

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

**SCHEDULE 14A  
(Rule 14a-101)  
INFORMATION REQUIRED IN PROXY STATEMENT  
SCHEDULE 14A INFORMATION**

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

Filed by the Registrant ☒ [X]  
Filed by a Party other than the Registrant ☐ [ ]

Check the appropriate box:

☒ [X] Preliminary Proxy Statement  
☐ [ ] Confidential, For Use of the Commission Only (as permitted by Rule 14a-6(e)(2))  
☐ [ ] Definitive Proxy Statement  
☐ [ ] Definitive Additional Materials  
☐ [ ] Soliciting Material Pursuant to Section 240.14a-12

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

(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

☒ [X] No fee required  
☐ [ ] Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11

- 1) Title of each class of securities to which transaction applies:  
not applicable
- 2) Aggregate number of securities to which transaction applies:  
not applicable
-

3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):

not applicable

4) Proposed maximum aggregate value of transaction:

not applicable

5) Total fee paid:

not applicable

☐ Fee paid previously with preliminary materials:

☐ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

1) Amount previously paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Date Filed:

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**BIORESTORATIVE THERAPIES, INC.**  
**40 Marcus Drive, Suite One**  
**Melville, New York 11747**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**  
**TO BE HELD ON AUGUST 17, 2021**

To the Stockholders of BioRestorative Therapies, Inc.:

**NOTICE IS HEREBY GIVEN** that the Annual Meeting of Stockholders of BioRestorative Therapies, Inc., a Delaware corporation (the “Company”), will be held on August 17, 2021 at 90 Merrick Avenue, 9<sup>th</sup> Floor, East Meadow, New York, at 10:00 a.m., local time, for the following purposes:

1. To elect one Class I director to hold office until the 2024 Annual Meeting of Stockholders.
2. To approve the Company’s 2021 Stock Incentive Plan.
3. To authorize the reincorporation of the Company from the State of Delaware to the State of Nevada (the “Reincorporation”).
4. In the event the Reincorporation is not approved, to approve amendments to the Certificate of Incorporation of the Company, and authorize the Board of Directors of the Company to select and file one such amendment, to effect a reverse stock split of the Company’s common stock at a ratio of not less than 1-for-20 and not more than 1-for-4000, with the Board of Directors of the Company having the discretion as to whether or not the reverse stock split is to be effected, and with the exact ratio of any reverse stock split to be set at a whole number within the above range as determined by the Company’s Board of Directors in its discretion (the “Reverse Stock Split Proposal”).
5. To authorize the Board of Directors of the Company, in the event the Reverse Stock Split Proposal is approved, in its discretion, to reduce the number of shares of common stock authorized to be issued by the Company in proportion to the percentage decrease in the number of outstanding shares of common stock resulting from the reverse split (or a lesser or greater decrease in authorized shares of common stock as determined by the Company’s Board of Directors in its discretion).
6. To ratify the selection of Friedman LLP as the Company’s independent registered public accounting firm for the fiscal year ending December 31, 2021.
7. To authorize the adjournment of the meeting to permit further solicitation of proxies, if necessary or appropriate, if sufficient votes are not represented at the meeting to approve any of the foregoing proposals.
8. To transact such other business as may properly come before the meeting.

Only stockholders of record at the close of business on June 24, 2021 are entitled to notice of and to vote at the meeting or at any adjournment thereof.

**Important notice regarding the availability of Proxy Materials:** The proxy statement, the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2020 and the Company’s Quarterly Report on Form 10-Q for the period ended March 31, 2021 are available electronically to the Company’s stockholders of record as of the close of business on June 24, 2021 at [www.proxyvote.com](http://www.proxyvote.com).

Lance Alstodt  
*Chief Executive Officer*

Melville, New York  
July \_\_, 2021

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WHETHER OR NOT YOU PLAN TO ATTEND THE MEETING, PLEASE SUBMIT YOUR PROXY OR VOTING INSTRUCTIONS AS SOON AS POSSIBLE. FOR SPECIFIC INSTRUCTIONS ON HOW TO VOTE YOUR SHARES, PLEASE REFER TO THE INSTRUCTIONS ON THE NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS YOU RECEIVED IN THE MAIL OR, IF YOU REQUESTED TO RECEIVE PRINTED PROXY MATERIALS, YOUR ENCLOSED PROXY CARD. ANY STOCKHOLDER MAY REVOKE A SUBMITTED PROXY AT ANY TIME BEFORE THE MEETING BY WRITTEN NOTICE TO SUCH EFFECT, BY SUBMITTING A SUBSEQUENTLY DATED PROXY OR BY ATTENDING THE MEETING AND VOTING IN PERSON. THOSE VOTING BY INTERNET OR BY TELEPHONE MAY ALSO REVOKE THEIR PROXY BY VOTING IN PERSON AT THE MEETING OR BY VOTING AND SUBMITTING THEIR PROXY AT A LATER TIME BY INTERNET OR BY TELEPHONE.

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**BIORESTORATIVE THERAPIES, INC.**

40 Marcus Drive, Suite One  
Melville, New York 11747

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**PROXY STATEMENT**

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**SOLICITING, VOTING AND REVOCABILITY OF PROXY**

This proxy statement is being mailed or made available to all stockholders of record at the close of business on June 24, 2021 in connection with the solicitation by our Board of Directors of proxies to be voted at the 2021 Annual Meeting of Stockholders to be held on August 17, 2021 at 10 a.m., local time, or any adjournment thereof. Proxy materials for the 2021 Annual Meeting of Stockholders were mailed or made available to stockholders on or about July \_\_, 2021.

All shares represented by proxies duly executed and received will be voted on the matters presented at the meeting in accordance with the instructions specified in such proxies. Proxies so received without specified instructions will be voted as follows:

- (i) **FOR** the nominee named in the proxy to our Board of Directors.
- (ii) **FOR** the proposal to approve our 2021 Stock Incentive Plan (the “2021 Plan”).
- (iii) **FOR** the proposal to authorize our reincorporation from the State of Delaware to the State of Nevada (the “Reincorporation”).
- (iv) **FOR** the proposal, in the event the Reincorporation is not approved, to approve amendments to our Certificate of Incorporation, and the authorization of our Board of Directors to select and file one such amendment, to effect a reverse stock split of our common stock at a ratio of not less than 1-for-20 and not more than 1-for-4000, with our Board of Directors having the discretion as to whether or not the reverse stock split is to be effected, and with the exact ratio of any reverse stock split to be set at a whole number within the above range as determined by our Board of Directors in its discretion (the “Reverse Stock Split Proposal”).
- (v) **FOR** the proposal to authorize our Board of Directors, in the event the Reverse Stock Split Proposal is approved, in its discretion, to reduce the number of shares of common stock authorized to be issued by us in proportion to the percentage decrease in the number of outstanding shares of common stock resulting from the reverse split (or a lesser or greater decrease in authorized shares of common stock as determined by our Board of Directors in its discretion).
- (vi) **FOR** the ratification of the selection of Friedman LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2021.
- (vii) **FOR** the proposal to adjourn the meeting to permit further solicitation of proxies, if necessary or appropriate, if sufficient votes are not represented at the meeting to approve any of the foregoing proposals.

If you are a beneficial owner of shares held in street name and you do not provide specific voting instructions to the organization that holds your shares, the organization will be prohibited under the current rules of the New York Stock Exchange from voting your shares on “non-routine” matters. This is commonly referred to as a “broker non-vote”. Proposals 4, 5 and 6 are each considered a routine matter. Each remaining proposal is considered a “non-routine” matter and therefore may not be voted on by your bank or broker absent specific instructions from you. Please instruct your bank or broker so your vote can be counted.

Our Board does not know of any other matters that may be brought before the meeting nor does it foresee or have reason to believe that the proxy holder will have to vote for a substitute or alternate nominee to the Board. In the event that any other matter should come before the meeting or the nominee is not available for election, the person named in the enclosed proxy will have discretionary authority to vote all proxies not marked to the contrary with respect to such matters in accordance with his best judgment.

The total number of shares of common stock outstanding and entitled to vote as of the close of business on June 24, 2021 was 3,188,844,445. The shares of common stock are the only class of securities entitled to vote on matters presented to our stockholders, each share being entitled to one vote. The holders of one-third of the shares of common stock outstanding as of the close of business on June 24, 2021, or 1,062,948,149 shares of common stock, must be present at the meeting in person or by proxy in order to constitute a quorum for the transaction of business.

With regard to the election of the director, votes may be cast in favor or withheld. The director shall be elected by a plurality of the votes cast in favor. Accordingly, based upon there being one nominee, if he shall receive one or more votes, he will be elected as a director. Shares of common stock as to which a stockholder withholds voting authority in the election of the director and broker non-votes will not be counted as voting thereon and therefore will not affect the election of the nominee receiving a plurality of the votes cast.

Stockholders may expressly abstain from voting on Proposals 2, 3, 4, 5, 6 and 7 by so indicating on the proxy. Abstentions are counted as present in the tabulation of votes on Proposals 2, 3, 4, 5, 6 and 7. Since Proposals 2, 6 and 7 require the affirmative approval of a majority of the shares of common stock present in person or represented by proxy at the meeting and entitled to vote (assuming a quorum is present at the meeting), abstentions will have the effect of a negative vote while broker non-votes will have no effect. Since Proposals 3, 4 and 5 require the affirmative approval of a majority of the shares of common stock outstanding and entitled to vote (assuming a quorum is present at the meeting), abstentions and broker non-votes will have the effect of a negative vote.

Any person giving a proxy in the form accompanying this proxy statement has the power to revoke it at any time before its exercise. The proxy may be revoked by filing with us written notice of revocation or a fully executed proxy bearing a later date. The proxy may also be revoked by affirmatively electing to vote in person while in attendance at the meeting. However, a stockholder who attends the meeting need not revoke a proxy given and vote in person unless the stockholder wishes to do so. Written revocations or amended proxies should be sent to us at 40 Marcus Drive, Suite One, Melville, New York 11747, Attention: Corporate Secretary. Those voting by Internet or by telephone may also revoke their proxy by voting in person at the meeting or by voting and submitting their proxy at a later time by Internet or by telephone.

The proxy is being solicited by our Board of Directors. We will bear the cost of the solicitation of proxies, including the charges and expenses of brokerage firms and other custodians, nominees and fiduciaries for forwarding proxy materials to beneficial owners of our shares. Solicitations will be made primarily by Internet availability of proxy materials and by mail, but certain of our directors, officers or employees may solicit proxies in person or by telephone, fax or email without special compensation.

## EXECUTIVE COMPENSATION

### Summary Compensation Table

The following Summary Compensation Table sets forth all compensation earned in all capacities during the fiscal years ended December 31, 2020 and 2019 by (i) each of our then principal executive officers, and (ii) our most highly compensated executive officer, other than our then principal executive officers, who was serving as an executive officer as of December 31, 2020 and whose total compensation for the 2020 fiscal year, as determined by Regulation S-K, Item 402, exceeded \$100,000 (the individuals falling within categories (i) and (ii) are collectively referred to as the “Named Executive Officers”):

Name and Principal Position	Year	Salary	All Other Compensation	Total
Lance Alstodt	2020	\$ 64,317	\$ -	\$ 64,317
Chief Executive Officer (1)	2019	\$ 350,000	\$ -	\$ 350,000 (2)
Francisco Silva	2020	\$ 207,553	\$ -	\$ 207,553
VP, Research and Development	2019	\$ 287,500	\$ -	\$ 287,500 (3)
Mark Weinreb	2020	\$ 179,172	\$ -	\$ 179,172 (4)
Chief Executive Officer (5)	2019	\$ 369,952	\$ 2,400 (6)	\$ 372,352 (6)

- (1) Mr. Alstodt served as our Executive Vice President and Chief Strategy Officer from October 15, 2018 through February 24, 2020. Mr. Alstodt has been serving as our President, Chief Executive Officer and Chairman of the Board since November 16, 2020.
- (2) Of the aggregate \$350,000 earned cash compensation during 2019, \$340,860 was paid in cash during 2019. Accrued compensation of \$9,140 at December 31, 2019 was settled in our chapter 11 bankruptcy case (“Chapter 11 Case”).
- (3) Of the aggregate \$287,500 earned cash compensation during 2019, \$263,660 was paid in cash during 2019. Accrued compensation of \$9,140 at December 31, 2019 was settled in our Chapter 11 Case.
- (4) Of the aggregate \$179,172 earned cash compensation during 2020, \$172,672 was paid in cash during 2020. The remaining \$6,500 in earned compensation was settled in our Chapter 11 Case.
- (5) Mr. Weinreb resigned as our President, Chief Executive Officer and Chairman of the Board in November 2020.
- (6) Of the aggregate \$372,352 earned cash compensation during 2019, \$335,852 was paid in cash during 2019. The remaining \$36,500 in earned compensation was settled in our Chapter 11 Case. All Other Compensation represents an automobile allowance paid to Mr. Weinreb in 2019.

### Employment Agreements

#### *Lance Alstodt*

#### 2018 Employment Agreement

Effective October 15, 2018, we entered into an at will employment agreement with Lance Alstodt, our then Executive Vice President and Chief Strategy Officer. Pursuant to the employment agreement, Mr. Alstodt was entitled to receive a base annual salary of \$350,000. Effective January 1, 2020, his salary was \$46,800 per annum (in connection with a salary reduction program for senior management). In addition, pursuant to the employment agreement, Mr. Alstodt was entitled to receive an annual bonus of up to 30% of his annual salary based on the satisfaction of certain performance goals, as determined by our Compensation Committee. Such goals were not satisfied for 2019 (the first year of bonus eligibility). The employment agreement also provided for the payment of six months severance under certain circumstances. Mr. Alstodt’s employment with us as Executive Vice President and Chief Strategy Officer ended effective February 24, 2020. Based upon such termination of employment, Mr. Alstodt was entitled to receive six months severance based upon his salary of \$350,000 per annum. Such amount was considered an unsecured claim in our Chapter 11 Case and Mr. Alstodt received shares of our common stock in exchange for such claim in a manner consistent with other unsecured creditors.

### 2021 Employment Agreement

Effective November 16, 2020, Mr. Alstodt was elected our Chief Executive Officer, President and Chairman of the Board. On March 18, 2021, we entered into an employment agreement with Mr. Alstodt which provides for a term ending on March 18, 2026. Pursuant to the employment agreement, Mr. Alstodt is entitled to receive initially an annual salary of \$250,000. Mr. Alstodt's annual salary will increase by \$50,000 per year. In addition, in the event certain performance goals are met, Mr. Alstodt's salary will increase by \$150,000. Concurrently with the execution of the employment agreement, we granted to Mr. Alstodt pursuant to the 2021 Plan (i) a ten year option for the purchase of 1,173,917,974 shares of our common stock at an exercise price of \$0.0119 per share and (ii) 586,958,987 restricted stock units ("RSUs"). The option vests to the extent of 50% thereof on the date of grant and 25% thereof on each of the first and second anniversaries of the date of grant. The RSUs vest in three equal annual installments on the first, second and third anniversaries of the date of grant. In the event that Mr. Alstodt's employment is terminated by us without "cause", or Mr. Alstodt terminates his employment for "good reason" (each as defined in the employment agreement), Mr. Alstodt will be entitled to receive severance in an amount up to one time his then annual base salary. If Mr. Alstodt's employment with us is terminated without cause, the option granted to Mr. Alstodt will vest and become exercisable and such option will remain exercisable until its expiration date notwithstanding such termination of employment with us. In addition, the RSUs granted to Mr. Alstodt will vest in the event of the termination of his employment without cause. Further, in the event of a change in control (as defined in the 2021 Plan), 50% of the unvested RSUs shall vest as of the date of the change in control and the remainder shall vest upon the earlier of the one year anniversary of the change in control or the date on which the RSU was scheduled to vest, subject to earlier vesting in the event Mr. Alstodt's employment is terminated without cause.

