MEDEL ROGER MD
Form 4
March 04, 2019

FORM 4

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

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

OMB APPROVAL

OMB Number:	3235-0287
Expires:	January 31, 2005
Estimated average burden hours per response...	0.5

Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. *See* Instruction 1(b).

(Print or Type Responses)

1. Name and Address of Reporting Person *
MEDEL ROGER MD

(Last) (First) (Middle)

1301 CONCORD TERRACE

(Street)

SUNRISE, FL 33323

(City) (State) (Zip)

2. Issuer Name **and** Ticker or Trading Symbol
MEDNAX, INC. [MD]

3. Date of Earliest Transaction (Month/Day/Year)
03/01/2019

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

__X__ Director _____ 10% Owner
__X__ Officer (give title below) _____ Other (specify below)
Chief Executive Officer

6. Individual or Joint/Group Filing(Check Applicable Line)
_X_ Form filed by One Reporting Person
___ Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1.Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)		4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)			5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
			Code	V	Amount	(A) or (D)	Price			
Common Stock	03/01/2019		F(1)		19,331	D	$ 32.91	1,558,878	D	

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

SEC 1474 (9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(*e.g.*, puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)		5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Underlying Securities (Instr. 3 and 4)		8. Price of Derivative Security (Instr. 5)	9. Nu Deriv Secur Bene Owne Follo Repo Trans (Instr
				Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares		

Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
MEDEL ROGER MD 1301 CONCORD TERRACE SUNRISE, FL 33323	X		Chief Executive Officer	

Signatures

/s/ Dominic J. Andreano, Attorney-in-Fact	03/04/2019
**Signature of Reporting Person	Date

Explanation of Responses:

***** If the form is filed by more than one reporting person, *see* Instruction 4(b)(v).

****** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

(1) Represents 19,331 shares withheld for payment of taxes upon vesting of shares previously reported.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.
Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. 47;Settlement Warrants).

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We have paid $500,000 to the Receiver. The remaining balance of the Settlement Amount to be paid is $400,000 and we failed to tender the third $200,000 installment to the Receiver in a timely manner. The Settlement provides that in the event we fail to pay any portion of the Settlement Amount, the Receiver will provide us with five business days written notice of the default. During this five business day period, we have the opportunity to cure the default. If we fail to cure the default within the cure period, then the Receiver may retain any portion of the Settlement Amount and Settlement Warrants received to date and file a Certificate of Default requesting the entry of a final judgment, and the Court will enter a final judgment against us in the amount of $1.2 million less any portion of the Settlement Amount previously paid under the Settlement and awarding any portion of the Settlement Warrants not previously delivered pursuant to the Settlement. The Settlement also provides that in the event of any litigation arising as a result of a default under the Settlement, the Receiver shall be entitled to reasonable attorneys fees and costs related thereto.

On July 23, 2007, we received a letter from the Receiver s representatives notifying us of our failure to pay the third installment and asking us to cure such default by July 30, 2007. The letter also indicated that the Receiver intends to (i) file a Certificate of Default and seek a final judgment in the amount of $1.2 million, less those portions we have already paid, if we are unable to cure in the time specified, and (ii) seek to recover its attorneys fees and costs if legal fees are incurred in connection with such filing.

As a result of our strict cash management program, we were unable to fund the third installment prior to the expiration of the specified cure period. After receipt of the letter from the Receiver s representatives, we informed them that we are currently investigating additional funding opportunities and talking to various potential investors who could provide additional financing, which would allow us to tender the remaining installments. If the Receiver files a Certificate of Default and we are unable to obtain additional financing, it would significantly impact our ability to execute our cash management program and we could have to curtail our planned activities or cease our operations.

If the Receiver files a Certificate of Default and the final judgment amount is in excess of $500,000 and such amount remains undischarged for 90 days, or any action shall be taken by the Receiver to levy upon our assets or properties to enforce such judgment, such occurrence would constitute an Event of Default under the Notes. As a result, the holders of Notes constituting a majority of the principal amount of the Notes then outstanding could declare, by notice to us, the unpaid principal of, and accrued interest on, all the Notes then outstanding to be due and payable.

We will need to raise additional funds through either the public or private offerings of our securities or licensing or sale of our technologies. We are currently investigating additional funding opportunities, talking to various potential investors who could provide financing and we believe that we will be able to secure financing in the near term. However, there can be no assurance that we will be able to obtain further financing, do so on reasonable terms, do so on terms that will satisfy the AMEX s continued listing standards or do so on terms that would not substantially dilute your equity interests in us. If we are unable to raise additional funds on a timely basis, or at all, we will not be able to continue our operations and we may be de-listed from the AMEX.

We do not generate enough revenue through the sale of our products or licensing revenues to meet our expenditure needs on an ongoing basis. Our ability to make payments on our indebtedness will depend on our ability to generate cash in the future. This, to some extent, is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control. There can be no assurance that our future cash flow will be sufficient to meet our obligations and commitments. If we are unable to generate sufficient cash flow from operations in the future to service our indebtedness and to meet our other commitments, including our Lancer payments, we will be required to adopt alternatives, such as seeking to raise additional debt or equity capital, curtailing our planned activities or ceasing our operations. There can be no assurance that any such actions could be effected on a timely basis or on satisfactory terms or at all, or that these actions would enable us to continue to satisfy our capital requirements. For additional information describing the risks concerning our liquidity, please see Certain Risks and Uncertainties below.

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Our future liquidity sources and requirements will depend on many factors, including:

- the market acceptance of our products, and our ability to effectively and efficiently produce and market our products;
- the availability of additional financing, through the sale of equity securities or otherwise, on commercially reasonable terms or at all;
- the timing and costs associated with obtaining the Conformité Européene, or CE, mark, which demonstrates compliance with the relevant European Union requirements and is a regulatory prerequisite for selling our ESRD therapy products in the European Union and certain other countries that recognize CE marking (for products other than our OLp ūr MDHDF Filter Series, for which the CE mark was obtained in July 2003), or United States regulatory approval;
- the ability to maintain the listing of our common stock on the AMEX;
- the continued progress in and the costs of clinical studies and other research and development programs;
- the costs involved in filing and enforcing patent claims and the status of competitive products; and
- the cost of litigation, including potential patent litigation and any other actual or threatened litigation.

We expect to put our current capital resources and the additional capital we are seeking to raise to the following uses:

- for outstanding accounts payable and accrued expenses;
- for the marketing and sales of our products;
- to complete certain clinical studies, obtain appropriate regulatory approvals and expand our research and development with respect to our ESRD therapy products;
- to continue our ESRD therapy product engineering;
- to pursue business opportunities with respect to our DSU water-filtration product;
- to pay the Receiver of Lancer Offshore, Inc. amounts due under the settlement with respect to the Ancillary Proceeding between us and the Receiver (See Note 9 Commitments and Contingencies Settlement Agreements to the Unaudited Condensed Consolidated Financial Statements for a description of the settlement);
- to pay a former supplier, Plexus Services Corp., amounts due under our settlement agreement; and
- for working capital purposes, additional professional fees and expenses, additional financial resources in the finance department and for other operating costs.

Our forecast of the period of time through which our financial resources will be adequate to support our operations is a forward-looking statement that involves risks and uncertainties, and actual results could vary materially. In the event that our plans change, our assumptions change or prove inaccurate, or if our existing cash resources, together with other funding resources including increased sales of our products, otherwise prove to be insufficient to fund our

operations and we are unable to obtain additional financing, we will be required to adopt alternatives, such as curtailing our planned activities or ceasing our operations.

In June 2006, we entered into subscription agreements with certain investors who purchased an aggregate of $5,200,000 principal amount of our Notes. The Notes are secured by substantially all of our assets.

The Notes accrue interest at a rate of 6% per annum, compounded annually and payable in arrears at maturity. Subject to certain restrictions, principal and accrued interest on the Notes are convertible at any time at the holder s option into shares of our common stock, at an initial conversion price of $2.10 per share (subject to anti-dilution adjustments upon the occurrence of certain events). There is no cap on any increases to the conversion price. The conversion price may not be adjusted to an amount less than $0.001 per share, the

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current par value of our common stock. We may cause the Notes to be converted at their then effective conversion price, if the common stock achieves average last sales prices of at least 240% of the then effective conversion price and average daily volume of at least 35,000 shares (subject to adjustment) over a prescribed time period. In the case of an optional conversion by the holder or a compelled conversion by us, we have 15 days from the date of conversion to deliver certificates for the shares of common stock issuable upon such conversion.

We may prepay outstanding principal and interest on the Notes at any time. Any prepayment requires us to pay each holder a premium equal to 15% of the principal amount of the Notes held by such holder receiving the prepayment if such prepayment is made on or before June 1, 2008, and 5% of the principal amount of the Notes held by such holder receiving prepayment in connection with prepayments made thereafter. In addition to the applicable prepayment premium, upon any prepayment of the Notes occurring on or before June 1, 2008, we must issue the holder of such Notes warrants (Prepayment Warrants) to purchase a quantity of common stock equal to three shares for every $20 principal amount of Notes prepaid at an exercise price of $0.01 per share (subject to adjustment). Upon issuance, the Prepayment Warrants would expire on June 1, 2012.

In connection with the sale of the Notes, we have entered into a registration rights agreement with the investors pursuant to which we granted the investors two demand registration rights and unlimited piggy-back and short-form registration rights with respect to the shares of common stock issuable upon conversion of the Notes or exercise of Prepayment Warrants, if any.

Subject to terms and conditions set forth in the Notes, the outstanding principal of and accrued interest on the Notes may become immediately due and payable upon the occurrence of any of the following events of default: our failure to pay principal or interest on the Notes when due; certain bankruptcy-related events with respect to us; material breach of any representation, warranty or certification made by us in or pursuant to the Notes, or under the registration rights agreement or the subscription agreements; our incurrence of Senior Debt (as defined in the Notes); the acceleration of certain of our other debt; or the rendering of certain judgments against us.

The Notes contain a prepayment feature that requires us to issue common stock purchase warrants to the Note holders for partial consideration of certain Note prepayments that the Note holders may demand under certain circumstances. Pursuant to the Notes, we must offer the Note holders the option (the Holder Prepayment Option) of prepayment (subject to applicable premiums) of their Notes, if we complete an asset sale in excess of $250,000 outside the ordinary course of business (a Major Asset Sale), to the extent of the net cash proceeds of such Major Asset Sale.

Net cash used in operating activities was approximately $2,531,000 for the six months ended June 30, 2007 compared to approximately $3,736,000 for the six months ended June 30, 2006. The most significant items causing this decrease during the six months ended June 30, 2007 compared to the six months ended June 30, 2006 are highlighted below:

During 2007, our net loss decreased approximately $652,000 and our stock-based compensation expense decreased approximately $78,000 compared to 2006.

Our accounts receivable decreased by approximately $220,000 during 2007 compared to an increase of approximately $88,000 during 2006. In order to accelerate collections of accounts receivable we offered a discount to our largest customer. Our customer accepted this offer and paid the net balances due prior to June 30, 2007.

Our inventory increased by approximately $111,000 during 2007 compared to a decrease of approximately $367,000 during 2006.

Our accounts payable and accrued expenses increased in total by approximately $165,000 in 2007 compared to a decrease of approximately $731,000 in 2006.

Our prepaid expenses and other assets increased by approximately $10,000 in 2007 compared to a increase of approximately $63,000 in 2006.

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During 2007, our accrued severance expenses decreased by approximately $95,000, which was substantially offset by an increase of approximately $154,000 in accrued interest relating to the convertible notes that were issued in June 2006.

During 2007, we paid amounts due under settlement agreements totaling approximately $225,000 (included within other liabilities on the statement of cash flow).

Net cash provided by investing activities was approximately $2,798,000 for the six months ended June 30, 2007 compared to net cash used in investing activities of approximately $518,000 for the six months ended June 30, 2006. The current year provision of cash reflects the maturities of short-term investments in the amount of approximately $2,800,000 partially offset by purchases of approximately $2,000 for computer equipment at the European headquarters. For the six months ended June 30, 2006 the provision of cash reflects the maturities of short term investments in the amount of approximately $2,500,000 mitigated by purchases of $3,000,000 of short term securities and $18,000 of fixed assets.

