

09-16-2010



To the Director of the U.S. Patent a.

103606985

cuments or the new address(es) below.

CORR 8-31-10

1. Name of conveying party(ies)

IBH-II, L.P.

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

3. Nature of conveyance/Execution Date(s):

Execution Date(s) August 4, 2010

- Assignment Merger
- Security Agreement Change of Name
- Joint Research Agreement
-
-
- Corrected Release of Security Agreement
- Other Documents on 24812/0241

2. Name and address of receiving party(ies)

Name: Blue Heron Biotechnology, Inc.

Internal Address: _____

Street Address: 22310 20th Avenue SE #100

City: Bothell

State: WA

Country: USA Zip 98021

Additional name(s) & address(es) attached? Yes No

4. Application or patent number(s):

This document is being filed together with a new application.

A. Patent Application No.(s)

60/218,023
60/278,086
60/341,409

B. Patent No.(s)

6,664,112
4,652,639

Additional numbers attached? Yes No

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

Name: Cooley LLP

Internal Address: ATTN: Patent Group

Street Address: 777 6th Street NW, Suite 1100

City: Washington

State: DC Zip 20001-3723

Phone Number: 202-842-7800

Fax Number: 202-842-7899

Email Address: _____

6. Total number of applications and patents involved: 5

7. Total fee (37 CFR 1.21(h) & 3.41) \$200.00

- Authorized to be charged to deposit account
- Enclosed
- None required (government interest not affecting title)

8. Payment Information

Deposit Account Number 50-1283

Authorized User Name Cooley LLP

9. Signature:

Signature
Jason A. Barron, Ph.D.
Name of Person Signing

8-27-2010
Date

Total number of pages including cover sheet, attachments, and documents: 54

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O.Box 1450, Alexandria, V.A. 22313-1450

Form **P10-1595** (Rev. 03-09)
OMB No. **0651-0027** (exp. 03/31/2009)

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

RECORDATION FORM COVER SHEET PATENTS ONLY

To the Director of the U.S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

<p>1. Name of conveying party(ies)</p> <p>IBH-II, L.P.</p> <p>Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>2. Name and address of receiving party(ies)</p> <p>Name: <u>Blue Heron Biotechnology, Inc.</u></p> <p>Internal Address: _____</p> <p>Street Address: <u>22310 20th Avenue SE #100</u></p> <p>City: <u>Bothell</u></p> <p>State: <u>WA</u></p> <p>Country: <u>USA</u> Zip <u>98021</u></p> <p>Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>3. Nature of conveyance/Execution Date(s):</p> <p>Execution Date(s) <u>August 4, 2010</u></p> <p><input type="checkbox"/> Assignment <input type="checkbox"/> Merger</p> <p><input type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name</p> <p><input type="checkbox"/> Joint Research Agreement</p> <p><input type="checkbox"/> Government Interest Assignment</p> <p><input type="checkbox"/> Executive Order 9424, Confirmatory License</p> <p><input checked="" type="checkbox"/> Other <u>Release from Sec. Agreemt for 013244/028 2</u></p>	<p>4. Application or patent number(s): <input type="checkbox"/> This document is being filed together with a new application.</p> <p>A. Patent Application No. (s)</p> <p>60/218,023 60/278,086 60/341,409</p> <p>B. Patent No. (s)</p> <p>6,664,112 4,652,639</p> <p>Additional numbers attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>5. Name and address to whom correspondence concerning document should be mailed:</p> <p>Name: <u>Cooley LLP</u></p> <p>Internal Address: <u>A11N: Patent Group</u></p> <p>Street Address: <u>777 6th Street NW, Suite 1100</u></p> <p>City: <u>Washington</u></p> <p>State: <u>DC</u> Zip <u>20001-3723</u></p> <p>Phone Number: <u>202-842-7800</u></p> <p>Fax Number: <u>202-842-7899</u></p> <p>Email Address: _____</p>	<p>6. Total number of applications and patents involved: <u>5</u></p> <p>7. Total fee (37 CFR 1.21(h) & 3.41) \$ <u>200.00</u></p> <p><input checked="" type="checkbox"/> Authorized to be charged to deposit account</p> <p><input type="checkbox"/> Enclosed</p> <p><input type="checkbox"/> None required (government interest not affecting title)</p> <p>8. Payment Information</p> <p>Deposit Account Number <u>50-1283</u></p> <p>Authorized User Name <u>Cooley LLP</u></p>
<p>9. Signature: _____ 8-9-10</p> <p style="text-align: center;">Signature Date</p> <p style="text-align: center;">Jason A. Barron, Ph.D. Total number of pages including cover sheet, attachments, and documents: <u>2</u></p> <p style="text-align: center;">Name of Person Signing</p>	

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, V.A. 22313-1450

THE SECURITIES REPRESENTED BY THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933, AS AMENDED.

CONVERTIBLE PROMISSORY NOTE

\$200,000

April 26, 2001
Kirkland, Washington

For value received, Blue Heron Biotechnology, Inc., a Delaware corporation (the "Company"), promises to pay to **IBH-II, L.P.** (the "Holder"), the principal sum of **Two Hundred Thousand Dollars (\$200,000)**. Interest shall accrue from the date of this Note on the unpaid principal amount at a rate equal to twelve percent (12 %) per annum, compounded annually. This Note is one of a series of Convertible Notes containing substantially identical terms and conditions issued pursuant to that certain Convertible Note and Warrant Purchase Agreement dated April 26, 2001 (the "Purchase Agreement"). Such Notes are referred to herein as the "Notes," and the holders thereof are referred to herein as the "Holders." This Note is subject to the following terms and conditions.

1. **Maturity.** Subject to Section 2, principal and any accrued but unpaid interest under this Note shall be due and payable upon demand by the Holder at any time after November 1, 2001. Notwithstanding the foregoing, the entire unpaid principal sum of this Note, together with accrued and unpaid interest thereon, shall become immediately due and payable upon the insolvency of the Company, the commission of any act of bankruptcy by the Company, the execution by the Company of a general assignment for the benefit of creditors, the filing by or against the Company of a petition in bankruptcy or any petition for relief under the federal bankruptcy act or the continuation of such petition without dismissal for a period of ninety (90) days or more, the appointment of a receiver or trustee to take possession of the property or assets of the Company, a Sale Transaction (as defined below), or a liquidation, dissolution or winding up of the Company. "Sale Transaction" means the sale, conveyance or disposal of all or substantially all of the Company's property or business or the Company's merger into or consolidation with any other entity (other than a wholly-owned subsidiary of the Company) or any other transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Company is disposed of, provided that a merger effected exclusively for the purpose of changing the domicile of the Company shall not constitute a Sale Transaction.

2. **Conversion.**

(a) **Investment by the Holder.** The entire principal amount of and accrued interest on this Note shall be converted into shares of the Company's equity securities (the "**Equity Securities**") issued and sold at the close of the Company's next equity financing in a single transaction or a series of related transactions (including the conversion of convertible debt) yielding gross proceeds to the Company of at least \$5,000,000 in the aggregate (the "**Next Equity Financing**"). The number of shares of Equity Securities to be issued upon such conversion shall be equal to the quotient obtained by dividing (i) the entire principal amount of this Note plus accrued interest by (ii) the price per share of the Equity Securities, rounded to the nearest whole share, and the issuance of such shares upon such conversion shall be upon the terms and subject to the conditions applicable to the Next Equity Financing.

If the Next Equity Financing does not occur by November 1, 2001, then on such date all principal and accrued and unpaid interest on this Note shall be converted into shares of the Company's Series B Preferred Stock. The number of shares of Series B Preferred Stock to be issued upon such conversion shall be equal to the quotient obtained by dividing (i) the entire principal amount of this Note plus accrued interest by (ii) \$1.64, and the issuance of such shares upon such conversion shall be upon the terms and subject to the conditions applicable to the Series B Preferred Stock then outstanding.

If a Sale Transaction (as defined below) occurs prior to November 1, 2001 and prior to the occurrence of the Next Equity Financing, then the Holder shall have the right to cause all principal and accrued and unpaid interest on this Note to convert into shares of the Company's Series B Preferred Stock by delivering written notice thereof to the Company. The number of shares of Series B Preferred Stock to be issued upon such conversion shall be equal to the quotient obtained by dividing (i) the entire principal amount of this Note plus accrued interest by (ii) \$1.64, and the issuance of such shares upon such conversion shall be upon the terms and subject to the conditions applicable to the Series B Preferred Stock then outstanding. The Company shall provide the Holder with at least ten days' written notice of a Sale Transaction. The Holder shall be entitled to exercise its right to convert the principal and accrued and unpaid interest on this Note into shares of the Company's Series B Preferred Stock, conditioned upon, and effective as of, the occurrence of a Sale Transaction.

(b) **Mechanics and Effect of Conversion.** No fractional shares of the Company's capital stock will be issued upon conversion of this Note. In lieu of any fractional share to which the Holder would otherwise be entitled, the Company will pay to the Holder in cash the amount of the unconverted principal and interest balance of this Note that would otherwise be converted into such fractional share. Upon conversion of this Note pursuant to this Section 2, the Holder shall surrender this Note, duly endorsed, at the principal offices of the Company or any transfer agent of the Company. At its expense, the Company will, as soon as practicable thereafter, issue and deliver to such Holder, at such principal office, a certificate or certificates for the number of shares to

which such Holder is entitled upon such conversion, together with any other securities and property to which the Holder is entitled upon such conversion under the terms of this Note, including a check payable to the Holder for any cash amounts payable as described herein. Upon conversion of this Note, the Company will be forever released from all of its obligations and liabilities under this Note with regard to that portion of the principal amount and accrued interest being converted including without limitation the obligation to pay such portion of the principal amount and accrued interest.

3. **Payment.** All payments shall be made in lawful money of the United States of America at such place as the Holder hereof may from time to time designate in writing to the Company. Payment shall be credited first to the accrued interest then due and payable and the remainder applied to principal. Prepayment of this Note may be made at any time without penalty.

4. **Transfer; Successors and Assigns.** The terms and conditions of this Note shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Notwithstanding the foregoing, the Holder may not assign, pledge, or otherwise transfer this Note without the prior written consent of the Company which will not be unreasonably withheld, except that transfers to affiliates, general or limited partners of the Holder, or a transfer to any transferee of at least fifty percent (50%) of the principal amount of this Note shall not require the Company's consent. Subject to the preceding sentence, this Note may be transferred only upon surrender of the original Note for registration of transfer, duly endorsed, or accompanied by a duly executed written instrument of transfer in form satisfactory to the Company. Thereupon, a new note for the same principal amount and interest will be issued to, and registered in the name of, the transferee. Interest and principal are payable only to the registered holder of this Note.

5. **Governing Law.** This Note and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Washington, without giving effect to principles of conflicts of law.

6. **Notices.** Any notice required or permitted by this Note shall be in writing and shall be deemed sufficient upon delivery, when delivered personally or by a nationally-recognized delivery service (such as Federal Express or UPS), or forty-eight (48) hours after being deposited in the U.S. mail, as certified or registered mail, with postage prepaid, addressed to the party to be notified at such party's address as set forth below or as subsequently modified by written notice.

7. **Amendments and Waivers.** Any term of this Note may be amended or waived only with the written consent of the Company and the Holder. Any amendment or waiver effected in accordance with this Section 7 shall be binding upon the Company, the Holder and each transferee of the Note.