*Francisco Silva*

### 2011 Employment Agreement

Effective April 5, 2011, we entered into an at will employment agreement with Francisco Silva, our Vice President of Research and Development. The employment agreement, as amended, provided for a salary of \$287,500 per annum except that, between January 1, 2020 and March 19, 2020, Mr. Silva's salary was \$46,800 per annum (in connection with a salary reduction program for senior management) and between April 16, 2020 and November 15, 2020 (during the Chapter 11 Case), his salary was \$200,000 per annum. Mr. Silva is currently receiving a salary of \$225,000 per annum. In addition, pursuant to the employment agreement, as amended, Mr. Silva was entitled to receive an annual bonus of up to 20% of his annual salary based on the satisfaction of certain performance goals, as determined by our Compensation Committee. Mr. Silva satisfied such goals in part for 2018 and received a bonus of \$23,000. Such goals were not satisfied for 2019. Further, pursuant to the employment agreement, as amended, in the event that Mr. Silva's employment with us was terminated without cause, Mr. Silva would have been entitled to receive severance in an amount equal to 50% of his then annual base salary.

### 2021 Employment Agreement

On March 18, 2021, we and Mr. Silva entered into an employment agreement which provides for a term ending on March 18, 2026. Pursuant to the employment agreement, Mr. Silva is entitled to receive initially an annual salary of \$225,000. Mr. Silva's annual salary will increase by \$50,000 per year. In addition, in the event certain performance goals are met, Mr. Silva's salary will increase by \$150,000. Concurrently with the execution of the employment agreement we granted to Mr. Silva pursuant to the 2021 Plan (i) a ten year option for the purchase of 1,173,917,974 shares of our common stock at an exercise price of \$0.0119 per share and (ii) 586,958,987 RSUs. The option vests to the extent of 50% thereof on the date of grant and 25% thereof on each of the first and second anniversaries of the date of grant. The RSUs vest in three equal annual installments on the first, second and third anniversaries of the date of grant. In the event that Mr. Silva's employment is terminated by us without "cause", or Mr. Silva terminates his employment for "good reason" (each as defined in the employment agreement), Mr. Silva will be entitled to receive severance in an amount up to one time his then annual base salary. If Mr. Silva's employment with us is terminated without cause, the option granted to Mr. Silva will vest and become exercisable and such option will remain exercisable until its expiration date notwithstanding such termination of employment with us. In addition, the RSUs granted to Mr. Silva will vest in the event of the termination of his employment without cause. Further, in the event of a change in control (as defined in the 2021 Plan), 50% of the unvested RSUs shall vest as of the date of the change in control and the remainder shall vest upon the earlier of the one year anniversary of the change in control or the date on which the RSU was scheduled to vest, subject to earlier vesting in the event Mr. Silva's employment is terminated without cause.

*Mark Weinreb*

In March 2015, we entered into an employment agreement with Mark Weinreb, our then Chief Executive Officer, President and Chairman of the Board. Pursuant to the employment agreement, which expired on September 30, 2020, Mr. Weinreb was entitled to receive a salary of \$400,000 per annum, except that, between January 1, 2020 and March 19, 2020, his salary was \$46,800 per annum (in connection with a salary reduction program for senior management) and between April 16, 2020 and November 15, 2020 (during the Chapter 11 Case), his salary was \$200,000 per annum. Mr. Weinreb was entitled to receive an annual bonus for 2018 and 2019 of up to 50% of his annual base salary in the event certain performance goals, as determined by our Compensation Committee, were satisfied. Such goals were not satisfied for such years. Pursuant to the employment agreement, Mr. Weinreb was entitled to receive severance in an amount equal to one time his then annual base salary (but not less than \$400,000) and certain benefits, plus \$100,000 (in lieu of bonus) in the event that, within three months of the expiration date of his agreement, his employment was terminated by us without "cause" or if Mr. Weinreb terminated his employment for any reason. Further, in the event that Mr. Weinreb's employment was terminated by us without "cause", or Mr. Weinreb terminated his employment for "good reason", following a "change in control" (as defined in the employment agreement), Mr. Weinreb would have been entitled to receive severance in an amount equal to one and one-half times his then annual base salary (but not less than \$400,000 in annual base salary) and certain benefits, plus \$300,000 (in lieu of bonus). Pursuant to the employment agreement, with respect to options granted to Mr. Weinreb during the term of his employment with us, such options would vest and become exercisable if Mr. Weinreb was entitled to receive severance based upon a termination of his employment as set forth above. In addition, pursuant to the employment agreement, to the extent that an option granted to Mr. Weinreb during his term of his employment with us became exercisable (whether due to the passage of time or otherwise), such option would remain exercisable until its expiration date notwithstanding any termination of employment with us. Mr. Weinreb resigned his employment with us on November 16, 2020, the effective date of the Chapter 11 reorganization. Based upon such termination of employment, Mr. Weinreb was entitled to

receive his severance of \$400,000 and certain benefits plus \$100,000, and the option accelerations as discussed above. The severance amount was generally considered an unsecured claim in our Chapter 11 Case and Mr. Weinreb received shares of our common stock in exchange for such claim in a manner consistent with other unsecured creditors.

## Outstanding Equity Awards at Fiscal Year-End

The following table provides information on outstanding equity awards as of December 31, 2020 to the Named Executive Officers:

Name	Option Awards					Stock Awards				Equity incentive plan awards: Market or payout value of unearned shares, units or other rights that have not vested
	Number of securities underlying unexercised options exercisable	Number of securities underlying unexercised options unexercisable	Equity incentive plan awards: Number of securities underlying unexercised unearned options	Option exercise price	Option expiration date	Number of shares or units of stock that have not vested	Market value of shares of units that have not vested	Equity incentive plan awards: Number of unearned shares, units or other rights that have not vested		
Lance Alstodt	500,000	-	-	\$ 1.42	2/24/2021	-	\$ -	-	\$ -	
Francisco Silva	4,000	-	-	\$ 4.70	4/4/2021	-	\$ -	-	\$ -	
Francisco Silva	150	-	-	\$ 4.70	6/23/2021	-	\$ -	-	\$ -	
Francisco Silva	1,000	-	-	\$ 4.70	11/16/2021	-	\$ -	-	\$ -	
Francisco Silva	2,000	-	-	\$ 4.70	2/10/2022	-	\$ -	-	\$ -	
Francisco Silva	4,500	-	3,000(1)	\$ 4.70	5/2/2022	-	\$ -	-	\$ -	
Francisco Silva	4,000	-	-	\$ 4.70	12/7/2022	-	\$ -	-	\$ -	
Francisco Silva	5,000	-	-	\$ 3.73	10/4/2023	-	\$ -	-	\$ -	
Francisco Silva	12,500	-	-	\$ 3.35	2/18/2024	-	\$ -	-	\$ -	
Francisco Silva	2,000	-	-	\$ 1.23	3/12/2024	-	\$ -	-	\$ -	
Francisco Silva	37,500	-	-	\$ 3.40	10/23/2024	-	\$ -	-	\$ -	
Francisco Silva	25,000	-	-	\$ 4.70	9/4/2025	-	\$ -	-	\$ -	
Francisco Silva	60,000	-	-	\$ 3.73	6/10/2026	-	\$ -	-	\$ -	
Francisco Silva	80,000	-	-	\$ 2.80	7/12/2027	-	\$ -	-	\$ -	
Francisco Silva	66,667	33,333(2)	-	\$ 1.23	10/29/2028	-	\$ -	-	\$ -	
Mark Weinreb	50,000	-	-	\$ 4.70	2/10/2022	-	\$ -	-	\$ -	
Mark Weinreb	20,000	-	-	\$ 4.70	12/7/2022	-	\$ -	-	\$ -	
Mark Weinreb	12,500	-	-	\$ 4.70	10/4/2023	-	\$ -	-	\$ -	
Mark Weinreb	50,000	-	-	\$ 4.70	2/18/2024	-	\$ -	-	\$ -	
Mark Weinreb	150,000	-	-	\$ 4.70	10/23/2024	-	\$ -	-	\$ -	
Mark Weinreb	208,000	-	-	\$ 4.70	9/4/2025	-	\$ -	-	\$ -	
Mark Weinreb	275,000	-	-	\$ 3.73	6/10/2026	-	\$ -	-	\$ -	
Mark Weinreb	275,000	-	-	\$ 3.35	6/23/2027	-	\$ -	-	\$ -	
Mark Weinreb	275,000	-	-	\$ 1.23	10/29/2028	-	\$ -	-	\$ -	

(1) Option is exercisable commencing on the date (provided that such date is during Mr. Silva's employment with us), if any, on which either (i) the FDA approves a biologics license application made by us with respect to any biologic product or (ii) a 501(k) Premarket Notification submission is made by us to the FDA with respect to a certain device.

(2) Option is exercisable on October 29, 2021.

## DIRECTOR COMPENSATION



The following table sets forth certain information concerning the compensation of our non-employee directors for the fiscal year ended December 31, 2020:

Name	Fees Earned or Paid in Cash	Stock Awards	Option Awards	Non-Equity Incentive Plan Compensation	Nonqualified Deferred Compensation Earnings	All Other Compensation	Total
Robert B. Catell <sup>(1)</sup>	\$ -	\$ -	\$ - <sup>(2)</sup>	\$ -	\$ -	\$ -	\$ -
John M. Desmarais <sup>(3)</sup>	\$ -	\$ -	\$ - <sup>(4)</sup>	\$ -	\$ -	\$ -	\$ -
A. Jeffrey Radov <sup>(5)</sup>	\$ -	\$ -	\$ - <sup>(6)</sup>	\$ -	\$ -	\$ -	\$ -
Charles S. Ryan <sup>(7)</sup>	\$ -	\$ -	\$ - <sup>(8)</sup>	\$ -	\$ -	\$ -	\$ -
Paul Jude Tonna <sup>(9)</sup>	\$ -	\$ -	\$ - <sup>(10)</sup>	\$ -	\$ -	\$ -	\$ -

- (1) Mr. Catell resigned as a director effective November 16, 2020.
- (2) As of December 31, 2020, Mr. Catell held options for the purchase of 219,000 shares of common stock.
- (3) Mr. Desmarais resigned as a director effective January 10, 2020.
- (4) As of December 31, 2020, Mr. Desmarais held options for the purchase of 225,000 shares of common stock.
- (5) Mr. Radov resigned as a director effective November 16, 2020.
- (6) As of December 31, 2020, Mr. Radov held options for the purchase of 566,000 shares of common stock.
- (7) Dr. Ryan resigned as a director effective January 10, 2020.
- (8) As of December 31, 2020, Dr. Ryan held options for the purchase of 231,000 shares of common stock.
- (9) Mr. Tonna resigned as a director effective November 16, 2020.
- (10) As of December 31, 2020, Mr. Tonna held options for the purchase of 364,000 shares of common stock.

Each of Messrs. Catell, Desmarais, Radov and Tonna and Dr. Ryan, our former non-employee directors, was entitled to receive, as compensation for his services as a director, \$30,000 per annum plus \$10,000 per annum for all committee service, in each case payable quarterly (subject to our cash needs). Our former non-employee directors also received stock options, from time to time, in consideration of their services. There is no arrangement in place for compensation of our only current non-employee director, Nickolay Kukekov.

#### SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth certain information regarding the beneficial ownership of our common stock, as of June 24, 2021, known by us, through transfer agent records, to be held by: (i) each person who beneficially owns 5% or more of the shares of common stock then outstanding; (ii) each of our directors; (iii) each of our Named Executive Officers (as defined above); and (iv) all of our directors and executive officers as a group.

The information in this table reflects “beneficial ownership” as defined in Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). To our knowledge, and unless otherwise indicated, each stockholder has sole voting power and investment power over the shares listed as beneficially owned by such stockholder, subject to community property laws where applicable. Percentage ownership is based on 3,188,844,445 shares of common stock outstanding as of June 24, 2021.

Beneficial Owner	Number of Shares Beneficially Owned	Approximate Percent of Class
Lance Alstodt	605,670,653 <sup>(1)</sup>	16.0%
Francisco Silva	595,703,049 <sup>(2)</sup>	15.8%
Nickolay Kukekov	0	-
Mark Weinreb	1,395,500 <sup>(3)</sup>	*
All directors and executive officers as a group (3 persons)	1,201,373,702 <sup>(1) (2)</sup>	27.5%

\* Less than 1%

- (1) Includes 586,958,987 shares of common stock issuable upon the exercise of a currently exercisable option.
- (2) Includes 587,259,304 shares of common stock issuable upon the exercise of a currently exercisable option and 12,116 shares of common stock held by Mr. Silva in a retirement account.
- (3) Includes 1,315,500 shares of common stock issuable upon the exercise of a currently exercisable option.

#### Securities Authorized for Issuance Under Equity Compensation Plans

The following table sets forth information as of December 31, 2020 with respect to compensation plans (including individual compensation arrangements) under which our common stock are authorized for issuance, aggregated as follows:

- All compensation plans previously approved by security holders; and
- All compensation plans not previously approved by security holders.

## EQUITY COMPENSATION PLAN INFORMATION

	Number of securities to be issued upon exercise of outstanding options (a)	Weighted-average exercise price of outstanding options (b)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by security holders	4,859,617	\$ 0.98	- (1)
Total	4,859,617	\$ 0.98	- (1)

(1) Our 2010 Equity Participation Plan terminated on November 17, 2020.

## CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

In July 2019, we, John Desmarais, one of our then non-employee directors and principal stockholders, and Tuxis Trust, a trust for which Mr. Desmarais and his wife serve as the trustees and which was established for the benefit of Mr. Desmarais' immediate family, agreed that the outstanding principal amounts of promissory notes held by Mr. Desmarais and Tuxis Trust in the amounts of \$175,000 and \$500,000, respectively, together with accrued interest, would be exchanged for shares of common stock and warrants, as described below, concurrently with a certain public offering of our securities. The exchange price was to equal 75% of the public offering price of the securities sold by us. The number of shares of common stock issuable pursuant to the warrants to be issued to Mr. Desmarais and Tuxis Trust was to be in the same ratio to the number of shares of common stock issued upon exchange of their indebtedness as the number of shares of common stock subject to the public warrants bore to the number of shares of common stock issued as part of any units of common stock and warrants offered by us. The exercise price of the warrants was to be 125% of the exchange price and the term of the warrants was to be the same term as the public warrants. Concurrently with the exchange, the exercise prices of outstanding warrants held by Mr. Desmarais and Tuxis Trust for the purchase of an aggregate of 1,377,842 shares of common stock were to be reduced from between \$1.50 and \$4.00 per share to \$0.75 per share and the expiration dates of such warrants were to be extended from between December 31, 2019 and March 1, 2022 to December 31, 2023. Concurrently with the exchange, Mr. Desmarais and Tuxis Trust were to release the security interest they held in our equipment and intellectual property with respect to the payment of the notes. The public offering contemplated by the exchange agreement did not occur.

In February 2019, we borrowed \$450,000 from Harvey P. Alstodt and Melody Alstodt. The convertible promissory note issued to them provided for the payment of the principal amount, together with interest at the rate of 15% per annum, six months from the date of issuance. The note was convertible, at the option of the lenders, into shares of our common stock at a conversion price of \$0.60 per share, subject to adjustment, and a five year warrant for the purchase of a number of shares equal to the number of shares issued upon the conversion of the principal amount of the note. The warrant provided for an exercise price of \$0.80 per share, subject to adjustment. The lenders are the parents of Lance Alstodt, our then Executive Vice President and Chief Strategy Officer and currently our President, Chief Executive Officer and Chairman of the Board.

In August 2019, the Alstodts agreed to an extension of the maturity date of the note to September 30, 2019 and that the outstanding principal amount of the note, together with accrued interest, would be exchanged for shares of common stock and warrants concurrently with a certain public offering of our securities. The exchange price was to be equal to the lesser of (i) 75% of the public offering price of the units offered by us and (ii) \$0.60 per share. The number of shares of common stock issuable pursuant to the warrant to be issued to the Alstodts was to be equal to the number of shares of common stock issued upon conversion of the principal amount of the note. The exercise price of the warrant was to be equal to the lesser of (i) 125% of the exchange price or (ii) \$0.80 per share. The term of the warrant was to be five years. The public offering contemplated by the exchange agreement did not occur.