There was no cash provided by financing activities for the six months ended June 30, 2007. For the six months ended June 30, 2006 net cash provided by financing activities reflects the $5,200,000 in proceeds from the Notes and approximately $1,000 relating to option exercises by a former employee.

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Exhibit A

WRITTEN CONSENT
OF A MAJORITY OF THE STOCKHOLDERS
OF
NEPHROS, INC.

The undersigned (the Consenting Stockholders), being the holders of a majority of the outstanding shares of capital stock of Nephros, Inc., a Delaware corporation (the Corporation), acting by written consent without a meeting pursuant to Section 228 of the General Corporation Law of the State of Delaware, hereby consent to the adoption of the following resolutions:

WHEREAS, the Pricing Committee of the Board of Directors of the Corporation has approved and authorized the Corporation to enter into (i) an offering by the Corporation of up to fifteen million dollars ($15,000,000) aggregate principal amount of 10% Secured Convertible Notes due 2008 (the Purchased Notes) convertible into (A) shares of the Corporation s common stock, par value $0.001 per share (Common Stock) and (B) Class D Warrants (the Warrants) for purchase of shares of Common Stock; and (ii) an exchange of its 6% Secured Convertible Notes due 2012 (and all accrued but unpaid interest and obligations thereon) with the holders thereof, for new 10% Secured Convertible Notes due 2008 (the Exchange Notes and together with the Purchased Notes, the Notes) in an aggregate principal amount of $5,300,000 convertible into shares of Common Stock, in accordance with a term sheet, executed on or about August 14, 2007 (the Term Sheet), by and among the Corporation, Wexford Capital LLC, 3V Capital Master Fund, Ltd., Distressed/High Yield Trading Opportunities, Ltd., Southpaw Credit Opportunity Master Fund LP, Kudu Partners, L.P., LJHS Company, and such other entities as may subsequently participate, as attached hereto as Exhibit A, with such revisions as the authorized officers of the Corporation, in the name and on behalf of the Corporation, deem necessary to take or cause to be taken in order to finalize and execute the necessary documents in accordance with the Term Sheet (the Offering);

WHEREAS, in accordance with the engagement letter, dated as of June 6, 2007 (the Engagement Letter) pursuant to which the Corporation engaged National Securities Corporation (National) and Dinosaur Securities LLC (Dinosaur and together with National, the Placement Agent) to act as co-placement agents in connection with the Offering, the Placement Agent will be paid an aggregate placement agent fee, which includes five-year warrants to purchase 10% of the aggregate shares of Common Stock sold under the Purchased Notes at an exercise price equal to the purchase price of the Common Stock (the Placement Agent Warrants); and

WHEREAS, the Board approved, and recommends that the stockholders approve, an amendment to the Fourth Amended and Restated Certificate of Incorporation of the Corporation (the Certificate Amendment), increasing the authorized Common Stock of the Corporation to sixty million (60,000,000) shares,

NOW, THEREFORE, BE IT:

RESOLVED, that the issuance of shares of Common Stock upon conversion of the Notes and the exercise of the Warrants and the Placement Agent Warrants, as contemplated by the proposed Offering and the Engagement Letter, be, and the same is, approved, ratified and confirmed in all respects; and be it further

RESOLVED, that, subject to the occurrence of the closing of the sale of at least $10 million in aggregate principal amount of Purchased Notes, the Certificate Amendment, substantially in the form attached hereto as Exhibit B, be, and the same hereby is, approved, ratified and confirmed in all respects; and be it further

RESOLVED, that, notwithstanding authorization of the Certificate Amendment by the Consenting Stockholders in the foregoing resolutions, the Board may, at any time prior to the effectiveness of the filing of the Certificate Amendment with the Secretary of State of Delaware, abandon such proposed Certificate Amendment without further action by the Consenting Stockholders; and be it further

RESOLVED, that the authorized officers of the Corporation be, and each of them hereby is, authorized, empowered and directed, in the name and on behalf of the Corporation, to take or cause to be taken all such further actions (i) to execute the necessary documents to effectuate the Offering in accordance with the Term

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Sheet; (ii) to execute and file the Certificate Amendment; and (iii) to execute and deliver or cause to be executed and delivered all such further agreements, documents, instruments, notes, reports, certificates and undertakings, and to incur and pay all such fees and expenses as in their judgment shall be necessary or advisable to carry into effect the purpose and intent of any and all of the foregoing resolutions, and all such acts of such officers taken pursuant to the authority granted herein, or having occurred prior to the date hereof in order to effect such transactions, are hereby approved, adopted, ratified and confirmed in all respects; and be it further

RESOLVED, that for purposes of each of the foregoing resolutions, the authorized officers of the Corporation shall be the Executive Chairman, the President and Chief Executive Officer, the Chief Financial Officer, any Vice President, the Treasurer and the Secretary.

This written consent may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Telecopied signatures on this written consent shall be valid and effective for all purposes.

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IN WITNESS WHEREOF, the undersigned has duly executed this Written Consent as of the day of , 2007.

STOCKHOLDER:

By:

Number of Nephros shares owned:

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Exhibit B

CERTIFICATE OF AMENDMENT
TO THE
FOURTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
NEPHROS, INC.

It is hereby certified that:

1. The name of the Corporation is: Nephros, Inc. (the Corporation).

2. The Corporation s Fourth Amended and Restated Certificate of Incorporation, as filed with the Secretary of State of the State of Delaware on June 24, 2005 (the Certificate), is hereby amended by deleting the existing Section 2 of Article IV and replacing it in its entirety with the following:

Section 2. *Capital Stock.* The total authorized capital stock of the Corporation shall be: 65,000,000 shares, consisting of:

(i) 60,000,000 shares of Common Stock, $.001 par value per share (the Common Stock);

(ii) 5,000,000 shares of preferred stock, $.001 par value per share (collectively, the Undesignated Preferred Stock). Subject to any limitations set forth elsewhere in this Certificate of Incorporation, the shares of Undesignated Preferred Stock may be issued from time to time in one or more series. Subject to any limitations set forth elsewhere in this Certificate of Incorporation, the Board of Directors is hereby authorized, by adopting appropriate resolutions and causing one or more certificates of amendment to be signed, verified and delivered in accordance with the DGCL, to establish from time to time the number of shares to be included in such series, and to fix the powers, preferences and rights of, and the qualifications, limitations and restrictions granted to and imposed upon such Undesignated Preferred Stock. Such powers, preferences and rights of, and the qualifications, limitations and restrictions granted to and imposed upon such Undesignated Preferred Stock may include, but are not limited to, the fixing or alteration of the dividend rights, dividend rate, conversion rights, exchange rights, voting rights, rights and terms of redemption (including sinking fund provisions), the redemption price or prices, and the liquidation preferences of any wholly unissued series of shares of Undesignated Preferred Stock, or any of them. In accordance with the authority hereby granted, the Board may increase or decrease the number of shares of any series of preferred stock, whether or not such preferred stock then constitutes Undesignated Preferred Stock, subsequent to the issuance of shares of that series; provided that any such increase shall be no greater than the total number of authorized shares of Undesignated Preferred Stock at such time, and no such decrease shall result in the number of authorized shares of such series being fewer than the number then outstanding. In case the number of shares of any series of preferred stock, other than Undesignated Preferred Stock, shall be so decreased, the shares constituting such decrease shall become Additional Undesignated Preferred Stock. Any shares of a series of preferred stock, which is designated pursuant to this clause (ii), that were issued but, thereafter, are no longer outstanding shall not resume the status of authorized and unissued shares of such series, but shall instead become authorized and unissued shares of Additional Undesignated Preferred Stock. Except as may otherwise be required by law or this Certificate of Incorporation, the terms of any series of Undesignated Preferred Stock may be amended without the consent of the holders of any other series of the Corporation s preferred stock, or Common Stock.

3. The amendment of the Certificate herein certified has been duly adopted in accordance with the provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware.

[Remainder of page intentionally left blank]

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IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the_ day of , 2007.

By:

Name: Norman J. Barta

Title: Chief Executive Officer

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Exhibit C

Name of Subscriber:

NEPHROS, INC.

SUBSCRIPTION AGREEMENT

Nephros, Inc.
3960 Broadway
New York, New York 10032

Ladies and Gentlemen:

1. *Subscription*. (a) The undersigned, intending to be legally bound, hereby irrevocably subscribes to purchase from Nephros, Inc., a Delaware corporation (the Company), the principal amount of Series A 10% Secured Convertible Notes due 2008 (the Notes), of the Company, set forth on the signature page hereof (the Subscription Amount), for a purchase price equal to the Subscription Amount. The Company, intending to be legally bound, hereby accepts the foregoing subscription and agrees to sell and issue to the undersigned a Note having a principal amount equal to the Subscription Amount for a purchase price equal to the Subscription Amount. This subscription is made in accordance with and subject to the terms and conditions described in this Subscription Agreement (this Agreement). The terms of the Notes shall be substantially as set forth in the form of Series A 10% Secured Convertible Note due 2008 attached hereto as Exhibit A (the Form of Note).

(b) The Notes that are the subject of this Agreement are part of an offering by the Company (the Offering) of up to fifteen million dollars ($15,000,000) aggregate principal amount of Notes (the Maximum Amount) convertible into shares of the Company s common stock, par value $0.001 per share (the Common Stock), at a per share conversion price (subject to adjustment as set forth in the Form of Note) of $0.706, and Class D warrants for the purchase of shares of Common Stock (the Warrants), in the form attached hereto as Exhibit B (the Form of Warrant). The Company is offering Notes until September 28, 2007, although the Company reserves the right, in its sole discretion, to extend the Offering period until some later date (such date, as the same may be extended, the Expiration Date). The undersigned and each person purchasing Notes in the Offering (collectively, the Purchasers) shall enter into a registration rights agreement among the Company and the Holders (as defined therein), in substantially the form attached hereto as Exhibit C (the Registration Rights Agreement).

2. *Closing*.

(a) Subject to the satisfaction of the conditions and upon the terms set forth in this Agreement, the first closing of the transactions contemplated by this Agreement (the First Closing) shall occur at any time on or prior to the Expiration Date with the execution and delivery of this Agreement by the parties hereto. The First Closing shall be conducted at the offices of Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York or such other location as the parties shall mutually agree.

(b) Following the First Closing, the Company may continue to sell Notes up to the Maximum Amount and may conduct closings from time to time for additional Notes sold (each an Additional Closing , and the First Closing and each Additional Closing shall be considered a Closing). A final closing will be held promptly on the earlier to occur of (i) the Expiration Date and (ii) acceptance of subscriptions for sale of the Maximum Amount.

(c) The undersigned acknowledges that, concurrently with the consummation of the First Closing, the Company will exchange its 6% Secured Convertible Notes due 2012 (Old Notes) with the holders thereof and all accrued but unpaid interest and obligations thereon, for new Series B 10% Secured Convertible Notes due 2008 in an aggregate principal amount of $5,300,000 (the New Notes and together with the Notes, the 2007 Notes). The terms of the New Notes shall be substantially as set forth in the form of

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Series B 10% Secured Convertible Note due 2008 attached as an exhibit to the Exchange Agreement (as defined below) (the Form of New Note). The New Notes will be convertible into shares of the Company s Common Stock at a per share conversion price (subject to adjustment as set forth in the Form of New Note) of $0.706 per share and are not included in the Maximum Amount.

(d) The obligations of the Company hereunder in connection with the Closing are subject to the following conditions being satisfied:

(i) each of the representations and warranties of the undersigned shall be true and correct in all material respects as of the date when made and as of the Closing as though made at that time, except for representations and warranties that speak as of a particular date, which shall be true and correct in all material respects as of such date;

(ii) the undersigned shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the undersigned at or prior to the Closing;

(iii) at the First Closing, the Company will have received, in the aggregate, not less than ten million dollars ($10,000,000) pursuant to executed acceptances of subscriptions from Purchasers in the Offering;

(iv) to the extent not already delivered, the tender of delivery at the Closing by the undersigned of the items set forth in Section 2(g) of this Agreement; and

(v) no statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated, endorsed or threatened or is pending by or before any governmental authority of competent jurisdiction which prohibits or threatens to prohibit the consummation of any of the transactions contemplated by the Transaction Documents (as defined below) or the Exchange Agreement.

