 1/9/09

Committee Member  
Sonomi Tsuyuzaki  
4 Ballinakill Vale  
Dunmore Rd., Waterford, Ireland  
[robles224@yahoo.com](mailto:robles224@yahoo.com)

International Legal Consultants  
Attn: Corporate Officer  
PO Box 40992-10-02 Peasl Bdg Deira  
Dubai United Arab Emirates  
[rcrlawpemirates.net.ae](mailto:rcrlawpemirates.net.ae)

Toru Ueda P.O. Box 88  
1 Grenville, St. Heiler  
c/o Ronan Walsh HSBC Priv Bank  
Jersey Channel Isl JE4-9PF UK  
[tm-ueda@ff-rij4u.or.jp](mailto:tm-ueda@ff-rij4u.or.jp)

John Philip Mappin  
14 Crestwood Ave.  
Linwood, NJ 08221  
[mappin1@verizon.net](mailto:mappin1@verizon.net)

Taghreed Altassan  
No. 8 deba st. Mohamadiya  
P.O. Box 16124  
Riyadh 11464 Saudi Arabia 96658388888  
[t\\_altassan@yahoo.com](mailto:t_altassan@yahoo.com)

Committee Member  
Jonathan P. Kornberg  
2a, 72 Mount Kellett Road  
The Peak SAR Hong Kong  
[jpkorn2@yahoo.com](mailto:jpkorn2@yahoo.com)

Via Mail  
Phil Frey  
5005 SE Williams  
Stuart, Florida 34997

The PBAA JPY Fund Limited  
Attn: Corporate Officer  
5, rue Jean Monnet  
L-2180 Luxembourg  
[office@interasset.jp](mailto:office@interasset.jp)

Uli Bangerter  
11 chemin de Pallud  
Chernex 1822 Switzerland  
[bangerteruli@hotmail.com](mailto:bangerteruli@hotmail.com)

RSN 12/1/08

BMR-6828 Nancy Ridge Drive LLC  
c/o Foley & Lardner LLP  
Victor A. Vilaplana, Esq.  
401 West Broadway, #2100  
San Diego, CA 92101  
[vavilaplana@foley.com](mailto:vavilaplana@foley.com)

EMAIL UPDATED - SEE BELOW

Committee Member  
Fabio L.B. Pelli  
PO Box 1718  
Ch-8027 Zurich  
Switzerland  
[Clinton@melvin.eu.com](mailto:Clinton@melvin.eu.com)

Committee Member  
BMR-6828 Nancy Ridge Dr., LLC  
Kevin Simansen  
17190 Bernardo Center Dr.  
San Diego, CA 92128  
[Kevins@biomedrealty.com](mailto:Kevins@biomedrealty.com)

Committee Member  
Dr. Jonathan Paul Kornberg  
2A, 72 Mt Kellett Road  
The Peak  
Hong Kong  
[Jpkorn2@yahoo.com](mailto:Jpkorn2@yahoo.com)

Committee Member  
Mr. Anthony Hall  
c/o Man Investments (HK) Ltd  
1301 Charter House  
8 Connaught Road  
Central, Hong Kong/ China  
[ahallo888@gmail.com](mailto:ahallo888@gmail.com)

Committee Member  
John Philip Maffin  
Jolyn Philip Maffin  
14 Crestwood Avenue  
Linwood, NJ 08221  
[mappin1@verizon.net](mailto:mappin1@verizon.net)

Committee Member  
Fabio L.B. Pelli  
PO Box 1718  
Ch-8027 Zurich  
Switzerland  
[flbPELLI@bloomberg.net](mailto:flbPELLI@bloomberg.net)

2<sup>nd</sup> Amnd 1/12/09

Committee Member  
Clifton Melvin  
Argosy Burtons Lane  
Chalpont SC Giles Buckr  
UK HP8 4BL  
[Clifton@melvin.eu.com](mailto:Clifton@melvin.eu.com)

Canta Rana Ranch L.P.  
Attn: Managing Member  
11750 Sorrento Valley Road, Suite 209  
San Diego, CA 92121

Iron Mountain Information Management,  
Inc  
c/o Bartlett Hackett Feingerg P  
Attn: Frank F. McGinn, Esq.  
155 Federal St., 9th Fl.  
Boston, MA 02110  
[Ffm@vostonbusinesslaw.com](mailto:Ffm@vostonbusinesslaw.com)

2/26/09 RSN

VIA MAIL.  
Party to agreement to be rejected  
Cardio Vasculat BioTherapeutics, Inc.  
Mickael A. Flaa, Chief Financial Officer  
1635 Village Center Circle, #250  
Las Vegas, NV 89134

2<sup>nd</sup> Amnd 1/12/09