8. **Officers and Directors Not Liable.** In no event shall any officer or director of the Company be liable for any amounts due or payable pursuant to this Note.

9. **Revised Code of Washington 19.36.140.**

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

COMPANY:

BLUE HERON
BIOTECHNOLOGY, INC.

By: 

Name: PETER R. NICHOLSON

Title: President & CEO
(print)

Address:

AGREED TO AND ACCEPTED:

IBH-II, L.P.

By: _____

Name: _____
(print)

Title: _____

Address:

9. Revised Code of Washington 19.36.140.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY,
EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A
DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

COMPANY:

BLUE HERON
BIOTECHNOLOGY, INC.

By: _____

Name: _____
(print)

Title: _____

Address:

AGREED TO AND ACCEPTED:

IBH-II, L.P.

By: Hans Lundin

Name: HANS LUNDIN
(print)

Title: Member, IBH Management LLC, General Partner to IBH-II, L.P.

Address: 1114 21st Ave. E.
Seattle, WA. 98112

BLUE HERON BIOTECHNOLOGY, INC.

**AMENDMENT TO FIRST CLOSING CONVERTIBLE NOTE AND
FIRST CLOSING WARRANT**

This Amendment to First Closing Convertible Note and First Closing Warrant (the "Amendment"), effective as of October 9, 2001, is made by and between Blue Heron Biotechnology, Inc., a Delaware corporation (the "Company") and IBH-II, L.P. (the "Purchaser").

RECITALS

1. The Company and the Purchaser are parties to the Convertible Note and Warrant Purchase Agreement dated April 26, 2001, as amended (the "Agreement").
2. The Company and the Purchaser desire to amend certain terms and conditions of the First Closing Note (the "Note") and First Closing Warrant (the "First Closing Warrant") issued to Purchaser.
3. The Company and the Purchaser have the authority to amend the Note and the First Closing Warrant.
4. Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in the Agreement.

AGREEMENT

The undersigned agree as follows:

1. The Recitals and Sections 1 and 2(a) of the Note are hereby amended and restated in their entirety to read as follows:

"For value received, Blue Heron Biotechnology, Inc., a Delaware corporation (the "Company"), promises to pay to **IBH-II, L.P.** (the "Holder"), the principal sum of **Two Hundred Thousand Dollars (\$200,000.00)**. Interest shall accrue from the date of this Note on the unpaid principal amount at a rate equal to twelve percent (12%) per annum, compounded annually. This Note is one of a series of Convertible Notes containing substantially identical terms and conditions issued pursuant to that certain Convertible Note and Warrant Purchase Agreement dated April 26, 2001, as amended (the "Purchase Agreement") at the First Closing (as defined in the Purchase Agreement). Such Notes are referred to herein as the "Notes," and the holders thereof are referred to herein as the "Holders." This Note is subject to the following terms and conditions.

1. **Maturity.** Subject to Section 2, principal and any accrued but unpaid interest under this Note shall be due and payable upon demand by the Holder at any time after March 31, 2002. Notwithstanding the foregoing, the entire unpaid principal sum of this Note, together with accrued and unpaid interest thereon, shall become immediately due and payable upon the insolvency of the Company, the commission of any act of bankruptcy by the Company, the execution by the Company of a general assignment for the benefit of creditors, the filing by or against the Company of a petition in bankruptcy or any petition for relief under the federal bankruptcy act or the continuation of such petition without dismissal for a period of ninety (90) days or more, the appointment of a receiver or trustee to take possession of the property or assets of the Company, a Sale Transaction (as defined below), or a liquidation, dissolution or winding up of the Company. "Sale Transaction" means the sale, conveyance or disposal of all or substantially all of the Company's property or business or the Company's merger into or consolidation with any other entity (other than a wholly-owned subsidiary of the Company) or any other transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Company is disposed of, provided that a merger effected exclusively for the purpose of changing the domicile of the Company shall not constitute a Sale Transaction.

2. **Conversion.**

(a) **Investment by the Holder.** The entire principal amount of and accrued interest on this Note shall be converted into shares of the Company's equity securities (the "Equity Securities") issued and sold at the close of the Company's next equity financing in a single transaction or a series of related transactions (excluding the conversion of convertible debt outstanding as of the Third Closing (as defined in the Purchase Agreement)) yielding gross proceeds to the Company of at least \$2,250,000 in the aggregate (the "Next Equity Financing"). The number of shares of Equity Securities to be issued upon such conversion shall be equal to the quotient obtained by dividing (i) the entire principal amount of this Note plus accrued interest by (ii) the price per share of the Equity Securities, rounded to the nearest whole share, and the issuance of such shares upon such conversion shall be upon the terms and subject to the conditions applicable to the Next Equity Financing.

If the Next Equity Financing does not occur by March 31, 2002, then on such date all principal and accrued and unpaid interest on this Note shall be converted into shares of the Company's Series C Preferred Stock. The number of shares of Series C Preferred Stock to be issued upon such conversion shall be equal to the quotient obtained by dividing (i) the entire principal amount of this Note plus accrued interest by (ii) \$0.60, and the issuance of such shares upon such conversion shall be upon the terms and subject to the conditions applicable to the Company's Series C Preferred Stock.

If a Sale Transaction (as defined below) occurs prior to March 31, 2002 and prior to the occurrence of the Next Equity Financing, then the Holder shall have the right to cause all principal and accrued and unpaid interest on this Note to convert into shares of the Company's Series C Preferred Stock by delivering written notice thereof to the Company. The number of shares of Series C Preferred Stock to be issued upon such

conversion shall be equal to the quotient obtained by dividing (i) the entire principal amount of this Note plus accrued interest by (ii) \$0.60, and the issuance of such shares upon such conversion shall be upon the terms and subject to the conditions applicable to the Series C Preferred Stock then outstanding. The Company shall provide the Holder with at least ten days' written notice of a Sale Transaction. The Holder shall be entitled to exercise its right to convert the principal and accrued and unpaid interest on this Note into shares of the Company's Series C Preferred Stock, conditioned upon, and effective as of, the occurrence of a Sale Transaction."

2. The Recitals and Section of the First Closing Warrant are hereby amended and restated in their entirety to read as follows:

"Blue Heron Biotechnology, Inc., a Delaware corporation (the "Company"), for value received, hereby certifies that **IBH-II, L.P.**, or its registered assigns (the "Registered Holder"), is entitled, subject to the terms set forth below, to purchase from the Company, at any time after the date hereof and on or before the Expiration Date (as defined in Section 6 below) shares of preferred stock of the Company ("Preferred Stock") issued in the Company's next private equity financing yielding aggregate gross proceeds to the Company of at least \$2,250,000 (excluding conversion of convertible debt outstanding as of the Third Closing) (the "Next Equity Financing") at a purchase price per share equal to the price paid per share by the purchasers in the Next Equity Financing. If the Next Equity Financing does not occur by March 31, 2002, this Warrant shall be issuable for shares of the Company's Series C Preferred Stock having a purchase price per share of \$0.60. If a Sale Transaction (as defined below) occurs prior to March 31, 2002 and prior to the Next Equity Financing, this Warrant shall be issuable for shares of Series C Preferred Stock of the Company having a purchase price per share of \$0.60. The shares purchasable upon exercise of this Warrant, and the purchase price per share, as adjusted from time to time pursuant to the provisions of this Warrant, are hereinafter referred to as the "Warrant Stock" and the "Purchase Price," respectively. "Sale Transaction" means the sale, conveyance or disposal of all or substantially all of the Company's property or business or the Company's merger into or consolidation with any other entity (other than a wholly-owned subsidiary of the Company) or any other transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Company is disposed of, provided that a merger effected exclusively for the purpose of changing the domicile of the Company shall not constitute a Sale Transaction.

This Warrant is issued pursuant to, and is subject to the terms and conditions of, the Convertible Note and Warrant Purchase Agreement dated as of April 26, 2001, as amended (the "Purchase Agreement"). Capitalized terms used by not defined herein shall have the meanings given in the Purchase Agreement.

I. Number of Shares.

(a) Subject to the terms and conditions hereinafter set forth, the Holder is entitled, upon surrender of this Warrant, to purchase from the Company the number of shares (subject to adjustment as provided herein) of Warrant Stock equal to (a) one hundred percent (100%) of the principal amount of the Note issued to the Registered Holder

pursuant to the Purchase Agreement divided by (b) the price per share paid by the investors in the Next Equity Financing.

(b) If the Next Equity Financing has not occurred by March 31, 2002, on such date the Registered Holder shall be entitled, upon surrender of this Warrant, to purchase from the Company the number of shares (subject to adjustment as provided herein) of Warrant Stock equal to (a) two hundred percent (200%) of the principal amount of the Note issued to the Registered Holder pursuant to the Purchase Agreement in the Third Closing divided by (b) \$0.60.

(c) If a Sale Transaction occurs prior to March 31, 2002 and prior to the Next Equity Financing, the Registered Holder shall be entitled, upon surrender of this Warrant, to purchase from the Company the number of shares (subject to adjustment as provided herein) of Warrant Stock equal to (a) one hundred percent (100%) of the principal amount of the Note issued to the Registered Holder pursuant to the Purchase Agreement divided by (b) \$0.60.”


3. All other provisions of the Note and First Closing Warrant shall remain in full force and effect.

[Signature Page Follows]

Amendment to First Closing Convertible Note and First Closing Warrant is effective as of the date first above written.

PURCHASER:

IBH-II, L.P.

By: 
Name: Hans Linder
Title: Member, IBH Management LLC,
General Partner to IBH-II, L.P.

COMPANY:

BLUE HERON BIOTECHNOLOGY, INC.

By: _____
Name: John Mulligan
Title: Chief Executive Officer

Amendment to First Closing Convertible Note and First Closing Warrant is effective as of the date first above written.


PURCHASER:

IBH-II, L.P.

By: _____
Name: _____
Title: _____

COMPANY:

BLUE HERON BIOTECHNOLOGY, INC.

By 
Name: John Mulligan
Title: Chief Executive Officer

BLUE HERON BIOTECHNOLOGY, INC.

**AMENDMENT NO. 2 TO FIRST CLOSING CONVERTIBLE NOTE AND
FIRST CLOSING WARRANT**

This Amendment No. 2 to First Closing Convertible Note and First Closing Warrant (the "Amendment"), effective as of February 14, 2002, is made by and between Blue Heron Biotechnology, Inc., a Delaware corporation (the "Company") and IBH-II, L.P. (the "Purchaser").

RECITALS

1. The Company and the Purchaser are parties to the Convertible Note and Warrant Purchase Agreement dated April 26, 2001, as amended (the "Agreement").
2. The Company and the Purchaser previously amended on October 9, 2001, certain terms and conditions of the First Closing Note (the "Note") and First Closing Warrant (the "First Closing Warrant") issued to Purchaser.
3. The Company and Purchaser desire to amend certain terms of the Note and First Closing Warrant.
4. The Company and the Purchaser have the authority to amend the Note and the First Closing Warrant.
5. Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in the Agreement.