(e) The obligations of the undersigned hereunder in connection with the Closing are subject to the following conditions being satisfied:

(i) each of the representations and warranties of the Company shall be true and correct in all material respects as of the date when made and as of the Closing as though made at that time, except for representations and warranties that speak as of a particular date, which shall be true and correct in all material respects as of such date;

(ii) the Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior to the Closing;

(iii) to the extent not already delivered, the tender of delivery at the Closing by the Company of the items set forth in Section 2(f) of this Agreement;

(iv) the Company and the holders of the Old Notes shall have duly executed and delivered the Exchange Agreement in the form attached hereto as Exhibit D (the Exchange Agreement) and the Investor Rights Agreement in the form attached hereto as Exhibit E (the Investor Rights Agreement), and the transactions contemplated by the Exchange Agreement shall be consummated simultaneous with the First Closing;

(v) the holders of a majority of the outstanding Common Stock as of the First Closing shall have executed and delivered to the Company written consents, in a form reasonably acceptable to the undersigned (the Stockholder Consents), consenting to (x) the issuance of the 2007 Notes, the Common Stock and Warrants issuable upon the

conversion of the 2007 Notes and the Common Stock issuable upon the exercise of the Warrants, and (y) approving an amendment to the Company s Certificate of Incorporation to increase the number of shares of Common Stock that it is authorized to issue to 60,000,000 shares (the Certificate of Amendment);

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(vi) (x) two individuals designated by Lambda Investors LLC (Lambda) (such individuals hereafter known as the New Directors) shall be duly elected to the board of directors of the Company (the Board of Directors) effective at the First Closing; (y) Lambda shall have consented to the election of any new members of the Board of Directors of the Company or the Subsidiary elected in connection with the First Closing; and (z) no more than four members of the Board of Directors of the Company that Lambda has requested to resign shall have submitted resignations to the Company (which resignations shall include releases in a form reasonably satisfactory to Lambda) with such resignations to become effective at the First Closing;

(vii) at the First Closing, the Company shall have received an extension, until October 4, 2007, to serve its opposition to the motion of the Receiver for Lancer Offshore, Inc. to enforce the Company s settlement agreement with the Receiver and for entry of final default judgment; and

(viii) no statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated, endorsed or threatened or is pending by or before any governmental authority of competent jurisdiction which prohibits or threatens to prohibit the consummation of any of the transactions contemplated by the Transaction Documents (as defined below) or the Exchange Agreement.

(f) At the Closing, the Company shall deliver or cause to be delivered to the undersigned the following (to the extent not previously delivered):

(i) an executed acceptance of subscription relating to this Agreement;

(ii) a Note in the principal amount of the Subscription Amount, registered in the name of the undersigned;

(iii) the Registration Rights Agreement duly executed by the Company and all other parties thereto other than the Purchasers, and the Investor Rights Agreement duly executed by the Company and all other parties thereto other than the Purchasers;

(iv) a certificate, duly executed by the Chief Executive Officer of the Company, to the effect that the conditions set forth in clauses (i), (ii), (iv), (v), (vi), (vii) and (viii) of Section 2(e) have been satisfied;

(v) copies of the duly executed Exchange Agreement, Stockholder Consents and resignations of directors; and

(vi) waivers from Eric A. Rose, M.D., Norman J. Barta, William J. Fox and Lawrence Centella waiving any right held by such persons pursuant to agreements entered into prior to the date hereof to have securities of the Company registered under the Registration Rights Agreement.

(g) At the Closing, the undersigned shall deliver or cause to be delivered to the Company the following (to the extent not previously delivered):

(i) an executed copy of the signature page of and Exhibit F to this Agreement and the Investor Rights Agreement duly executed by the undersigned;

(ii) immediately available funds in the amount of the Subscription Amount, delivered by wire transfer to the following account:

Bank:	Bank of America
ABA No.:	026009593

Account Name:	Nephros, Inc.
Account No.:	94293 70902
Apply To:	Nephros, Inc.
Attention:	Client Manager

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(iii) an executed copy of the signature page, or counterpart signature page, to the Registration Rights Agreement; and

(iv) a certificate, duly executed by a duly authorized officer, manager or member of the undersigned, to the effect that the conditions set forth in clauses (i) and (ii) of Section 2(d) have been satisfied.

3. *Representations and Warranties of the Company*. The Company represents and warrants to the undersigned as follows, in each case as of the date hereof and in all material respects as of the date of any Closing, except, where the following representations and warranties are made or deemed to be made after the First Closing, for any changes resulting solely from any Closing that has previously been consummated or the consummation of the transactions contemplated by the Exchange Agreement:

(a) The Company is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with full power and authority to own, lease, license and use its properties and assets and to carry out the business in which it proposes to engage. Nephros International Limited (the Subsidiary) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with full power and authority to own, lease, license and use its properties and assets and to carry out the business in which it proposes to engage. Each of the Company and the Subsidiary is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in a (x) material adverse effect on the legality, validity or enforceability of any Transaction Document (as defined below) or the Exchange Agreement, (y) material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiary, taken as a whole, or (z) material adverse effect on the Company s ability to perform in any material respect on a timely basis its obligations under any Transaction Document (as defined below) or the Exchange Agreement (any of (x), (y) or (z), a Material Adverse Effect). The Company owns all of the capital stock or other equity interests of the Subsidiary free and clear of any liens or encumbrances, other than Permitted Liens, and all of the issued and outstanding shares of capital stock of the Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities. The Company does not own, and never has owned, any capital stock of or equity interest in any entity other than the Subsidiary. Neither the Company nor the Subsidiary is in violation or default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents.

(b) The Company has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement and to issue and sell the Notes subscribed for hereunder, the shares of Common Stock and Warrants issuable upon conversion thereof, and the shares of Common Stock issuable upon exercise of the Warrants (collectively, the Subject Securities). Subject to the Stockholder Consents becoming effective, all necessary proceedings of the Company have been duly taken to authorize the execution, delivery, and performance of this Agreement, the Notes, the Warrants, the Registration Rights Agreement and the Investor Rights Agreement (collectively, the Transaction Documents), the Exchange Agreement and the New Notes. The Transaction Documents and Exchange Agreement have been duly authorized by the Company and, when executed and delivered by the Company will constitute the legal, valid and binding obligation of the Company enforceable against the Company in accordance with their terms except as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors rights generally. The Common Stock issuable upon conversion of the 2007 Notes and the Common Stock issuable upon exercise of the Warrants, when issued in compliance with the provisions of the Transaction Documents, will be validly issued, fully paid and nonassessable and free of any liens or encumbrances other than any liens or encumbrances created by the undersigned. The 2007 Notes are duly authorized, and when issued pursuant to the Transaction Documents and the Exchange Agreement, will be validly issued. The Warrants are duly authorized, and when issued, pursuant to the Transaction Documents, will be validly issued.

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(c) No consent of any party to any contract, agreement, instrument, lease or license to which the Company or the Subsidiary is a party or to which any of the Company s or the Subsidiary s properties or assets are subject is required for the execution, delivery or performance by the Company of its obligations under any of the Transaction Documents or the Exchange Agreement or the issuance and sale of the Subject Securities. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other person or entity in connection with the execution, delivery and performance by the Company of the Transaction Documents and Exchange Agreement, other than (i) the filing with the Securities and Exchange Commission (the Commission) of the registration statement or registration statements pursuant to the Registration Rights Agreement, a Schedule 14C information statement and a Form 8-K and related press release announcing the Offering and changes in directors and officers of the Company, (ii) the notice and/or application(s) to the American Stock Exchange for the issuance and sale of the Subject Securities and the listing for trading thereon in the time and manner required thereby, (iii) the filing of Form D with the Commission and such filings as are required to be made under applicable state securities laws, (iv) the Stockholder Consents, and (v) the filing with the Delaware Secretary of State of the Certificate of Amendment.

(d) Except as disclosed on Schedule 3(d), the execution, delivery and performance of the Transaction Documents and the Exchange Agreement and the issuance of the Subject Securities will not (i) violate or result in a breach of, or entitle any party (with or without the giving of notice or the passage of time or both) to terminate, amend, accelerate, cancel or call a default under any contract or agreement to which the Company or the Subsidiary is a party or result in the creation of any lien, charge or encumbrance upon any of the properties or assets of the Company or the Subsidiary, other than the liens, charges or encumbrances created by the undersigned, (ii) conflict with, violate or result in a breach of any term of the certificate of incorporation or by-laws of the Company or the Subsidiary, or (iii) violate any law, rule, regulation, order, judgment or decree binding upon the Company or the Subsidiary or to which any of their respective operations, businesses, properties or assets are subject, except, in the case of a breach, termination, violation or default referenced in clauses (i) or (iii), would not reasonably be expected to have a Material Adverse Effect.

(e) The capitalization of the Company is as set forth on Schedule 3(e), which Schedule 3(e) shall also include the number of shares of Common Stock owned beneficially, and of record, by officers or directors of the Company or holders of 5% or more of the outstanding Common Stock, in each case as of the date hereof. The Company has not issued any capital stock since its most recently filed periodic report under the Securities Exchange Act of 1934, as amended (the Exchange Act), other than shares of Common Stock issued pursuant to the exercise of employee stock options under the Company s stock option plans. No person or entity has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as a result of the purchase and sale of the Subject Securities or as set forth on Schedule 3(e), there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock or other capital stock or securities of the Company, or contracts, commitments, understandings or arrangements by which the Company is or may become bound to issue additional shares of Common Stock or other capital stock or securities of the Company. The issuance and sale of the Subject Securities will not obligate the Company to issue shares of Common Stock or other capital stock or securities of the Company to any person or entity (other than the Purchasers and the holders of the Old Notes) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. All of the outstanding shares of capital stock of the Company are validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. There are no stockholders agreements or voting agreements with respect to the Company s capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company s stockholders.

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(f) Except as set forth on Schedule 3(f), there are no brokerage commissions, finder s fees or similar fees or commissions payable by the Company in connection with the transactions contemplated by the Transaction Documents or Exchange Agreement based on any agreement, arrangement or understanding with or known to the Company. The Purchasers will have no obligation with respect to any brokerage commissions, finder s fees or similar fees or commissions described on Schedule 3(f).

(g) Except as disclosed on Schedule 3(g), as disclosed in the reports, schedules, forms, statements and other documents filed by the Company under the Exchange Act on or after April 10, 2007 (the Current SEC Filings) or as would not reasonably be expected to have a Material Adverse Effect, neither the Company nor the Subsidiary is in violation or default of any provisions of any instrument, judgment, order, writ or decree, or any provision of any contract or agreement, to which it is a party or by which it is bound or of any provision of statute, rule or regulation of any country, state, province or other local governmental unit applicable to the Company, the Subsidiary or their respective businesses.

(h) Except as disclosed on Schedule 3(h), neither the Company nor the Subsidiary is a party to any litigation, action, suit, proceeding or investigation, and, to the knowledge of the Company, no litigation, action, suit, proceeding or investigation has been threatened against the Company or the Subsidiary. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the Exchange Act or the Securities Act of 1933, as amended (the Securities Act). Except as disclosed on Schedule 3(g) or in the Current SEC Filings, since January 1, 2007 there has been no material adverse effect on the products of the Company, the prospects of the products of the Company or the status of the regulatory approval of the products of the Company.

(i) Each of the Company and the Subsidiary has good and marketable title to its properties and assets (including without limitation those assets pledged as collateral pursuant to this Agreement) held in each case free and clear of all liens, pledges, security interests, encumbrances, attachments or charges of any kind (each a Lien), except for (i) Liens for taxes that are not yet due and payable, (ii) Liens that do not or are not reasonably likely to result in a Material Adverse Effect, or (iii) Liens disclosed in the Current SEC Filings (including the Liens securing the Old Notes, which Liens shall be released at the First Closing) or arising under the Offering (Liens described in clauses (i), (ii) and (iii) are referred to as Permitted Liens). Neither the Company nor the Subsidiary owns, or has ever owned, any real property. With respect to the property and assets it leases, except as would not reasonably be expected to have a Material Adverse Effect or as disclosed on Schedule 3(i), the Company is in compliance with such leases and, to the best of the Company s knowledge, the Company holds valid leasehold interests in such property and assets free and clear of any Liens of any other party other than the lessors of such property and assets, except for Permitted Liens. The properties and assets owned and leased by the Company and the Subsidiary are sufficient to enable the Company and the Subsidiary to conduct their respective business as presently conducted.

