

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT

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

Date of Report: April 23, 2020
(Date of earliest event reported)

BIORESTORATIVE THERAPIES, INC.
(Exact Name of Registrant as Specified in Charter)

Delaware	000-54402	91-1835664
(State or Other Jurisdiction of Incorporation)	(Commission File No.)	(IRS Employer Identification Number)

40 Marcus Drive, Melville, New York	11747
(Address of Principal Executive Offices)	(Zip Code)

Registrant's telephone number, including area code: (631) 760-8100

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
None	N/A	N/A

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 **Entry into a Material Definitive Agreement.**

See Item 1.03.

Item 1.03 **Bankruptcy or Receivership.**

Chapter 11 Filing

As previously disclosed, on March 20, 2020, BioRestorative Therapies, Inc. (the “**Company**”) filed a voluntary petition commencing a case under chapter 11 of title 11 of the U.S. Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Eastern District of New York (the “**Bankruptcy Court**”). The Company’s chapter 11 case (the “**Chapter 11 Case**”) is being administered under the caption, *In re: BioRestorative Therapies, Inc.*, Case No. 8-20-71757. The Company is continuing to operate its business as a “debtor-in-possession” under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court.

Senior “Debtor-in-Possession” Financing

In connection with the Chapter 11 Case, the Company filed a motion (the “**DIP Motion**”) seeking, among other things, interim and final approval of postpetition, debtor-in-possession financing (the “**DIP Financing**”) on the terms and conditions set forth in Secured Term Note (the “**DIP Note**”), dated as of April 23, 2020, issued by the Company to Auctus Fund, LLC (the “**DIP Lender**”). The DIP Note provides for a senior secured superpriority debtor-in-possession credit facility of up to \$713,000 of which approximately \$354,000 (the “**Interim DIP Facility**”) was approved for funding pursuant to the entry of an interim DIP order (the “**Interim DIP Order**”) and until the entry of a final order approving the DIP Note (the “**Final DIP Order**”), secured by a first priority lien on all tangible and intangible property and assets of the Company, now owned or hereafter acquired, subject to certain carve outs, pursuant to a Security Agreement (the “**DIP Security Agreement**”), dated as of April 23, 2020, executed by the Company in favor of the DIP Lender. The Interim DIP Order was approved by the Bankruptcy Court at a hearing held on April 23, 2020. The Company received approximately \$244,000 of the Interim DIP Facility from the DIP Lender on April 24, 2020.

The proceeds from the DIP Financing will be used, subject to the Interim DIP Order and the Final DIP Order, (a) for working capital and other general purposes of the Company; (b) United States Trustee fees; (c) Bankruptcy Court approved professional fees and other administrative expenses arising in the Chapter 11 Case; and (d) interest, fees, costs and expenses incurred in connection with the DIP Financing, including professional fees, each subject to the terms and conditions of the DIP Note, the orders of the Bankruptcy Court approving the DIP Note and consistent with the financing budget attached to the DIP Motion as an exhibit, subject to certain exceptions as provided in the DIP Note.

The maturity date of the DIP Financing will be the earliest to occur of (a) July 6, 2020; (b) ten days following entry of an order confirming a chapter 11 plan in the Chapter 11 Case ; (c) ten days following the entry of an order approving the sale of the Company or the Company’s assets; or (d) the occurrence of an event of default under the DIP Note, following any applicable grace or cure periods.

Interest on the outstanding principal amount of the loans under the DIP Note will be payable in arrears on the maturity date at the rate of 8% per annum. Upon the occurrence and during the continuance of an event of default, all obligations under the DIP Note will bear interest at a rate equal to the then current rate plus an additional 2% per annum.

The foregoing descriptions of the DIP Note and the DIP Security Agreement do not purport to be complete and are qualified in their entirety by reference to the texts of the DIP Note and the DIP Security Agreement, which are filed as Exhibits 10.1 and 10.2, respectively, to this Current Report on Form 8-K and incorporated herein by reference.

Forward-Looking Statements

This Current Report on Form 8-K contains certain forward-looking statements within the meaning of the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995, as amended, based on our current expectations, estimates and projections about our operations, financial condition, results of operations, and liquidity. Statements containing words such as “may,” “believe,” “anticipate,” “expect,” “intend,” “plan,” “project,” “estimate,” or similar expressions constitute forward-looking statements. These forward-looking statements include, but are not limited to, statements regarding expectations about the timing and execution of the Company’s strategic transactions and the operating expectations during the pendency of the Chapter 11 Case. Potential factors that could affect such forward-looking statements include, among others, risks and uncertainties relating to the Chapter 11 Case, including, but not limited to, the Company’s ability to obtain Bankruptcy Court approval of motions filed in the Chapter 11 Case (including, but not limited to, the DIP Motion), the effects of the Chapter 11 Case on the Company and on the interests of various constituents, Bankruptcy Court rulings in the Chapter 11 Case and the outcome of the Chapter 11 Case in general, the length of time the Company will operate under the Chapter 11 Case, risks associated with third-party motions in the Chapter 11 Case, the conditions to which the Company’s DIP Financing is subject and the risk that these conditions may not be satisfied for various reasons, including for reasons outside of the Company’s control; uncertainty associated with evaluating and completing any strategic or financial alternative as well as the Company’s ability to implement and realize any anticipated benefits associated with any alternative that may be pursued; the consequences of the acceleration of the Company’s debt obligations; the trading price and volatility of the Company’s common stock and the risks related to trading on the OTC Pink Market and the other factors disclosed in the section entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations - Factors that May Affect Future Results and Financial Condition” in the Company’s most recent Annual Report on Form 10-K filed with the SEC, as updated from time to time in the Company’s subsequent filings with the SEC. Readers are cautioned not to place undue reliance on these forward-looking statements, which reflect management’s analysis only as of the date hereof. Such forward-looking statements are not guarantees of future performance or results and involve risks and uncertainties that may cause actual performance and results to differ materially from those predicted. Reported results should not be considered an indication of future performance. Except as required by law, the Company undertakes no obligation to publicly release the results of any revision to these forward-looking statements that may be made to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