AGREEMENT

The undersigned agree as follows:

1. The Recitals and Sections 1 and 2(a) of the Note are hereby amended and restated in their entirety to read as follows:

"For value received, Blue Heron Biotechnology, Inc., a Delaware corporation (the "Company"), promises to pay to **IBH-II, L.P.** (the "Holder"), the principal sum of **Two Hundred Thousand Dollars (\$200,000.00)**. Interest shall accrue from the date of this Note on the unpaid principal amount at a rate equal to twelve percent (12%) per annum, compounded annually. This Note is one of a series of Convertible Notes containing substantially identical terms and conditions issued pursuant to that certain Convertible Note and Warrant Purchase Agreement dated April 26, 2001, as amended (the "Purchase Agreement") at the First Closing (as defined in the Purchase Agreement). Such Notes are referred to herein as the "Notes," and the holders thereof

are referred to herein as the "Holder." This Note is subject to the following terms and conditions.

1. **Maturity.** Subject to Section 2, principal and any accrued but unpaid interest under this Note shall be due and payable upon demand by the Holder at any time after September 30, 2002 (or such later date as agreed to by the Company and the Holders of at least 2/3 of the aggregate principal amount of all convertible notes issued pursuant to the Purchase Agreement). Notwithstanding the foregoing, the entire unpaid principal sum of this Note, together with accrued and unpaid interest thereon, shall become immediately due and payable upon the insolvency of the Company, the commission of any act of bankruptcy by the Company, the execution by the Company of a general assignment for the benefit of creditors, the filing by or against the Company of a petition in bankruptcy or any petition for relief under the federal bankruptcy act or the continuation of such petition without dismissal for a period of ninety (90) days or more, the appointment of a receiver or trustee to take possession of the property or assets of the Company, a Sale Transaction (as defined below), or a liquidation, dissolution or winding up of the Company. "Sale Transaction" means the sale, conveyance or disposal of all or substantially all of the Company's property or business or the Company's merger into or consolidation with any other entity (other than a wholly-owned subsidiary of the Company) or any other transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Company is disposed of, provided that a merger effected exclusively for the purpose of changing the domicile of the Company shall not constitute a Sale Transaction.

2. **Conversion.**

(a) **Investment by the Holder.** The entire principal amount of and accrued interest on this Note shall be converted into shares of the Company's equity securities (the "Equity Securities") issued and sold at the close of the Company's next equity financing in a single transaction or a series of related transactions (excluding the conversion of convertible debt outstanding as of or pursuant to the Fourth Closing (as defined in the Purchase Agreement)) yielding gross proceeds to the Company of at least \$3,000,000 in the aggregate (the "Next Equity Financing"). The number of shares of Equity Securities to be issued upon such conversion shall be equal to the quotient obtained by dividing (i) the entire principal amount of this Note plus accrued interest by (ii) the price per share of the Equity Securities, rounded to the nearest whole share, and the issuance of such shares upon such conversion shall be upon the terms and subject to the conditions applicable to the Next Equity Financing.

If the Next Equity Financing does not occur by September 30, 2002 (or such later date as agreed to by the Company and the Holders of at least 2/3 of the aggregate principal amount of all convertible notes issued pursuant to the Purchase Agreement), then the Holder shall have the right to cause all principal and accrued and unpaid interest on this Note to be converted into shares of the Company's Series C Preferred Stock. The number of shares of Series C Preferred Stock to be issued upon such conversion shall be equal to the quotient obtained by dividing (i) the entire principal amount of this Note plus accrued interest by (ii)

\$0.60, and the issuance of such shares upon such conversion shall be upon the terms and subject to the conditions applicable to the Company's Series C Preferred Stock. Holder's election to convert to shares of Series C Preferred Stock pursuant to this paragraph shall cure any default in payment under the Note, Purchase Agreement and any related security agreements.

If a Sale Transaction (as defined below) occurs prior to September 30, 2002 (or such later date as agreed to by the Company and the Holders of at least 2/3 of the aggregate principal amount of all convertible notes issued pursuant to the Purchase Agreement) and prior to the occurrence of the Next Equity Financing, then the Holder shall have the right to cause all principal and accrued and unpaid interest on this Note to convert into shares of the Company's Series C Preferred Stock by delivering written notice thereof to the Company. The number of shares of Series C Preferred Stock to be issued upon such conversion shall be equal to the quotient obtained by dividing (i) the entire principal amount of this Note plus accrued interest by (ii) \$0.60, and the issuance of such shares upon such conversion shall be upon the terms and subject to the conditions applicable to the Series C Preferred Stock then outstanding. The Company shall provide the Holder with at least ten days' written notice of a Sale Transaction. The Holder shall be entitled to exercise its right to convert the principal and accrued and unpaid interest on this Note into shares of the Company's Series C Preferred Stock, conditioned upon, and effective as of, the occurrence of a Sale Transaction.

If the Company executes a commercial credit arrangement, equipment financing or similar transaction making at least \$3,000,000 in debt financing available to the Company on terms reasonably acceptable to each of Crabtree Ventures, L.P. and IBH-II, L.P. (a "Debt Financing"), then on such date all principal and accrued and unpaid interest on this Note shall be converted into shares of the Company's Series C Preferred Stock. The number of shares of Series C Preferred Stock to be issued upon such conversion shall be equal to the quotient obtained by dividing (i) the entire principal amount of this Note plus accrued interest by (ii) \$0.60, and the issuance of such shares upon such conversion shall be upon the terms and subject to the conditions applicable to the Company's Series C Preferred Stock."

2. The Recitals and Section of the First Closing Warrant are hereby amended and restated in their entirety to read as follows:

"Blue Heron Biotechnology, Inc., a Delaware corporation (the "Company"), for value received, hereby certifies that **IBH-II, L.P.**, or its registered assigns (the "Registered Holder"), is entitled, subject to the terms set forth below, to purchase from the Company, at any time after the date hereof and on or before the Expiration Date (as defined in Section 6 below) shares of preferred stock of the Company ("Preferred Stock") issued in the Company's next private equity financing in a single transaction or series of related transactions (excluding conversion of convertible debt outstanding as of or pursuant to the First Closing) yielding aggregate gross proceeds to the Company of at least \$3,000,000 (the "Next Equity Financing") at a purchase price per share equal to the price paid per share by the purchasers in the Next Equity Financing. If the Next Equity Financing does not occur by September 30, 2002 (or such later date as agreed to by the Company and the

Holder of at least 2/3 of the aggregate principal amount of all convertible notes issued pursuant to the Purchase Agreement (as defined below)), this Warrant shall be issuable for shares of the Company's Series C Preferred Stock having a purchase price per share of \$0.60. If a Sale Transaction (as defined below) occurs prior to September 30, 2002 (or such later date as agreed to by the Company and the Holders of at least 2/3 of the aggregate principal amount of all convertible notes issued pursuant to the Purchase Agreement) and prior to the Next Equity Financing, this Warrant shall be issuable for shares of Series C Preferred Stock of the Company having a purchase price per share of \$0.60. The shares purchasable upon exercise of this Warrant, and the purchase price per share, as adjusted from time to time pursuant to the provisions of this Warrant, are hereinafter referred to as the "Warrant Stock" and the "Purchase Price," respectively. "Sale Transaction" means the sale, conveyance or disposal of all or substantially all of the Company's property or business or the Company's merger into or consolidation with any other entity (other than a wholly-owned subsidiary of the Company) or any other transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Company is disposed of, provided that a merger effected exclusively for the purpose of changing the domicile of the Company shall not constitute a Sale Transaction.

This Warrant is issued pursuant to, and is subject to the terms and conditions of, the Convertible Note and Warrant Purchase Agreement dated as of April 26, 2001, as amended (the "Purchase Agreement"). Capitalized terms used by not defined herein shall have the meanings given in the Purchase Agreement.

1. Number of Shares.

(a) Subject to the terms and conditions hereinafter set forth, the Registered Holder is entitled, upon surrender of this Warrant, to purchase from the Company the number of shares (subject to adjustment as provided herein) of Warrant Stock equal to (i) twenty-five percent (25%) of the principal amount of the Note issued to the Registered Holder pursuant to the Purchase Agreement in the First Closing divided by (ii) the price per share paid by the investors in the Next Equity Financing.

(b) If the Next Equity Financing has not occurred by September 30, 2002 (or such later date as agreed to by the Company and the Holders of at least 2/3 of the aggregate principal amount of all convertible notes issued pursuant to the Purchase Agreement), the Registered Holder shall be entitled, upon surrender of this Warrant, to purchase from the Company the number of shares (subject to adjustment as provided herein) of Warrant Stock equal to (i) twenty-five percent (25%) of the principal amount of the Note issued to the Registered Holder pursuant to the Purchase Agreement in the First Closing divided by (ii) \$0.60.

(c) If a Sale Transaction occurs prior to September 30, 2002 (or such later date as agreed to by the Company and the Holders of at least 2/3 of the aggregate principal amount of all convertible notes issued pursuant to the Purchase Agreement), and prior to the Next Equity Financing, the Registered Holder shall be entitled, upon surrender of this Warrant, to purchase from the Company the number of shares (subject to adjustment as provided herein) of Warrant Stock equal to (i) twenty-five percent (25%) of the principal

amount of the Note issued to the Registered Holder pursuant to the Purchase Agreement in the First Closing divided by (ii) \$0.60.

(d) If the Company executes a commercial credit arrangement, equipment financing or similar transaction making at least \$3,000,000 in debt financing available to the Company on terms reasonably acceptable to each of Crabtree Ventures, L.P. and IBH-II, L.P. (a "Debt Financing"), on such date the Registered Holder shall be entitled, upon surrender of this Warrant, to purchase from the Company the number of shares (subject to adjustment as provided herein) of Warrant Stock equal to (i) twenty-five percent (25%) of the principal amount of the Note issued to the Registered Holder pursuant to the Purchase Agreement in the First Closing divided by (ii) \$0.60.

3. All other provisions of the Note and First Closing Warrant shall remain in full force and effect.

[Signature Page Follows]

Amendment No. 2 to First Closing Convertible Note and First Closing Warrant is effective as of the date first above written.

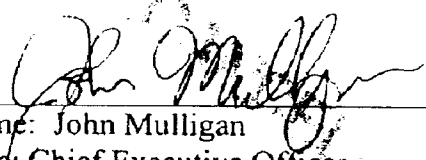
PURCHASER:

IBH-II, L.P.

By: _____
Name: _____
Title: _____

COMPANY:

BLUE HERON BIOTECHNOLOGY, INC.

By: 
Name: John Mulligan
Title: Chief Executive Officer

Amendment No. 2 to First Closing Convertible Note and First Closing Warrant is effective as of the date first above written.

PURCHASER:

IBH-II, L.P.

By: *Hans Wladin*
Name: Hans Wladin
Title: Member, IBH Management LLC,
General Partner of IBH-II L.P.

COMPANY:

BLUE HERON BIOTECHNOLOGY, INC.

By _____
Name: John Mulligan
Title: Chief Executive Officer

AMENDMENT NO. 3 TO FIRST CLOSING CONVERTIBLE NOTE AND
FIRST CLOSING WARRANT AND WAIVER

This Amendment No. 3 to First Closing Convertible Note and First Closing Warrant and Waiver (the "Amendment and Waiver") is made as of July 1, 2003 by and between Blue Heron Biotechnology, Inc., a Delaware corporation (the "Company"), and IBH-II, L.P. (the "Purchaser").