(j) Neither the Company nor the Subsidiary has any liability or obligation of any nature whatsoever (whether absolute, accrued, contingent, or otherwise and whether due or to become due) which would be required to be reflected on a balance sheet or in the notes thereto prepared in accordance with GAAP, except for (i) those liabilities that are fully reflected or reserved against on the financial statements included in the Current SEC Filings, described in the notes to such financial statements, or expressly described elsewhere in the Current SEC Filings, including without limitation, under the headings Management s Discussion and Analysis or Plan of Operation and Controls and Procedures in the applicable Current SEC Filings, (ii) liabilities and obligations which have been incurred since June 30, 2007 in the ordinary course of business which are not material in nature or amount, or (iii) liabilities and obligations described on Schedule 3(j).

(k) Except as disclosed in the Current SEC Filings, each of the Company and the Subsidiary owns, free and clear of all Liens, other than Permitted Liens, or is licensed or otherwise possesses legally enforceable rights to use, all patents, patent applications, trademarks, trademark applications, trade names, service marks, copyrights, know-how, trade secrets, inventions and similar rights necessary to permit the Company and the Subsidiary to conduct its respective business as described in the Current SEC Filings (collectively,

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Intellectual Property). To the Company s knowledge, the Intellectual Property does not violate or infringe upon the rights of any other person or entity, and neither the Company nor the Subsidiary has received a notice (written or otherwise) claiming such infringement. To the knowledge of the Company, all Intellectual Property is enforceable and there is no existing infringement by another person or entity of any of the Intellectual Property. The Company and the Subsidiary have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(l) The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, since September 20, 2004 (the reports, schedules, forms, statements and other documents filed pursuant to the Securities Act and the Exchange Act on or after September 20, 2004, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the Nephros SEC Filings). Except for the Company s Annual Report on Form 10-KSB for the year ended December 31, 2005, each Nephros SEC Filing that is an Annual Report on Form 10-KSB, a Quarterly Report on Form 10-QSB or a Current Report on Form 8-K (other than a Current Report on Form 8-K that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a) or 5.02(e) of Form 8-K) was filed on a timely basis or the Company received a valid extension of such time of filing and has filed such Nephros SEC Filing prior to the expiration of such extension. Except as disclosed on Schedule 3(l), as of their respective dates, the Nephros SEC Filings complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the Nephros SEC Filings, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Except as disclosed on Schedule 3(l), the financial statements of the Company included in the Nephros SEC Filings complied in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved (GAAP), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and the Subsidiary as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal year-end audit adjustments.

(m) The Company is in material compliance with all provisions of the Sarbanes-Oxley Act of 2002 which are applicable to it as of the First Closing. Except as disclosed in the Current SEC Filings, the Company and the Subsidiary maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management s general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management s general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as disclosed in the Current SEC Filings, the Company has established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Company and designed such disclosure controls and procedures to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission s rules and forms. The Company s certifying officers have evaluated the effectiveness of the Company s disclosure controls and procedures as of the end of the period covered by the Company s most recently filed periodic report under the Exchange Act (such date, the Evaluation Date). The Company presented in its most recently filed periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no changes in the Company s

internal control over financial reporting (as such term is defined in the Exchange Act) that has materially affected, or is reasonably likely to materially affect, the Company s internal control over financial reporting.

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(n) No material labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company which could reasonably be expected to result in a Material Adverse Effect. None of the Company s or the Subsidiary s employees is a member of a union that relates to such employee s relationship with the Company, and neither the Company nor the Subsidiary is a party to a collective bargaining agreement, and the Company and the Subsidiaries believe that their relationships with their employees are good. No executive officer, to the knowledge of the Company, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(o) The Company and the Subsidiary possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the Current SEC Filings, except where the failure to possess such permits could not have or reasonably be expected to result in a Material Adverse Effect (Material Permits), and neither the Company nor the Subsidiary has received any notice of proceedings relating to the revocation or modification of any Material Permit.

(p) The Company and the Subsidiary are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiary are engaged, including, but not limited to, directors and officers insurance coverage at least equal to $7,000,000. Neither the Company nor the Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

(q) Except as set forth in the Current SEC Filings, none of the officers or directors of the Company and, to the knowledge of the Company, none of the employees of the Company is presently a party to any transaction with the Company or the Subsidiary, including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner, in each case in excess of $120,000 other than for (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

(r) Neither the Company nor any person or entity acting on its behalf has offered or sold any of the Subject Securities by any form of general solicitation or general advertising. The Company has offered the Subject Securities for sale only to the Purchasers and certain other accredited investors within the meaning of Rule 501 under the Securities Act. Assuming the accuracy of the undersigned s representations and warranties set forth in Section 4 (and corresponding representations made by other Purchasers), no registration under the Securities Act is required for the offer and sale of the Subject Securities by the Company to the Purchasers as contemplated by the Offering. Neither the Company, nor any of its affiliates, nor any person or entity acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause the Offering to be integrated with prior offerings by the Company for purposes of the Securities Act or any applicable shareholder approval provision of the American Stock Exchange. Subject to the Stockholder Consents becoming effective and the filing of an additional shares listing application with the American Stock Exchange, the issuance and sale of the Subject Securities does not contravene the rules and regulations of the American Stock Exchange.

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(s) The Company is not, and is not an affiliate of, and immediately after receipt of payment for the Notes, will not be or be an affiliate of, an investment company within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become subject to the Investment Company Act of 1940, as amended.

(t) Except as disclosed on Schedule 3(t), as of the First Closing, no Person will have any right to cause the Company to effect the registration under the Securities Act of any securities of the Company except pursuant to the Registration Rights Agreement.

(u) The Company s Common Stock is registered pursuant to Section 12(b) of the Exchange Act, and the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act nor has the Company received any notification that the Commission is contemplating terminating such registration. The Company s outstanding Common Stock is listed for trading on the American Stock Exchange and, since January 1, 2007, the trading of the Company s Common Stock on the American Stock Exchange has not been de-listed or suspended. The Company has taken no action for the purpose of de-listing the Common Stock from the American Stock Exchange or suspending the trading of the Common Stock on the American Stock Exchange. Except as described in the Current SEC Filings, the Company has not, in the 12 months preceding the date hereof, received written notice from the American Stock Exchange to the effect that the Company is not in compliance with the listing or maintenance requirements of the American Stock Exchange or that the American Stock Exchange is considering suspending the trading of or de-listing the Company s Common Stock from the American Stock Exchange.

(v) The Company and its Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, shareholder rights plan (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company s certificate of incorporation (or similar charter documents) or the laws of its state of incorporation (including without limitation Section 203 of the Delaware General Corporation Law) that is or could become applicable to the Purchasers as a result of the Purchasers and the Company fulfilling their obligations or exercising their rights under the Transaction Documents and the Exchange Agreement, including without limitation as a result of the Company s issuance of the Subject Securities and the Purchasers ownership of the Subject Securities.

(w) All disclosure furnished by or on behalf of the Company in writing to the Purchasers regarding the Company, its business and the transactions contemplated hereby, including the Schedules to this Agreement, with respect to the representations and warranties contained herein is true and correct in all material respects with respect to such representations and warranties and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The press releases disseminated by the Company during the twelve months preceding the date of this Agreement taken as a whole do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made and when made, not misleading.

(x) Based on the financial condition of the Company as of the First Closing, after giving effect to the receipt by the Company of not less than ten million dollars ($10,000,000) from the Purchasers at the First Closing, and assuming (counterfactually) that all of the 2007 Notes issued at the First Closing were converted as of such date, (i) the fair saleable value of the Company s assets exceeds the amount that will be required to be paid on or in respect of the Company s existing debts and other liabilities (including known contingent liabilities) as they mature; (ii) the Company s assets do not constitute unreasonably small capital to carry on its business as now conducted and as proposed to be conducted including its capital needs taking into account the particular capital requirements of the business conducted by the Company, and projected capital requirements and capital availability thereof; and (iii) the

current cash flow of the Company, together with the proceeds the Company would receive, were it to liquidate all of its assets, after taking into account all anticipated uses of the cash, would be sufficient to pay all amounts on or in respect of its liabilities when such amounts are required to be paid. The Company has no knowledge of any facts or circumstances which lead it

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to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the First Closing. Schedule 3(x) sets forth as of the date hereof all outstanding secured and unsecured Indebtedness of the Company or the Subsidiary, or for which the Company or the Subsidiary has commitments. For the purposes of this Agreement, Indebtedness means (a) any liabilities for borrowed money (other than trade accounts payable incurred in the ordinary course of business), (b) every obligation of the Company evidenced by bonds, debentures, notes or other similar instruments, (c) all guaranties, endorsements and other contingent obligations in respect of Indebtedness of others, whether or not the same are or should be reflected in the Company s balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (d) the present value of any lease payments due under leases required to be capitalized in accordance with GAAP. Except as set forth on Schedule 3(x), neither the Company nor the Subsidiary is in default with respect to any Indebtedness.

(y) Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and the Subsidiary have filed all necessary federal, state, local and foreign income, franchise, employment and other tax returns and have paid or accrued all taxes shown as due thereon, and the Company has no knowledge of a tax deficiency which has been asserted or threatened against the Company or the Subsidiary.

(z) Neither the Company nor the Subsidiary, nor to the knowledge of the Company, any agent or other person or entity acting on behalf of the Company or the Subsidiary, has (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company or the Subsidiary (or made by any person or entity acting on behalf of the Company or the Subsidiary) which is in violation of law, or (iv) violated in any material respect any provision of the Foreign Corrupt Practices Act of 1977, as amended.

(aa) The Company s accounting firm is Rothstein Kass & Company, P.C. To the knowledge of the Company, (i) such accounting firm is a registered public accounting firm as required by the Exchange Act, and (ii) has been engaged by the Company s Audit Committee to conduct procedures to provide its opinion with respect to the financial statements to be included in the Company s Annual Report on Form 10-KSB for the year ending December 31, 2007.

(bb) Immediately following the First Closing, no Indebtedness or other claim against the Company is senior to the Notes in right of payment, whether with respect to interest or upon liquidation or dissolution, or otherwise, other than indebtedness secured by purchase money security interests (which is senior only as to underlying assets covered thereby) and capital lease obligations (which is senior only as to the property covered thereby).

(cc) There are no disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the Company and the accountants and lawyers formerly or presently employed by the Company, and except as set forth on Schedule 3(cc) the Company is current with respect to any fees owed to its accountants and lawyers.

(dd) The Company acknowledges and agrees that each of the Purchasers is acting solely in the capacity of an arm s length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by any Purchaser or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchasers purchase of the Subject Securities. The Company further represents to each Purchaser that the Company s decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated

hereby by the Company and its representatives.

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(ee) The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Subject Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the securities of the Company, or (iii) paid or agreed to pay to any person or entity any compensation for soliciting another to purchase any other securities of the Company, other than, in the case of clauses (ii) and (iii), compensation paid to the Company s placement agent in connection with the Offering.

(ff) The Company (i) is in compliance with any and all Environmental Laws (as hereinafter defined), (ii) has received all permits, licenses or other approvals required of it under applicable Environmental Laws to conduct its business and (iii) is in compliance with all terms and conditions of any such permit, license or approval where, in each of the foregoing clauses (i), (ii) and (iii), the failure to so comply would be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. The term Environmental Laws means all federal, state, local or foreign laws relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, Hazardous Materials) into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder.

(gg) In accepting the subscription and entering into this Agreement, the Company is not relying on any representations and warranties of the undersigned other than those in this Agreement.

(hh) The Company acknowledges that the representations, warranties and agreements made by the Company herein shall survive the execution and delivery of this Agreement and the purchase of the Notes, the conversion of the Notes and the exercise of the Warrants.

(ii) The Company has received the written consent from at least 50.1% of the outstanding Common Stock as of the date hereof approving the Offering in accordance with Rule 713 of the American Stock Exchange Company Guide.

4. *Representations, Warranties and Covenants of the Subscriber*. The undersigned hereby represents and warrants to, and agrees with, the Company as follows:

(a) The undersigned is an Accredited Investor, as specifically indicated in Exhibit F to this Agreement, which is being delivered to the Company herewith.