In March 2019, our Board of Directors reduced the exercise price of outstanding options for the purchase of an aggregate of 4,631,700 shares of our common stock (with exercise prices ranging between \$1.00 and \$4.70 per share) to \$0.75 per share, which was the closing price for our common stock on the day prior to the determination, as reported by the OTCQB. The exercise price reduction related to options held by, among others, our Named Executive Officers and directors with respect to the following number of shares: (i) Mark Weinreb, our then President, Chief Executive Officer and Chairman of the Board: 1,319,500 shares, (ii) A. Jeffrey Radov, one of our then directors: 566,000 shares, (iii) Paul Jude Tonna, one of our then directors: 364,000 shares, (iv) Dr. Charles S. Ryan, one of our then directors: 256,000 shares, (v) Mr. Desmarais: 250,000 shares, (vi) Robert B. Catell, one of our then directors: 219,000 shares, (vii) Mr. Alstodt: 500,000 shares; and (viii) Francisco Silva, our Vice President of Research and Development: 340,650 shares.

In May 2019, we issued 1,111,111 shares of our common stock to Dale Broadrick, one of our then principal stockholders, at a purchase price of \$0.45 per share. In consideration thereof, we issued to Mr. Broadrick a five year warrant for the purchase of 555,556 shares of our common stock at an exercise price of \$0.85 per share and a one year warrant for the purchase of 555,555 shares of our common stock at an exercise price of \$0.70 per share.

In October 2019, we issued 3,333,333 shares of our common stock to Mr. Broadrick at a purchase price of \$0.15 per share. In consideration thereof, we issued to Mr. Broadrick a five year warrant for the purchase of 3,333,333 shares of our common stock at an exercise price of \$0.20 per share. In addition, in consideration thereof, we reduced the exercise prices of outstanding warrants held by Mr. Broadrick for the purchase of 1,055,556 and 1,055,555 shares of our common stock from \$0.70 and \$0.85 per share, respectively, to \$0.15 per share and extended the expiration dates of warrants held by Mr. Broadrick for the purchase of 500,000 and 555,555 shares of our common stock from February 19, 2020 and May 7, 2020, respectively, to February 19, 2024 and May 7, 2024, respectively.

## PROPOSAL 1: ELECTION OF DIRECTORS

One Class I director is to be elected at the meeting to serve until the 2024 annual meeting of stockholders and until his respective successor shall have been elected and have qualified or until his earlier resignation or removal.

### Nominee for Class I Director

The nominee is currently a member of our Board of Directors. The following table sets forth the nominee's age as of the date of the annual meeting, the positions and offices presently held with us, and the year in which he became a director.

Name	Age	Positions Held	Director Since
Nickolay Kukekov	47	Director	March 2021

### Nickolay Kukekov, Ph.D.

Nickolay Kukekov, Ph.D. has served as one of our directors since March 2021. For more than the past fifteen years, Dr. Kukekov has held a number of healthcare investment banking positions. He has served as Senior Managing Director of Paulson Investment Company, LLC since 2020. From 2012 to 2020, Dr. Kukekov was a founding partner of Highline Research Advisors LLC. He served as a Managing Director of Summer Street Research Partners from 2010 to 2012. From 2007 to 2009, Dr. Kukekov was a Managing Director of Paramount Capital. He served as a Vice President of Rodmen & Renshaw from 2006 to 2007. He serves as a director of Brain Scientific, Inc. and Omnia Wellness Inc. whose shares are publicly traded. Dr. Kukekov received a Bachelor of Arts degree in molecular, cellular and developmental biology from the University of Colorado at Boulder and a Ph.D. in neuroscience from Columbia University College of Physicians and Surgeons. We believe that Dr. Kukekov's extensive experience in the investment banking field relating to the healthcare sector and his strong background in regenerative medicine give him the qualifications to serve as one of our directors.

### Directors Not Standing For Election

Name	Age	Positions Held	Director Since	Class/Term Expiration
Lance Alstodt	50	Chief Executive Officer, President and Chairman of the Board	November 2020	Class III/2023
Francisco Silva	46	Director	November 2020	Class II/2022

### Lance Alstodt

Lance Alstodt has served as our Chief Executive Officer, President and Chairman of the Board since November 2020. He served as our Executive Vice President and Chief Strategy Officer from October 2018 to February 2020. Since 2013, Mr. Alstodt has served as Chief Executive Officer of MedVest Consulting Corporation, an advisory and capital firm that focuses exclusively on the healthcare industry. Prior to MedVest, he was an investment banker with over 23 years of experience with respect to healthcare investment banking, including mergers and acquisitions. From 2011 to 2013, Mr. Alstodt was a Managing Director at Leerink Partners where he helped lead its medical technology sector. From 2009 to 2011, he was a Managing Director and Head of Medical Technology at Oppenheimer & Co. From 2000 to 2009, Mr. Alstodt was a Managing Director in the Healthcare Group and Global Mergers and Acquisitions Group at Bank of America Merrill Lynch. He previously spent seven years as a Vice President in the Global Mergers and Acquisitions Group at J.P. Morgan Chase, where he worked extensively on acquisitions, leveraged buyouts, private and public financings, exclusive sales and general advisory assignments. Mr. Alstodt received a degree in Economics from the State University of New York at Albany, with a secondary concentration in Finance and Marketing. We believe that Mr. Alstodt's executive-level management experience with us and other healthcare businesses and his extensive experience in the investment banking field relating to the healthcare sector give him the qualifications to serve as one of our directors.

### Francisco Silva

Francisco Silva has served as our Vice President of Research and Development since March 2013, having also previously served in such position from April 2011 until March 2012. Mr. Silva was elected our Secretary and a director in November 2020. He served as our Research Scientist from March 2012 to June 2012 and as our Chief Scientist from June 2012 to March 2013. From 2007 to 2011, Mr. Silva served as Chief Executive Officer of DV Biologics LLC, and as President of DaVinci Biosciences, LLC, companies engaged in the commercialization of human based biologics for both research and therapeutic applications. From 2003 to 2007, Mr. Silva served as Vice President of Research and Development for PrimeGen Biotech LLC, a company engaged in the development of cell based platforms. From 2002 to 2003, he was a Research Scientist with PrimeGen Biotech and was responsible for the development of experimental designs that focused on germ line reprogramming stem cell platforms. Mr. Silva has taught courses in biology, anatomy and advanced tissue culture at California State Polytechnic University. He has obtained a number of patents relating to stem cells and has had numerous articles published with regard to stem cell research. Mr. Silva graduated from California State Polytechnic University with a degree in Biology. He also obtained a Graduate Presidential Fellowship and MBRS Fellowship from California State Polytechnic University. We believe that Mr. Silva's executive-level management experience with us since April 2011 and his extensive knowledge of the science related to our business give him the qualifications to serve as one of our directors.

### Scientific Advisors

#### Scientific Advisory Board

The following persons are the members of our Scientific Advisory Board:

Name	Principal Positions
Wayne Marasco, M.D., Ph.D. Chairman	Professor, Department of Cancer Immunology & AIDS, Dana-Farber Cancer Institute; Professor of Medicine, Harvard Medical School; Principal Faculty Member, Harvard Stem Cell Institute

Naiyer Imam, M.D.	Chairman and President, First Medicine, Inc., an international telemedicine corporation dedicated to virtual physician services and chronic disease management
Wayne J. Olan, M.D.	Director, Interventional and Endovascular Neurosurgery; Associate Professor, Neurosurgery and Radiology, George Washington University Medical Center; Consulting Physician, Department of Radiology, National Institutes of Health
Joy Cavagnaro, Ph.D., DABT, RAC	President and Founder, Access BIO, L.C.; Fellow, Academy of Toxicological Sciences and the Regulatory Professional Society; Formerly Senior Pharmacologist and Director of Quality Assurance, Food and Drug Administration's Center for Biologics Evaluation and Research
Jason Lipetz, M.D. Chairman, Disc Advisory Committee	Founder, Long Island Spine Rehabilitation Medicine; Chief of Spine Medicine, Northwell Health Spine Center; Assistant Professor of Rehabilitation Medicine, Hofstra University School of Medicine
Harvinder Sandhu, M.D.	Orthopedic Spine Surgeon, Hospital for Special Surgery; Formerly Chief of Spinal Surgery Service, UCLA Medical Center
Christopher Plastaras, M.D.	Clinical Director of Musculoskeletal Spine and Sports Rehabilitation Medicine and Physiatrist, MossRehab; Formerly Director of The Penn Spine and Rehabilitation Center; Formerly Director of Spine, Sports and Musculoskeletal Medicine Fellowship, University of Pennsylvania
Gerard A. Malanga, M.D.	Founder, Partner and Physiatrist, New Jersey Sports Medicine, LLC and New Jersey Regenerative Institute; Chair, American Academy of Physical Medicine and Rehabilitation Task Force on Regenerative Medicine; President Elect, Interventional Orthopedic Foundation

### **Family Relationships**

There are no family relationships among any of our executive officers and directors.

### **Term of Office**

We have a classified Board of Directors. Each Class III director will hold office until the 2023 annual meeting of stockholders and until his respective successor shall have been elected and have qualified or until his earlier resignation or removal. Each Class II director will hold office until the 2022 annual meeting of stockholders and until his respective successor shall have been elected and have qualified or until his earlier resignation or removal. Each Class I director will hold office until the 2024 annual meeting of stockholders and until his respective successor shall have been elected and have qualified or until his earlier resignation or removal. Each executive officer will hold office until the initial meeting of the Board of Directors following the next annual meeting of stockholders and until his successor is elected and qualified or until his earlier resignation or removal.

### **Committees**

#### *Audit Committee*

The Audit Committee of the Board of Directors is responsible for overseeing our accounting and financial reporting processes and the audits of our financial statements. The sole member of the Audit Committee is Dr. Kukekov.

#### **Audit Committee Financial Expert**

We do not currently have an “audit committee financial expert,” as that is defined in Item 407(d)(5) of Regulation S-K, as we are in the process of reconstituting our Board of Directors following our Chapter 11 reorganization.

### **Delinquent Section 16(a) Beneficial Ownership Reports**

Section 16 of the Exchange Act requires that reports of beneficial ownership of common stock and changes in such ownership be filed with the Securities and Exchange Commission by Section 16 “reporting persons,” including directors, certain officers, holders of more than 10% of the outstanding common stock and certain trusts of which reporting persons are trustees. We are required to disclose in this proxy statement each reporting person whom we know to have failed to file any required reports under Section 16 on a timely basis during the fiscal year ended December 31, 2020. To our knowledge, based solely on a review of copies of Forms 3, 4 and 5 filed with the Securities and Exchange Commission, during the fiscal year ended December 31, 2020, our officers, directors and 10% stockholders complied with all Section 16(a) filing requirements applicable to them.

### **Code of Ethics for Senior Financial Officers**

Our Board of Directors has adopted a Code of Ethics for our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. A copy of the Code of Ethics is posted on our website, [www.biorestorative.com](http://www.biorestorative.com). We intend to satisfy the disclosure requirement under Item 5.05(c) of Form 8-K regarding an amendment to, or a waiver from, our Code of Ethics by posting such information on our website, [www.biorestorative.com](http://www.biorestorative.com).

## **Recommendation**

**The Board of Directors recommends a vote FOR the Class I nominee.**

## **PROPOSAL 2: APPROVAL OF 2021 STOCK INCENTIVE PLAN**

Our Board of Directors has approved the BioRestorative Therapies, Inc. 2021 Stock Incentive Plan (the "Plan") pursuant to which 4,700,000,000 shares of our common stock are authorized for issuance. The Plan is being submitted to the stockholders for approval.

The Plan plays an important role in our efforts to attract and retain employees of outstanding ability and to align the interests of employees with those of the stockholders through increased stock ownership. As discussed below, the Plan is also designed to provide incentives to our non-employee directors, consultants and advisors.

**The following statements include summaries of certain provisions of the Plan. The statements do not purport to be complete and are qualified in their entirety by reference to the provisions of the Plan, a copy of which is available at our offices.**

### **Purpose**

The purpose of the Plan is to promote the success and enhance the value of the Company and its subsidiaries by linking the individual interests of employees, consultants, advisors and members of our Board of Directors to those of our stockholders and by providing such individuals with an incentive for outstanding performance to generate superior returns to our stockholders. The Plan is further intended to provide flexibility to the Company and its subsidiaries in their ability to motivate, attract, and retain the services of those individuals upon whose judgment, interest, and special effort the successful conduct of our operation is largely dependent.

### **Administration**

The Plan provides for its administration by our Board of Directors or a committee (the "Committee") appointed by the Board. The following discussion of the Plan assumes that the Plan is administered by the Committee.

The Committee has authority (subject to certain restrictions) to select from the group of eligible employees, non-employee directors, consultants and advisors the individuals or entities to whom awards will be granted under the Plan, and to determine the times at which awards will be granted and the terms of such grants. The Committee is authorized to interpret the Plan and the interpretation and construction by the Committee of any provision of the Plan or of any award granted under the Plan shall be final and conclusive. The receipt of awards under the Plan by directors or any members of the Committee shall not preclude their vote on any matters in connection with the administration or interpretation of the Plan.

### **Eligibility**

Subject to certain limitations as set forth in the Plan, options to purchase shares may be granted thereunder to persons or entities who, in the case of incentive stock options, are employees of the Company or, in the case of non-qualified stock options, are employees or non-employee directors of, or certain consultants or advisors to, the Company. Subject to certain limitations as set forth in the Plan, restricted stock, restricted stock units, stock appreciation rights and other stock awards may be granted thereunder to persons or entities who are employees or non-employee directors of, or certain consultants or advisors to, the Company.

As of June 24, 2021, seven employees, one non-employee director and eight members of our Scientific Advisory Board were eligible to receive awards under the Plan.

On March 18, 2021, we granted to each of Lance Alstodt, our Chief Executive Officer, President and Chairman of the Board, and Francisco Silva, our Vice President of Research and Development, pursuant to the Plan, an option to purchase 1,173,917,974 shares of our common stock at an exercise price of \$0.0119 per share, such option being exercisable for a period of ten years. The option vested to the extent of 50% thereof on the date of grant and vests to the extent of 25% thereof on each of the first and second anniversaries of the date of grant, subject to earlier vesting under certain circumstances. In addition, on March 18, 2021, we granted to each of Mr. Alstodt and Mr. Silva 586,958,987 restricted stock units which vest to the extent of one-third thereof on each of the first, second and third anniversaries of the date of grant, subject to earlier vesting under certain circumstances. In the event the Plan is not approved by our stockholders within twelve months of our Board's adoption of the Plan, the option and RSU grants will be deemed to be outside the Plan and will otherwise remain in full force and effect.

### **Options**

#### *Nature of Options*

The Committee may grant options under the Plan which are intended to either qualify as "incentive stock options" within the meaning of Section 422 of the Code or not so qualify. We refer to options that do not so qualify as "non-qualified stock options." The Federal income tax consequences relating to the grant and exercise of incentive stock options and non-qualified stock options are described below under "Federal Income Tax Consequences."

#### *Option Price*

The option price of the shares subject to an incentive stock option or a non-qualified stock option may not be less than the fair market value (as such term is defined in the Plan) of the common stock on the date upon which such option is granted. In addition, in the case of a recipient of an incentive stock option who, at the time the option is granted, owns more than 10% of the total combined voting power of all classes of our stock or of a parent or of any of our subsidiaries, the option price of the shares subject to such option must be at least 110% of the fair market value of the common stock on the date upon which such option is granted.

On June 23, 2021, the last reported sale price for our common stock on the OTC Markets was \$0.00755 per share.

#### *Exercise of Options*

An option granted under the Plan shall be exercised by the delivery by the holder to our Secretary at our principal office of a written or electronic notice of the number of shares with respect to which the option is being exercised. The notice must be followed by payment of the full option price of such shares which must be made by the holder's delivery of (i) cash or check in such amount, (ii) previously acquired common stock, the fair market value of which shall be determined as of the date of exercise, (iii) other form of legal consideration acceptable to the Committee, or (iv) any combination of the foregoing.

#### *Duration of Options*

No incentive stock option granted under the Plan shall be exercisable after the expiration of ten years from the date of its grant. However, if an incentive stock option is granted to a 10% stockholder, the option shall not be exercisable after the expiration of five years from the date of its grant.

Non-qualified stock options granted under the Plan shall be exercisable for a period of up to ten years from the date of their grant.