RECITALS

1. The Company and the Purchaser are parties to the Convertible Note and Warrant Purchase Agreement dated April 26, 2001, as amended to date (the "Agreement").
2. The Company issued a Convertible Promissory Note and First Closing Warrant to the Purchaser on April 26, 2001, as amended by the Amendment dated October 9, 2001, the Amendment No. 2 dated February 14, 2002, the Addendum to Convertible Promissory Notes, Warrants and Voting Agreement dated September 26, 2002, and the Second Addendum to Convertible Promissory Notes, Warrants and Voting Agreement dated February 7, 2003 (such note and warrant, as amended, the "Note" and "First Closing Warrant," respectively).
3. The Company is currently in the process of completing an equity financing pursuant to the terms of a Series B-1 Preferred Stock and Warrant Purchase Agreement between the Company (the "Series B-1 Purchase Agreement") and certain purchasers (the "Series B-1 Investors") approved by the Company's Board of Directors on June 13, 2003. The Series B-1 Purchase Agreement provides that conditions to the Series B-1 Investors' and Company's obligations at the Initial Closing (as defined in the Series B-1 Purchase Agreement) include (a) that the holders of outstanding convertible promissory notes (the "Junior Debt Notes") and warrants (the "Junior Debt Warrants") issued by the Company prior to August 28, 2002 and the holders of outstanding convertible promissory notes (the "Senior Debt Notes") and warrants (the "Senior Debt Warrants") issued by the Company on or after August 28, 2002 shall agree to amend such notes and warrants, to provide for, among other things, that (i) the Junior Debt Notes will convert into the Company's Series A-1 Preferred Stock simultaneously with the Initial Closing, (ii) the Junior Debt Warrants will become exercisable for Series A-1 Preferred Stock, (iii) the Senior Debt Notes will convert into the Company's Series B-1 Preferred Stock simultaneously with the Initial Closing and (iv) the Senior Debt Warrants will become exercisable for Series B-1 Preferred Stock, and (b) that an automatic conversion of the Company's outstanding Series A Preferred Stock and Series B Preferred Stock (the "Conversion") shall have occurred.
4. The Company and Purchaser desire to amend certain terms of the Note and First Closing Warrant in order to induce the Series B-1 Investors to purchase shares of the Company's Series B-1 Preferred Stock and warrants to purchase Series B-1 Preferred Stock pursuant to the Series B-1 Purchase Agreement.

5. The Company and the Purchaser have the authority to amend the Note and the First Closing Warrant.

6. Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in the Agreement.

AGREEMENT

The undersigned agree as follows:

1. Section 2(a) of the Note is hereby amended and restated in its entirety to read as follows:

“2. Conversion.

(a) Automatic Conversion. The entire principal amount of and accrued interest on this Note shall be automatically converted into shares of the Company’s Series A-1 Preferred Stock (the “Series A-1 Preferred”) concurrently with the Initial Closing (as defined in the Series B-1 Purchase Agreement) of the Company’s Series B-1 Preferred Stock and Warrant financing occurring pursuant to the Series B-1 Preferred Stock and Warrant Purchase Agreement (the “Series B-1 Purchase Agreement”) between the Company and certain purchasers approved by the Company’s Board of Directors on June 13, 2003. The number of shares of Series A-1 Preferred to be issued upon such conversion shall be equal to the quotient obtained by dividing (i) the entire principal amount of this Note plus accrued interest by (ii) \$0.80, rounded down to the nearest whole share. The Holder shall execute and become a party to the Company’s Amended and Restated Investors’ Rights Agreement and Amended and Restated Voting Agreement at the time of the Initial Closing.”

2. The Recitals and Section 1 of the First Closing Warrant are hereby amended and restated in their entirety to read as follows:

“Blue Heron Biotechnology, Inc., a Delaware corporation (the “Company”), for value received, hereby certifies that IBH-II, L.P., or its registered assigns (the “Registered Holder”), is entitled, subject to the terms set forth below, to purchase from the Company, at any time after the date hereof and on or before the Expiration Date (as defined in Section 6 below) shares of the Company’s Series A-1 Preferred Stock (“Preferred Stock”) at a purchase price per share equal to \$0.80. The shares purchasable upon exercise of this Warrant, and the purchase price per share, as adjusted from time to time pursuant to the provisions of this Warrant, are hereinafter referred to as the “Warrant Stock” and the “Purchase Price,” respectively. “Sale Transaction” means the sale, conveyance or disposal of all or substantially all of the Company’s property or business or the Company’s merger into or consolidation with any other entity (other than a wholly-owned subsidiary of the Company) or any other transaction or series of related transactions in which more than fifty percent (50%) of

the voting power of the Company is disposed of, provided that a merger effected exclusively for the purpose of changing the domicile of the Company shall not constitute a Sale Transaction.

This Warrant is issued pursuant to, and is subject to the terms and conditions of, the Convertible Note and Warrant Purchase Agreement dated as of April 26, 2001, as amended (the "Purchase Agreement"). Capitalized terms used but not defined herein shall have the meanings given in the Purchase Agreement.

1. **Number of Shares.** Subject to the terms and conditions hereinafter set forth, the Registered Holder is entitled, upon surrender of this Warrant, to purchase from the Company the number of shares (subject to adjustment as provided herein) of Warrant Stock equal to (i) twenty-five percent (25%) of the principal amount of the Note issued to the Registered Holder pursuant to the Purchase Agreement in the First Closing divided by (ii) \$0.80."

3. Section 7(d) of the First Closing Warrant provides that the Purchaser is entitled to notice of any mandatory conversion of the Company's Preferred Stock into Common Stock at least ten (10) days prior to the effective date of any such conversion. The Purchaser hereby waives such notice requirement with respect to the Conversion.

4. All other provisions of the Note and First Closing Warrant shall remain in full force and effect.

5. This Amendment and Waiver shall be effective immediately prior to the Initial Closing and if the Initial Closing shall not occur within ninety (90) days of the date hereof, this Amendment and Waiver shall be null and void.

[Signature Page Follows]

19 IN WITNESS WHEREOF, the parties have executed this Amendment and Waiver this day of June, 2003. This Amendment and Waiver may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

PURCHASER:

IBH-II, L.P.

By: [Signature]
Name: HANS LUDIN
Title: Member, IBH Management LLC
General Partner to IBH II, L.P.

COMPANY:

BLUE HERON BIOTECHNOLOGY, INC.

By: _____
Name: John Mulligan
Title: President & Chief Executive Officer

IN WITNESS WHEREOF, the parties have executed this Amendment and Waiver this 1st day of July, 2003. This Amendment and Waiver may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

PURCHASER:

IBH-II, L.P.

By: _____
Name: _____
Title: _____

COMPANY:

BLUE HERON BIOTECHNOLOGY, INC.

By: 
Name: John Mulligan
Title: President & Chief Executive Officer

**BLUE HERON BIOTECHNOLOGY, INC.
SERIES B-1 PREFERRED STOCK AND
WARRANT PURCHASE AGREEMENT**

This Series B-1 Preferred Stock and Warrant Purchase Agreement (the "Agreement") is made as of the 1st day of July, 2003 by and between Blue Heron Biotechnology, Inc., a Delaware corporation (the "Company") and the investors listed on Exhibit A attached hereto (each an "Investor" and together the "Investors").

The parties hereby agree as follows:

1. PURCHASE AND SALE OF PREFERRED STOCK AND WARRANTS.

1.1 Sale and Issuance of Series B-1 Preferred Stock and Warrants.

(a) An automatic conversion of the Company's outstanding Series A Preferred Stock and Series B Preferred Stock (the "Conversion") shall occur on or before the Initial Closing (as defined below) as approved in an Action by Written Consent of Stockholders of the Company dated June 30, 2003.

(b) The holders of outstanding convertible promissory notes (the "Junior Debt Notes") and warrants (the "Junior Debt Warrants") issued by the Company prior to August 28, 2002 and the holders of outstanding convertible promissory notes (the "Senior Debt Notes") and warrants (the "Senior Debt Warrants") issued by the Company on or after August 28, 2002 shall agree to amend such notes and warrants pursuant to the form of amendments attached hereto as Exhibit B and Exhibit C, respectively, to provide for, among other things, that (i) the Junior Debt Notes will convert into the Company's Series A-1 Preferred Stock simultaneously with the Initial Closing, (ii) the Junior Debt Warrants will become exercisable for Series A-1 Preferred Stock, (iii) the Senior Debt Notes will convert into the Company's Series B-1 Preferred Stock simultaneously with the Initial Closing and (iv) the Senior Debt Warrants will become exercisable for Series B-1 Preferred Stock.

(c) The Company shall adopt and file with the Secretary of State of the State of Delaware on or before the Initial Closing the Amended and Restated Certificate of Incorporation in the form attached hereto as Exhibit D (the "Restated Certificate").

(d) Subject to the terms and conditions of this Agreement, each Investor agrees to purchase at the Closing and the Company agrees to sell and issue to each Investor at the Closing that number of shares of Series B-1 Preferred Stock (the "Series B-1 Shares" or "Series B-1 Preferred") set forth opposite each such Investor's name on Exhibit A attached hereto at a purchase price of \$0.30 per share and a warrant with a price equal to \$0.001 multiplied by the number of shares of Series B-1 Preferred issuable upon exercise of such warrant in the form attached hereto as Exhibit E to purchase that number of shares of Series B-1 Preferred indicated with respect to such Investor on Exhibit A. The warrants issued to the Investor pursuant to this

Agreement shall be hereinafter referred to as the "Warrants" and the shares of Series B-1 Preferred issuable upon exercise of the Warrants shall be hereinafter referred to as the "Warrant Stock." The Series B-1 Shares, the Warrants, the Warrant Stock, and the Common Stock issuable upon conversion of the Series B-1 Shares and the Warrant Stock shall be hereinafter referred to as the "Securities."

1.2 Closing; Delivery.

(a) The purchase and sale of the Series B-1 Shares and the Warrants shall take place at the offices of Venture Law Group, a Professional Corporation, 4750 Carillon Point, Kirkland, Washington 98033, at 10:00 a.m., on July 1, 2003, or at such other time and place as the Company and the Investors mutually agree upon, orally or in writing (which time and place are designated as the "Initial Closing" or "Initial Closing Date"). In the event there is more than one closing, the term "Closing" or "Closing Date" shall apply to each such closing unless otherwise specified herein.

(b) At each Closing, the Company shall deliver to each Investor (i) a certificate representing the Series B-1 Shares being purchased thereby and (ii) a Warrant, in each case against payment of the purchase price therefor by check payable to the Company, by wire transfer to a bank account designated by the Company or by the cancellation of indebtedness the Company owes to an Investor.

(c) If less than 5,000,000 shares of Series B-1 Preferred and 5,000,000 Warrants are sold at the Initial Closing, the Company shall have the right, any time within 120 days of the Initial Closing, to sell such remaining shares of Series B-1 Preferred and such remaining Warrants to one or more additional purchasers as determined by the Company, or to any Investor hereunder who wishes to acquire additional shares of Series B-1 Preferred and Warrants at the price and on the terms set forth herein, provided that any such additional purchaser shall (i) become a party to this Agreement and the Related Agreements (as defined in Section 5.9 below), and (ii) have the rights and obligations hereunder and thereunder, by executing and delivering to the Company an additional counterpart signature page to each of the Agreements and any additional documentation required by the Company. Any additional purchaser so acquiring shares of Series B-1 Preferred and Warrants shall be considered an "Investor" for purposes of this Agreement, and any Series B-1 Preferred or Warrants so acquired by such additional purchaser shall be considered "Series B-1 Shares," "Series B-1 Preferred," "Warrants" or "Warrant Stock," as applicable, for purposes of this Agreement and all other agreements contemplated hereby.