Item 9.01**Financial Statements and Exhibits.**

(d) Exhibits

10.1 Secured Term Note, dated as of April 23, 2020, by BioRestorative Therapies, Inc. to Auctus Fund, LLC*

10.2 Security Agreement, dated as of April 23, 2020, by BioRestorative Therapies, Inc. in favor of Auctus Fund, LLC

* Certain schedules and exhibits omitted pursuant to Item 601(b)(2) of Regulation S-K promulgated by the SEC. The Company agrees to furnish a supplemental copy of any omitted schedule or exhibit to the SEC upon request.

SIGNATURES

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

BIORESTORATIVE THERAPIES, INC.

Dated: April 28, 2020

By: /s/ Mark Weinreb

Mark Weinreb
Chief Executive Officer

SECURED TERM NOTE

\$713,000.00

Boston, Massachusetts
April 23, 2020

FOR VALUE RECEIVED, the undersigned, BioRestorative Therapies, Inc., a Delaware corporation (the “**Borrower**”) as a debtor and debtor in possession, pursuant to the Borrower’s chapter 11 case (the “**Chapter 11 Case**”) under Title 11 of the United States Code, as amended filed in the Eastern District of New York (the “**Bankruptcy Court**”) hereby absolutely and unconditionally promises to pay to the order of Auctus Fund, LLC, a Delaware limited liability company, or its successor and/or assign (the “**Holder**”), in lawful money of the United States of America:

- (a) the principal amount of SEVEN HUNDRED THIRTEEN THOUSAND AND 00/100 DOLLARS (\$713,000.00) or the aggregate unpaid principal amount borrowed by the Borrower (the “**Principal Amount**”) under this Secured Term Note (as amended, supplemented, restated, replaced or otherwise modified from time to time, this “**Note**”), whichever is lesser; and
- (b) interest on the unpaid principal amount hereof from time to time outstanding and not overdue, from the date upon which such principal amount is advanced to the Borrower to the date on which such principal amount is paid in full at the per annum rate of eight percent (8.0%) (the “**Interest Rate**”).

This Note has been executed and delivered subject to the following terms and conditions:

1. Advances. The Holder shall advance funds to the Borrower pursuant to and subject to the budget attached hereto as Exhibit A (the “**Budget**”); the interim order entered by the Bankruptcy Court approving this Note and related documentation (the “**Interim Order**”); and (iii) the final order entered by the Bankruptcy Court approving this Note and related documentation (the “**Final Order**”). In no event shall Holder be obligated to advance funds on or after July 6, 2020 (“**Final Advance Date**”) other than as may expressly be provided for in the Interim Order or the Final Order.

2. Maturity Date. The entire outstanding Principal Amount of this Note, plus all accrued but unpaid interest thereon, shall be paid in one lump sum no later than the earliest to occur of: (i) the Final Advance Date; (ii) fourteen (14) days following entry of an order confirming a chapter 11 plan in the Chapter 11 Case (a “**Confirmation Order**”); (iii) ten (10) days following the entry of an order approving the sale of the Borrower or Borrower’s assets (the “**Sale Order**”); or (iv) the occurrence of an Event of Default, as hereinafter defined, following any applicable grace or cure periods (the “**Termination Date**”). The earliest to occur of (i) through (iv) above shall be referred to as the “**Maturity Date**”, which Maturity Date may only be extended by the mutual agreement of the Borrower and the Holder.

3. Interest. Interest shall accrue on the unpaid Principal Amount of this Note at the Interest Rate and shall be due and payable in arrears on the Maturity Date. Interest shall accrue on overdue payments of principal and interest, advances, fees and other amounts due at the annual rate of two percent (2%) above the Interest Rate. Interest on this Note shall be computed on the basis of a year of three hundred sixty (360) days and actual days elapsed.

4. Payments. Payments of principal and interest on this Note shall be made by check or other from acceptable to the Holder sent to the Holder’s address set forth in Section 14 below or to such other address as the Holder may designate for such purpose from time to time by written notice to the Borrower, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

5. Prepayment. Borrower may make prepayments on the Note at any time, in whole or in part, without premium or penalty. All prepayments shall be applied first to any charges and fees due hereunder, second to accrued but unpaid interest and lastly to the principal sum then outstanding.