#### *Non-Transferability*

Options granted under the Plan are not transferable otherwise than by will or the laws of descent and distribution and such options are exercisable, during a holder's lifetime, only by the grantee; provided, however, that a non-qualified stock option granted under the Plan may, upon the approval of the Committee be transferred in whole or in part during a grantee's lifetime to certain family members of a grantee through a gift or domestic relations offer.

#### *Death, Disability or Termination of Employment*

Subject to the terms of the agreement pursuant to which the options are granted, if the employment of an employee or the services of a non-employee director, consultant or advisor shall terminate other than for cause or by reason of death or disability, such option may be exercised at any time within three months after such termination, but in no event after the expiration of the option.

Subject to the terms of the agreement pursuant to which the options are granted, if an option holder under the Plan dies while employed by us or while serving as a non-employee director of, or consultant or advisor to, us, then such option may be exercised by the estate of the employee, non-employee director, consultant or advisor, or by a person who acquired such option by bequest or inheritance from the deceased option holder, at any time within twelve months after his death.

Subject to the terms of the stock option agreement pursuant to which the options are granted, if the holder of an option under the Plan ceases employment or services because of permanent and total disability (as defined in the Plan) while employed by, or while serving as a non-employee director of, or consultant or advisor to, us, then such option may be exercised at any time within twelve months after his termination of employment, termination of directorship, or termination of consulting or advisory arrangement or agreement due to the disability.

#### **Stock Appreciation Rights**

The Committee may grant stock appreciation rights (an "SAR") to such persons eligible under the Plan as selected from time to time. SARs shall be granted at such times, in such amounts and under such other terms and conditions as the Committee shall determine. An SAR entitles the grantee to exercise the SAR, in whole or in part, in exchange for payment of shares of our common stock, cash or a combination thereof, as determined by the Committee, equal in value to the excess of the fair market value of the shares of our common stock underlying the SAR, determined on the date of exercise, over the fair market value of our common stock underlying the SAR on the date of grant.

No SAR granted under the Plan shall be exercisable after the expiration of ten years from the date of its grant.

#### **Restricted Stock and Restricted Stock Unit Grants**

The Committee may grant restricted stock and restricted stock units ("RSUs") under the Plan to any individual or entity eligible to receive restricted stock or RSUs. A restricted stock or RSU award is an award of shares of our common stock that is subject to certain conditions on vesting and to certain restrictions on transferability.

Shares granted pursuant to a grant of restricted stock or RSUs shall vest as determined by the Committee. Except as otherwise provided in the award agreement, a grantee shall forfeit all shares not previously vested, if any, at such time as the grantee is no longer employed by, or serving as a director of, or rendering consulting or advisory services to, us.

In determining the vesting requirements with respect to a grant of restricted stock or RSUs, the Committee may impose such restrictions on any shares granted as it may deem advisable including, without limitation, restrictions relating to length of service, corporate performance, attainment of individual or group performance goals and federal or state securities laws.

During the period that restricted stock is unvested, the grantee will be the record owner of the restricted stock and shall be entitled to receive all dividends and other distributions paid with respect to such shares while they are so restricted; however, if any dividends or distributions

are payable in shares of our stock, cash and/or other property during an applicable period of restriction, the shares, cash and/or other property deliverable shall be held by us until such time as the vesting restrictions with respect to the restricted stock are satisfied.

A holder of RSUs shall not have any rights of a stockholder with respect to the shares of common stock underlying the RSUs unless and until the RSUs vest and are settled by the issuance of shares of common stock.

### **Amendment and Termination**

The Plan (but not the options or other stock awards previously granted thereunder) shall terminate on March 18, 2031, ten years from the date that it was adopted by our Board. Subject to certain limitations, the Plan may be amended or modified from time to time or terminated at an earlier date by our Board or by the stockholders.

### **Federal Income Tax Consequences**

The following discussion is intended only as a brief summary of the federal income tax rules relevant to stock options, restricted stock and RSUs granted under the Plan. These rules are highly technical and subject to change. The following discussion is limited to the federal income tax rules relevant to us and to the individuals who are citizens or residents of the United States. The discussion does not address state, local or foreign income tax consequences.

#### *Non-qualified Stock Options*

Under the Code and the Treasury Department Regulations, a non-qualified stock option does not ordinarily have a readily ascertainable fair market value when it is granted. This rule will apply to our grant of non-qualified stock options. Consequently, the grant of a non-qualified stock option to an optionee will result in neither income to him or her nor a deduction to us. Instead, the optionee will recognize compensation income at the time he or she exercises the non-qualified stock option in an amount equal to the excess, if any, of the then fair market value of the shares transferred to the optionee over the option price. Subject to the applicable provisions of the Code and the Treasury Department Regulations regarding withholding of tax, a deduction will be allowable to us in the year of exercise in the same amount as is includable in the optionee's income.

For purposes of determining the optionee's gain or loss on the sale or other disposition of the shares transferred to him or her upon exercise of a non-qualified stock option, the optionee's basis in such shares will be the sum of the optionee's option price plus the amount of compensation income recognized by him or her on exercise. Such gain or loss will be capital gain or loss and will be long-term or short-term depending upon the holding period requirement for the shares. No part of any such gain will be an item of tax preference for purposes of the alternative minimum tax.

#### *Incentive Stock Options*

Options granted under the Plan which qualify as incentive stock options under Section 422 of the Code will be treated as follows:

Except to the extent that the alternative minimum tax rule described below applies, no tax consequences will result to the optionee or us from the grant of an incentive stock option to, or the exercise of an incentive stock option by, the optionee. Instead, the optionee will recognize gain or loss when he or she sells or disposes of the shares transferred to him or her upon exercise of the incentive stock option. For purposes of determining such gain or loss, the optionee's basis in such shares will be his or her option price. If the optionee holds the shares acquired upon exercise for the requisite holding period set forth in the Code, the optionee will realize long-term capital gain treatment upon their sale or disposition.

Generally, we will not be allowed a deduction with respect to an incentive stock option. However, if an optionee fails to meet the foregoing holding period requirements (a so-called disqualifying disposition), any gain recognized by the optionee upon the sale or disposition of the shares transferred to him or her upon exercise of an incentive stock option will be treated in the year of such sale or disposition as ordinary income, rather than capital gain, to the extent of the excess, if any, of the fair market value of the shares at the time of exercise (or, if less, in certain cases the amount realized on such sale or disposition) over their option price, and in that case we will be allowed a corresponding deduction.

For purposes of the alternative minimum tax, the amount, if any, by which the fair market value of the shares transferred to the optionee upon such exercise exceeds the option price will be included in determining the optionee's alternative minimum taxable income. In addition, for purposes of such tax, the basis of such shares will include such excess.

To the extent that the aggregate fair market value (determined at the time the option is granted) of the stock with respect to which incentive stock options are exercisable for the first time by the optionee during any calendar year exceeds \$100,000, such options will not be incentive stock options. In this regard, upon the exercise of an option which is deemed, under the rule described in the preceding sentence, to be in part an incentive stock option and in part a non-qualified stock option, under existing Internal Revenue Service guidelines, we may designate which shares issued upon exercise of such options are incentive stock options and which shares are non-qualified stock options. In the absence of such designation, a pro rata portion of each share issued is to be treated as issued pursuant to the exercise of an incentive stock option and the balance of each share treated as issued pursuant to the exercise of a non-qualified stock option.

#### *Other Stock-Based Awards*

The income tax consequences of the other stock-based awards will depend on how such awards are structured. In the case of the grant of an RSU, a participant will not be in receipt of taxable income at the time of grant. On delivery, a participant will be in receipt of ordinary income in an amount equal to the fair market value of the acquired shares of common stock.

### **New Plan Benefits**



The benefits that will be awarded or paid under the Plan are not currently determinable (see, however, “Eligibility” above). Awards granted under the Plan are within the discretion of the Committee, and the Committee has not determined future awards or who might receive them.

### Plan Benefits

The following table sets forth certain information regarding options and RSUs granted under the Plan as of June 24, 2021, to (i) each person listed in the Summary Compensation Table under Executive Compensation, (ii) all current executive officers as a group, (iii) all current directors who are not executive officers as a group, (iv) each nominee for election as a director, (v) each associate of any such directors, executive officers or nominees, (vi) each other person who received 5% of the options granted and (vii) all employees, including current officers who are not executive officers, as a group:

Name and Position	Common Stock Underlying Options Granted	Weighted Average Exercise Price Per Share	Restricted Stock Units Granted
Lance Alstodt Chief Executive Officer, President and Chairman of the Board	1,173,917,974 (2)	\$0.0119	586,958,987 (3)
Francisco Silva Vice President of Research and Development	1,173,917,974 (2)	\$0.0119	586,958,987 (3)
Mark Weinreb (1) Chief Executive Officer	-	-	-
Nickolay Kukekov	-	-	-
All current executive officers as a group	2,347,835,948 (2)	\$0.0119	1,173,917,974 (3)
All current directors who are not executive officers as a group	-	-	-
All employees, including all current officers who are not executive officers, as a group	2,347,835,948 (2)	\$0.0119	1,173,917,974 (3)

(1) Mr. Weinreb resigned as our President, Chief Executive Officer and Chairman of the Board in November 2020.

(2) Such options vested to the extent of 50% thereof on March 18, 2021, the date of grant, and will vest to the extent of 25% thereof on each of the first and second anniversaries of the date of grant (subject to earlier vesting under certain circumstances) and are exercisable until March 18, 2031.

(3) Such RSUs vest to the extent of one-third thereof on each of the first, second and third anniversaries of the date of grant of March 18, 2021 (subject to earlier vesting under certain circumstances).

### Securities Authorized for Issuance Under Equity Compensation Plans

The following table sets forth information as of December 31, 2020 with respect to compensation plans (including individual compensation arrangements) under which our shares of common stock are authorized for issuance, aggregated as follows:

- All compensation plans previously approved by security holders; and
- All compensation plans not previously approved by security holders.

### Equity Compensation Plan Information

	Number of securities to be issued upon exercise of outstanding options (a)	Weighted-average exercise price of outstanding options (b)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by security holders	4,859,617	\$ 0.98	- (1)
Total	4,859,617	\$ 0.98	- (1)

(1) Our 2010 Equity Participation Plan terminated on November 17, 2020.

### Vote Required

The approval of the Plan requires the affirmative vote of stockholders who hold a majority of the shares of common stock present in person or represented by proxy at the meeting and entitled to vote.

### Recommendation

The Board of Directors recommends a vote FOR approval of the Plan.



### **PROPOSAL 3: AUTHORIZATION TO REINCORPORATE THE COMPANY IN THE STATE OF NEVADA**

Our Board of Directors has approved and recommends to the stockholders a proposal to change the Company's state of incorporation from the State of Delaware to the State of Nevada (the "Reincorporation"). The Reincorporation would be effected through the merger (the "Merger") of the Company into a newly-formed Nevada corporation that is a wholly-owned subsidiary of the Company, which we refer to herein as the "Surviving Company," pursuant to an Agreement and Plan of Merger (the "Merger Agreement"). Upon completion of the Merger, the Surviving Company will be the surviving corporation and will continue to operate our business under the name "BioRestorative Therapies, Inc."

Reincorporation in Nevada will not result in a material change in our business, management, assets, liabilities or net worth. Reincorporation in Nevada will allow us to take advantage of certain provisions of the corporate and tax laws of Nevada.

#### **Reasons for the Reincorporation in Nevada**

Our Board of Directors believes that there are several reasons why a reincorporation in Nevada is in the best interests of the Company and its stockholders. First of all, the Reincorporation will eliminate our obligation to pay the annual Delaware franchise tax, which we expect will result in substantial savings to us over the long term. For tax year 2020, we paid approximately \$25,000 in Delaware franchise taxes. We anticipate that, if we remain a Delaware corporation, for tax year 2021, our Delaware franchise taxes will be \$140,000 (based on our current capital structure and assets). If we reincorporate in Nevada, our current annual fees will consist of an annual business license fee of \$500, an annual domestic agent representation fee of \$198, and an annual fee based on the number of authorized shares, currently equal to \$11,125.

In addition, the Reincorporation may help us attract and retain qualified management by reducing the risk of lawsuits being filed against the Company and its directors and officers. We believe that, for the reasons described below, in general, Nevada law provides greater protection to our directors, officers and the Company than Delaware law. The increasing frequency of claims and litigation directed towards directors and officers has greatly expanded the risks facing directors and officers in general of public companies in exercising their duties. The amount of time and money required to respond to these claims and to defend this type of litigation can be substantial. Delaware law provides that every person becoming a director of a Delaware corporation consents to the personal jurisdiction of the Delaware courts in connection with any action concerning the corporation. Accordingly, a director can be personally sued in Delaware, even though the director has no other contacts with the state. Similarly, Nevada law provides that every person who accepts election or appointment, including reelection or reappointment, as a director or officer of a Nevada corporation consents to the personal jurisdiction of the Nevada courts in connection with all civil actions or proceedings brought in Nevada by, on behalf of or against the entity in which the director or officer is a necessary or proper party, or in any action or proceeding against the director or officer for a violation of a duty in such capacity, whether or not the person continues to serve as a director or officer at the time the action or proceeding is commenced. We believe that the advantage of Nevada is that, unlike Delaware corporate law, much of which consists of judicial decisions that migrate and develop over time, Nevada has pursued a statute-focused approach that does not depend upon judicial supplementation and revision, and is intended to be stable, predictable and more efficient.

Also, reincorporation in Nevada will provide potentially greater protection for directors of the Company and, unlike Delaware, for officers as well. Delaware law permits a corporation to adopt provisions limiting or eliminating the liability of a director to a company and its stockholders for monetary damages for breach of fiduciary duty as a director, provided that the liability does not arise from certain proscribed conduct, including breach of the duty of loyalty, acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law. By contrast, Nevada law permits a broader exclusion of liability of both officers and directors to the Company and its stockholders, providing for an exclusion of all monetary damages for breach of fiduciary duty unless they arise from acts or omissions which involve intentional misconduct, fraud or a knowing violation of law. The reincorporation will result in the elimination of any liability of an officer or director for a breach of the duty of loyalty unless arising from intentional misconduct, fraud or a knowing violation of law. There is currently no known pending claim or litigation against any of our directors or officers for breach of fiduciary duty related to their service as directors or officers of the Company. The directors have an interest in the Reincorporation to the extent that they will be entitled to such limitation of liability.

Further, a reincorporation in Nevada will provide certain corporate flexibility in connection with certain corporate transactions, including reverse stock splits, as discussed below under "Comparative Rights of Stockholders under Delaware and Nevada Law."

The Reincorporation is not being effected to prevent a change in control, nor is it in response to any present attempt known to our Board to acquire control of the Company or obtain representation on our Board. Nevertheless, certain effects of the proposed reincorporation may be considered to have anti-takeover implications by virtue of being subject to Nevada law. For a discussion of differences between the laws of Delaware and Nevada, including differences that may have anti-takeover implications, see "Comparative Rights of Stockholders under Delaware and Nevada Law" below.

#### **Material Terms of the Merger**

In order to effect the Reincorporation of the Company in Nevada, the Company will be merged with and into the Surviving Company. Prior to the Merger, the Surviving Company will not have engaged in any activities except in connection with the proposed transaction. The mailing address and telephone number of the Surviving Company are the same as those of the Company. As part of its approval and recommendations of our reincorporation in Nevada, our Board of Directors has approved, and recommends to our stockholders for their adoption and approval, the Merger Agreement pursuant to which we will be merged with and into the Surviving Company. The full texts of the Merger Agreement, the Articles of Incorporation of the Surviving Company and the Bylaws of the Surviving Company in substantially the form under which the Company's business will be conducted after the Merger are attached hereto as Appendix A, Appendix B, and Appendix C, respectively. The discussion contained in this proxy statement is qualified in its entirety by reference to such Appendices.

The Board of Directors has determined that the Reincorporation and the terms of the Merger Agreement between the Company and the Surviving Company are in the best interests of our stockholders. The terms of the Merger Agreement are more fully described below.