(b) If a natural person, the undersigned is: a bona fide resident of the state or non-United States jurisdiction contained in the address set forth on the signature page of this Agreement as the undersigned s home address; at least twenty-one (21) years of age; and legally competent to execute the Transaction Documents. If an entity, the undersigned has its principal offices or principal place of business in the state or non-United States jurisdiction contained in the address set forth on the signature page of this Agreement and the individual signing on behalf of the undersigned is duly authorized to execute the Transaction Documents.

(c) When executed and delivered by the undersigned, each of the Transaction Documents to which the undersigned is party will constitute the legal, valid and binding obligation of the undersigned, enforceable against the undersigned in accordance with its terms except as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors rights generally.

(d) Neither the execution, delivery nor performance of the Transaction Documents by the undersigned violates or conflicts with, creates (with or without the giving of notice or the lapse of time, or both) a default under or a lien or encumbrance upon any of the undersigned s assets or properties pursuant to, or requires the consent, approval or order of any government or governmental agency or other person or entity under (i) any note, indenture, lease, license or other agreement to which the undersigned is a party or by

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which it or any of its assets or properties is bound or (ii) any statute, law, rule, regulation or court decree binding upon or applicable to the undersigned or its assets or properties. If the undersigned is not a natural person, the execution, delivery and performance by the undersigned of the Transaction Documents have been duly authorized by all necessary corporate or other action on behalf of the undersigned and such execution, delivery and performance does not and will not constitute a breach or violation of, or default under, the charter or by-laws or equivalent governing documents of the undersigned.

(e) The undersigned has received from the Company, or has been directed to, all materials which have been requested by the undersigned and the Nephros SEC Filings. The undersigned has had a reasonable opportunity to ask questions of the Company and its representatives, and the Company has answered to the satisfaction of the undersigned all inquiries that the undersigned or the undersigned s representatives have put to it.

(f) The undersigned or the undersigned s purchaser representative has such knowledge and experience in finance, securities, taxation, investments and other business matters so as to be capable of evaluating the merits and risks of an investment in the Subject Securities. The undersigned can afford to bear such risks, including, without limitation, the risk of losing its entire investment.

(g) The undersigned acknowledges that no liquid market for the Notes and Warrants presently exists and none may develop in the future and that the undersigned may find it impossible to liquidate the investment at a time when it may be desirable to do so, or at any other time.

(h) The undersigned has been advised by the Company and understands that none of the Subject Securities have been registered under the Securities Act, that the Subject Securities are being offered and issued on the basis of the statutory exemption provided by Section 4(2) of the Securities Act, Regulation D promulgated thereunder or both, relating to transactions by an issuer not involving any public offering and under similar exemptions under certain state securities laws; that this transaction has not been reviewed by, passed on or submitted to any United States Federal or state agency or self-regulatory organization where an exemption is being relied upon; and that the Company s reliance thereon is based in part upon the representations made by the undersigned in this Agreement.

(i) The undersigned will acquire the Subject Securities for the undersigned s own account (or, if such individual is married, for the joint account of the undersigned and the undersigned s spouse either in joint tenancy, tenancy by the entirety or tenancy in common) for investment and not with a view to the sale or distribution thereof or the granting of any participation therein, in each case in violation of applicable securities laws, and has no present intention of distributing or selling to others any of such Subject Securities or granting any participation therein, in each case in violation of applicable securities laws.

(j) In subscribing for Notes, the undersigned is not relying on any representations and warranties of the Company other than those in this Agreement.

(k) The undersigned acknowledges that the representations, warranties and agreements made by the undersigned herein shall survive the execution and delivery of this Agreement and the purchase of the Notes, the conversion of the Notes and the exercise of the Warrants.

(l) Except as set forth on the signature page hereto, the undersigned has not engaged any broker or other person or entity that is entitled to a commission, fee or other remuneration as a result of the execution, delivery or performance of this Agreement.

(m) The undersigned is not subscribing for Notes as a result of any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio, or

presented at any seminar or meeting, or any solicitation of a subscription by a person other than a representative of the Company with whom the undersigned had a pre-existing relationship.

(n) The undersigned is not with respect to the undersigned s subscription a person or entity (a Person) with whom a United States citizen, entity organized under the laws of the United States or its territories or entity having its principal place of business within the United States or any of its territories (collectively, a U.S. Person), is prohibited from transacting business of the type contemplated by this

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Agreement, whether such prohibition arises under United States law, regulation or executive orders and lists published by the Office of Foreign Assets Control, Department of the Treasury (OFAC) (including those executive orders and lists published by OFAC with respect to Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC Specially Designated Nationals and Blocked Persons). Neither the undersigned nor any Person who owns an interest in the undersigned (collectively, a Purchaser Party) is a Person with whom a U.S. Person, including a United States Financial Institution as defined in 31 U.S.C. Section 5312, as amended (Financial Institution), is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation or executive orders and lists published by the OFAC (including those executive orders and lists published by OFAC with respect to Specially Designated Nationals and Blocked Persons).

(o) To the actual knowledge of the undersigned, the funds used to pay to the Company the purchase price for the Subject Securities were derived: (i) from transactions that do not violate United States law or, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction in which they originated; and (ii) from permissible sources under United States law and to the extent such funds originate outside the United States, under the laws of the jurisdiction in which they originated.

(p) To the actual knowledge of the undersigned, neither the undersigned nor any Purchaser Party, nor any Person providing funds to the undersigned: (i) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist related activities, any crimes which in the United States would be predicate crimes to money laundering, or any violation of any Anti-Money Laundering Laws (as hereinafter defined in this Section 4(p)); (ii) has been assessed civil or criminal penalties under any Anti-Money Laundering Laws; or (iii) has had any of its funds seized or forfeited in any action under any Anti-Money Laundering Laws. For purposes of this Section 4(p), the term Anti-Money Laundering Laws shall mean laws, regulations and sanctions, state and federal, criminal and civil, that: (i) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (ii) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; (iii) require identification and documentation of the parties with whom a Financial Institution conducts business; or (iv) are designed to disrupt the flow of funds to terrorist organizations. Such laws, regulations and sanctions shall be deemed to include the USA PATRIOT Act of 2001, Pub. L. No. 107-56 (the Patriot Act), the Bank Secrecy Act, 31 U.S.C. Section 5311 et. seq. (the Bank Secrecy Act), the Trading with the Enemy Act, 50 U.S.C. Appendix, the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et. seq., and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

(q) The undersigned is in compliance in all material respects with any and all applicable provisions of the Patriot Act, including, without limitation, amendments to the Bank Secrecy Act. If the undersigned is a Financial Institution, it has established and is in compliance in all material respects with all procedures, if any, required by the Patriot Act and the Bank Secrecy Act.

(r) The undersigned represents and warrants that, since July 15, 2007, the undersigned has not engaged in any short sale of any equity security of the Company.

5. *Covenants of the Company*.

(a) Except for the 2007 Notes, without the prior written consent of the Secured Party (as defined in Section 8 herein), the Company shall not create, issue, incur (by conversion, exchange or otherwise), assume, guarantee or otherwise become or remain directly or indirectly liable for any Indebtedness while the 2007 Notes are outstanding. In addition,

so long as the 2007 Notes are outstanding, without the prior written consent of the 2007 Notes Majority Holders (as defined in section 7(b) hereof) the Company shall not and shall not permit the Subsidiary to:

(i) sell, assign (by operation of law or otherwise), lease, license, exchange or otherwise transfer or dispose of any Collateral (as defined in the Form of Note) other than the sale of inventory in the

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ordinary course of business and the sale or other disposition of worn out or obsolete assets not necessary for the conduct of its business;

(ii) grant any Lien upon or with respect to any Collateral (as defined in the Form of Note) or create or suffer to exist any Lien upon or with respect to any Collateral (as defined in the Form of Note) other than a Permitted Lien;

(iii) declare, set aside, or pay any dividends on, make any other distributions in respect of, redeem or otherwise repurchase any of its capital stock or other securities, other than dividends and distributions by the Subsidiary to the Company, or redeem or repurchase any of its capital stock or other securities;

(iv) split, combine or reclassify any of its capital stock;

(v) adopt or amend any employee benefit plan;

(vi) except with respect to the compensation of Norman J. Barta, grant, award or enter into any compensation (including stock options or other awards under existing benefit plans) or change of control arrangement with any employee or director of the Company or the Subsidiary or amend the terms of employment or compensation of any employee or director of the Company or the Subsidiary; or

(vii) increase the size of the Board of Directors of the Company or the Subsidiary or, except with respect to the New Directors, appoint any new members to the Board of Directors of the Company or the Subsidiary.

(b) No later than fifteen (15) business days after the First Closing, the Company will file a preliminary Schedule 14C information statement (the Preliminary Schedule 14C) with the Commission. The Company agrees to respond to the initial and any subsequent Commission comments relating to the Preliminary Schedule 14C as soon as practicable after receipt of such comments and to use commercially reasonable efforts to address all of such Commission comments. The Company agrees to file a definitive Schedule 14C information statement with the Commission no later than the second business day after receiving confirmation that the Commission has no further comments on the Preliminary Schedule 14C.

(c) As long as any Purchaser owns Subject Securities and the Company is required to file reports pursuant to the Exchange Act, the Company covenants to use commercially reasonable best efforts to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act. As long as any Purchaser owns Subject Securities, if the Company is not required to file reports pursuant to the Exchange Act, it will prepare and furnish to the Purchasers and make publicly available in accordance with Rule 144(c) such information as is required for the Purchasers to sell the Subject Securities under Rule 144. The Company further covenants that it will take such further action as any holder of Subject Securities may reasonably request, to the extent required from time to time to enable such holder to sell such Subject Securities without registration under the Securities Act within the requirements of the exemption provided by Rule 144.

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

(e) Other than in the case of a Form 8-K and any exhibits thereto, including any press releases included therein, required to be filed with the Commission by the Company, neither the Company nor the undersigned shall issue any

press release or otherwise make any public statement concerning the transactions contemplated by the Transaction Documents and Exchange Agreement without the prior consent of the Company, with respect to any press release of the undersigned, or without the prior consent of the undersigned, with respect to any press release of the Company or otherwise authorized by the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, in which case the

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disclosing party shall promptly provide the other party with prior notice of such public statement or communication.

(f) No claim will be made or enforced by the Company or, with the consent of the Company, any other person or entity, that any Purchaser is an acquiring person or interested stockholder under any control share acquisition, business combination, shareholder rights plan (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by or applicable to the Company (including without limitation Section 203 of the Delaware General Corporation Law), or that any Purchaser could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Subject Securities under the Transaction Documents or under any other agreement between the Company and the Purchasers.

(g) Except as set forth on Schedule 5(g), the Company shall use the net proceeds from the sale of the Subject Securities for working capital purposes and shall not use such proceeds for the payment of any dividends or distributions or the redemption or repurchase of any Common Stock or other securities of the Company.

(h) Promptly after the Stockholder Consents become effective, the Company shall file the Certificate of Amendment with the Secretary of State of the State of Delaware. Thereafter, the Company shall maintain a reserve from its duly authorized shares of Common Stock, free of all preemptive or preferential rights, for issuance pursuant to the Transaction Documents in such amount as may be required to fulfill its obligations in full under the Transaction Documents. Promptly following the conversion of the Notes, the Company shall: (i) in the time and manner required by the American Stock Exchange (or any subsequent trading market which is the principal trading market on which the Common Stock is listed or quoted, as applicable, the Trading Market), prepare and file with the Trading Market an additional shares listing application covering a number of shares of Common Stock equal to the number of shares of Common Stock issued upon the Conversion of the Notes and issuable upon the exercise of the Warrants, (ii) take all steps necessary to cause such shares of Common Stock to be approved for listing on such Trading Market as soon as possible thereafter, (iii) provide to the Purchasers evidence of such listing, and (iv) maintain the listing of such Common Stock on such Trading Market or another Trading Market.