6. Default.

(a) The occurrence of any of the following shall be considered an “**Event of Default**”:

- (i) Failure to pay any installment of interest or principal when due.
- (ii) Impairment of any Loan Document (as defined below);
- (iii) Dismissal of the Chapter 11 Case or conversion to a chapter 7 case;
- (iv) Appointment of a chapter 11 trustee;
- (v) Granting of relief from the automatic stay to permit foreclosure on any assets of the Borrower;
- (vi) Entry of an order granting any super-priority claim which is senior or *pari passu* with the Holder’s claims under this Note or the Security Agreement;
- (vii) Entry of an order amending, supplementing or otherwise modifying the Interim Order or Final Order without the consent of the Holder;
- (viii) Reversal, vacation or stay of the effectiveness of the Interim Order or the Final Order;
- (ix) The support by the Debtor or filing by the Debtor of a plan of reorganization that, absent the express written consent of Lender, does not provide for the payment in full, in cash, on the effective date of such plan of all obligations of the Borrower to the Holder in respect of this Note and the Security Agreement;
- (x) Cessation of liens or super-priority claims granted for this Note and Security Agreement to be valid, perfected and enforceable in all material respects;
- (xi) Material adverse change in the business operations, prospects or finances of the Borrower;

- (xii) Failure by the Borrower to strictly comply with the Budget, subject to line item variations of no more than five percent (5%), provided that the aggregate Budget amount shall not be exceeded at any time without the express written consent of Holder;
- (xiii) Failure of the Borrower to timely provide access, information or financial records to Holder and its representatives as may be required under the Loan Documents (as hereinafter defined), including any Bankruptcy Court order;
- (xiv) Resignation or termination of employment of Francisco Silva from the Borrower prior to the Final Advance Date;
- (xv) Dissolution of the Borrower or failure to conduct the Borrower's operations in the ordinary course of business consistent with prior practices to the extent provided for within the funding permitted by the Budget;
- (xvi) The breach of any covenant or other term or condition of this Note or the Security Agreement; and
- (xvii) Any of Borrower's representations or warranties made herein or in the Security Agreement or in any statement or certificate at any time given in writing pursuant hereto or in connection herewith shall be false or misleading in any material respect.

(b) Upon the occurrence and during the continuance of an Event of Default, at the option of the Holder hereof, all sums of principal and interest then remaining unpaid hereon and all other amounts payable hereunder shall immediately become due and payable, all without demand, presentment or notice, all of which hereby are expressly waived. Upon any Event of Default, the Borrower shall pay all costs and expenses, including reasonable attorney's fees, incurred by the Holder in collecting any payment due hereunder.

7. **Security.** This Note and the Borrower's obligations hereunder (the "**Obligations**") shall be secured by a Security Agreement, dated as of even date herewith, by and between the Borrower and the Holder (the "**Security Agreement**"), pursuant to which the Borrower shall grant to the Holder a first priority security interest in and lien on all assets (tangible, intangible, real, personal and mixed) of the Borrower, whether now owned or hereafter acquired, including without limitation, accounts, inventory, equipment, capital stock in subsidiaries, investment property, instruments, chattel paper, real estate, leasehold interests, contracts, patents, copyrights, trademarks and other general intangibles, and all products and proceeds thereof (collectively the "**Collateral**"), excluding, however, avoidance power actions pursuant to the United States Bankruptcy Code (the "**Code**") and the proceeds thereof. The liens granted to Holder shall be senior to and shall prime all pre-petition liens. Neither Holder nor any of the Collateral shall be subject to any surcharge under section 506(c) of the Code.

8. **Amendment.** No provision of this Note may be amended, modified or terminated, unless such amendment, modification or termination is evidenced by a prior mutual written instrument of the Borrower and the Holder.

9. **Additional Terms and Conditions.** The Borrower (i) waives presentment, demand, notice of demand, protest, notice of protest, and notice of nonpayment and any other notice required to be given under the law to the Borrower, in connection with the delivery, acceptance, performance, default or enforcement of this Note; (ii) agrees that any failure to act or failure to exercise any right or remedy, on the part of the Holder shall not in any way affect or impair the obligations of the Borrower or be construed as a waiver by the Holder of, or otherwise affect, any of its rights under this Note.

10. **Invalidity.** In the event any one or more of the provisions of this Note shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event that any one or more of the provisions of this Note operate or would prospectively operate to invalidate this Note, then and in either of those events, such provision or provisions only shall be deemed null and void and shall not affect any other provision of this Note and the remaining provisions of this Note shall remain operative and in full force and effect and shall in no way be affected, prejudiced and disturbed thereby.

11. **Expenses.** The Borrower shall pay all (i) reasonable out-of-pocket costs and expenses of the Holder (including all reasonable fees, expenses and disbursements of counsel) in connection with the preparation, execution and delivery of this Note, Security Agreement and any and all other documents executed in conjunction herewith (the "**Loan Documents**") and the funding of all advances under this Note, including, without limitation, all due diligence, audit, appraisal and consultant fees, costs and expenses, and all search, filing and recording fees, incurred or sustained by the Holder in connection with the Loan Documents or the transactions contemplated hereby, the administration of the Loan Documents and any amendment or waiver of any provision of the Loan Documents, and (ii) costs and expenses of the Holder (including reasonable fees, expenses and disbursements of counsel) in connection with the enforcement or protection of any of their rights and remedies under the Loan Documents (collectively, the "**Holder Expenses**"), which shall be reviewable by the Office of the United States Trustee for reasonableness. All Holder Expenses shall be treated as additional advances under this Note.

12. **No Waiver.** No delay or omission on the part of Holder to exercise any right or power arising from any Event of Default shall impair such right or power or be considered a waiver of any such right or power or a waiver of any such Event of Default or an acquiescence therein, nor shall the action or non-action of Holder in case of such Event of Default impair any right or power arising as a result thereof.