2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

In order to induce the Investors to enter into this Agreement and to purchase the Series B-1 Shares and Warrants, the Company hereby represents and warrants to each Investor, which representations and warranties shall survive the execution and delivery hereof, that:

2.1 Organization and Standing; Restated Certificate and Bylaws. The Company is duly incorporated, validly existing and in good standing under the laws of the State of Delaware. The Company has full corporate power and authority to own its properties and carry on its business as it is currently being conducted by the Company and as is currently proposed to be conducted by the Company. The Company is duly licensed or qualified to transact business as a foreign corporation and is validly existing in the State of Washington and in good standing in all other jurisdictions in which the nature of the business transacted by it or the character of the properties owned or leased by it requires such licensing or qualification, except where the failure to be so qualified will not have a material adverse effect on the Company. The Company has furnished counsel to the Investors true, correct and complete copies of its Restated Certificate, including all amendments thereto, and Bylaws, as presently in effect (the "Bylaws").

2.2 Corporate Power and Authority. The Company has full corporate power and authority to enter into this Agreement and the transactions contemplated hereby, issue the Series B-1 Shares, Warrants and the Common Stock (as defined herein) issuable upon conversion of the Series B-1 Shares or Series B-1 Preferred issued upon exercise of the Warrants purchased hereby (the "Underlying Common Stock") in accordance with the terms thereof and carry out and perform its obligations under the terms of this Agreement.

2.3 Subsidiaries. The Company has no subsidiaries and does not own of record or beneficially any capital stock, assets comprising the business of or equity interest or investment in any corporation, association or business entity.

2.4 Capitalization.

(a) Immediately prior to the Initial Closing, the authorized capital stock of the Company consists solely of (i) 41,000,000 shares of Common Stock, \$0.001 par value per share ("Common Stock"), of which 3,253,063 shares are issued and outstanding, and (ii) 30,000,000 shares of Preferred Stock, par value \$0.001 per share, of which 9,200,000 shares have been designated Series A-1 Preferred Stock and 20,800,0000 shares have been designated Series B-1 Preferred, and, of which no shares of Series A-1 Preferred or Series B-1 Preferred are issued and outstanding. The Company has reserved 5,000,000 shares of Series B-1 Preferred for issuance upon exercise of the Warrants. All such issued and outstanding shares are duly authorized and validly issued, fully paid and nonassessable and owned of record and beneficially by the stockholders and in the amounts set forth in Schedule 2.4(a)(i), and will have been offered, issued, sold and delivered by the Company in compliance with applicable federal and state securities laws. Schedule 2.4(a)(i) sets forth all stockholders of the Company immediately following the Initial Closing and the number of shares held by such stockholders. Schedule 2.4(a)(i) sets forth all of the holders of options or warrants to purchase any shares of Company capital stock and the number of shares of Company capital stock which each option or warrant holder has the right to purchase.

(b) Except for (i) the Warrants, (ii) 1,273,509 shares of Common Stock reserved for issuance pursuant to options currently held by employees of the Company as set

forth on Schedule 2.4(b), (iii) 592,628 shares of Common Stock reserved for issuance pursuant to options to be granted to employees of the Company, (iv) shares of Series A-1 Preferred Stock or Series B-1 Preferred Stock to be issued upon conversion of the Junior Debt Notes and Senior Debt Notes, as applicable, (v) shares of Series A-1 Preferred Stock or Series B-1 Preferred Stock to be issued upon exercise of the Junior Debt Warrants and Senior Debt Warrants, as applicable, (vi) shares of Common Stock reserved for issuance upon conversion of the Series B-1 Shares issued and outstanding immediately following the Initial Closing Date, (vii) shares of Common Stock reserved for issuance upon conversion of shares of Series A-1 Preferred Stock or Series B-1 Preferred Stock referenced in Sections 2.4(b)(iv) or 2.4(b)(v) above, or (viii) as specified in Schedule 2.4(b) or in the Restated Certificate, there are no outstanding preemptive, conversion or other rights, options, warrants or agreements granted or issued by or binding upon the Company for the purchase or acquisition of any shares of its capital stock. To the best of the Company's knowledge, no stockholder has granted options or other rights to purchase any shares of Common Stock from such stockholder other than as set forth in Schedule 2.4(b). The Company holds no shares of its capital stock in its treasury.

(c) At each Closing, sufficient shares of authorized but unissued Common Stock of the Company will have been reserved by appropriate corporate action in connection with the prospective conversion of the Series B-1 Shares and Warrants and the issuance of the Underlying Common Stock in accordance with its terms will not require any further corporate action by the stockholders or directors of the Company, will not be subject to preemptive rights in any present or future stockholders of the Company and will not conflict with any provision of any agreement to which the Company is a party or by which it is bound. The Underlying Common Stock, when issued upon conversion of the Series B-1 Shares or Series B-1 Preferred issued upon exercise of the Warrants, in accordance with its terms, will be duly authorized, fully paid and nonassessable and will be free of any liens or encumbrances.

2.5 Authorization; No Conflicts. All corporate action on the part of the Company, its directors and stockholders necessary for the authorization, execution, delivery and performance by the Company of this Agreement, and the consummation of the transactions contemplated herein and for the authorization, offer, issuance, sale and delivery of the Series B-1 Shares and Warrants and, subject to the conversion thereof and exercise and conversion thereof in accordance with their terms, of the Underlying Common Stock, has been taken. This Agreement is a valid and binding obligation of the Company, enforceable in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and to the extent the indemnification provisions contained in the Investors' Rights Agreement (as hereinafter defined) may be limited by applicable or state securities laws. The execution, delivery and performance by the Company of this Agreement and compliance herewith and the offer, issuance, sale and delivery of the Series B-1 Shares, Warrants and Underlying Common Stock will not, assuming the truth and accuracy of the Investors' representations and warranties set forth in Section 4 hereof, result in any violation of and will not conflict with, or result in any breach of any of the terms of, or constitute a default under, the Restated Certificate or the Bylaws, any mortgage, indenture, agreement, instrument, judgment, decree, order, rule or regulation or other restriction to which the Company is a party or by which it is bound or result in

the creation of any Lien (as defined herein) upon any of the properties or assets of the Company pursuant to any such term or, to the best of the Company's knowledge, any provision of federal or state law to which the Company is subject. No stockholder of the Company has any preemptive rights or rights of first refusal by reason of the issuance of the Series B-1 Shares, Warrants or the Underlying Common Stock, or such stockholder has waived any such rights in writing.

2.6 Financial Information. The unaudited financial statements of the Company (including any notes thereto) as of December 31, 2002 and for the year then ended, and the unaudited financial statements of the Company as of March 31, 2003 and for the three-month period then ended, included in Schedule 2.6, present fairly the financial position and results of operations of the Company at the dates and for the periods to which they relate, have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods indicated, and show all material liabilities, absolute or contingent, of the Company required to be recorded thereon in accordance with generally accepted accounting principles.

2.7 Outstanding Debt. The Company has no outstanding indebtedness for borrowed money except as set forth in Schedule 2.7 and is not a guarantor contingently liable for any indebtedness. Except as set forth in Schedule 2.7, there exists no default under the provisions of any instrument evidencing any indebtedness or of any agreement relating thereto.

2.8 Absence of Undisclosed Liabilities. Except as set forth on Schedule 2.8, the Company has no liabilities (fixed, accrued, contingent or otherwise, including any tax liabilities due) which are not fully reflected or provided for on the balance sheet referred to in Section 2.6, except liabilities incurred in the ordinary course of business since the date of such balance sheet, none of which individually or in the aggregate has been or is materially adverse to the condition, financial or otherwise, of the Company or its assets, properties or business.

2.9 Absence of Certain Changes. Since March 31, 2003, except to the extent described in Schedule 2.9, there has not been any event or condition of any character which has materially and adversely affected the condition, financial or otherwise, of the Company or its assets, liabilities, properties or business, including, but not limited to, the following:

(a) any material adverse change in the condition, financial or otherwise, of the Company or in its assets, liabilities, properties or business;

(b) any damage, destruction or loss of any of the properties or assets of the Company (whether or not covered by insurance) materially adversely affecting the condition, financial or otherwise, of the Company or its assets, liabilities, properties or business;

(c) any declaration, setting aside or payment of any dividend or other distribution in respect of any of the Company's capital stock or any direct or indirect redemption, purchase or other acquisition of any such stock by the Company;

(d) any increase in the compensation payable or to become payable by the Company to any of its directors, officers, agents, consultants or any of its employees whose total compensation after such increase was in excess of \$50,000 per annum, or any bonus, percentage compensation, service award or other like benefit having a value in excess of \$5,000 granted, made or accrued to the credit of any such director, officer, agent, consultant or employee, or any welfare, pension, retirement or similar payment or arrangement made or agreed to by the Company for the benefit of any such director, officer, agent, consultant or employee;

(e) any change in any method of accounting or accounting practice of the Company;

(f) any notes or accounts receivable or portions thereof written off by the Company as uncollectible (except for write-offs in the ordinary course of business and consistent with past practice);

(g) any issuance or sale by the Company of any stock, bonds or other corporate securities of which the Company is the issuer, or the grant, issuance or change of any stock options, warrants or other rights to purchase securities;

(h) any discharge or satisfaction by the Company of any Lien (as defined herein) or payment or satisfaction of any obligation or liability (whether absolute, accrued, contingent or otherwise and whether due or to become due) other than current liabilities shown on the balance sheet referred to in Schedule 2.6 and current liabilities incurred since the date of such balance sheet, in the ordinary course of business and consistent with past practice;

(i) any sale, assignment, transfer, mortgage, pledge or encumbrance of any of the assets (real, personal or mixed, tangible or intangible) of the Company, cancellation of any debts or claims or waiver of any rights of substantial value, except, in each case, in the ordinary course of business and consistent with past practice;

(j) any sale, assignment or transfer by the Company of any Proprietary Asset (as defined herein) or other similar assets, including applications or licenses therefor;

(k) any capital expenditure, or commitment to make any capital expenditure, by the Company for additions to property, plant or equipment, individually or in the aggregate in excess of \$10,000;

(l) payment of any amounts or liability incurred to or in respect of, or sale of any properties or assets (real, personal or mixed, tangible or intangible) to, or any transaction or agreement or arrangement of the Company with, any corporation or business in which any corporate officer or director of the Company has any direct or indirect ownership interest;

(m) any collective bargaining agreements or employment agreements entered into by the Company;

(n) any material change to a contract or arrangement by or to which the Company or any of its assets is bound or subject; or

(o) any labor trouble.

2.10 Business of the Company. The Company is engaged in the development, manufacture and sale of custom engineered genes to life science companies (the "Business"). Except as set forth on Schedule 2.10, the Company has no knowledge or belief that: (a) there is pending or threatened any claim or litigation against or affecting the Company contesting its right to produce, manufacture, sell or use any product, process, method, substance, part or other material produced, manufactured, sold or used by the Company in connection with the operations of the Company and the Business; (b) there exists, or there is pending or planned, any patent, invention, device or application, or any statute, rule, law, regulation, standard or code which would materially adversely affect the condition (financial or otherwise) or the operations of the Company; or (c) there is any other factor within the special knowledge of the Company (other than fire, flood, accident, act of war or civil commotion, industry-wide trends or developments or any other cause or event beyond the control of the Company or events or factors that may be reasonably expected to affect the conditions or operations of business entities generally) which may materially adversely affect the condition (financial or otherwise) or the proposed operations of the Company.