#### **Terms of the Merger Agreement**

The following discussion summarizes the material terms of the Merger Agreement but does not purport to be a complete statement of all provisions of the Merger Agreement and is qualified in its entirety by reference to the Merger Agreement, a copy of which is attached to this proxy statement as Appendix A. Stockholders are urged to read the Merger Agreement carefully as it is the legal document that will govern the Merger.

*The Merger.* The Merger Agreement provides that, subject to the terms and conditions of the Merger Agreement, the Company shall be merged with and into the Surviving Company, the Company's separate legal existence shall cease and the Surviving Company shall continue as the surviving corporation.

*Effect of the Merger.* Upon the effectiveness of the Reincorporation, the outstanding shares of common stock of the Company will automatically be converted into shares of common stock of the Surviving Company, on a one-for-one-basis. Outstanding options and warrants to purchase the Company's common stock will be converted into options and warrants to purchase the same number of shares of the Surviving Company's common stock. Outstanding convertible securities and convertible debt that are convertible into the Company's common stock will be converted into convertible securities and convertible debt that are convertible into the same number of shares of the Surviving Company's common stock. The Surviving Company, as the surviving corporation, shall continue unaffected and unimpaired by the Merger with all of its purposes and powers. The Surviving Company shall be governed by Nevada law and succeed to all rights, assets, liabilities and obligations of the Company in accordance with Nevada law and Delaware law.

*Articles of Incorporation and Bylaws of the Surviving Company Following the Merger.* The Merger Agreement will provide that the Articles of Incorporation and the Bylaws of the Surviving Company, as in effect at the Effective Time (as defined below) will be the Articles of Incorporation and Bylaws, respectively, of the surviving corporation following the Merger. They are attached to this proxy statement as Appendix B and Appendix C, respectively.

*Directors and Officers of the Surviving Company Following the Merger.* The incumbent officers and directors of the Company will also be the officers and directors of the Surviving Company at the Effective Time.

### **Effective Time**

It is anticipated that the Merger, and consequently our reincorporation from Delaware to Nevada, will become effective at the date and time (the "Effective Time") specified in each of (i) the Articles of Merger to be executed and filed with the office of the Nevada Secretary of State in accordance with the Nevada Revised Statutes (the "NRS") Section 92A.200 and (ii) the Certificate of Merger to be executed and filed with the Office of the Secretary of State of Delaware in accordance with Section 252 of the Delaware General Corporation Law (the "DGCL"). However, the Reincorporation may be delayed by our Board of Directors or the Merger Agreement may be terminated and abandoned by action of our Board of Directors at any time prior to the effective time of the Reincorporation, whether before or after the approval by the Company's stockholders, if our Board of Directors determines for any reason that the consummation of the Reincorporation should be delayed or would be inadvisable or not in the best interests of the Company and its stockholders, as the case may be.

### **Material U.S. Federal Income Tax Consequences of the Reincorporation**

We intend the Merger to be a tax-free reorganization under the Internal Revenue Code of 1986, as amended (the "Code"). Assuming the Merger qualifies as a tax-free reorganization, the holders of our common stock will not recognize any gain or loss under the U.S. federal income tax laws as a result of the consummation of the Reincorporation, and neither will the Company nor the Surviving Company. Each stockholder will have the same basis in the Surviving Company common stock received as a result of the Reincorporation as that holder has in our common stock held at the time the Merger is consummated. Each holder's holding period in the Surviving Company common stock received as a result of the Merger will include the period during which such holder held our common stock at the time the Merger is consummated, provided the latter was held by such holder as a capital asset at the time of consummation of the Merger.

This proxy statement only discusses U.S. federal income tax consequences and has done so only for general information. It does not address all of the U.S. federal income tax consequences that may be relevant to particular stockholders based upon individual circumstances or to stockholders who are subject to special rules, such as financial institutions, tax-exempt organizations, insurance companies, dealers in securities, foreign holders or holders who acquired their shares as compensation, whether through employee stock options or otherwise. This proxy statement does not address the tax consequences under state, local or foreign laws.

This discussion is based on the Code, laws, regulations, rulings and decisions in effect as of the date of this proxy statement, all of which are subject to differing interpretations and change, possibly with retroactive effect. The Company has neither requested nor received a tax opinion from legal counsel or rulings from the Internal Revenue Service regarding the consequences of the Reincorporation. There can be no assurance that future legislation, regulations, administrative rulings or court decisions would not alter the consequences discussed above.

Stockholders should consult their own tax advisors to determine the particular tax consequences of the Reincorporation, including the applicability and effect of U.S. federal, state, local, foreign and other tax laws.

### **Securities Act Consequences**

The shares of the Surviving Company common stock to be issued in exchange for shares of our common stock are not being registered under the Securities Act of 1933, as amended (the "Securities Act"). In that respect, the Surviving Company is relying on Rule 145(a)(2) under the Securities Act, which provides that a merger that has as its sole purpose a change in a corporation's domicile does not involve the sale of securities for purposes of the Securities Act. After the Merger, the Surviving Company will be a publicly held company, and it will file with the SEC and provide to its stockholders the same type of information that we have previously filed and provided. Stockholders, whose shares of our common stock are freely tradable before the Merger will continue to have freely tradable shares of Surviving Company common stock. Stockholders holding restricted shares of Surviving Company common stock will be subject to the same restrictions on transfer as those to which their present

shares of our common stock are subject. In summary, the Surviving Company and its stockholders will be in the same respective positions under the federal securities laws after the Reincorporation as the Company and our stockholders prior to the Reincorporation.

### **No Exchange of Stock Certificates Required**

Stockholders are not required to exchange their stock certificates for new certificates representing shares of the Surviving Company common stock. New stock certificates representing shares of Surviving Company common stock will not be issued to a stockholder until such stockholder submits one or more existing certificates for transfer, whether pursuant to a sale or other disposition. However, stockholders (at their option and at their expense) may exchange their stock certificates for new certificates representing shares of Surviving Company common stock following the effective time of the Merger.

### **Accounting Treatment of the Merger**

In accordance with the terms of the Merger Agreement, the Company will be merged with and into the Surviving Company, with the Surviving Company being the surviving corporation. The incumbent officers and directors of the Company will also be the officers and directors of the Surviving Company at the Effective Time. Since the Merger is not expected to be accounted for as a business combination, no goodwill is expected to be recorded in connection therewith and the costs incurred in connection with the Merger are expected to be expensed.

### **Dissenters' Rights**

Holders of record of shares of the Company's common stock who do not vote in favor of the Reincorporation and who properly demand payment for their shares will be entitled to dissenters' rights in connection with the Reincorporation under Section 262 of the DGCL. If dissenters' rights are exercised for more than 1% of our outstanding shares, however, our Board of Directors may decide not to proceed with the Reincorporation.

To assert dissenters' rights, stockholders must satisfy all of the conditions in DGCL 262 discussed below. The following discussion is not a complete statement of the law pertaining to dissenters' rights under Section 262 of the DGCL and is qualified in its entirety by the full text of Section 262 of the DGCL, which is attached to this proxy statement as Appendix D. The following summary does not constitute any legal or other advice nor does it constitute a recommendation that stockholders exercise their dissenters' rights under DGCL 262.

Pursuant to Section 262 of the DGCL, if you do not wish to accept the shares of common stock of the Surviving Company, as provided for in the Merger Agreement, you have the right to seek appraisal of your shares of our common stock and to receive payment in cash for the fair value of your shares of our common stock, as determined by the Delaware Court of Chancery, together with interest, if any, to be paid upon the amount determined to be fair value. These rights are known as appraisal rights. The Company's stockholders who do not vote in favor of the proposal to adopt the Merger Agreement and who properly demand appraisal for their shares in compliance with the provisions of Section 262 of the DGCL will be entitled to appraisal rights. Strict compliance with the statutory procedures set forth in Section 262 of the DGCL is required. Failure to follow precisely any of the statutory requirements will result in the loss of your appraisal rights.

Pursuant to Section 262 of the DGCL, when a merger agreement will be submitted for adoption at a meeting of stockholders, the company must notify the stockholders who were stockholders of record on the record date for notice of such meeting, not less than 20 days before the meeting to vote on the merger, that appraisal rights will be available. A copy of Section 262 of the DGCL must be included with the notice.

This proxy statement constitutes the Company's notice to our stockholders that appraisal rights are available in connection with the Merger and the full text of Section 262 of the DGCL is attached to this proxy statement as Annex D, in compliance with the requirements of Section 262 of the DGCL. If you wish to exercise your appraisal rights, you should carefully review the text of Section 262 of the DGCL contained in Annex D. Failure to comply timely and properly with the requirements of Section 262 of the DGCL will result in the loss of your appraisal rights. Moreover, because of the complexity of the procedures for exercising the right to seek appraisal of shares of our common stock, the Company believes that a stockholder considering the exercise of such rights should seek the advice of legal counsel.

If you wish to demand appraisal of your shares of our common stock, you must satisfy each of the following conditions: You must deliver to the Company a written demand for appraisal of your shares of our common stock before the vote is taken to approve the Merger proposal; the written demand must reasonably inform us of the identity of the holder of record of shares of our common stock who intends to demand appraisal of his, her or its shares of our common stock; and you must not vote or submit a proxy in favor of the proposal to adopt the Merger Agreement.

If you fail to comply with any of these conditions and the Merger is completed, you will be entitled to receive the shares of common stock of the Surviving Company for your shares of our common stock as provided in the Merger Agreement, but you will not have appraisal rights with respect to your shares of our common stock. A holder of shares of our common stock wishing to exercise appraisal rights must hold of record the shares of our common stock on the date the written demand for appraisal is made and must continue to hold the shares of our common stock of record through the Effective Time of the Merger. A proxy that is submitted and does not contain voting instructions will, unless revoked, be voted **"FOR"** the Merger proposal, result in the loss of the stockholder's right of appraisal and nullify any previously delivered written demand for appraisal. Therefore, a stockholder who submits a proxy and who wishes to exercise appraisal rights must either submit a proxy containing instructions to vote **"AGAINST"** the Merger proposal or abstain from voting on the Merger proposal. Voting against or failing to vote for the Merger proposal by itself does not constitute a demand for appraisal within the meaning of Section 262 of the DGCL. The written demand for appraisal must be in addition to and separate from any proxy or vote on the proposal to adopt the Merger Agreement.

All demands for appraisal should be addressed to BioRestorative Therapies, Inc., Attention: Secretary, 40 Marcus Drive, Suite One, Melville, New York 11747, and must be delivered to the Company before the vote is taken to approve the proposal to adopt the Merger Agreement at the annual meeting of stockholders, and must be executed by, or on behalf of, the record holder of the shares of our common stock. The demand must reasonably inform the Company of the identity of the stockholder and the intention of the stockholder to demand appraisal of the "fair value" of his, her or its shares of our common stock. A stockholder's failure to deliver to the Company the written demand for appraisal prior to the taking of the vote on the proposal to adopt the Merger Agreement at the annual meeting of stockholders will result in the loss of appraisal rights.

Only a holder of record of shares of our common stock is entitled to demand an appraisal of the shares registered in that holder's name. Accordingly, to be effective, a demand for appraisal by a holder of our common stock must be made by, or on behalf of, the record stockholder. The demand should set forth, fully and correctly, the record stockholder's name as it appears on the stockholder's stock certificate(s) or in the transfer agent's records, and in the case of uncertificated shares, should specify the stockholder's mailing address and the number of shares registered in the stockholder's name. The demand must state that the person intends thereby to demand appraisal of the stockholder's shares in connection with the Merger. The demand cannot be made by the beneficial owner if he, she or it does not also hold the shares of our common stock of record. The beneficial holder must, in such cases, have the registered owner, such as a bank, brokerage firm or other nominee, submit the required demand in respect of those shares of our common stock. If you hold your shares of our common stock through a bank, brokerage firm or other nominee and you wish to exercise your appraisal rights, you should consult with your bank, brokerage firm or the other nominee to determine the appropriate procedures for the making of a demand for appraisal by the nominee and obtaining notice of the effective date of the Merger.

If shares of our common stock are owned of record in a fiduciary capacity, such as by a trustee, guardian or custodian, execution of a demand for appraisal must be made in that capacity. If the shares of our common stock are owned of record by more than one person, as in a joint tenancy or tenancy in common, the demand must be executed by or for all joint owners. An authorized agent, including an authorized agent for two or more joint owners, may execute the demand for appraisal for a stockholder of record; however, the agent must identify the record owner or owners and expressly disclose the fact that, in executing the demand, he, she or it is acting as agent for the record owner or owners. A record owner, such as a bank, brokerage firm or other nominee, who holds shares of our common stock as a nominee for others, may exercise his, her or its right of appraisal with respect to shares of our common stock held for one or more beneficial owners, while not exercising this right for other beneficial owners. In that case, the written demand should state the number of shares of our common stock as to which appraisal is sought. Where no number of shares of our common stock is expressly mentioned, the demand will be presumed to cover all shares of our common stock held in the name of the record owner. If a stockholder holds shares of our common stock through a broker who in turn holds the shares through a central securities depository nominee such as Cede & Co., a demand for appraisal of such shares must be made by or on behalf of the depository nominee and must identify the depository nominee as record owner.

Within 10 days after the Effective Time of the Merger, the Surviving Company must give notice of the date that the Merger became effective to each of the Company's record stockholders who has complied with Section 262 of the DGCL and who did not vote in favor of the proposal to adopt the Merger Agreement. At any time within 60 days after the Effective Time of the Merger, any stockholder who has not commenced an appraisal proceeding or joined a proceeding as a named party may withdraw the stockholder's demand and accept the shares of common stock of the Surviving Company as provided for the Merger Agreement for that holder's shares of our common stock by delivering to the Surviving Company a written withdrawal of the demand for appraisal. However, any such attempt to withdraw the demand made more than 60 days after the Effective Time of the Merger will require written approval of the Surviving Company. No appraisal proceeding in the Delaware Court of Chancery will be dismissed as to any stockholder without the approval of the Delaware Court of Chancery, with such approval conditioned upon such terms as the Delaware Court of Chancery deems just. If the Surviving Company does not approve a request to withdraw a demand for appraisal when that approval is required, or, except with respect to any stockholder who withdraws such stockholder's right to appraisal in accordance with the proviso in the immediately preceding sentence, if the Delaware Court of Chancery does not approve the dismissal of an appraisal proceeding, the stockholder will be entitled to receive only the appraised value of his, her or its shares of our common stock determined in any such appraisal proceeding.

Within 120 days after the Effective Time of the Merger, but not thereafter, either the Surviving Company or any stockholder who has complied with the requirements of Section 262 of the DGCL and is entitled to appraisal rights under Section 262 of the DGCL may commence an appraisal proceeding by filing a petition in the Delaware Court of Chancery demanding a determination of the fair value of the shares of our common stock held by all such stockholders. Upon the filing of the petition by a stockholder, service of a copy of such petition shall be made upon the Surviving Company. The Surviving Company has no obligation to file such a petition, has no present intention to file a petition and holders should not assume that the Surviving Company will file a petition. Accordingly, it is the obligation of the holders of our common stock to initiate all necessary petitions to perfect their appraisal rights in respect of shares of our common stock within the time prescribed in Section 262 of the DGCL and the failure of a stockholder to file such a petition within the period specified in Section 262 of the DGCL could nullify the stockholder's previous written demand for appraisal. In addition, within 120 days after the Effective Time of the Merger, any stockholder who has properly complied with the requirements of Section 262 of the DGCL and who did not vote in favor of the Merger proposal will be entitled to receive from the Surviving Company, upon written request, a statement setting forth the aggregate number of shares of our common stock not voted in favor of the Merger proposal and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. The statement must be mailed within 10 days after such written request has been received by the Surviving Company or within 10 days after the expiration of the period for delivery of demands for appraisal, whichever is later. A person who is the beneficial owner of shares of our common stock held either in a voting trust or by a nominee on behalf of such person may, in such person's own name, file a petition for appraisal or request from the Surviving Company such statement.