13. **Priority.** All amounts owing by the Borrower under this Note at all times will constitute allowed super-priority administrative expense claims in the Chapter 11 Case (and any successor case under chapter 7 of the Code) under section 364(c)(1) of the Code, having priority over all pre-petition and post-petition liabilities, including any and all administrative expenses of the kind specified in Code §§ 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 364(c)(1) and/or 726. This priority (and the liens described above) will be junior and subordinate only to: (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the U.S. Trustee under section 1930(a) of title 28 of the Code, and up to an aggregate amount of \$7,500.00 of allowed, commissions, fees and/or expenses for a chapter 7 trustee, if appointed.

14. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 14):

If to Holder: Auctus Fund, LLC
545 Boylston Street
Boston, MA 02116
Attention: Alfred Sollami, Managing Member
Email: als@auctusfundllc.com

With a copy to: Murphy & King, Professional Corporation
One Beacon Street

Boston, MA 02108
Attention: William R. Moorman, Jr., Esq.
Email: wmoorman@murphyking.com
Facsimile: (617) 423-0498

If to Borrower: BioRestorative Therapies, Inc
40 Marcus Drive
Suite One
Melville, NY 11747
Attention: Mark Weinreb, President

With a copy to: Certilman Balin Adler & Hyman, LLP
90 Merrick Avenue
East Meadow, NY 11554
Attention: Robert D. Nosek, Esq.
Email: RNosek@certilmanbalin.com
Facsimile: (516) 296-7111

Each party may change its notice mailing address, email address or facsimile number by written notice to the other party.

15. Governing Law. This Note shall be governed by the laws of the Commonwealth of Massachusetts without reference to its conflicts of laws rules as though this Note was wholly made and was to be wholly performed within the Commonwealth of Massachusetts, and shall bind Borrower, its successors and assigns, and shall inure to the benefit of Holder, his heirs, legal representatives, successors and assigns.

16. Consent to Jurisdiction and Waiver of Jury Trial.

(c) Any legal action, suit or proceeding arising out of or relating to this Note shall, in the first instance, be instituted in the United States Bankruptcy Court for the Eastern District of New York; provided, however, if such Court, declines or otherwise lacks jurisdiction, then any legal action, suit or proceeding arising out of or relating to this Note may be instituted in any state or federal court in the Commonwealth of Massachusetts, and Borrower agrees not to assert, by way of motion, as a defense or otherwise, in any action, suit or proceeding, any claim that Borrower is not subject personally to the jurisdiction of such court, or that such action, suit or proceeding is brought in an inconvenient forum, that the venue is improper or that the subject matter hereof cannot be enforced in such court. Borrower hereby irrevocably submits to the jurisdiction of any such court in any such action, suit or proceeding.

(d) *JURY TRIAL WAIVER*. BORROWER AND HOLDER MUTUALLY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE OR ANY ANCILLARY DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION HERewith OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR HOLDER TO ACCEPT THIS NOTE.

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed as of the day first above written.

BORROWER:

BioRestorative Therapies, Inc.

By:
Name: Mark Weinreb
Title: President

SECURITY AGREEMENT

This Security Agreement (this “**Agreement**”) is made as of April 23, 2020, by BioRestorative Therapies, Inc., a Delaware corporation (the “**Borrower**”) as a debtor and debtor in possession, pursuant to the Borrower’s chapter 11 case (the “**Chapter 11 Case**”) under Title 11 of the United States Code, as amended, filed in the Eastern District of New York (the “**Bankruptcy Court**”), Case No. 20-71757-reg, in favor of Auctus Fund, LLC, a Delaware limited liability company, (together with its successors and assigns, the “**Holder**”).

Reference is hereby made to the following facts:

A. The Borrower is party to that certain Secured Term Note, dated as of the date hereof, in the principal amount of \$713,000.00 (as amended, restated, supplemented or otherwise modified from time to time), (the “**Note**”);

B. In order to induce the Holder to loan the amounts referenced in the Note to the Borrower, the Borrower has agreed to execute and deliver this Agreement and grant the pledges and security interests described herein.

NOW, THEREFORE, in consideration of the foregoing and the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. The meanings of all defined terms used herein shall be equally applicable to the singular and plural forms of the terms defined. In addition to the terms defined in the preamble and recitals to this Agreement, the following terms shall have the following meanings:

“**Collateral**” means, collectively, all right, title and interest of the Borrower in, to and under the following personal property, whether now or hereafter existing, whether now owned or hereafter acquired, and wherever located: All accounts and all other rights to the payment of money (including without limitation, pursuant to contracts, agreements or other arrangements, tax refunds and insurance proceeds); chattel paper (both tangible and electronic); commercial tort claims; contract rights; deposit accounts; documents; equipment (including without limitation computer hardware and software embedded therein); financial assets (including money of any jurisdiction); furniture; general intangibles (including, without limitation, payment intangibles and software, patents, trademarks, tradenames, copyrights, websites, web addresses and all other intellectual property); goods; instruments; inventory; investment property; letter-of-credit rights; machinery; software; supporting obligations; real estate; leasehold interests; capital stock in subsidiaries of Borrower; and, to the extent not included in the foregoing, all other personal property of the Borrower of any kind or description; together with (a) all attachments, accessions, accessories, tools, parts, supplies, increases, and additions to and all replacements of and substitutions for any personal property described above, (b) with respect to equipment and software, any and all licenses, options, warranties, service contracts, program services, test rights, maintenance rights, support rights, improvement rights, renewal rights and indemnifications and any model conversions, (c) all proceeds and products of any of the property described above; and (d) all records and data relating to any of the property described above, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, and all of the Borrower’s right, title, and interest in and to all software required to utilize, create, maintain and process any such records or data on electronic media, excluding, however, avoidance power actions pursuant to the United States Bankruptcy Code (the “**Code**”) and proceeds thereof).