(i) From the date hereof until 90 days after the date on which a registration statement is declared effective pursuant to the Registration Rights Agreement (the Effective Date), neither the Company nor the Subsidiary shall issue shares of Common Stock, any other capital stock or equity securities of the Company or the Subsidiary, or any securities convertible into or exercisable for Common Stock, capital stock or equity securities of the Company or the Subsidiary (collectively, Equity Securities); provided, however, the 90 day period set forth in this Section 5(i) shall be extended for the number of days during such period in which (i) trading in the Common Stock is suspended by the Trading Market, or (ii) following the Effective Date, the Registration Statement is not effective or the prospectus included in the Registration Statement may not be used by the Purchasers for the resale of Common Stock. This Section 5(i) shall not apply to any Exempt Issuance as such term is defined in the Warrant.

(j) From the Effective Date until the Cessation Date (as defined below), the Company will not, directly or indirectly, effect any sale, issuance or exchange of any Equity Securities (a Subsequent Placement) unless the Company shall have first complied with this Section 5(j).

(i) The Company shall deliver to each Purchaser and holder of New Notes (collectively, the 2007 Holders) a written notice (the Offer) of any proposed or intended sale, issuance or exchange of the securities being offered (the Offered Securities) in a Subsequent Placement, which Offer shall (w) identify and describe the Offered Securities, (x) describe the price and other terms upon which they are to be sold, issued or exchanged, and the number or amount of the Offered Securities to be sold, issued or exchanged, (y) identify the persons or entities to which or with which the Offered Securities are to be offered, sold, issued or exchanged, and (z) offer to sell and issue to or exchange with each 2007 Holder (A) a pro rata portion of the Offered Securities based on such 2007 Holder s pro rata portion of the aggregate principal amount of the 2007 Notes purchased or received by such 2007 Holder (the Basic Amount), and

(B) with respect to each 2007 Holder that

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elects to purchase its Basic Amount, any additional portion of the Offered Securities attributable to the Basic Amounts of other 2007 Holders as such 2007 Holder shall indicate it will purchase or acquire should the other 2007 Holders subscribe for less than their Basic Amounts (the Undersubscription Amount).

(ii) To accept an Offer, in whole or in part, a 2007 Holder must deliver a written notice to the Company prior to the end of the 10 trading day period following receipt of the Offer, setting forth the portion of the 2007 Holder s Basic Amount that such 2007 Holder elects to purchase and, if such 2007 Holder shall elect to purchase all of its Basic Amount, the Undersubscription Amount, if any, that such 2007 Holder elects to purchase (in either case, the Notice of Acceptance). If the Basic Amounts subscribed for by all 2007 Holders are less than the total of all of the Basic Amounts, then each 2007 Holder who has set forth an Undersubscription Amount in its Notice of Acceptance shall be entitled to purchase, in addition to the Basic Amounts subscribed for, the Undersubscription Amount it has subscribed for; provided, however, that if the Undersubscription Amounts subscribed for exceed the difference between the total of all the Basic Amounts and the Basic Amounts subscribed for (the Available Undersubscription Amount), each 2007 Holder who has subscribed for any Undersubscription Amount shall be entitled to purchase only that portion of the Available Undersubscription Amount as the Basic Amount of such 2007 Holder bears to the total Basic Amounts of all 2007 Holders that have subscribed for Undersubscription Amounts.

(iii) The Company shall have 10 trading days from the expiration of the period set forth in Section 5(j)(ii) above to sell, issue or exchange all or any part of such Offered Securities as to which a Notice of Acceptance has not been given by the 2007 Holders (the Refused Securities), but only to the offerees described in the Offer and only upon terms and conditions (including, without limitation, unit prices and interest rates), taken as a whole, that are not more favorable to the acquiring persons or entities or less favorable to the Company than those set forth in the Offer.

(iv) In the event the Company shall propose to sell less than all the Refused Securities (any such sale to be in the manner and on the terms specified in Section 5(j)(iii) above), then each 2007 Holder may, at its sole option and in its sole discretion, reduce the number or amount of the Offered Securities specified in its Notice of Acceptance to an amount that shall be not less than the number or amount of the Offered Securities that the 2007 Holder elected to purchase pursuant to Section 5(j)(ii) above multiplied by a fraction, (i) the numerator of which shall be the number or amount of Offered Securities the Company actually proposes to issue, sell or exchange (including Offered Securities to be issued or sold to 2007 Holders pursuant to Section 5(j)(ii) above prior to such reduction) and (ii) the denominator of which shall be the original amount of the Offered Securities. In the event that any 2007 Holder so elects to reduce the number or amount of Offered Securities specified in its Notice of Acceptance, the Company may not issue, sell or exchange more than the reduced number or amount of the Offered Securities unless and until such securities have again been offered to the 2007 Holders in accordance with Section 5(j)(i) above.

(v) Upon the closing of the sale, issuance or exchange of all or less than all of the Refused Securities, the 2007 Holders shall acquire from the Company, and the Company shall issue to the 2007 Holders, the number or amount of Offered Securities specified in the Notices of Acceptance, as reduced pursuant to Section 5(j)(iv) above if the 2007 Holders have so elected, upon the terms and conditions specified in the Offer. The purchase by the 2007 Holders of any Offered Securities is subject in all cases to the preparation, execution and delivery by the Company and the 2007 Holders of a purchase agreement relating to such Offered Securities reasonably satisfactory in form and substance to the 2007 Holders, the Company and their respective counsel. Notwithstanding anything to the contrary contained in this Agreement, if the Company does not consummate the closing of the sale, issuance or exchange of all or less than all of the Refused Securities within 7 trading days after the expiration of the period set forth in Section 5(j)(ii), the Company shall issue to the 2007 Holders the number or amount of Offered Securities specified in the Notices of Acceptance, as reduced pursuant to Section 5(j)(iv) above if the 2007 Holders have so elected (which, in this case may be reduced to zero), upon the terms and conditions specified in the Offer.

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(vi) The Company and the 2007 Holders agree that if any 2007 Holder elects to participate in the Offer, any registration rights set forth in the agreement regarding the Subsequent Placement with respect to such Offer or any other transaction documents related thereto (collectively, the Subsequent Placement Documents) shall not entitle the purchasers of any Offered Securities issued in such Subsequent Placement to participate in any registration statement filed under the Registration Rights Agreement and shall not obligate the Company to file a registration statement with respect to such Offered Securities unless one or more registration statements covering all shares of Common Stock issued or issuable upon the conversion of the 2007 Notes or the exercise of the Warrants are then effective. The Subsequent Placement Documents shall not include any term or provision whereby any 2007 Holder shall be required to agree to any restrictions in trading as to any securities of the Company owned by such 2007 Holder prior to such Subsequent Placement if the 2007 Holders purchase all of the Offered Securities, and, in all other cases, such restrictions shall apply only to 2007 Holders who participate in the Subsequent Placement and the period of such restrictions shall not exceed ninety (90) days after the closing of the Subsequent Placement.

(vii) Notwithstanding anything to the contrary in this Section 5(j) and unless otherwise agreed to by the 2007 Notes Majority Holders (as defined in section 7(b) hereof), the Company shall either confirm in writing to the 2007 Holders that the transaction with respect to the Subsequent Placement has been abandoned or shall publicly disclose its intention to issue the Offered Securities, in either case in such a manner such that the 2007 Holders will not be in possession of material non-public information as a result of having information concerning the proposed Subsequent Placement, by the seventeenth (17th) trading day following delivery of the Offer. If by the seventeenth (17th) trading day following delivery of the Offer no public disclosure regarding a transaction with respect to the Offered Securities has been made, and no notice regarding the abandonment of such transaction has been received by the 2007 Holders, such transaction shall be deemed to have been abandoned and the 2007 Holders shall not be deemed to be in possession of any material, non-public information with respect to the Company as a result of having information concerning the proposed Subsequent Placement. Should the Company decide to pursue such transaction with respect to the Offered Securities, the Company shall provide each 2007 Holder with another Offer Notice and each 2007 Holder will again have the right of participation set forth in this Section 5(j). The Company shall not be permitted to deliver more than one such Offer to the 2007 Holders in any 60 day period.

(viii) Any Offered Securities not acquired by the 2007 Holders or the offerees in accordance with Section 5(j)(iii) above may not be issued, sold or exchanged until they are again offered to the 2007 Holders under the procedures specified in this Agreement.

(ix) This Section 5(j) shall not apply to any Exempt Issuance as such term is defined in the Form of Warrant.

(x) For purposes of this Agreement, the term Cessation Date shall mean the first day on which the Purchasers (including transferees treated as Purchasers pursuant to Section 11(c)) no longer hold: (x) prior to the conversion of the Notes, Notes representing at least 25% of the aggregate principal amount of all Notes issued in the Offering, and (y) after the conversion of the Notes, (A) if the Per Share Exercise Price (as such term is defined in the Warrants) is greater than the closing price of the Common Stock last reported by the Trading Market prior to such day, shares of Common Stock representing at least 25% of the aggregate shares of Common Stock issued upon the conversion of the Notes or previously issued upon the exercise of any Warrants, or (B) if the Per Share Exercise Price is less than the closing price of the Common Stock last reported by the Trading Market prior to such day, shares of Common Stock representing at least 25% of the aggregate shares of Common Stock issued upon the conversion of the Notes, previously issued upon the exercise of any Warrants, or issuable upon the future exercise of any Warrants (treating the Purchasers as holding any shares of Common Stock that would be issuable upon the exercise of any Warrants then held by Purchasers).

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

(l) Upon the terms and subject to the conditions hereof, the Company shall use its commercially reasonable best efforts to take, or cause to be taken, all appropriate actions and do, or cause to be done, all things necessary, proper or advisable to consummate and make effective as promptly as practicable the transactions contemplated by this Agreement (including, without limitation, to cause the conditions in clauses (i), (ii), (iv), (v), (vi), (vii) and (viii) of Section 2(e) to be satisfied) and to cooperate with the undersigned in connection with the foregoing.

(m) From the date hereof until such time as no Purchaser holds any of the Subject Securities, the Company will, at its own expense, maintain insurance (including, without limitation, commercial general liability and property insurance, and directors and officers liability insurance, including such directors and officers liability insurance in respect of acts or omissions occurring prior to the First Closing covering each such person serving as an officer or director of the Company immediately prior to the First Closing to the extent that such coverage is in place as of the First Closing) in such amounts, against such risks, in such form and with responsible and reputable insurance companies or associations as is required by any governmental authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and in any event, in amount, adequacy, scope and with comparable insurance companies as the insurance in place as of the date of this Agreement; provided, if the First Closing shall not have occurred prior to September 21, 2007 the directors and officers liability coverage may be reduced to $7,000,000.

(n) Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents and the Exchange Agreement, the Company covenants and agrees that neither it nor any other person or entity acting on its behalf will, following the Closing, provide any Purchaser or its agents or counsel with any information that the Company believes constitutes material non-public information, unless prior thereto such Purchaser shall have executed a written agreement (which may be in the form of an e-mail or other electronic confirmation) regarding the confidentiality and use of such information. The Company understands and confirms that each Purchaser shall be relying on the foregoing representations in effecting transactions in securities of the Company. This Section 5(n) shall not apply to any information provided, or limit the ability of the Company to provide any information, to any Purchaser to whom knowledge of a member of the Board of Directors of the Company is attributable.

(o) From the date hereof until such time as no Purchaser holds any of the Subject Securities, the Company shall not effect or enter into an agreement to effect any financing involving a Variable Rate Transaction. Variable Rate Transaction means a transaction in which the Company issues or sells (i) any Equity Securities that are convertible into, exchangeable or exercisable for, or include the right to receive additional shares of Common Stock either (A) at a conversion, exercise or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such Equity Security, or (B) with a

conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such Equity Security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or

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the market for the Common Stock or (ii) enters into any agreement, including, but not limited to, an equity line of credit, whereby the Company may sell securities at a future determined price.