If a petition for appraisal is duly filed by a stockholder and a copy of the petition is delivered to the Surviving Company, then the Surviving Company will be obligated, within 20 days after receiving service of a copy of the petition, to file with the Delaware Register in Chancery a duly verified list containing the names and addresses of all stockholders who have demanded an appraisal of their shares of our common stock and with whom agreements as to the value of their shares of our common stock have not been reached. After notice to stockholders who have demanded appraisal from the Register in Chancery, if such notice is ordered by the Delaware Court of Chancery, the Delaware Court of Chancery will conduct a hearing upon the petition and determine those stockholders who have complied with Section 262 of the DGCL and who have become entitled to the appraisal rights provided by Section 262 of the DGCL. The Delaware Court of Chancery may require stockholders who have demanded payment for their shares of our common stock to submit their stock certificates to the Register in Chancery for notation of the pendency of the appraisal proceedings; if any stockholder fails to comply with that direction, the Delaware Court of Chancery may dismiss the proceedings as to that stockholder.

After determination of the stockholders entitled to appraisal of their shares of our common stock, the Delaware Court of Chancery will appraise the shares of our common stock, determining their fair value as of the Effective Time of the Merger after taking into account all relevant factors, together with interest, if any, to be paid upon the amount determined to be the fair value. When the fair value has been determined, the Delaware Court of Chancery will direct the payment of such value upon surrender by those stockholders of the certificates representing their

shares of our common stock. Unless the Delaware Court of Chancery in its discretion determines otherwise for good cause shown, interest from the effective date of the Merger through the date of payment of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during the period between the Effective Time of the Merger and the date of payment of the judgment.

The Delaware Supreme Court has stated that, in making this determination of fair value, the court must consider market value, asset value, dividends, earnings prospects, the nature of the enterprise and any other facts which could be ascertained as of the date of the merger which throw any light on future prospects of the merged corporation.

Costs of the appraisal proceeding (which do not include attorneys' fees or the fees and expenses of experts) may be determined by the Delaware Court of Chancery and imposed upon the Surviving Company and the stockholders participating in the appraisal proceeding by the Delaware Court of Chancery, as it deems equitable in the circumstances. Upon the application of a stockholder, the Delaware Court of Chancery may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorneys' fees and the fees and expenses of experts used in the appraisal proceeding, to be charged pro rata against the value of all shares of our common stock entitled to appraisal. Any stockholder who demanded appraisal rights will not, after the Effective Time of the Merger, be entitled to vote shares of our common stock subject to that Company for any purpose or to receive payments of dividends or any other distribution with respect to those shares of our common stock, other than with respect to payment as of a record date prior to the Effective Time of the Merger. If no petition for appraisal is filed within 120 days after the Effective Time of the Merger, or if the stockholder otherwise fails to perfect, successfully withdraws or loses such holder's right to appraisal, then the right of that stockholder to appraisal will cease and that stockholder will be deemed to have been converted at the Effective Time of the Merger into the right to receive the shares of common stock of the Surviving Company for his, her or its shares of our common stock pursuant to the Merger Agreement. Inasmuch as the Company has no obligation to file such a petition, and the Company has no present intention to do so, any holder of shares of our common stock who desires such a petition to be filed is advised to file it on a timely basis. A stockholder will fail to perfect or effectively lose the right to appraisal if no petition for appraisal is filed within 120 days after the Effective Time of the Merger. In addition, as indicated above, a stockholder may withdraw his, her or its demand for appraisal in accordance with Section 262 of the DGCL and accept the shares of common stock of the Surviving Company as provided for in the Merger Agreement.

**Failure to comply strictly with all of the procedures set forth in Section 262 of the DGCL will result in the loss of a stockholder's statutory appraisal rights.**

**In view of the complexity of Section 262 of the DGCL, the Company's stockholders who wish to pursue appraisal rights should consult their legal and financial advisors.**

#### **Potential Disadvantages of the Reincorporation**

Because of Delaware's prominence as a state of incorporation for many large corporations, the Delaware courts have developed considerable expertise in dealing with corporate issues and a substantial body of case law has developed construing Delaware law and establishing public policies with respect to Delaware corporations. While Nevada also has encouraged incorporation in that state and adopted comprehensive, modern and flexible statutes that it periodically updates and revises to meet changing business needs, because Nevada case law concerning the effects of its statutes and regulations is more limited, the Company and its stockholders may experience less predictability with respect to the legality of certain corporate affairs and transactions and stockholders' rights to challenge them, to the extent Nevada's statutes do not provide a clear answer and a Nevada court must make a determination.

In addition, underwriters and other members of the financial services industry may be less willing and able to assist the Company with capital-raising programs because they might perceive Nevada's laws as being less flexible or developed than those of Delaware. Certain investment funds, sophisticated investors and brokerage firms may likewise be less comfortable and less willing to invest in a corporation incorporated in a jurisdiction other than Delaware whose corporate laws may be less understood or perceived to be unresponsive to stockholder rights.

Further, a reincorporation in Nevada will provide certain corporate flexibility in connection with certain corporate transactions, including reverse stock splits, whereby our Board of Directors may be able to take certain actions without the need for stockholder approval, as discussed under "Comparative Rights of Stockholders under Delaware and Nevada Law."

#### **Comparative Rights of Stockholders Before and After the Reincorporation**

Upon consummation of the Reincorporation, the outstanding shares of our common stock will be converted into shares of the Surviving Company's common stock. Consequently, our common stockholders, whose rights as stockholders are currently governed by the DGCL and the Company's current Certificate of Incorporation and Bylaws, will become common stockholders of the Surviving Company (as the surviving corporation) whose rights will be governed by the NRS and the Articles of Incorporation and the Bylaws of the Surviving Company, which are attached hereto as Appendix B and Appendix C, respectively. The Company's current Certificate of Incorporation and Bylaws are referred to below as the "Current Charter" and "Current Bylaws", respectively, and the Surviving Company's Articles of Incorporation and Bylaws are referred to below as the "New Charter" and the "New Bylaws", respectively.

#### ***Key Changes in the Company's Charter and Bylaws to be Implemented by the Reincorporation***

The New Charter and New Bylaws differ in a number of respects from the Current Charter and Current Bylaws, respectively, copies of which have been filed with the SEC (including as exhibits to the Company's Annual Report on Form 10-K for the year-ended December 31, 2020 filed on April 30, 2021) and are also available for inspection by our stockholders upon reasonable notice during regular business hours, at our principal executive offices at 40 Marcus Drive, Suite One, Melville, New York 11747, Attention: Corporate Secretary.

There are certain differences that may affect your rights as a stockholder, as well as the corporate governance of the Surviving Company as the surviving corporation. The following are summaries of some of the more significant differences between the Current Charter and Current Bylaws, on the one hand, and the New Charter and New Bylaws, on the other. Except as described in this section, the rights of stockholders under the New Charter and New Bylaws are substantially the same as under the Current Charter and Current Bylaws.

The following discussion is a brief summary. It does not provide a complete description of the differences that may affect you. This summary is qualified in its entirety by reference to the Current Charter and Current Bylaws, and the New Charter and New Bylaws.

<b>Provisions</b>	<b>Nevada</b>	<b>Delaware</b>
Charter regarding limitation on liability	The New Charter provides that, to the fullest extent permitted by the NRS, the liability of directors and officers of the Surviving Company shall be eliminated or limited. Note that, under the NRS, this provision does not exclude exculpation for breaches of duty of loyalty and covers both directors and officers.	The Current Charter provides that, to the fullest extent permitted by the DGCL, a director of the Company shall not be liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director, except (a) for any breach of the director's duty of loyalty to the corporation or its stockholders; (b) for acts or omissions not in good faith or involving intentional misconduct or a knowing violation of law; (c) for the payment of unlawful dividends, stock repurchases or redemptions; or (d) for any transaction in which the director received an improper personal benefit. Note that, under the DGCL, exculpation only covers directors.
Charter regarding distributions to stockholders	The New Charter provides that, in accordance with the NRS, the Surviving Company may make distributions to stockholders even when, after giving effect to the distribution, the Surviving Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the Surviving Company were to be dissolved at the time of distribution, to satisfy the preferential rights upon dissolution of stockholders whose preferential rights are superior to those receiving the distribution.	Under the DGCL, a dividend may only be paid out of a corporation's surplus or, if there is no surplus, out of its net profits for the fiscal year in which the dividend is declared and/or the preceding year.
Bylaws regarding proxies	The New Bylaws provide that each proxy authorized by a stockholder shall be valid until its expiration or revocation in a manner permitted by the laws of Nevada. In Nevada, proxies are valid for six months from the date of creation unless the proxy provides for a longer period of up to seven years.	Under the DGCL, no proxy authorized by a stockholder shall be valid after three years from the date of its execution unless the proxy provides for a longer period.
Bylaws regarding removal of directors	As permitted by Nevada law, the New Bylaws provide that any director may be removed from office at any special meeting of the stockholders either with or without cause by the vote of the holders of not less than 75% of the voting power of the issued and outstanding stock entitled to vote generally in the election of directors, excluding stock entitled to vote only upon the happening of a fact or event unless such fact or event shall have occurred.	Under the DGCL, any director may be removed, with or without cause, by the stockholders, except that, in the case of a corporation whose board is classified (such as the Company), no director may be removed from office by the stockholders except for cause.
Bylaws regarding director compensation	As permitted by Nevada law, the New Bylaws provide that director compensation established pursuant to the bylaws shall be presumed to be fair to the Surviving Company unless proven unfair by a preponderance of the evidence.	Delaware law does not have a corresponding statute.
Bylaws regarding stockholder proposals	The New Bylaws provide that a stockholder proposal may be considered at a meeting of stockholders if such proposal is properly requested to be brought before such meeting by a stockholder of the Surviving Company in accordance with New Bylaws, which requires the proposal be delivered to the secretary of the Surviving Company not earlier than the 120th day and not later than the 90th day prior to the meeting and the disclosure of certain information including the name and address of the stockholder, the number of shares directly or indirectly held by the stockholder and any other information relating to the stockholder, beneficial owner or a control person of the stockholder that would be required to be disclosed in a proxy statement.	The Current Bylaws provide that a stockholder proposal may be considered at a meeting of stockholders if such proposal is properly requested to be brought before such meeting by a stockholder of the Company in accordance with Current Bylaws, which requires the proposal to be delivered to the secretary of the Company not less than 45 days nor more than 75 days prior to the one-year anniversary of the preceding year's annual meeting of stockholders; <i>provided, however</i> , that, in the event that the date of the annual meeting is advanced more than 30 days prior to such anniversary date or delayed more than 30 days after such anniversary date, then, to be timely, such notice must be received by the Company no later than the later of 90 days prior to the date of the meeting or the 10th day following the day on which public announcement of the date of the meeting was made.
Bylaws regarding forum adjudication for disputes	The New Bylaws provide that the Eighth Judicial District Court of Clark County, Nevada, shall be the sole and exclusive forum for certain categories of actions brought by stockholders as specified in the new Bylaws.	The Current Bylaws do not contain a corresponding provision.

### **Comparative Rights of Stockholders under Delaware and Nevada Law**

*General.* The statutory corporate laws of Nevada, as governed by the NRS, are similar in many respects to those of Delaware, as governed by the DGCL. However, there are certain differences that may affect your rights as a stockholder, as well as the corporate governance of the Surviving Company. The following are summaries of material differences between the current rights of stockholders of the Company and the rights of stockholders of the Surviving Company following the consummation of the Reincorporation.

The following discussion is a brief summary. It does not provide a complete description of the differences that may affect you. This summary is qualified in its entirety by reference to the NRS and DGCL, as well as the forms of the New Charter and New Bylaws, which are attached as Appendix B and Appendix C, respectively, to this proxy statement, and which will come into effect concurrently with the consummation of the Reincorporation.

*Increasing or Decreasing Authorized Capital Stock.* The NRS allows the board of directors of a corporation, unless restricted by the articles of incorporation, to increase or decrease the number of authorized shares in a class or series of the corporation's shares and correspondingly effect a forward or reverse split of any class or series of the corporation's shares (and change the par value thereof) without a vote of the stockholders, so long as the action taken does not adversely change or alter any right or preference of the stockholders and does not include any provision or provisions pursuant to which only money will be paid or scrip issued to stockholders who hold 10% or more of the outstanding

shares of the affected class and series, and who would otherwise be entitled to receive fractions of shares in exchange for the cancellation of all of their outstanding shares. Delaware law has no similar provision.

*Classified Board of Directors.* The DGCL permits any Delaware corporation to classify its board of directors into as many as three classes with staggered terms of office. If this is done, the stockholders elect only one class each year and each class would have a term of office of three years. The Current Charter and Current Bylaws provide for a classified board of directors.

The NRS also permits any Nevada corporation to classify its board of directors into as many as four classes with staggered terms of office, where at least one-fourth of the directors must be elected annually. The New Charter and New Bylaws also provide for a classified board of directors, and thus all directors will still be elected each year for a three-year term following the consummation of the Reincorporation.

*Cumulative Voting.* Cumulative voting for directors entitles each stockholder to cast a number of votes that is equal to the number of voting shares held by such stockholder multiplied by the number of directors to be elected and to cast all such votes for one nominee or distribute such votes among up to as many candidates as there are positions to be filled. Cumulative voting may enable a minority stockholder or group of stockholders to elect at least one representative to the board of directors where such stockholders would not be able to elect any directors without cumulative voting.

Although the DGCL does not generally grant stockholders cumulative voting rights, a Delaware corporation may provide in its certificate of incorporation for cumulative voting in the election of directors. The NRS also permits any Nevada corporation to provide in its articles of incorporation the right to cumulative voting in the election of directors as long as certain procedures are followed.

The Current Charter does not provide for cumulative voting in the election of directors. Similarly, the New Charter does not provide for cumulative voting.

*Vacancies.* Under both the DGCL and the NRS, vacancies on the board of directors may be filled by the affirmative vote of a majority of the remaining directors then in office, even if less than a quorum. Any director so appointed will hold office for the remainder of the term of the director no longer on the board.

*Removal of Directors.* Under the DGCL, the holders of a majority of shares of each class entitled to vote at an election of directors may vote to remove any director or the entire board without cause unless (i) the board is a classified board, in which case directors may be removed only for cause, or (ii) the corporation has cumulative voting, in which case, if less than the entire board is to be removed, no director may be removed without cause if the votes cast against his or her removal would be sufficient to elect him or her. Thus, under the DGCL, a director of a corporation that has a classified board, such as the Company, may be removed only for cause by the affirmative vote of a majority of the outstanding shares entitled to vote at an election of directors.

The NRS requires the vote of the holders of at least two-thirds of the shares or class or series of shares of the issued and outstanding stock entitled to vote at an election of directors in order to remove a director or all of the directors. Furthermore, the NRS does not make a distinction between removals for cause and removals without cause. The articles of incorporation may provide for a higher voting threshold but not a lower one.

*Fiduciary Duty and Business Judgment.* Nevada, like most jurisdictions, requires that directors and officers of Nevada corporations exercise their powers in good faith and with a view to the interests of the corporation but, unlike other jurisdictions, fiduciary duties of directors and officers are codified in the NRS. As a matter of law, directors and officers are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation in making business decisions. In performing such duties, directors and officers may exercise their business judgment through reliance on information, opinions, reports, financial statements and other financial data prepared or presented by corporate directors, officers or employees who are reasonably believed to be reliable and competent. Professional reliance may also be extended to legal counsel, public accountants, advisers, bankers or other persons reasonably believed to be competent, and to the work of a committee (on which the particular director or officer does not serve) if the committee was established and empowered by the corporation's board of directors, and if the committee's work was within its designated authority and was about matters on which the committee was reasonably believed to merit confidence. However, directors and officers may not rely on such information, opinions, reports, books of account or similar statements if they have knowledge concerning the matter in question that would make such reliance unwarranted.

Under Delaware law, members of the board of directors or any committee designated by the board of directors are similarly entitled to rely in good faith upon the records of the corporation and upon such information, opinions, reports and statements presented to the corporation by corporate officers, employees, committees of the board of directors or other persons as to matters such member reasonably believes are within such other person's professional or expert competence, provided that such other person has been selected with reasonable care by or on behalf of the corporation. Such appropriate reliance on records and other information protects directors from liability related to decisions made based on such records and other information. Unlike Delaware law, Nevada law extends the statutory protection for reliance on such persons to corporate officers.