“**Loan Documents**” means the Note and this Agreement, as such may be amended, restated, supplemented or otherwise modified from time to time.

“**Total Obligations**” means, collectively, all obligations of the Borrower to Holder, whether now existing or hereafter arising, under the Note and this Agreement.

2. GRANT.

2.1 Grant of Security Interest. To secure the prompt unconditional payment and performance in full when due of all of the Total Obligations, the Borrower hereby grants a continuing security interest in, and collaterally assigns and transfers to the Holder, all of such Borrower’s right, title and interest in and to the Collateral, wherever located and whether now owned or hereafter acquired by Borrower or hereafter arising in favor of the Borrower.

2.2 Perfection, Third Parties, Further Assurances. The Borrower authorizes the Holder to file all UCC financing statements, and amendments thereto and continuations thereof, describing the Collateral (including a description that refers to the Collateral as all assets of the Borrower) necessary to perfect the Holder’s security interest hereunder. Where Collateral is in the possession of a third party, if requested by the Holder, the Borrower will join with the Holder in notifying the third party of the Holder’s security interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of the Holder. The Borrower agrees to take whatever other actions are reasonably requested by the Holder to perfect and continue the perfection of the Holder’s security interest in the Collateral. The Collateral is and shall remain personal property even though all or any portion of the Collateral may hereafter become attached or affixed to real property. The liens granted to Holder shall be senior to and shall prime all pre-petition liens. Neither Holder nor any of the Collateral shall be subject to any surcharge under section 506(c) of the Code.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER.

The Borrower hereby represents and warrants to, and covenants with, the Holder as follows:

- (a) The Borrower is and will be the sole legal and beneficial owner and holder of record of all of its Collateral. The liens granted hereunder constitute valid and perfected liens. The Borrower shall, at the Borrower’s expense, take all actions necessary or advisable from time to time to maintain the priority and perfection of the liens granted to the Holder hereunder and shall not take any actions that would alter, impair or eliminate said priority or perfection.

- (b) The correct legal name and jurisdiction of organization of the Borrower is set forth in the initial paragraph hereof. The Borrower shall not change any such name or jurisdiction without giving at least thirty (30) days' prior written notice thereof to the Holder. The Borrower shall keep its Collateral and records pertaining to such Collateral at the location set forth on the signature page hereto and at any other location described in writing to the Holder.
- (c) The Borrower shall comply in all material respects with all laws, regulations, judicial orders or decrees applicable to the Collateral.
- (d) The Borrower shall pay promptly when due any taxes, assessments, and governmental charges or levies imposed upon the Collateral.
- (e) The Borrower shall advise the Holder promptly, in reasonable detail, of (i) any lien made or asserted against any of the Collateral, and (ii) the occurrence of any event or condition which could reasonably be expected to have a material adverse effect on the validity, perfection or priority of the liens granted hereunder.
- (f) The Borrower shall not sell, assign, transfer, set over to, or grant a lien to any Person in or otherwise encumber the Collateral except with respect to the sale of inventory and obsolete or surplus assets or assets no longer used or useful in the business in the ordinary course of business consistent with Borrower's past practices.
- (g) The Holder may, from time to time, upon prior notice to the Borrower (except following the occurrence of an Event of Default under the Loan Documents when no prior notice shall be required), contact account debtors to verify the validity, amount or any other matter relating to any accounts by mail, telephone or otherwise. The Borrower shall cooperate fully with the Holder's efforts to so verify any accounts.

4. RIGHTS OF HOLDER.

4.1. Holder Appointed Attorney-in-Fact. The Borrower hereby irrevocably constitutes and appoints the Holder, its employees, agents, successors, assigns, nominees and other transferees, its true and lawful attorney-in-fact, with full power and authority and with full power of substitution, at the expense of the Borrower, either in the Holder's own name or in the name of the Borrower, at any time and from time to time, in each case as the Holder in its sole discretion may determine, upon the occurrence and during the continuance of an event of default under the Loan Documents, including but not limited to failure to make payment of principal and interest under the Note (an "**Event of Default**");

(a) to take any action and execute any instruments that such attorney-in-fact may deem necessary or advisable to accomplish the purposes of this Agreement including, without limitation, in connection with the exercise of the rights and remedies granted to the Holder hereunder;

(b) to ask, demand, collect, receive, receipt for, sue for, compound, and give acquittance for any and all sums or properties that may be or become due, payable, or distributable in respect of the Collateral or that constitute a part thereof, with full power to settle, adjust, or compromise any claim thereunder or therefor as fully as the Borrower could do;

(c) to endorse or sign the name of the Borrower on all instruments given in payment or in part payment thereof and all documents of satisfaction, discharge, or receipt required or requested in connection therewith; and

(d) to file or take any action or institute any case or proceeding that the Holder may deem necessary or appropriate to collect or otherwise realize upon any or all of the Collateral, or effect a transfer thereof, or cause any of the Collateral to be transferred into its own name or the name or names of its successors, assigns, nominees or other transferees, or that may be necessary or appropriate to protect and preserve the right, title, and interest of the Holder in and to the Collateral and the security intended to be afforded hereby.

4.1.1 All of the foregoing is subject to whatever conditions are established by order of the Bankruptcy Court in approving the Borrower's entry into the Loan Documents and consistent with applicable Federal law.