(p) Notwithstanding Section 6(b), the Company agrees to issue or reissue certificates of Common Stock without a legend if at such time, prior to making any transfer of any Common Stock, the undersigned shall give written notice to the Company making such request and: (i) a registration statement covering the resale of such Common Stock is effective under the Securities Act, or (ii) the undersigned provides the Company or its counsel with reasonable assurances that such security can be sold pursuant to Rule 144 promulgated under the Securities Act or any successor or replacement rule (as applicable, Rule 144) (which may include an opinion of counsel provided by the Company), or (iii) the undersigned provides the Company or its counsel with reasonable assurances that such security can be sold pursuant to section (k) of Rule 144 (or a corresponding successor or replacement section, as applicable, Rule 144(k)), or (iv) the Company has received other evidence reasonably satisfactory to the Company that such legend is not required under applicable requirements of the Securities Act and state securities laws (including judicial interpretations and pronouncements issued by the staff of the Commission). The Company shall cause its counsel to issue a legal opinion to its transfer agent, after the undersigned has provided the Company s counsel with all necessary documentation required by such counsel to issue such an opinion, if such legal opinion is required by the transfer agent to effect the removal of the legend hereunder. If all or any portion of a Note or Warrant is converted or exercised (as applicable) at a time when there is an effective registration statement to cover the resale of the Common Stock issued upon such conversion or exercise, or if such shares of Common Stock may be sold under Rule 144(k) or if such legend is not otherwise required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission) then certificates representing such shares of Common Stock shall be issued free of all legends. The Company agrees that at such time as such legend is no longer required under this Section 5(p) and the undersigned has complied with this Section 5(p), it will, no later than three trading days following the delivery by the undersigned to the Company or the transfer agent of a certificate representing shares of Common Stock issued with a restrictive legend, deliver or cause to be delivered to the undersigned a certificate representing such shares that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to the transfer agent that enlarge the restrictions on transfer set forth in this Section 5(p). Certificates for shares of Common Stock subject to legend removal hereunder shall, at the direction of the undersigned, be transmitted by the transfer agent of the Company to the undersigned by crediting the account of the undersigned s prime broker with the Depository Trust Company System.

(q) At all times until the Investor Rights Agreement has terminated in accordance with its terms (the Designation Period), the Company will cause two individuals designated by Lambda (the individuals whom Lambda has so designated from time to time are referred to herein as the Lambda Designees) to be members of the Board of Directors of the Company except to the extent that (i) Lambda otherwise consents in writing, or (ii) a member of the Board of Directors originally designated by Lambda resigns and Lambda has not yet designated a successor. Without limiting the generality of the foregoing, during the Designation Period the Company will cause the Lambda Designees to be elected or nominated to the Board of Directors, to promptly remove any Lambda Designee from the Board of Directors upon the written direction of Lambda, and to promptly elect or appoint any successor designated by Lambda having reasonably appropriate business experience and background to fill any vacancy caused by any Lambda Designee ceasing to be a member of the Board of Directors for any reason.

(r) Prior to the Automatic Conversion Date (as defined in the Form of Note), the Company will not enter into any agreement for additional financing through equity or equity-linked securities on terms that are materially different or more beneficial to the purchasers of such equity or equity-linked securities than those contained in this Agreement and all exhibits hereto without the prior consent of the 2007 Notes Majority Holders (as defined in section 7(b) hereof).

6. *Covenants of the Undersigned*.

(a) The undersigned agrees that no sale, assignment or transfer of any of the Subject Securities acquired by the undersigned shall be valid or effective, and the Company shall not be required to give any

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effect to such a sale, assignment or transfer, unless (i) the sale, assignment or transfer of such Subject Securities is registered under the Securities Act, it being understood that the Subject Securities are not currently registered for sale and that the Company has no obligation or intention to so register the Subject Securities, except as provided by the Registration Rights Agreement; (ii) the Subject Securities are sold, assigned or transferred in accordance with all the requirements and limitations of an exemption from registration under the Securities Act. Without limiting the generality of the foregoing, the undersigned agrees that following the removal of the restrictive legend from certificates representing Common Stock, the undersigned will sell any such Common Stock pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if shares of Common Stock are sold pursuant to a Registration Statement, they will be sold in compliance with the plan of distribution set forth therein.

(b) The undersigned agrees to the imprinting, so long as is required by Section 6(a), of a legend on any of the Securities in the following or a substantially similar form and such other legends as may be required by state blue sky laws:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE SECURITIES ACT), OR ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF A REGISTRATION STATEMENT IN EFFECT WITH RESPECT TO SUCH SECURITIES UNDER THE SECURITIES ACT OR AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. ANY SUCH TRANSFER MAY ALSO BE SUBJECT TO COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS.

(c) The undersigned hereby agrees that from the date hereof and continuing until the Cessation Date, the undersigned shall not, without the prior written consent of the Company, directly or indirectly, through related parties, affiliates or otherwise, (i) sell short or short against the box (as those terms are generally understood) any equity security of the Company or (ii) otherwise engage in any transaction which involves hedging of the undersigned s position in any equity security of the Company, provided, however, that it shall not be a violation of this Section 6(c), if the undersigned places a sell order for shares of Common Stock underlying the Notes or Warrants at or following the time of conversion or exercise of such Notes or Warrants and all conditions to exercise of such Warrants have been satisfied, relies on the Company to deliver such Common Stock in accordance with the Form of Note or Warrants as the case may be, and completes the sale of such Common Stock before the Company delivers the Common Stock to the undersigned.

(d) Upon the terms and subject to the conditions hereof, the undersigned shall use its commercially reasonable best efforts to take, or cause to be taken, all appropriate actions and do, or cause to be done, all things necessary, proper or advisable to consummate and make effective as promptly as practicable the transactions contemplated by this Agreement (including, without limitation, to cause the conditions in clauses (i) and (ii) of Section 2(d) to be satisfied and to execute and deliver at the First Closing the Registration Rights Agreement and Investor Rights Agreement) and to cooperate with the Company in connection with the foregoing.

(e) After the Closing, upon the request of the Company the undersigned shall provide to the Company such additional information and documentation concerning the undersigned s legal or beneficial ownership, policies, procedures and sources of funds as is reasonably necessary to enable the Company to comply with Anti-Money Laundering Laws now in existence or hereafter enacted or amended.

7. *Indemnification*.

(a) *General*. The Company shall indemnify and hold harmless the undersigned and each officer, director, partner, employee, agent and controlling person of the undersigned (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), past, present or future (each, an Indemnified Party), from and against any and all claims, losses, damages, liabilities, judgments, fines, penalties, charges, costs, and expense, including reasonable attorneys fees and disbursements including those incurred in

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enforcing this Section 7(a) (collectively, Losses), due to or arising out of (i) a breach of any representation, warranty, covenant or agreement by the Company in this Agreement or any other Transaction Document, or (ii) a claim against the undersigned by a third party based on the transactions contemplated by the Transaction Documents (other than a claim based on a breach by the undersigned of any representation, warranty or covenant of the undersigned in the Transaction Documents to which it is a party). No knowledge by the undersigned of any breach or inaccuracy of any representation, warranty, covenant or agreement by the Company in this Agreement shall impair, limit, release or otherwise impair any rights of the undersigned pursuant to this Section 7.

(b) *Limitation on Indemnification*. The maximum amount payable by the Company to all Indemnified Parties in respect of claims made for indemnification under clause (i) of Section 7(a) shall not exceed, in the aggregate, the Subscription Amount plus the Indemnified Parties reasonable out-of-pocket expenses incurred in connection with (i) the Transaction Documents and the transactions contemplated thereby, (ii) enforcing its rights under Section 7(a) and (iii) defending itself against any claim related to the Transaction Documents or the transactions contemplated thereby. No Indemnified Party shall be entitled to bring a claim with respect to Losses due to or arising out of a breach by the Company of any representation or warranty contained in Sections 3(e) through (ii) (including a claim permitted by clause (i) or (ii) of Section 7(c)) unless such claim is brought by, or the bringing of such claim is consented to in writing by, the 2007 Notes Majority Holders. For purposes of this Section 7(b), the 2007 Notes Majority Holders shall be (x) prior to the conversion of the 2007 Notes, holders of 2007 Notes having a principal amount greater than fifty percent (50%) of the principal amount of all 2007 Notes then outstanding, and (y) after the conversion of the 2007 Notes, the holders of a majority of the shares of Common Stock that were issued upon the conversion of the 2007 Notes or were issued or are issuable upon the exercise of the Warrants (excluding from such analysis any shares of Common Stock that have been sold pursuant to an effective registration statement or Rule 144 and the holders thereof). Once a claim has been brought or approved by the 2007 Notes Majority Holders, each Indemnified Party may continue to prosecute such claim even if the persons or entities bringing or approving such claim subsequently cease to constitute the 2007 Notes Majority Holders.

(c) *Sole Remedy*. The parties hereto agree and acknowledge that the indemnification rights provided in this Section 7 shall be the exclusive remedy of the parties hereto for breaches of the representations and warranties contained in this Agreement except with respect to (i) claims involving fraud or a knowing breach of the representations and warranties or (ii) any equitable relief to which any party may be entitled, including without limitation, rescission.

(d) *Notice*. With respect to any Loss related to a claim by a third party, an Indemnified Party shall give written notice thereof to the Company (in such capacity, the Indemnifying Party) promptly after receipt of any written claim by such third party and in any event not later than twenty (20) business days after receipt of any such written claim (or not later than ten (10) business days after the receipt of any such written claim in the event such written claim is in the form of a formal complaint filed with a court of competent jurisdiction and served on the Indemnified Party), specifying in reasonable detail the amount, nature and source of the claim, and including therewith copies of any notices or other documents received from third parties with respect to such claim; *provided*, *however*, that failure to give such notice shall not limit the right of an Indemnified Party to recover indemnity or reimbursement except to the extent that the Indemnifying Party suffers any prejudice or harm with respect to such claim as a result of such failure. The Indemnified Party shall also provide the Indemnifying Party with such further information concerning any such claims as the Indemnifying Party may reasonably request by written notice.

(e) *Payment of Losses*. Within thirty (30) calendar days after receiving notice of a claim for indemnification or reimbursement, the Indemnifying Party shall, by written notice to the Indemnified Party, either (i) concede or deny liability for the claim in whole or in part, or (ii) in the case of a claim asserted by a third party, advise that the matters set forth in the notice are, or will be, subject to contest or legal proceedings not yet finally resolved. If the Indemnifying Party concedes liability in whole or in part, it shall, within twenty (20) business days of such concession, pay the amount of the claim to the Indemnified Party to the extent of the liability conceded. Any such

payment shall be made in immediately available funds equal to the amount of such claim so payable. If the Indemnifying Party denies liability in whole or in part or advises that the matters

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set forth in the notice are, or will be, subject to contest or legal proceedings not yet finally resolved, then the Indemnifying Party shall make no payment (except for the amount of any conceded liability payable as set forth above) until the matter is resolved in accordance with this Agreement.

(f) *Defense of Claims*. In the case of any third party claim, if within 20 days after receiving the notice described in the preceding Section 7(d), the Indemnifying Party (i) gives written notice to the Indemnified Party stating that the Indemnifying Party would be liable under the provisions hereof for indemnity in the amount of such claim if such claim were valid and that the Indemnifying Party disputes and intends to defend against such claim, liability or expense at the Indemnifying Party s own cost and expense, and (ii) provides assurance reasonably acceptable to such Indemnified Party that such indemnification will be paid fully and promptly if required and such Indemnified Party will not incur cost or expense during the proceeding, then the Indemnifying Party shall be entitled to assume the defense of such claim and to choose counsel for the defense (subject to the consent of such Indemnified Party which consent shall not be unreasonably withheld) and such Indemnified Party shall not be required to make any payment with respect to such claim, liability or expense as long as the Indemnifying Party is conducting a good faith and diligent defense at its own expense; provided, however, that the assumption of the defense of any such matters by the Indemnifying Party shall relate solely to the claim, liability or expense that is subject or potentially subject to indemnification. If the Indemnifying Party assumes such defense in accordance with the preceding sentence, it shall have the right to settle indemnifiable matters related to claims by third parties where (x) the only obligation of the Indemnified Party and Indemnifying Party in connection with such settlement is the payment of money damages and such money damages are satisfied in full by the Indemnifying Party, and (ii) the settlement includes a complete release of the relevant Indemnified Party or Parties. Any other settlement of a claim for which the Indemnifying Party has assumed the defense shall require the prior written consent of the relevant Indemnified Party or Parties, which consent shall not be unreasonably withheld. No Indemnified Party shall settle any claim with respect to which the Indemnifying Party has assumed the defense, without the prior written consent of the Indemnifying Party. The Indemnifying Party shall keep such Indemnified Party apprised of the status of the claim, liability or expense and any resulting suit, proceeding or enforcement action, shall furnish such Indemnified Party with all documents and information that such Indemnified Party shall reasonably request and shall consult with such Indemnified Party prior to acting on major matters, including settlement discussions. Notwithstanding anything herein stated, such Indemnified Party shall at all times have the right to participate in, but not control, such defense at its own expense directly or through counsel; *provided*, *however*, if the named parties to the action or proceeding include both the Indemnifying Party and the Indemnified Party and representation of both parties by the same counsel would be inappropriate under applicable standards of professional conduct, the reasonable expense of separate counsel for such Indemnified Party shall be paid by the Indemnifying Party provided that such Indemnifying Party shall be obligated to pay for only one such counsel. If no such notice of intent to dispute and defend is given by the Indemnifying Party, or if such diligent good faith defense is not being or ceases to be conducted, such Indemnified Party may undertake the defense of (with counsel selected by such Indemnified Party, which selection shall require the consent of the Indemnifying Party, which consent shall not be unreasonably withheld, and paid by the Indemnifying Party), and shall have the right to compromise or settle, such claim, liability or expense (exercising reasonable business judgment) with the consent of the Indemnifying Party, which consent shall not be unreasonably withheld. Such Indemnified Party shall make available all information and assistance that the Indemnifying Party may reasonably request and shall cooperate with the Indemnifying Party in such defense.