*Flexibility for Decisions, including Takeovers.* Nevada provides directors with more discretion than Delaware in making corporate decisions, including decisions made in takeover situations. Under Nevada law, director and officer actions taken in response to a change or potential change in control are granted the benefits of the business judgment rule. However, in the case of an action that impedes the rights of stockholders to vote for or remove directors, directors will only be given the advantage of the business judgment rule if the directors have reasonable grounds to believe a threat to corporate policy and effectiveness exists and the action taken that impedes the exercise of the stockholders' rights is reasonable in relation to such threat.

In exercising their powers, including in response to a change or potential change of control, directors and officers of Nevada corporations may consider the effect of the decision on several corporate constituencies in addition to the stockholders, including the corporation's employees, suppliers, creditors and customers, the economy of the state and nation, the interests of the community and society in general, and the long-term as well as short-term interests of the corporation and its stockholders, including the possibility that these interests may be best served by the

continued independence of the corporation. To underscore the discretion of directors and officers of Nevada corporations, the NRS specifically states that such directors and officers are not required to consider the effect of a proposed corporate action upon any constituent as a dominant factor.

The DGCL does not provide a similar list of statutory factors that corporate directors and officers may consider in making decisions. In a number of cases and in certain situations, Delaware law has been interpreted to provide that fiduciary duties require directors to accept an offer from the highest bidder regardless of the effect of such sale on the corporate constituencies other than the stockholders. Thus, the flexibility granted to directors of Nevada corporations when making business decisions, including in the context of a hostile takeover, are greater than those granted to directors of Delaware corporations.

*Limitation on Personal Liability of Directors and Officers.* The NRS and the DGCL each permit corporations to adopt provisions in their charter documents that eliminate or limit the personal liability of directors to the corporation or their stockholders for monetary damages for breach of a director's fiduciary duty, subject to the differences discussed below.

Both jurisdictions preclude liability limitation for acts or omissions not in good faith or involving intentional misconduct and for paying dividends or repurchasing stock out of other than lawfully available funds. Unlike the DGCL, however, the NRS does not expressly preclude a corporation from limiting liability for a director's breach of the duty of loyalty or for any transaction from which a director derives an improper personal benefit. Alternatively, the NRS permits a corporation to renounce in its articles of incorporation any interest or expectancy to participate in specific or specified classes or categories of business opportunities. In addition, the NRS provision permitting limitation of liability applies to both directors and officers and expressly applies to liabilities owed to creditors of the corporation. Furthermore, under the NRS, it is not necessary to adopt provisions in the articles of incorporation limiting personal liability of directors as this limitation is provided by statute.

Finally, in Nevada, in order for a director or officer to be individually liable to the corporation or its stockholders or creditors for damages as a result of any act or failure to act, it must be proven that the directors' or officers' act or failure to act constituted a breach of his or her fiduciary duties as a director or officer and that the breach of those duties involved intentional misconduct, fraud or a knowing violation of law.

Thus, the NRS provides broader protection from personal liability for directors and officers than the DGCL.

*Indemnification.* The NRS and the DGCL each permit corporations to indemnify directors, officers, employees and agents in similar circumstances, subject to the differences discussed below.

In suits that are not brought by or in the right of the corporation, both jurisdictions permit a corporation to indemnify current and former directors, officers, employees and agents for attorneys' fees and other expenses, judgments and amounts paid in settlement that the person actually and reasonably incurred in connection with the action, suit or proceeding. The person seeking indemnity may recover as long as he or she acted in good faith and believed his or her actions were either in the best interests of or not opposed to the best interests of the corporation. Under the NRS, the person seeking indemnity may also be indemnified if he or she is not liable for breach of his or her fiduciary duties. Similarly, with respect to a criminal proceeding, the person seeking indemnification must not have had any reasonable cause to believe his or her conduct was unlawful.

In derivative suits, a corporation in either jurisdiction may indemnify its directors, officers, employees or agents for expenses that the person actually and reasonably incurred. A corporation may not indemnify a person if the person was adjudged to be liable to the corporation unless a court otherwise orders.

No corporation may indemnify a party unless it decides that indemnification is proper. Under the DGCL, the corporation through its stockholders, directors or independent legal counsel will determine whether the conduct of the person seeking indemnity conformed with the statutory provisions governing indemnity. Under the NRS, the corporation through its stockholders, directors or independent counsel must only determine that the indemnification is proper.

*Advancement of Expenses.* Although the DGCL and NRS have substantially similar provisions regarding indemnification by a corporation of its officers, directors, employees and agents, the NRS provides broader indemnification in connection with stockholder derivative lawsuits, in particular with respect to advancement of expenses incurred by an officer or director in defending a civil or criminal action, suit or other proceeding.

The DGCL provides that expenses incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay the amount if it is ultimately determined that he or she is not entitled to be indemnified by the corporation. A Delaware corporation has the discretion to decide whether or not to advance expenses, unless its certificate of incorporation or bylaws provide for mandatory advancement.

In contrast, under the NRS, the articles of incorporation, the bylaws or an agreement made by the corporation may provide that the corporation must pay advancements of expenses in advance of the final disposition of the action, suit or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined that he or she is not entitled to be indemnified by the corporation.

*Action by Written Consent of Directors.* Both the DGCL and NRS provide that, unless the articles or certificate of incorporation or the bylaws provide otherwise, any action required or permitted to be taken at a meeting of the directors or a committee thereof may be taken without a meeting if all members of the board or committee, as the case may be, consent to the action in writing.

*Actions by Written Consent of Stockholders.* Both the DGCL and NRS provide that, unless the articles or certificate of incorporation provides otherwise, any action required or permitted to be taken at a meeting of the stockholders may be taken without a meeting if the holders of outstanding stock having at least the minimum number of votes that would be necessary to authorize or take the action at a meeting of stockholders consent to the action in writing. In addition, the DGCL requires the corporation to give prompt notice of the taking of corporate



action without a meeting by less than unanimous written consent to those stockholders who did not consent in writing. There is no equivalent requirement under the NRS.

The NRS also permits a corporation to prohibit stockholder action by written consent in lieu of a meeting of stockholders by including such prohibition in its bylaws.

The Current Charter provides that stockholders may act by written consent if such consent is authorized by a majority of the entire Board. The New Charter contains a substantially similar provision.

*Dividends and Distributions.* Delaware law is more restrictive than Nevada law with respect to dividend payments. Unless further restricted in the certificate of incorporation, the DGCL permits a corporation to declare and pay dividends out of either (i) surplus, or (ii) if no surplus exists, out of net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year (provided that the amount of capital of the corporation is not less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets). The DGCL defines surplus as the excess, at any time, of the net assets of a corporation over its stated capital. In addition, the DGCL provides that a corporation may redeem or repurchase its shares only when the capital of the corporation is not impaired and only if such redemption or repurchase would not cause any impairment of the capital of the corporation.

The NRS provides that no distribution (including dividends on, or redemption or repurchases of, shares of capital stock) may be made if, after giving effect to such distribution, (i) the corporation would not be able to pay its debts as they become due in the usual course of business, or, (ii) except as otherwise specifically permitted by the articles of incorporation, the corporation's total assets would be less than the sum of its total liabilities plus the amount that would be needed at the time of a dissolution to satisfy the preferential rights of preferred stockholders (the condition in this clause (ii), the "Balance Sheet Test"). Directors may consider financial statements prepared on the basis of accounting practices that are reasonable in the circumstances, a fair valuation, including but not limited to unrealized appreciation and depreciation, and any other method that is reasonable in the circumstances. Pursuant to NRS 78.288(2)(b), in the New Charter, the Surviving Company is specifically allowed to make any distribution that otherwise would be prohibited by the Balance Sheet Test.

To date, the Company has not paid dividends on its shares of common stock. The payment of dividends following the consummation of the Reincorporation, if any, will be within the discretion of the board of directors of the Surviving Company. Our Board (which will be the board of directors of the Surviving Company immediately following the Reincorporation) does not anticipate that the Surviving Company will pay dividends in the foreseeable future.

*Restrictions on Business Combinations.* Both Delaware and Nevada law provide certain protections to stockholders in connection with certain business combinations. These protections can be found in NRS 78.411 to 78.444, inclusive, and Section 203 of the DGCL.

Under Section 203 of the DGCL, certain "business combinations" with "interested stockholders" of the Company are subject to a three-year moratorium unless specified conditions are met. For purposes of Section 203, the term "business combination" is defined broadly to include (i) mergers with or caused by the interested stockholder; (ii) sales or other dispositions to the interested stockholder (except proportionately with the corporation's other stockholders) of assets of the corporation or a subsidiary equal to 10% or more of the aggregate market value of either the corporation's consolidated assets or its outstanding stock; (iii) the issuance or transfer by the corporation or a subsidiary of stock of the corporation or such subsidiary to the interested stockholder (except for transfers in a conversion or exchange or a pro rata distribution or certain other transactions, none of which increase the interested stockholder's proportionate ownership of any class or series of the corporation's or such subsidiary's stock); or (iv) receipt by the interested stockholder (except proportionately as a stockholder), directly or indirectly, of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation or a subsidiary.

The three-year moratorium imposed on business combinations by Section 203 of the DGCL does not apply if: (i) prior to the time on which such stockholder becomes an interested stockholder the board of directors approves either the business combination or the transaction which resulted in the person becoming an interested stockholder; (ii) the interested stockholder owns 85% of the corporation's voting stock upon consummation of the transaction that made him or her an interested stockholder (excluding from the 85% calculation shares owned by directors who are also officers of the target corporation and shares held by employee stock plans that do not permit employees to decide confidentially whether to accept a tender or exchange offer); or (iii) at or after the time on which such stockholder becomes an interested stockholder, the board approves the business combination and it is also approved at a stockholder meeting by at least two-thirds (66-2/3%) of the outstanding voting stock not owned by the interested stockholder.

In contrast, the NRS imposes a maximum moratorium of two years versus Delaware's three-year moratorium on business combinations. However, NRS 78.411 to 78.444, inclusive, regulate combinations more stringently. First, an interested stockholder is defined as a beneficial owner of 10% or more of the voting power. Second, the two-year moratorium can be lifted only by advance approval by a corporation's board of directors, as opposed to Delaware's provision that allows interested stockholder combinations with stockholder approval at the time of such combination. Finally, after the two-year period, combinations remain prohibited unless (i) they are approved by the board of directors, the disinterested stockholders or 60% of the outstanding voting power not beneficially owned by the interested party and its affiliates and associates or (ii) the interested stockholders satisfy certain fair value requirements. But note that these statutes do not apply to any combination of a corporation and an interested stockholder after the expiration of four years after the person first became an interested stockholder.

Companies are entitled to opt out of the business combination provisions of the DGCL and NRS. The Company has not opted out of the business combination provisions of Section 203 of the DGCL. In the New Charter, the Surviving Company does not opt out of the business combination provisions of NRS 78.411 to 78.444, inclusive.

*Acquisition of Controlling Interests.* In addition to the restrictions on business combinations with interested stockholders, Nevada law also protects the corporation and its stockholders from persons acquiring a "controlling interest" in a corporation. The provisions can be found in NRS 78.378 to 78.3793, inclusive. Delaware law does not have similar provisions.

Pursuant to NRS 78.379, any person who acquires a controlling interest in a corporation may not exercise voting rights on any control shares unless such voting rights are conferred by a majority vote of the disinterested stockholders of the issuing corporation at a special meeting of such stockholders held upon the request and at the expense of the acquiring person. NRS 78.3785 provides that a “controlling interest” means the ownership of outstanding voting shares of an issuing corporation sufficient to enable the acquiring person, individually or in association with others, directly or indirectly, to exercise (i) one fifth or more but less than one third, (ii) one third or more but less than a majority or (iii) a majority or more of the voting power of the issuing corporation in the election of directors, and voting rights must be conferred by a majority of the disinterested stockholders as each threshold is reached and/or exceeded. In the event that the control shares are accorded full voting rights and the acquiring person acquires control shares with a majority or more of all the voting power, any stockholder, other than the acquiring person, who does not vote in favor of authorizing voting rights for the control shares is entitled to demand payment for the fair value of such person’s shares, and the corporation must comply with the demand.

NRS 78.378(1) provides that the control share statutes of the NRS do not apply to any acquisition of a controlling interest in an issuing corporation if the articles of incorporation or bylaws of the corporation in effect on the 10th day following the acquisition of a controlling interest by the acquiring person provide that the provisions of those sections do not apply to the corporation or to an acquisition of a controlling interest specifically by types of existing or future stockholders, whether or not identified. In addition, NRS 78.3788 provides that the control share statutes of the NRS apply only to a corporation that has 200 or more stockholders, at least 100 of whom are stockholders of record and residents of Nevada, and which does business directly or indirectly in Nevada. NRS 78.378(2) provides that the corporation may impose stricter requirements if it so desires.

*Stockholder Vote for Mergers and Other Corporate Reorganizations.* Under the DGCL, unless the certificate of incorporation specifies a higher percentage, the stockholders of a corporation that is being acquired in a merger or selling substantially all of its assets must authorize such merger or sale of assets by vote of an absolute majority of outstanding shares entitled to vote. The corporation’s board of directors must also approve such transaction.

Similarly, under the NRS, a merger or sale of all assets requires authorization by stockholders of the corporation being acquired or selling its assets by an absolute majority of outstanding shares entitled to vote, as well as approval of such corporation’s board of directors. However, it is not entirely clear under Nevada law if stockholder authorization is required for the sale of less than all of the assets of a corporation. Although a substantial body of case law has been developed in Delaware as to what constitutes the “sale of substantially all of the assets” of a corporation, it is difficult to determine the point at which a sale of virtually all, but less than all, of a corporation’s assets would be considered a “sale of all of the assets” of the corporation for purposes of Nevada law. It is likely that many sales of less than all of the assets of a corporation requiring stockholder authorization under Delaware law would not require stockholder authorization under Nevada law.

The DGCL and NRS have substantially similar provisions with respect to approval by stockholders of a surviving corporation in a merger. The DGCL does not require a stockholder vote of a constituent corporation in a merger (unless the corporation provides otherwise in its certificate of incorporation) if (i) the plan of merger does not amend the existing certificate of incorporation, (ii) each share of stock of such constituent corporation outstanding immediately before the effective date of the merger is an identical outstanding share after the effective date of merger and (iii) either no shares of the common stock of the surviving corporation and no shares, securities or obligations convertible into such stock are to be issued or delivered under the plan of merger, or the authorized unissued shares or treasury shares of the common stock of the surviving corporation to be issued or delivered under the plan of merger plus those initially issuable upon conversion of any other shares, securities or obligations to be issued or delivered under such plan do not exceed 20% of the shares of common stock of such constituent corporation outstanding immediately prior to the effective date of the merger. The NRS does not require a stockholder vote of the surviving corporation in a merger under substantially similar circumstances.

The Current Charter does not require a higher percentage to vote to approve certain corporate transactions. The New Charter also does not specify a higher percentage.

*Appraisal or Dissenter’s Rights.* In both jurisdictions, dissenting stockholders of a corporation engaged in certain major corporate transactions are entitled to appraisal rights. Appraisal rights permit a stockholder to receive cash equal to the fair market value of the stockholder’s shares (as determined by agreement of the parties or by a court) in lieu of the consideration such stockholder would otherwise receive in any such transaction.

Under Section 262 of the DGCL, appraisal rights are generally available for the shares of any class or series of stock of a Delaware corporation in a merger or consolidation, provided that no appraisal rights are available with respect to shares of any class or series of stock if, at the record date for the meeting held to approve such transaction, such shares of stock, or depositary receipts in respect thereof, are either (i) listed on a national securities exchange or (ii) held of record by more than 2,000 holders, unless the stockholders receive in exchange for their shares anything other than shares of stock of the surviving or resulting corporation (or depositary receipts in respect thereof), or of any other corporation that is listed on a national securities exchange or held by more than 2,000 holders of record, cash in lieu of fractional shares or fractional depositary receipts described above or any combination of the foregoing.

In addition, Section 262 of the DGCL allows beneficial owners of shares to file a petition for appraisal without the need to name a nominee holding such shares on behalf of such owner as a nominal plaintiff and makes it easier than under Nevada law to withdraw from the appraisal process and accept the terms offered in the merger or consolidation. Under the DGCL, no appraisal rights are available to stockholders of the surviving or resulting corporation if the merger did not require their approval. The Current Charter and Current Bylaws do not provide for appraisal rights in addition to those provided by the DGCL.