2.11 Taxes. The Company has filed within the time prescribed by law (including extensions of time approved by the appropriate taxing authority) all tax returns and reports required to be filed with the United States Internal Revenue Service, with the State of Washington and with all other jurisdictions where such filing is required by law. The Company has paid or, to the extent required by generally accepted accounting principles, made adequate provision in the balance sheet referred to in Schedule 2.6 for the payment of, all taxes, interest, penalties, assessments or deficiencies shown to be due or claimed to be due on or in respect of such tax returns and reports. The Company knows of (a) no other tax returns or reports which are required to be filed which have not been so filed and (b) no unpaid assessment for additional tax for any fiscal period or any basis therefor. The Company's tax returns have not, to the best of the Company's knowledge, been audited by the United States Internal Revenue Service nor by any state taxing authority.

2.12 Contracts; Insurance. Except as set forth in Schedules 2.7, 2.8, 2.9, 2.12, 2.17, 2.18 or 2.28, the Company has no written, or to the best of the Company's knowledge, oral, contracts, obligations, agreements, plans, arrangements, commitments, or the like (absolute or contingent) of any material nature, including the following:

(a) Employment, bonus or consulting agreements, pension, profit sharing, deferred compensation, stock bonus, retirement, stock option, stock purchase, phantom stock or

similar plans, including agreements evidencing rights to purchase securities of the Company, agreements among stockholders and the Company and, to the best of the Company's knowledge, agreements among stockholders of the Company relating to any of the Company's capital stock or rights with respect thereto;

(b) Loan or other agreements, notes, indentures or other instruments relating to or evidencing indebtedness for borrowed money or mortgaging, pledging, granting or creating a Lien on any of the Company's property or any agreement or instrument evidencing any guaranty by the Company of payment or performance by any other person;

(c) Agreements with dealers, sales representatives, brokers or other distributors, jobbers, advertisers or sales agencies;

(d) Agreements with any labor union or collective bargaining organization or other labor agreements;

(e) Any contract for the furnishing or purchase of machinery, equipment, goods or services, including agreements with processors and subcontractors;

(f) Any indenture or agreement relating to the sale or repurchase of any securities of the Company;

(g) Any joint venture contract or arrangement or other agreement involving a sharing of profits or expenses to which the Company is a party;

(h) Agreements limiting the freedom of the Company to compete in any line of business or in any geographic area or with any person;

(i) Agreements providing for disposition of the business, assets or shares of the Company, agreements of merger or consolidation to which the Company is a party or letters of intent with respect to the foregoing;

(j) Letters of intent or agreements with respect to the acquisition of the business, assets, or equity or debt securities of any other business;

(k) Any license agreements relating to the acquisition or disposition of any Proprietary Asset necessary for the Company to conduct its business as conducted by it or proposed to be conducted by it; and

(l) Insurance policies.

The Company has complied with all the material provisions of all of such contracts, obligations, agreements, plans, arrangements and commitments and is not in material default thereunder. The Company has no present expectation or intention of not fully performing all its material

obligations under each such contract, obligation or agreement, and, to the best of the Company's knowledge, there is no breach or anticipated breach by the other party to any contract or commitment to which the Company is a party.

2.13 Stockholders, Directors and Officers. Set forth on Schedule 2.13 is a correct and complete list or description of all indebtedness of the Company to its officers, directors or stockholders or any of their respective relatives and of all indebtedness of such persons to the Company. Set forth on Schedule 2.13 is a correct and complete list or description of all compensation arrangements between the Company and each director, officer and stockholder of the Company, including current salary, bonus plans and other benefits and any agreement, arrangement or understanding with respect to any of the foregoing in the future.

2.14 Litigation and Bankruptcy Proceedings.

(a) There is neither pending nor, to the best of the Company's knowledge, threatened any action, suit, proceeding or claim, nor any basis therefor, whether or not purportedly on behalf of the Company, to which the Company is or may be named as a party or its property or assets is or may be subject and in which an unfavorable outcome, ruling or finding in any such matter or for all such matters taken as a whole might have a material adverse effect on the condition, financial or otherwise, or operations of the Company. To the best of the Company's knowledge, there is no unasserted claim, the assertion of which is likely and which, if asserted, will seek damages, an injunction or other legal, equitable, monetary or non-monetary relief which claims, individually or collectively with other such unasserted claims, if granted would have a material adverse effect on the condition, financial or otherwise, or operations of the Company.

(b) The Company has not admitted in writing its inability to pay its debts as they become due, filed or consented to the filing against it of a petition in bankruptcy or a petition to take advantage of any insolvency act, made an assignment for the benefit of creditors, consented to the appointment of a receiver for itself or for the whole or any substantial part of its property or assets or had a petition in bankruptcy filed against it, been adjudicated a bankrupt, or filed a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other law or statute of the United States of America or any other jurisdiction.

2.15 Consents. All consents, approvals, orders or authorizations of, or registrations, qualifications, designations, declarations or filings with, any federal or state governmental authority (including under the "blue sky laws" of any such state governmental authority), any party to a contract to which the Company is bound or any other third party, required on the part of the Company, in connection with the consummation of the transactions contemplated by this Agreement, shall have been obtained prior to, and be effective as of, the Initial Closing Date, other than any notice filing required to be made after the Initial Closing Date pursuant to Regulation D under the Securities Act of 1933 (the "1933 Act") and any applicable "blue sky laws."

2.16 Title to Properties; Liens and Encumbrances. The Company has a valid ownership interest in all of its property and assets, free from all mortgages, pledges, liens, security interests, conditional sale agreements, encumbrances or charges (collectively, "Liens"), except as listed on Schedule 2.16 or Schedule 2.17 hereto. The Company does not have any ownership interest in real property except as listed on Schedule 2.16 hereto. The Company is not in violation of any law, regulation or ordinance (including laws, regulations or ordinances relating to building, zoning, environmental, city planning, land use or similar matters) relating to its property or assets which violation would have a material adverse effect on the business of the Company. All personal property and assets material to the business, operations or financial condition of the Company, and all buildings, structures and fixtures used by it in the conduct of its business, are in good operating condition and repair.

2.17 Leases. Set forth on Schedule 2.17 is a correct and complete list (including the amount of rents required to be paid and a description of the leased property) of all leases under which the Company is a lessee. The Company enjoys peaceful and undisturbed possession under all such leases, which are all valid and currently in full force and effect. The Company is not in default in any material respect under any such lease.

2.18 Franchises, Licenses, and Permits. Except as set forth on Schedule 2.18, the Company has all franchises, permits, licenses and other similar authority necessary for the conduct of its business as conducted by it, the lack of which could materially and adversely affect the operations or condition, financial or otherwise, of the Company. The Company is not in default in any material respect under any of such franchises, permits, licenses or other similar authority.

2.19 Status of Proprietary Assets.

(a) Status. To the best of its knowledge, the Company has full title and ownership of, or is duly licensed under or otherwise authorized to use, all patents, patent applications, trademarks, trademark applications, service marks, service mark applications, trade names, copyrights, domain names, software programs, trade secrets, confidential and proprietary information, designs and proprietary rights (all of the foregoing collectively hereinafter referred to as the "Proprietary Assets"), necessary to enable it to carry on its business as now conducted without any conflict with or infringement of the rights of others. A list of all of the Company's patents, patent applications, trademarks, trademark applications, service marks, service mark applications, trade names, copyrights, domain names and software programs (whether owned or licensed) included in the Proprietary Assets is set forth on Schedule 2.19(a). The Company has not received any notice or claim of, nor does it have any knowledge of, any infringement or misappropriation by the Company of the asserted rights of others. The Company is not aware of any infringement or misappropriation by others of its Proprietary Assets. The Company has taken substantially all reasonable steps necessary or appropriate to establish and maintain its ownership of its Proprietary Assets. The Company is not aware that any of its employees is obligated under any contract or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of his or her best efforts to

promote the interests of the Company or that would conflict with the Company's business as proposed to be conducted. The Company does not believe it is or will be necessary to utilize any inventions, trade secrets or proprietary information of any of its employees made prior to their employment by the Company, except for inventions, trade secrets or proprietary information that have been assigned to the Company.

(b) Licenses; Other Agreements. Except as set forth on Schedule 2.19(b), the Company has not granted, and, to the Company's knowledge, there are not outstanding, any options, licenses or agreements of any kind relating to any Proprietary Asset of the Company, nor is the Company bound by or a party to any option, license or agreement of any kind with respect to any of its Proprietary Assets. Except as set forth on Schedule 2.19(b), the Company is not obligated to pay any royalties or other payments to third parties with respect to the marketing, sale, distribution, manufacture, license or use of any Proprietary Asset or any other property or rights.

2.20 Issuance Taxes. All taxes imposed upon the Company by law as a result of the issuance, sale and delivery of the Series B-1 Shares, Warrants or Underlying Common Stock shall have been fully paid, and all laws imposing such taxes shall have been fully complied with, on or prior to the Initial Closing or any additional Closing, as applicable.

2.21 Offering. Neither the Company nor anyone authorized to act on its behalf has taken an action that will cause the issuance, sale and delivery of the Series B-1 Shares, Warrants or Underlying Common Stock as contemplated by this Agreement (assuming the truth and accuracy of the representations and warranties of the Investors set forth in Section 4 hereof) to constitute a violation of the 1933 Act or any applicable state securities laws.

2.22 Compliance. The Company is not in violation of any term of its Restated Certificate or Bylaws as amended. The Company is not in violation of any term of any law, judgment, decree, order, rule or regulation to which the Company is subject and a violation of which would have a material adverse effect on the condition, financial or otherwise, or operations of the Company.

2.23 Employees; Consultants. Set forth on Schedule 2.23 is a list of all employees and consultants of the Company. Set forth on Schedule 2.23 is a list of all consulting agreements between the Company and the Company's consultants, including all software development agreements. The Company has delivered to the Investors prior to the date hereof copies of all consulting agreements between the Company and the Company's consultants, or a written summary of any oral agreement between the Company and any Company consultant. Set forth on Schedule 2.23 is a list of all employment agreements with full-time employees not terminable at will without continuing obligation to the Company. Except as set forth on Schedule 2.23, to the best of the Company's knowledge, no full-time employee of the Company has any affiliation with or obligation to any other employer. The Company is not aware that any employee intends to terminate his or her employment with the Company, nor does the Company have a present intention to terminate the employment of any officer or key employee. To the best of the

Company's knowledge, no employee of the Company is in violation of any term of any employment contract, patent disclosure agreement, non-competition agreement or any other contract or agreement or any restrictive covenant relating to the relationship of any such employee to the Company or any former employer because of the nature of the business conducted or contemplated to be conducted by the Company or the use of trade secrets or proprietary information of others. There is neither pending nor, to the best of the Company's knowledge, threatened, any action, suit, proceeding or claim, or to the best of the Company's knowledge, any basis therefor, with respect to any contract, agreement, covenant or obligation referred to in Schedule 2.23.