4.2. Distributions, Conversion, etc. So long as no Event of Default shall have occurred and be continuing, the Borrower shall be entitled to:

(a) receive all cash or payments made in respect of the Collateral in accordance with the terms of the Loan Documents; and

(b) exercise any and all consensual rights pertaining to the Collateral or any part thereof for any purpose not inconsistent with the terms of this Agreement or the Loan Documents.

All such rights of the Borrower shall cease if an Event of Default shall have occurred and be continuing, and in each such case the Borrower shall (i) at the request of the Holder, issue appropriate instructions that any such cash or payments be made directly to the Holder or to such account as the Holder may designate, and (ii) hold in trust for the Holder and immediately remit to the Holder (with appropriate endorsements) any of the same received by the Borrower for application to the Total Obligations in accordance with the Loan Documents.

4.3. No Assignment of Duties. This Agreement constitutes an assignment of the Collateral only and not an assignment of any duties or obligations of the Borrower with respect thereto. By its acceptance hereof and whether or not the Holder shall have exercised any of its rights or remedies hereunder, the Holder does not undertake to perform or discharge, and shall not be responsible or liable for the performance or discharge of, any such duties or responsibilities. The Borrower agrees that, notwithstanding the exercise by the Holder of any of its rights hereunder, the Borrower shall remain liable for the full and prompt performance of all of Borrower's obligations and liabilities under or with respect to the Collateral.

5. REMEDIES.

5.1. Generally. Upon the occurrence of an Event of Default, and during the continuance thereof, the Holder shall have, in addition to the rights, powers and authorizations to collect the sums assigned hereunder, all rights and remedies of a secured party under the UCC and under other applicable law, including, without limitation, the following rights and remedies, subject only to such Orders as may be entered by the Bankruptcy Court:

(a) The Holder may, in its sole discretion, (i) give all consents, waivers, approvals, and ratifications required, permitted or requested under the Collateral, (ii) take all actions required under the Collateral to succeed to the Borrower's interest therein, and (iii) otherwise act with respect thereto as though it were the outright owner thereof (in each case, the Borrower hereby irrevocably constituting and appointing the Holder the proxy and attorney-in-fact of the Borrower, with full power and authority of substitution, to do so);

(b) The Holder may, in its sole discretion, demand, sue for, collect, compromise, or settle any rights or claims in respect of any Collateral, as attorney-in-fact pursuant to Section 4.1 hereof or otherwise;

(c) The Holder may, in its sole discretion, sell, resell, assign, deliver, or otherwise dispose of any or all of the Collateral, for cash or credit or both and upon such terms, in such manner, at such place or places, at such time or times, and to such persons or entities as the Holder thinks expedient, all without demand for performance by the Borrower or any notice or advertisement whatsoever except as expressly provided herein or as may otherwise be required by applicable law;

(d) The Holder may, in its sole discretion, cause all or any part of the Collateral held by it to be transferred into its name or the name of its successor, assign, nominee or other transferee, in which case, such successor, assign, nominee or other transferee shall have all of the rights and remedies of the Holder hereunder; and

(e) The Holder may, in its sole discretion, set off against the Total Obligations, or place an administrative hold or freeze on any and all sums deposited with it or held by it, including any sums in any accounts maintained with the Holder, with any withdrawal penalty relating thereto being an expense of collection.

5.2. Public Sale. The Holder shall give to the Borrower at least ten (10) days prior written notice of the time and place of any public sale of the Collateral or of the time after which any private sale is to be made. The Borrower hereby acknowledges that ten (10) days prior written notice of such sale or sales shall be reasonable notice. The Holder may enforce its rights hereunder without any other notice and without compliance with any other condition precedent now or hereafter imposed by law, regulation, judicial order or decree or otherwise (all of which are hereby expressly waived by the Borrower, to the fullest extent permitted by law). The Holder may buy any part or all of the Collateral at any public sale and if any part or all of the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely-distributed standard price quotations, the Holder may buy at private sale and may make payments thereof by any means. The Holder may apply the cash proceeds actually received from any sale or other disposition to the reasonable expenses of retaking, holding, preparing for sale, selling, and the like, to reasonable attorneys' fees, travel, and all other expenses which may be incurred by the Holder in attempting to collect the Total Obligations or to enforce this Agreement or in the prosecution or defense of any case or proceeding related to this Agreement, and then to the Total Obligations in accordance with the requirements of the Loan Documents. To the extent that any of the Total Obligations are to be paid or performed by a person or entity other than the Borrower, to the extent permitted by applicable law, the Borrower waives and agrees not to assert any rights or privileges which it may have under the UCC.

5.3. Private Sale. The Borrower recognizes that the Holder may be unable to effect a public sale of the Collateral by reason of the lack of a ready market for the Collateral and that the Holder may be compelled to resort to one or more private sales thereof to a restricted group of purchasers. The Borrower agrees that any such private sales may be at prices and other terms less favorable to the seller than if sold at public sales and that such private sales shall not solely by reason thereof be deemed not to have been made in a commercially reasonable manner. Any such sale of all or a portion of the Collateral may be for cash or on credit or for future delivery and may be conducted at a private sale where the Holder or any other person or entity may be the purchaser of all or part of the Collateral so sold. The Borrower agrees that to the extent notice of sale shall be required by law, at least ten (10) Business Days prior notice to the Borrower of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. Subject to the foregoing, the Holder agrees that any sale of any of the Collateral shall be made in a commercially reasonable manner. The Holder shall not incur any liability as a result of the sale of any of the Collateral, or any part thereof, at any private sale which complies with the requirements of this Section 5.3. The Borrower hereby waives, to the extent permitted by applicable law, any claims against the Holder arising by reason of the fact that the price at which any of the Collateral, or any part thereof, may have been sold at such private sale was less than the price that might have been obtained at a public sale, even if the Holder accepts the first offer deemed by the Holder in good faith to be commercially reasonable under the circumstances and does not offer any of the Collateral to more than one offeree.