8. *Creation of Security Interest*.

(a) *Grant of Security Interest*. The Company hereby grants and pledges to Lambda (the Secured Party) a continuing security interest in the Collateral (as defined in the Form of Note) in order to secure prompt payment of the principal of, interest on and all other amounts due and payable under the 2007 Notes (collectively, the Obligations). Such security interest shall automatically terminate upon the (i) earlier of the payment of principal and interest on the 2007 Notes; (ii) such time as the Company designates sufficient funds (which may be proceeds from the sale of Collateral)

for the payment of the 2007 Notes and (iii) the Automatic Conversion Date (as defined in the Form of Note) (the Security Interest Termination Date).

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(b) *Designation of Secured Party as Agent*. The undersigned hereby irrevocably designates the Secured Party to act as Secured Party on the undersigned s behalf. The undersigned hereby irrevocably authorizes, and each holder of any Subject Securities, by such holder s acceptance of such Subject Securities, shall be deemed irrevocably to authorize, the Secured Party to take such action on its behalf under the provisions of this Agreement and any other instruments and agreements referred to herein or therein and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated to, or required of, the Secured Party by the terms hereof or thereof and such other powers as are reasonably incidental thereto. The undersigned, on behalf of itself and future holders of the Subject Securities issued to the undersigned, hereby authorizes and directs the Secured Party, from time to time in the Secured Party s discretion, to take any action and promptly to execute and deliver on the undersigned s behalf any document or instrument that the Company may reasonably request to effect, confirm or evidence the provisions of this Section 8, the occurrence of the Security Interest Termination Date, any subordination agreement, or otherwise. Pursuant to Section 9-509(d) of the Uniform Commercial Code as in effect on the date hereof in the State of New York, the Secured Party hereby authorizes the Company to file a termination statement upon the occurrence of the Security Interest Termination Date; the Secured Party agrees to provide any further authorizations of such filing if requested by the Company. In no event shall the Secured Party have any liability or other obligation to the Company or the undersigned whatsoever as a result of any act or omission taken or failed to be taken in its capacity as the Secured Party, and the Company and the undersigned hereby irrevocably release the Secured Party from any and all such liabilities or other obligations.

(c) *Delivery of Additional Documentation Required*. The Company shall from time to time execute and deliver to Secured Party, at the request of Secured Party, all financing statements and other documents that Secured Party may reasonably request and take any action that Secured Party may reasonably request to perfect and continue perfected Secured Party s security interests in the Collateral. Without limiting the generality of the foregoing, the Company shall, upon the Secured Party s written request, duly execute and deliver any (i) assignment for security with respect to Intellectual Property in a form reasonably requested by the Secured Party, and (ii) any account control agreement with respect to any account holding Collateral in a form reasonably requested by the Secured Party. Notwithstanding the foregoing, the Company need not deliver possession or control of any Collateral to the Secured Party or take any action to perfect the security interest granted hereby other than the filing of financing statements under the Uniform Commercial Code, the delivery and filing of any assignments for security with respect to Intellectual Property and the entry into account control agreements with respect to accounts holding Collateral. The Secured Party may, at any time and from time to time, file financing statements, continuation statements and amendments thereto that describe the Collateral as all assets of the Company or words of similar effect.

(d) *Remedies of Secured Party*. If any Event of Default as defined in the Notes shall have occurred and be continuing, the Secured Party may exercise in respect of the Collateral, in addition to any other rights and remedies provided for herein or otherwise available to it, all of the rights and remedies of a secured party upon default under the Uniform Commercial Code (whether or not the Uniform Commercial Code applies to the affected Collateral), and also may (i) take absolute control of the Collateral, including, without limitation, transfer into the Secured Party s name or into the name of its nominee or nominees (to the extent the Secured Party has not theretofore done so) and thereafter receive, for the benefit of the holders of 2007 Notes, all payments made thereon, give all consents, waivers and ratifications in respect thereof and otherwise act with respect thereto as though it were the outright owner thereof, (ii) require the Company to, and the Company hereby agrees that it will at its expense and upon request of the Secured Party forthwith, assemble all or part of its respective Collateral as directed by the Secured Party and make it available to the Secured Party at a place or places to be designated by the Secured Party that is reasonably convenient to both parties, and the Secured Party may enter into and occupy any premises owned or leased by the Company where the Collateral or any part thereof is located or assembled for a reasonable period in order to effectuate the Secured Party s rights and remedies hereunder or under law, without obligation to the Company in respect of such occupation, and (iii) without notice except as specified below and without any obligation to prepare or process the Collateral for sale, (A) sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Secured Party s

offices or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Secured Party may deem commercially reasonable and/or (B) lease, license or

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dispose of the Collateral or any part thereof upon such terms as the Secured Party may deem commercially reasonable. The Company agrees that, to the extent notice of sale or any other disposition of its respective Collateral shall be required by law, at least 10 days notice to the Company of the time and place of any public sale or the time after which any private sale or other disposition of its Collateral is to be made shall constitute reasonable notification. The Secured Party shall not be obligated to make any sale or other disposition of any Collateral regardless of notice of sale having been given. The Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The Company hereby waives any claims against the Secured Party and the holders of 2007 Notes arising by reason of the fact that the price at which the Collateral may have been sold at a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Obligations, even if the Secured Party accepts the first offer received and does not offer such Collateral to more than one offeree, and waives all rights that the Company may have to require that all or any part of such Collateral be marshaled upon any sale (public or private) thereof. The Company hereby acknowledges that (x) any such sale of the Collateral by the Secured Party shall be made without warranty, (y) the Secured Party may specifically disclaim any warranties of title, possession, quiet enjoyment or the like, and (z) such actions set forth in clauses (x) and (y) above shall not adversely affect the commercial reasonableness of any such sale of Collateral. In addition to the foregoing, (A) upon written notice to the Company from the Secured Party after and during the continuance of an Event of Default, the Company shall cease any use of the Intellectual Property for any purpose described in such notice; (B) the Secured Party may, at any time and from time to time after and during the continuance of an Event of Default, upon 10 days prior notice to the Company, license, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any of the Intellectual Property, throughout the universe for such term or terms, on such conditions, and in such manner, as the Secured Party shall in its sole discretion determine; and (C) the Secured Party may, at any time, pursuant to the authority granted in Section 8 hereof (such authority being effective upon the occurrence and during the continuance of an Event of Default), execute and deliver on behalf of the Company, one or more instruments of assignment of the Intellectual Property (or any application or registration thereof), in form suitable for filing, recording or registration in any country.

(e) *Benefits to Holders of 2007 Notes*. The rights of the Secured Party are for the ratable benefit of the holders of the 2007 Notes (including the Secured Party). Any proceeds or other Collateral received or recovered by the Secured Party in its capacity as such shall, in the sole discretion of the Secured Party, either (i) be held (or sold, liquidated or otherwise converted into another form of proceeds or other Collateral that is held) by the Secured Party for the ratable benefit of the holders of the 2007 Notes, as collateral security for the Obligations (whether matured or unmatured), (ii) after and during the continuance of an Event of Default, be retained by the Secured Party to reimburse the Secured Party for its reasonable costs and expenses, including attorneys fees and disbursements, incurred in serving as the Secured Party, and/or (iii) after and during the continuance of an Event of Default, be distributed to the holders of the 2007 Notes on a pro rata basis based on the respective amounts then due and owing to the respective holders of the 2007 Notes. After and during the continuance of an Event of Default, the Secured Party shall distribute any cash Collateral then held by the Secured Party in accordance with clause (iii) of the proceeding sentence to the extent that such cash Collateral exceeds the costs or expenses described in clause (ii) of the preceding sentence that have already been incurred or are reasonably expected by the Secured Party to be incurred unless the Secured Party has determined, upon the advice of counsel, that it is not entitled to distribute such cash Collateral at such time, in which case the Secured Party shall make such distributions as soon as practicable after the Secured Party determines that it is entitled to distribute such cash Collateral.

9. *Confidentiality*. The undersigned acknowledges and agrees that all information, written and oral, concerning the Company furnished from time to time to the undersigned and identified as confidential has been and is provided on a confidential basis pursuant to a confidentiality agreement between the undersigned and the Company.

10. *Expenses*. The Company shall pay, in connection with the preparation, execution and delivery of this Agreement, the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, all reasonable fees and out of pocket expenses incurred by Lambda in connection with the

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Offering up to an aggregate maximum amount of $75,000, whether or not the transactions contemplated by the Transaction Documents are consummated.

11. *Miscellaneous*.

(a) This Agreement, including the exhibits hereto, sets forth the entire understanding of the parties with respect to the undersigned s purchase of Notes from the Company, supersedes all existing agreements among them concerning such subject matter, and, subject to paragraph (h) below, may be modified, and the provisions hereof may be waived, only by a written instrument duly executed by the party to be charged; provided, however, the obligations of the Company under Sections 5(b), (e), (g), (i), (j), (m) and (o) may be amended or waived following the First Closing by the 2007 Notes Majority Holders; provided, further, that any amendment or waiver to any of such Sections by the 2007 Notes Majority Holders must apply to the corresponding Sections of all of the subscription agreements entered into by the Company in connection with the Offering and the corresponding Sections of the Exchange Agreement.

(b) Except as otherwise specifically provided herein, any notice or other communication required or permitted to be given hereunder shall be in writing and shall be mailed by certified mail, return receipt requested, or by Federal Express, Express Mail or similar guaranteed overnight delivery or courier service or delivered in person against receipt to the party to whom it is to be given,

(i) if to the Company,

Nephros, Inc.
3960 Broadway
New York, New York 10032
Attn: President

(ii) with a copy to,

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
Attention: Thomas D. Balliett, Esq.

(ii) if to the undersigned, at the address set forth on the signature page hereof,

or in either case, to such other address as the party shall have furnished in writing in accordance with the provisions of this Section 11(b). Any notice given by means permitted by this Section 11(b) shall be deemed given at the time of receipt thereof at the address specified in this Section 11(b).

(c) This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the undersigned or, after the Closing, the Majority Holders. The undersigned may assign any or all of its rights under this Agreement to any person or entity to whom the undersigned assigns or transfers any Subject Securities, provided that such transferee agrees in writing to be bound, with respect to the transferred Subject Securities, by the provisions of the Transaction Documents that apply to such Subject Securities. In the event of any assignment pursuant to this Section 11(c), the transferee shall be treated as the undersigned and a Purchaser to the same extent as if such transferee were the original party to this Agreement. Notwithstanding anything in this Section 11(c) to the contrary, in the event of any assignment pursuant to this Section 11(c), the undersigned shall not be entitled to assign any rights under this Agreement to a purchaser of shares of Common Stock sold by the

undersigned pursuant to an effective registration statement or Rule 144.

(d) The headings in this Agreement are solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

(e) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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(f) This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles governing conflicts of law that would defer to the substantive law of another jurisdiction.

(g) In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

(h) This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a party to this Agreement other