2.24 Proprietary Rights and Confidentiality Agreement. Each person engaged by the Company in a technical or management position, either as an employee or consultant, has entered into and executed a Proprietary Rights and Confidentiality Agreement in the form attached to this Agreement as Exhibit F ("Proprietary Rights Agreement") or an employment or consulting agreement containing substantially similar terms. The Company, after reasonable investigation, is not aware that any of its employees, officers or consultants are in violation of the Proprietary Rights Agreement entered into by such employee, officer or consultant and the Company.

2.25 Registration Rights. Except as provided for or disclosed in the Investors' Rights Agreement (as hereinafter defined), the Company is not under any obligation to register any currently outstanding securities under the 1933 Act.

2.26 Loans to Other Persons. Except as set forth on Schedule 2.26, the Company has not made any loan or advance to any person or entity that is outstanding on the date of this Agreement, nor is the Company obligated or committed to make any such loan or advance, except for advances to employees in the ordinary course of business, consistent with past practice, which individually or in the aggregate are not material.

2.27 Books and Records. The books of account, stock record books, minute books, bank accounts and other corporate records of the Company are true, correct and complete and have been maintained in accordance with good business practices.

2.28 ERISA. Except as set forth on Schedule 2.28, the Company does not maintain any employee pension benefit plan as defined in paragraph 3(2)(A) of Title I of the Employee Retirement Income Security Act of 1974, as amended. The Company is in compliance in all material respects with all its obligations pursuant to such plans.

2.29 Labor Relations. To the best of the Company's knowledge, no labor union or any representative thereof has made any attempt to organize or represent employees of the Company. There are no unfair labor practice charges, pending trials with respect to unfair labor practice charges, pending material grievance proceedings or adverse decisions of a Trial Examiner of the National Labor Relations Board against the Company. To the best of the Company's knowledge, relations with employees of the Company are good.

2.30 Insurance. The Company maintains insurance which the Company reasonably believes is commercially reasonable given the risks involved in the business conducted by the Company.

2.31 Disclosure. Neither this Agreement, nor any certificate or statement furnished to the Investors by the Company pursuant to this Agreement, contains any untrue statement of a material fact, and none of this Agreement, such certificates or statements omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in the light of the circumstances under which they were made. The Company has not provided any information or disclosure to one Investor that it has not also provided to the other Investors.

2.32 Environmental and Safety Laws. The Company is not to the best of its knowledge in violation of any applicable statute, law or regulation relating to the environment or occupational health and safety, which violations, either singly or in the aggregate, would have a material adverse effect on the Company's business, and no material expenditures are or will be required in order to comply with any such statute, law or regulation.

2.33 Interested Party Transactions. No officer, director or stockholder of the Company or "associate" (as such term is defined in Rule 405 promulgated under the 1933 Act) of any such person or the Company, has or has had, either directly or indirectly, (a) a material interest in any person or entity which (i) furnishes or sells services or products which are furnished or sold or are proposed to be furnished or sold by the Company, or (ii) purchases from or sells or furnishes to the Company any goods or services, or (b) a material beneficial interest in any contract or agreement to which the Company is a party or by which it may be bound or affected.

2.34 Qualified Small Business Stock. The Series B-1 Shares qualify as Qualified Small Business Stock as defined in Section 1202(c) of the Internal Revenue Code of 1986, as amended (the "Code").

3. REPRESENTATIONS AND WARRANTIES OF THE INVESTORS.

Each Investor represents and warrants, severally and not jointly, to the Company that all action on the part of such Investor necessary for the authorization, execution, delivery and performance of all its obligations under this Agreement has been (or will be) taken prior to the Initial Closing Date. This Agreement, when executed and delivered by such Investor, shall constitute a valid and legally binding obligation of such Investor enforceable in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors.

4. FEDERAL AND OTHER SECURITIES LAWS.

4.1 Investment Representations.

(a) This Agreement is made with each Investor in reliance upon such Investor's representation to the Company, which by its acceptance hereof the Investor hereby confirms, that the Securities to be received by it will be acquired for investment for its own account, not as a nominee or agent, and not with a view to the sale or distribution of any part thereof, and that it has no present intention of selling, granting participation in, or otherwise distributing the same. By executing this Agreement, each Investor further represents that it does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer, or grant participations to such person or to any third person, with respect to any of the Securities.

(b) Each Investor understands that the Securities are not registered and will not be registered under the 1933 Act, on the ground that the sale provided for in this Agreement and the issuance of Securities hereunder should be exempt from registration under the 1933 Act and that the Company's reliance on such exemption is predicated on such Investor's representations set forth herein. Each Investor realizes that the basis for the exemption may not be present if, notwithstanding such representations, such Investor has in mind merely acquiring the Securities for a fixed or determinable period in the future, or for a market rise or for sale if the market does not rise. Each Investor confirms it has no such intention.

(c) Each Investor represents that it is an "accredited investor" within the meaning of Rule 501 under the 1933 Act and that such Investor is experienced in evaluating and investing in companies such as the Company, is able to fend for itself in the transactions contemplated by this Agreement, has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment and has the ability to bear the economic risks of its investment. Each Investor further represents that it has had access, during the course of the transaction and prior to its purchase of its Securities, to the same kind of information that would be provided in a registration statement filed by the Company under the 1933 Act and that it has had, during the course of the transaction and prior to its purchase of the Securities, the opportunity to ask questions of, and receive answers from, the Company concerning the terms and conditions of the offering and to obtain additional information necessary to verify the accuracy of any information furnished to it or to which it had access.

(d) Each Investor understands that the Securities may not be sold, transferred or otherwise disposed of without registration under the 1933 Act or an exemption therefrom, and that in the absence of an effective registration statement covering the Securities or an available exemption from registration under the 1933 Act, the Securities must be held indefinitely. In particular, each Investor is aware that the Securities may not be sold pursuant to Rule 144 promulgated under the 1933 Act unless all of the conditions of that Rule are met. Among the conditions for use of Rule 144 is the availability of current information to the public about the Company. Such information is not now available and the Company has no present plans to make such information available. Each Investor represents that, in the absence of an effective

registration statement covering the Securities it will sell, transfer or otherwise dispose of the Securities only in a manner consistent with its representations set forth herein and then only in accordance with the provisions of Section 4.1(e) hereof.

(e) Each Investor agrees that in no event will it make a transfer or disposition of any of the Securities (other than in accordance with the terms of conversion thereof or pursuant to an effective registration statement under the 1933 Act), unless and until (i) such Investor shall have notified the Company of the proposed disposition and shall have furnished the Company with a statement of the circumstances surrounding the disposition and assurance that the proposed disposition is in compliance with all applicable laws, (ii) if reasonably requested by the Company, at the expense of such Investor or transferee, it shall have furnished to the Company an opinion of counsel, reasonably satisfactory to the Company, to the effect that such transfer may be made without registration under the 1933 Act; provided, no opinion of counsel need be furnished for any transfer of the Securities to a partner of such Investor who confirms the representations and undertakings set forth in this Section 4 and (iii) compliance with all other agreements between the Investors and the Company.

(f) Each Investor understands that no public market now exists for any of the securities issued by the Company, and that the Company has made no assurances that a public market will ever exist for the Securities.

(g) If an Investor is not a United States person (as defined by Section 7701(a)(30) of the Code), such Investor hereby represents that it has satisfied itself as to the full observance of the laws of its jurisdiction in connection with any invitation to subscribe for the Securities or any use of this Agreement, including (i) the legal requirements within its jurisdiction for the purchase of the Securities, (ii) any foreign exchange restrictions applicable to such purchase, (iii) any governmental or other consents that may need to be obtained, and (iv) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale, or transfer of the Securities. Such Investor's subscription and payment for and continued beneficial ownership of the Securities, will not violate any applicable securities or other laws of the Investor's jurisdiction.

(h) Neither the Investor, nor any of its officers, employees, agents, directors, stockholders or partners has engaged the services of a broker, investment banker or finder to contact any potential investor nor has the Investor or any of the Investor's officers, employees, agents, directors, stockholders or partners, agreed to pay any commission, fee or other remuneration to any third party to solicit or contact any potential investor. Neither the Investor, nor any of its officers, directors, employees, agents, stockholders or partners has (a) engaged in any general solicitation, or (b) published any advertisement in connection with the offer and sale of the Securities.

4.2 Legends; Stop Transfer.

(a) All certificates for the Securities may bear the following or a substantially similar legend:

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.”

(b) The certificates for the Securities may also bear any legend required by any applicable state securities or other law or any of the other agreements executed by the Investors in connection with their investment in the Company.

(c) In addition, the Company shall make a notation regarding the restrictions on transfer of the Securities in its records and the Securities shall be transferred on the books of the Company only if transferred or sold pursuant to an effective registration statement under the 1933 Act covering such shares or pursuant to and in compliance with the provisions of Section 4.1(e) hereof.

5. CONDITIONS TO INVESTORS' OBLIGATIONS AT EACH CLOSING.

The obligations of each Investor under this Agreement at Closing are subject to the satisfaction or waiver on or before the Closing of each of the following conditions:

5.1 Representations and Warranties True on the Closing Date. The representations and warranties of the Company contained in Section 2 shall be true and correct on and as of the Closing Date, with the same force and effect as if they had been made on the Closing Date.

5.2 Performance. The Company shall have performed and complied with all agreements and conditions contained in this Agreement required to be performed or complied with by it on or before the Closing Date, and the Company shall have delivered to each Investor a certificate, in a form approved by Investors, signed by the Company's President or Chief Executive Officer to that effect.

5.3 Conditions to Closing. All of the closing conditions set forth in this Section 5 shall have been satisfied and there shall have occurred no material adverse change in the business or financial condition of the Company since March 31, 2003, and the Company shall have delivered to each Investor a certificate, in form approved by Investors, signed by the Company's President or Chief Executive Officer to that effect.

5.4 Secretary's Certificate. The Company shall deliver to each Investor copies of all resolutions of the Company's board of directors or stockholders necessary to approve this Agreement, the issuance of the Series B-1 Shares and Warrants, the reservation of the Underlying Common Stock, and all other transactions contemplated hereby, certified by the Secretary of the Company as of the Closing.

5.5 Qualifications and Consents. All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state and all consents of third parties that are required in connection with the lawful issuance and sale of the Series B-1 Shares, Warrants and Underlying Common Stock and the transactions contemplated hereby, shall have been duly obtained and shall be effective on and as of the Closing Date, and a copy thereof delivered to each Investor.

5.6 Legal Opinion. As of the Initial Closing Date, each Investor shall have received an opinion of counsel to the Company, in the form of Exhibit G hereto.

5.7 Restated Certificate. The Company shall have filed the Restated Certificate with the Secretary of State of Delaware on or prior to the Initial Closing Date, which shall continue to be in full force and effect as of the Closing Date.

5.8 Investors' Rights Agreement. As of the Initial Closing Date, the Company, the Investors and the holders of at least the minimum number of shares required to amend the Company's Investors' Rights Agreement dated May 2, 2000, as amended to date (the "Prior Rights Agreement"), shall have executed and delivered the Amended and Restated Investors' Rights Agreement set forth on Exhibit H hereto (the "Investors' Rights Agreement").

5.9 Voting Agreement. As of the Initial Closing Date, the Company, the Investors and the holders of at least the minimum number of shares required to amend the Company's Voting Agreement dated May 2, 2000, as amended to date, shall have executed and delivered the Amended and Restated Voting Agreement set forth on Exhibit I hereto (the "Voting Agreement" and collectively, with the Investors' Rights Agreement, the "Related Agreements").