5.4. Proceeds; Deficiency. The proceeds received by the Holder upon any sale or other disposition of the Collateral shall be applied (a) first to the Holder's costs and expenses incurred in connection with such sale or other disposition, (b) second, to the Total Obligations (in such order as the Holder shall determine in its sole discretion) and (c) the remainder, if any, shall be delivered to the Borrower.

5.5. Remedies Cumulative. Each right, power and remedy of the Holder provided for in this Agreement, and the Loan Documents, or now or hereafter existing at law or in equity or by statute, shall be cumulative and concurrent and shall be in addition to every other such right, power or remedy. The exercise or beginning of the exercise by the Holder of any one or more of the rights, powers or remedies provided for in this Agreement and/or the Loan Documents, or in any such other document, instrument or agreement now or hereafter existing at law or in equity

or by statute or otherwise, shall not preclude the simultaneous or later exercise by the Holder of all such other rights, powers or remedies, and no failure or delay on the part of the Holder to exercise any such right, power or remedy shall operate as a waiver thereof.

6. BORROWER'S OBLIGATIONS NOT AFFECTED.

The obligations of the Borrower hereunder shall remain in full force and effect without regard to, and shall not be impaired by, (a) any exercise or nonexercise, or any waiver, by the Holder of any right, remedy, power or privilege under or in respect of any of the Total Obligations or any collateral security therefor (including this Agreement and the Collateral); (b) any amendment to or modification or restatement of the Loan Documents, or any of the other documents contemplated thereby or ancillary thereto or any of the Total Obligations; (c) any amendment to or modification of any instrument (other than this Agreement) securing any of the Total Obligations; or (d) the taking of additional collateral security for, or any other assurances of payment of, any of the Total Obligations, or the release or discharge or termination of any security or other assurances of payment or performance for any of the Total Obligations (including any guaranties of the Total Obligations) or the liability of the Borrower therefor; whether or not any of the Borrower shall have notice or knowledge of any of the foregoing. In order to sell, dispose or otherwise realize upon the security interests and assignments herein granted and provided for, and exercise the rights granted the Holder hereunder and under applicable law, there shall be no obligation on the part of the Holder at any time to first resort for payment to any other guarantors of the Total Obligations or any part thereof or to resort to any other collateral security, property, liens or other rights or remedies whatsoever, and the Holder shall have the right to enforce the security interests and assignments herein provided for irrespective of whether or not other proceedings are pending for realization upon or from any of the foregoing.

7. TERMINATION.

Upon satisfaction in full of the Total Obligations, this Agreement shall be deemed terminated and, at the expense of the Borrower, the Holder will release its security interest in, and will duly assign, transfer and deliver to the Borrower such of the Collateral as has not theretofore been sold or otherwise applied or released pursuant to this Agreement or the Loan Documents.

8. MISCELLANEOUS.

8.1 Demands and Notices. Any demands or notices required or permitted by this Agreement shall be in writing, and shall be deemed to have been given on the day when delivered by hand or sent via facsimile (receipt confirmed), one day after delivery to any national overnight delivery service (delivery charges prepaid), or three days after deposit in the U.S. mails (postage prepaid, certified and return receipt requested) at the address for the Borrower and the Holder set forth in the Loan Documents or to such other address as the Borrower or the Holder may designate in a notice given to the other in accordance with this Section.

8.2 Amendments, Waivers, Etc. No provision of this Agreement can be changed, waived, discharged or terminated except by an instrument in writing signed by the Holder and the Borrower expressly referring to the provision of this Agreement to which such instrument relates and no such waiver shall extend to, affect or impair any right of the Holder with respect to any of the Total Obligations which is not expressly dealt with therein. No course of dealing or delay or omission on the part of the Holder in exercising any right, power or privilege hereunder or under the Loan Documents shall operate as a waiver thereof or otherwise be prejudicial thereto, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder.

8.3 Further Assurances. The Borrower, at its sole cost and expense, agrees to do all such things and execute, acknowledge and deliver all such documents and instruments as the Holder from time to time may reasonably request in order to give full effect to this Agreement and to perfect and preserve the rights and powers of the Holder hereunder.

8.4 Conflicts. In the event of any conflict between any provision of this Agreement and the Loan Documents, it is the express and absolute understanding and agreement of the Borrower that this Agreement shall be interpreted so as to be consistent with the Loan Documents and to give full effect to the rights granted to the Holder herein and therein. In the event that any conflict between any provision of this Agreement and any order issued by the Bankruptcy Court authorizing the Borrower to enter into this Agreement, the terms of such order(s) shall control.

8.5 Provisions to Survive. All representations, warranties, covenants and agreements contained in this Agreement shall survive the execution and delivery hereof and of the Loan Documents and shall continue in full force and effect until all of the Total Obligations have been indefeasibly paid in full.