5.10 Good Standing. A copy of a good standing certificate, dated no more than 10 days prior to the Closing Date, for the Company issued by the Delaware Secretary of State shall be delivered to each Investor.

5.11 Automatic Conversion. The Conversion described in Section 1.1(a) shall have occurred prior to the Initial Closing.

5.12 Amendments to Outstanding Notes and Warrants. The amendments to the Junior Debt Notes, Junior Debt Warrants, Senior Debt Notes and Senior Debt Warrants described in Section 1.1(b) shall have occurred prior to the Initial Closing.

5.13 Proceedings and Documents. All corporate and other proceedings in connection with the transactions contemplated hereby and all documents and instruments incident to such transactions shall be in form and substance reasonably satisfactory to each Investor and each Investor shall have received all such counterpart originals or certified or other copies of such documents as it may reasonably request.

6. CONDITIONS TO THE COMPANY'S OBLIGATIONS AT CLOSING.

The obligations of the Company under this Agreement at the Closing are subject to the satisfaction or waiver by the Company on or before the Closing Date of each of the following conditions:

6.1 Representations and Warranties True on Each Closing Date. The representations and warranties of the applicable Investors contained in Sections 3 and 4 shall be true on and as of the Closing Date with the same force and effect as if each had been made at the Closing, and, on or before the Closing Date, the applicable Investors shall have delivered to the Company a certificate to that effect.

6.2 Qualifications and Consents. All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state and all consents of third parties that are required in connection with the lawful issuance and sale of the Series B-1 Shares, Warrants and the Underlying Common Stock and the transactions contemplated hereby, shall have been duly obtained and shall be effective on and as of the Closing.

6.3 Automatic Conversion. The Conversion described in Section 1.1(a) shall have occurred prior to the Initial Closing.

6.4 Amendments to Outstanding Notes and Warrants. The amendments to the Junior Debt Notes, Junior Debt Warrants, Senior Debt Notes and Senior Debt Warrants described in Section 1.1(b) shall have occurred prior to the Initial Closing.

6.5 Proceedings and Documents. All corporate and other proceedings in connection with the transactions contemplated hereby and all documents and instruments incident to such transactions shall be in form and substance reasonably satisfactory to the Company and the Company shall have received all such counterpart originals or certified or other copies of such documents as it may reasonably request.

7. MISCELLANEOUS.

7.1 Expenses, Stamp Tax Indemnity. Each party represents that it neither is nor will be obligated for any finder's fee or commission in connection with this transaction. Each of the parties hereto agrees to protect and indemnify the other parties against any liability for any and all brokerage fees and commissions payable or claimed to be payable to any person in connection

with the issue and sale of the Series B-1 Shares and Warrants by the Company pursuant to this Agreement which may arise out of the actions of such party. The Company also agrees to pay on demand all of the reasonable fees, not to exceed \$15,000, and disbursements of counsel to Crabtree Ventures, L.P. ("Crabtree") incurred in connection with the negotiation and execution of this Agreement and the transactions contemplated hereby. The Company covenants and agrees that it shall deliver payment to Crabtree's counsel the fees contemplated by the foregoing sentence within 10 business days of the Company's receipt of an itemized bill related to such representation.

7.2 Understanding Among Investors. The determination of each Investor to purchase the Series B-1 Shares and Warrants pursuant to this Agreement has been made by such Investor independent of any other Investor and independent of any statements or opinions as to the advisability of such purchase or as to the properties, business, prospects or conditions (financial or otherwise) of the Company which may have been made or given by any other Investor or by any agent or employee of any other Investor. In addition, it is acknowledged by each Investor that no Investor, nor any other person, has acted as an agent of any Investor in connection with making its investment hereunder and that no Investor shall be acting as an agent of such Investor in connection with monitoring its investment hereunder. Each Investor further acknowledges that in connection with the transactions contemplated hereby, each Investor has had the opportunity to engage its own legal counsel and has either done so or has elected to forego such opportunity.

7.3 Consent Required. Any term, covenant, agreement or condition of this Agreement may, with the consent of the Company and each of the Investors, be amended or compliance therewith may be waived (either generally or in a particular instance and either retroactively or prospectively) by the written consent of the Company and the holders of a majority of the Series B-1 Preferred, voting on an as-if-converted to Common Stock basis.

7.4 Notices. All communications (other than those sent to stockholders generally) provided for hereunder shall be in writing and delivered or mailed by registered or certified mail, by reputable overnight delivery, or by telecopy:

(a) if to the Company: President, Blue Heron Biotechnology, Inc., 22310 - 20th Avenue S.E., Suite 100, Bothell, WA 98021, Attention: John Mulligan (fax number (425) 368-4050), with a copy to Venture Law Group, 4750 Carillon Point, Kirkland, Washington 98033-7355, Attention: Sonya Erickson (fax number (425) 739-8750), or to such other address as the Company may designate to each Investor in writing; and

(b) if to an Investor, at such address next to such Investor's name on Exhibit A, or such other address as such Investor may designate to the Company and the other Investors in writing.

7.5 Successors and Assigns. This Agreement shall be binding upon the Company and its successors and assigns and shall inure to each Investor's benefit and to the benefit of each Investor's successors and assigns.

7.6 Survival of Covenants and Representations. All covenants, representations and warranties made by the Company herein and in any certificates delivered pursuant hereto, whether or not in connection with the closing of the transactions herein contemplated, shall survive such closing and the delivery of this Agreement.

7.7 Severability. Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated and it is hereby declared the intention of the parties hereto that they would have executed the remaining portion of this Agreement without including therein any such part, parts, or portion which may, for any reason, be hereafter declared invalid.

7.8 Governing Law. This Agreement and securities issued and sold hereunder shall be governed by and construed in accordance with Delaware corporate law, without reference to conflict of laws principles.

7.9 Captions. The descriptive headings of the various Sections or parts of this Agreement are for convenience only and shall not affect the meaning or construction of any of the provisions hereof.

7.10 Number and Gender. Where required by the context, singular words or pronouns shall be construed as plural, plural words and pronouns shall be construed as singular and the gender of personal pronouns shall be construed as either masculine, feminine or neuter.

7.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one Agreement binding on all the parties hereto.

7.12 Confidentiality. Each party hereto agrees that, except with the prior written permission of the other parties or except in connection with the transfer of any Series B-1 Shares, Warrants or Underlying Common Stock to any transferee or proposed transferee who agrees to be bound by the provisions of this Section 7.12 or a nondisclosure agreement containing substantially similar provisions, it shall at all times keep confidential and not divulge, furnish or make accessible to anyone any confidential information, knowledge or data concerning or relating to the business or financial affairs of the other parties to which such party has been or shall become privy by reason of this Agreement, discussions or negotiations relating to this Agreement, the performance of its obligations hereunder or the ownership of Series B-1 Shares or Warrants purchased hereunder. The provisions of this Section 7.12 shall be in addition to, and not in substitution for, the provisions of any separate nondisclosure agreement executed by the parties hereto with respect to the transactions contemplated hereby.

The remainder of this page left blank intentionally.

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

COMPANY:

BLUE HERON BIOTECHNOLOGY, INC.


John Mulligan, President & CEO

Address: 22310 - 20th Avenue S.E.
Suite 100
Bothell, WA 98021

**SIGNATURE PAGE TO
SERIES E-3 PREFERRED STOCK PURCHASE AGREEMENT**

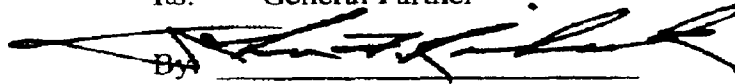
**PATENT
REEL: 025000 FRAME: 0138**

INVESTORS:

CRABTREE VENTURES, L.P.

By: Crabtree Ventures, LLC

Its: General Partner



By

John. F. Richards
Managing Member

Address: 790 Frontage Road
Suite 301
Northfield, IL 60093

Alan Blanchard

**SIGNATURE PAGE TO
SERIES B-1 PREFERRED STOCK AND WARRANT PURCHASE AGREEMENT**

INVESTORS:

CRABTREE VENTURES, L.P.

By: Crabtree Ventures, LLC

Its: General Partner

By: _____

John. F. Richards
Managing Member

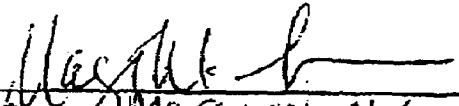
Address: 790 Frontage Road
Suite 301
Northfield, IL 60093



Alan Blanchard 27 JUN 03

**SIGNATURE PAGE TO
SERIES B-1 PREFERRED STOCK AND WARRANT PURCHASE AGREEMENT**

INVESTORS:

By: 
Name: Margaret McLoonick
Title: _____

**SIGNATURE PAGE TO
SERIES B-1 PREFERRED STOCK AND WARRANT PURCHASE AGREEMENT**

INVESTORS:

By: 2
Name: Michael Reed
Title: _____

**SIGNATURE PAGE TO
SERIES B-1 PREFERRED STOCK AND WARRANT PURCHASE AGREEMENT**

SEE REVERSE SIDE FOR RESTRICTIVE LEGEND(S)

Number A1-2

BLUE HERON BIOTECHNOLOGY, INC.
A Delaware Corporation

1,553,962 Shares
Series A-1 Preferred Stock

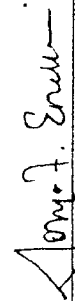
THIS CERTIFIES THAT *IBH-II, LP* is the record holder of *One Million Five Hundred Fifty Three Thousand Nine Hundred Sixty Two (1,553,962)* shares of Series A-1 Preferred Stock of Blue Heron Biotechnology, Inc. (the "Corporation") transferable only on the share register of the Corporation by the holder, in person or by such holder's duly authorized attorney, upon surrender of this certificate properly endorsed or assigned.


This certificate and the shares represented hereby shall be held subject to all of the provisions of the Certificate of Incorporation and the Bylaws of said Corporation and any amendments thereto, a copy of each of which is on file at the office of the Corporation and made a part hereof as fully as though the provisions of said Certificate of Incorporation and Bylaws were imprinted in full on this certificate, to all of which the holder of this certificate, by acceptance hereof, assents and agrees to be bound.

The shares represented by this certificate are convertible into shares of Common Stock as set forth in the Certificate of Incorporation of the Corporation and shall be so converted upon the occurrence of certain events as set forth in said Certificate of Incorporation.

The Corporation will furnish without charge to each stockholder who so requests, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights.

IN WITNESS WHEREOF, the Corporation has caused this certificate to be signed by its duly authorized officers this 1st day of July, 2003.


Sonya F. Erickson, Secretary



John Mulligan, President & CEO

RECEIPT

The undersigned hereby acknowledges receipt of Certificate No. A1-2 registered to IBH-II, L.P. and representing 1,553,962 shares of Series A-1 Preferred Stock of Blue Heron Biotechnology, Inc. and Certificate No. B1-2 registered to IBH-II, L.P. and representing 363,853 shares of Series B-1 Preferred Stock of Blue Heron Biotechnology, Inc.

Executed this 11th day of November, 2003.

IBH-II, L.P.

By: 
Signature

Title(Print): Managing Director
of GP

PLEASE SIGN AND RETURN TO:
Heller Ehrman Venture Law Group
701 Fifth Avenue, Suite 6100
Seattle, Washington 98104-7098
Telephone: (206) 264-4047
Attention: Karen Melgardshagen

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