8.6 Governing Law; Jurisdiction. This Agreement shall be deemed to be a contract made under seal and shall be construed in accordance with and governed by the laws of the Commonwealth of Massachusetts (without regard to its conflicts of laws rules). Any legal action, suit or proceeding arising out of or relating to this Agreement shall, in the first instance, be instituted in the United States Bankruptcy Court for the Eastern District of New York; provided, however, if such Court, declines or otherwise lacks jurisdiction, then any legal action, suit or proceeding arising out of or relating to this Agreement may be instituted in any state or federal court in the Commonwealth of Massachusetts, and the Borrower hereby irrevocably submits to the jurisdiction of each such court in any such action or proceeding; provided, however, that the foregoing shall not limit the Holder's rights to bring any legal action or proceeding in any other appropriate jurisdiction in its unrestricted discretion.

8.7 Miscellaneous Provisions. This Agreement shall inure to the benefit of the Holder, the Borrower and their respective successors, permitted assigns and legal representatives. The Borrower may not assign its obligations hereunder without the prior written consent of the Holder. This Agreement may be assigned by the Holder in connection with any assignment, transfer or other disposition (in whole or in part) of the Total Obligations or the Loan Documents by the Holder. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by law or any other agreement. The invalidity or unenforceability of any one or more sections of this Agreement in their entirety or under certain circumstances shall not affect the validity or enforceability of its remaining provisions or the invalid or unenforceable provisions in different circumstances. Captions are for ease of reference only and shall not affect the meaning of the relevant provisions. The meanings of all defined terms used in this Agreement shall be equally applicable to the singular and plural forms of the terms defined.

8.8 Holder's Exoneration. Under no circumstances shall the Holder be deemed to assume any responsibility for or obligation or duty with respect to any part or all of the Collateral of any nature or kind, or any matter or proceeding arising out of or relating thereto, other than (a) to exercise reasonable care in the physical custody of the Collateral and (b) if an Event of Default shall have occurred and be continuing, to act in a commercially reasonable manner in exercising its rights and remedies with respect to the Collateral. Subject to the foregoing, the Holder shall not be required to take any action of any kind to collect, preserve or protect its or the Borrower's rights in the Collateral.

8.9 Revival of Security Interests. To the extent that the Borrower makes a payment or other transfer to the Holder or the Holder receives any payment of proceeds of the Collateral, which is later invalidated, declared to be a fraudulent transfer or preference, set aside or required to be repaid under any bankruptcy law, other law or equitable principle, the Holder's security interest in the Collateral shall be revived and continue as if the payment, transfer or proceeds had never been received by the Holder.

8.10 Holder May Perform. If the Borrower fails to perform any agreement contained herein, the Holder may, upon three (3) days' prior notice to the Borrower, perform or cause the performance of such agreement, and the reasonable costs and expenses of the Holder incurred in connection therewith shall constitute Total Obligations, shall be secured by the Collateral, and shall be jointly and severally payable by the Borrower forthwith upon demand. Until paid, the same shall bear interest at the default rate set forth in the Loan Documents.

8.11 Marshalling. The Holder shall not be required to marshal any present or future collateral security (including but not limited to this Agreement and the Collateral) for, or other assurances of payment of, the Total Obligations, or any of them, or to resort to such collateral security or other assurances of payment in any particular order. To the extent that the Borrower lawfully may, the Borrower hereby agrees that the Borrower will not invoke any law relating to the marshalling of collateral that might cause delay in or impede the enforcement of the Holder's rights under this Agreement or under any other instrument evidencing any of the Total Obligations or under which any of the Total Obligations is outstanding or by which any of the Total Obligations is secured or payment thereof is otherwise assured, and to the extent that it lawfully may the Borrower hereby irrevocably waives the benefits of all such laws.

8.12 Powers of Attorney. The Borrower hereby acknowledges that each power of attorney granted hereunder is irrevocable and shall be deemed coupled with an interest.

8.13 Counterparts. This Agreement may be executed in any number of counterparts, each constituting an original, but all together shall constitute one and the same instrument.

8.14 **WAIVER OF JURY TRIAL, SERVICE OF PROCESS AND DAMAGES.**

THE BORROWER AND, BY ITS ACCEPTANCE HEREOF, THE **HOLDER** MUTUALLY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY, INCLUDING, WITHOUT LIMITATION, ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS OR ACTIONS OF THE **HOLDER** RELATING TO THE ADMINISTRATION OR ENFORCEMENT OF THIS AGREEMENT OR THE **LOAN DOCUMENTS**. THE BORROWER WILL NOT SEEK TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED.

IN ANY ACTION OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE INTERPRETATION OR ENFORCEMENT HEREOF, THE BORROWER HEREBY ABSOLUTELY AND IRREVOCABLY WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT, DECLARATION OR OTHER PROCESS AND HEREBY ABSOLUTELY AND IRREVOCABLY AGREES THAT THE SERVICE THEREOF MAY BE MADE IN THE MANNER AND TO THE ADDRESS SPECIFIED FOR NOTICES IN SECTION 8.1 HEREOF.

EXCEPT AS PROHIBITED BY LAW, THE BORROWER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LITIGATION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES.

THE BORROWER CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE **HOLDER** HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE **HOLDER** WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS. THE FOREGOING WAIVERS CONSTITUTE A MATERIAL INDUCEMENT FOR THE **HOLDER** TO ACCEPT THIS AGREEMENT AND EXTEND THE CREDIT FACILITIES DESCRIBED IN THE **LOAN DOCUMENTS**.

IN WITNESS WHEREOF, the parties hereto have caused this Security Agreement to be duly executed and delivered under seal by their duly authorized officers as of the date first set forth above.

BIORESTORATIVE THERAPIES, INC., a Delaware corporation

By: Mark Weinreb
Title: President
Address: 40 Marcus Drive, Suite One, Melville, NY 11747

[Auctus Signature Block]