Under the NRS, a stockholder is entitled to dissent from, and obtain payment for, the fair value of his or her shares in the event of (i) certain acquisitions of a controlling interest in the corporation, (ii) consummation of a plan of merger, if approval by the stockholders is required and the stockholder is entitled to vote on the merger or if the domestic corporation is a subsidiary and is merged with its parent, (iii) a plan of exchange in which the corporation is a party or (iv) any corporate action taken pursuant to a vote of the stockholders, if the articles of incorporation, bylaws or a resolution of the board of directors provides that voting or nonvoting stockholders are entitled to dissent and obtain payment for their shares.

Holders of securities that are listed on a national securities exchange or traded in an organized market and held by at least 2,000 stockholders of record with a market value of at least \$20,000,000 are generally not entitled to dissenter's rights. However, this exception is not available if (i) the articles of incorporation of the corporation issuing the shares provide that such exception is not available, (ii) the resolution of the board of directors approving the plan of merger, conversion or exchange expressly provides otherwise or (iii) the holders of the class or series of stock are required under the plan of merger or exchange to accept for the shares anything except cash, shares of stock as described in NRS 92A.390(3) or a combination thereof. The NRS prohibits a dissenting stockholder from voting his or her shares or receiving certain dividends or distributions after his or her dissent. Like the Current Charter and Current Bylaws, the New Charter and New Bylaws do not provide for dissenter's rights in addition to those provided by the NRS.

The mechanics and timing procedures vary somewhat between Delaware and Nevada but both require technical compliance with specific notice and payment protocols.

*Special Meetings of the Stockholders.* The DGCL permits special meetings of stockholders to be called by the board of directors or by any other person authorized in the certificate of incorporation or bylaws to call a special stockholder meeting.

In contrast, the NRS permits special meetings of stockholders to be called by the entire board of directors, any two directors or the President, unless the articles of incorporation or bylaws provide otherwise.

Under the Current Bylaws, a special meeting of stockholders may be called by our Board or by the Chairman of our Board. The New Bylaws contain a substantially similar provision.

*Special Meetings Pursuant to Petition of Stockholders.* The DGCL provides that a director or a stockholder of a corporation may apply to the Court of Chancery of Delaware if the corporation fails to hold an annual meeting for the election of directors or there is no written consent to elect directors in lieu of an annual meeting for a period of 30 days after the date designated for the special meeting or, if there is no date designated, within 13 months after the last annual meeting.

Nevada law is more restrictive. Under the NRS, stockholders having not less than 15% of the voting interest may petition the district court to order a meeting for the election of directors if a corporation fails to call a meeting for that purpose within 18 months after the last meeting at which directors were elected.

*Adjournment of Stockholder Special Meetings.* Under the DGCL, if a meeting of stockholders is adjourned due to lack of a quorum and the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting must be given to each stockholder of record entitled to vote at the meeting. At the adjourned meeting the corporation may transact any business that might have been transacted at the original meeting.

In contrast, under the NRS, a corporation is not required to give any notice of an adjourned meeting or of the business to be transacted at an adjourned meeting, other than by announcement at the meeting at which the adjournment is taken, unless the board fixes a new record date for the adjourned meeting or the meeting date is adjourned to a date more than 60 days later than the date set for the original meeting, in which case a new record date must be fixed and notice given.

*Duration of Proxies.* Under the DGCL, a proxy executed by a stockholder will remain valid for a period of three years, unless the proxy provides for a longer period.

Under the NRS, a proxy is effective only for a period of six months, unless it is coupled with an interest or unless otherwise provided in the proxy, which duration may not exceed seven years. The NRS also provides for irrevocable proxies, without limitation on duration, in limited circumstances.

*Quorum and Voting.* The DGCL provides that the certificate of incorporation and bylaws may establish quorum and voting requirements, but in no event shall quorum consist of less than one-third of the shares entitled to vote. If the certificate of incorporation and bylaws are silent as to specific quorum and voting requirements: (a) a majority of the shares entitled to vote shall constitute a quorum at a meeting of stockholders; (b) in all matters other than the election of directors, the affirmative vote of the majority of shares present at the meeting and entitled to vote on the subject matter shall be the act of the stockholders; (c) directors shall be elected by a plurality of the votes of the shares present at the meeting and entitled to vote on the election of directors; and (d) where a separate vote by a class or series is required, a majority of the outstanding shares of such class or series shall constitute a quorum entitled to take action with respect to that vote on that matter and, in all matters other than the election of directors, the affirmative vote of the majority of shares of such class or series present at the meeting shall be the act of such class or series or classes or series. A bylaw amendment adopted by stockholders which specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the board. The Current Bylaws provide that (A) holders of one-third of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business, (b) directors are to be elected by plurality vote and (c) all other matters are to be determined by majority vote of the shares present and voting, other than as required by the DGCL or the Company's governing documents.

The NRS provides that, unless the articles of incorporation or bylaws provide otherwise, a majority of the voting power of the corporation, present in person or by proxy at a meeting of stockholders (regardless of whether the proxy has authority to vote on all matters), constitutes a quorum for the transaction of business. Action by the stockholders on a matter other than the election of directors is approved if the number of votes cast in favor of the action exceeds the number of votes cast in opposition to the action. Unless provided otherwise in the corporation's articles of incorporation or bylaws, directors are elected at the annual meeting of stockholders by plurality vote. The New Bylaws provide that one-third of the votes entitled to be cast on any matter shall constitute a quorum. The New Charter and New Bylaws do not change the statutory rule with respect to voting requirements for approval of an action.

*Stockholder Inspection Rights.* The DGCL grants any stockholder or beneficial owner of shares the right, upon written demand under oath stating the proper purpose thereof, either in person or by attorney or other agent, to inspect and make copies and extracts from a corporation's stock ledger, list of stockholders and its other books and records for any proper purpose. A proper purpose is one reasonably related to such person's interest as a stockholder.

Inspection rights under Nevada law are more limited. The NRS grants any person who has been a stockholder of record of a corporation for at least six months immediately preceding the demand, or any person holding, or thereunto authorized in writing by the holders of, at least 5% of all of its outstanding shares, upon at least five days' written demand the right to inspect in person or by agent or attorney, during usual business hours (i) the articles of incorporation and all amendments thereto, (ii) the bylaws and all amendments thereto and (iii) a stock ledger or a duplicate stock ledger, revised annually, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, if known, and the number of shares held by them respectively. A Nevada corporation may require a stockholder to furnish the corporation with an affidavit that such inspection is for a proper purpose related to his or her interest as a stockholder of the corporation.

In addition, the NRS grants certain stockholders the right to inspect the books of account and records of a corporation for any proper purpose. The right to inspect the books of account and all financial records of a corporation, to make copies of records and to conduct an audit of such records is granted only to a stockholder who owns at least 15% of the issued and outstanding shares of a Nevada corporation, or who has been authorized in writing by the holders of at least 15% of such shares. However, these requirements do not apply to any corporation that furnishes to its stockholders a detailed annual financial statement or any corporation that has filed during the preceding 12 months all reports required to be filed pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934.

### **Anti-Takeover Implications of the Proposed Reincorporation**

Delaware law and the Company's certificate of incorporation and bylaws contain provisions that may have the effect of deterring hostile takeover attempts. A hostile takeover attempt may have a positive or negative effect on the Company and its stockholders, depending on the circumstances surrounding a particular takeover attempt. Takeover attempts that have not been negotiated or approved by the Board of Directors can be opportunistically timed and unfairly priced to take advantage of an artificially depressed stock price. Takeover attempts can also be coercively structured, can seriously disrupt the business and management of a corporation and can generally present a risk of terms that may be less favorable than would be available in a board-approved transaction. Board-approved transactions may be carefully planned and undertaken at an opportune time in order to obtain maximum value for the corporation and all of its stockholders by determining and pursuing the best strategic alternative, obtaining negotiating leverage to achieve the best terms available, and giving due consideration to matters such as tax planning, the management and business of the acquiring corporation and the most effective deployment of corporate assets.

The Board of Directors recognizes that hostile takeover attempts do not always have the unfavorable consequences or effects described above and may be beneficial to stockholders, providing them with considerable value for their shares. However, the Board of Directors believes that the potential disadvantages of unapproved takeover attempts are sufficiently great that prudent measures are needed to give the Board the time and flexibility to determine and pursue potentially superior strategic alternatives and take other appropriate action in an effort to maximize stockholder value. Accordingly, the Company's certificate of incorporation and bylaws include certain provisions that are intended to accomplish these objectives, but which may have the effect of discouraging or deterring hostile takeover attempts.

Nevada law includes some features that may deter hostile takeover attempts. The New Charter contains anti-takeover provisions similar to those set forth in the Current Charter.

Notwithstanding these similarities, there are a number of differences between Nevada and Delaware law and between the governing documents of the Surviving Company and the Company which could have a bearing on unapproved takeover attempts as discussed in "Comparative Rights of Stockholders Before and After the Reincorporation" and "Comparative Rights of Stockholders under Delaware and Nevada Law" above.

Certain anti-takeover provisions set forth in the Current Charter and the New Charter are as follows:

- The governing documents of the Company and the Surviving Company establish a classified board of directors.
- The governing documents of the Company and the Surviving Company do not allow stockholders to act by written consent unless otherwise approved by the Board of Directors.
- The governing documents of the Company allow stockholders to remove directors only for cause and with the affirmative vote of holders of 75% of the Company's voting power. The governing documents of the Surviving Company allow stockholders to remove directors with or without cause and with the affirmative vote of holders of 75% of the Company's voting power.
- The governing documents of the Company and the Surviving Company allow the Board of Directors alone to fill any directorship vacancies.
- The governing documents of the Company and the Surviving Company allow the Board of Directors or the Chairman of the Board to call a special meeting of stockholders.
- The governing documents of the Company and the Surviving Company provide that any amendments to the bylaws and certain amendments to the certificate of incorporation or articles must be approved by holders of 75% of the voting power of the Company.

The inclusion of anti-takeover provisions in the New Charter and New Bylaws does not reflect knowledge on the part of the Board of Directors or management of any proposed takeover or other attempt to acquire control of the Company. Management may in the future propose other measures designed to address hostile takeovers apart from those discussed in this proxy statement, if warranted from time to time in the judgment of the Board of Directors.

## **Vote Required**

The approval and adoption of the Reincorporation of the Company from the State of Delaware to the State of Nevada pursuant to the Merger Agreement requires the affirmative vote of the holders of a majority of the outstanding shares of common stock entitled to vote.

## **Recommendation**

**The Board of Directors recommends a vote FOR approval of the Reincorporation.**

### **PROPOSAL 4: AMENDMENT TO CERTIFICATE OF INCORPORATION TO EFFECT A REVERSE STOCK SPLIT**

Our Board of Directors has adopted and is recommending that our stockholders approve proposed amendments to our Certificate of Incorporation, and thereby authorize the Board of Directors to select and file one such amendment, to effect a reverse stock split of our outstanding shares of common stock in the event the Reincorporation is not approved. Holders of our common stock are being asked to approve the proposal that Article Four of our Certificate of Incorporation be amended to effect a reverse stock split of our common stock at a ratio of not less than 1-for-20 and not more than 1-for-4000, with the Board of Directors having the discretion as to whether or not the reverse stock split is to be effected, and with the exact ratio to be determined in the discretion of our Board of Directors. Pursuant to the law of the State of Delaware, our state of incorporation, the Board of Directors must adopt the amendments to our Certificate of Incorporation and submit the amendments to stockholders for their approval.

By approving this proposal, stockholders will (i) approve a series of amendments to our Certificate of Incorporation pursuant to which any whole number of outstanding shares between and including twenty (20) and four thousand (4000) would be combined into one share of our common stock and (ii) authorize our Board of Directors to file only one such amendment, as determined by our Board of Directors in the manner described herein, and to abandon each amendment not selected by our Board of Directors. Our Board of Directors believes that stockholder approval of amendments granting our Board of Directors this discretion, rather than approval of a specified ratio, provides our Board of Directors with maximum flexibility to react to then-current market conditions and, therefore, is in the best interests of the Company and its stockholders. The Board of Directors may effect only one reverse stock split as a result of this authorization. The Board of Directors may also elect not to effect any reverse stock split. In determining whether to implement the reverse stock split following the receipt of stockholder approval, our Board of Directors may consider, among other things, factors such as:

- the historical trading price and trading volume of our common stock;
- the then prevailing trading price and trading volume of our common stock and the anticipated impact of the reverse stock split on the trading market for our common stock;
- our ability to have our shares of common stock listed on a stock exchange such as The Nasdaq Stock Market;
- the anticipated impact of the reverse stock split on our ability to raise additional financing (see “Reasons for the Reverse Stock Split” below);
- which alternative split ratio would result in the greatest overall reduction in our administrative costs; and
- prevailing general market and economic conditions.

Although our stockholders may approve the reverse stock split, we will not effect the reverse stock split if the Board of Directors does not deem it to be in the best interests of the Company and its stockholders. The reverse stock split, if authorized pursuant to this resolution and if deemed by the Board of Directors to be in the best interests of the Company and its stockholders, will be effected, if at all, at a time that is not later than one year from the date of the Annual Meeting of Stockholders.

If our Board of Directors determines that effecting the reverse stock split is in our best interest, the reverse stock split will become effective upon filing of an amendment to our Certificate of Incorporation with the Secretary of State of the State of Delaware. The amendment filed thereby will set forth the number of shares to be combined into one share of our common stock within the limits set forth in this proposal. Except for adjustments that may result from the treatment of fractional shares as described below, each stockholder will hold the same percentage of our outstanding common stock immediately following the reverse stock split as such stockholder holds immediately prior to the reverse stock split.

### **Reasons for the Reverse Stock Split**

Our Board of Directors believes that a reverse stock split is desirable for two reasons. First, the Board of Directors believes that a reverse stock split could improve the marketability and liquidity of our common stock. Second, the Board of Directors believes that a reverse stock split may facilitate the listing of our common stock on a stock exchange such as The Nasdaq Stock Market.

#### *Marketability*

Our Board of Directors believes that the increased market price of our common stock expected as a result of implementing a reverse stock split could improve the marketability and liquidity of our stock and could encourage interest and trading in our stock. Theoretically, the number of shares outstanding and the per share price should not, by themselves, affect the marketability of our common stock, the type of investor who acquires them, or our reputation in the financial community. However, in practice, we believe this is not necessarily the case, as we believe that many investors view low-priced stocks (which we believe constitute stocks that trade and/or quote, as applicable, at or below \$5.00 per share) as speculative and generally avoid the purchase of such securities. Our Board of Directors believes that there is a reluctance of many brokerage firms to recommend low-priced stocks to their retail clients (whether due to internal restrictions and/or limitations or otherwise). Further, we believe that certain brokerage house policies and practices tend to discourage individual brokers who administer brokerage accounts within those firms from encouraging their clients to transact trades in low-priced stocks. In addition, institutional investors, pursuant to internal policies, often are

restricted and/or limited from investing in companies whose stocks trade at less than \$5.00 per share. Stockbrokers are also subject to certain restrictions on their ability to recommend stocks to their retail clients trading at less than \$5.00 per share because of what we believe to be a general presumption in the industry that such securities are highly speculative. In addition, the structure of trading commissions tends to have an adverse impact upon purchasers of low-priced stocks because the brokerage commission on a sale of such securities generally represents a higher percentage of the purchase/sales price than the commission on a relatively higher-priced issue.

The reverse stock split is intended, in part, to result in a price level for our common stock that will increase investor interest and possibly eliminate, or at the least reduce, the resistance of brokerage firms. On June 23, 2021, the closing bid price for our common stock, as reported by the OTC Market, was \$0.00755 per share. No assurances can be given that the market price for our common stock will increase in the same proportion as the reverse stock split or, if increased, that such price will be maintained. In addition, no assurances can be given that the reverse stock split will increase the price of our common stock to a level in excess of the \$5.00 threshold discussed above or otherwise to a level that is attractive to brokerage houses and retail and institutional investors.

### *Stock Exchange Requirements*

Our common stock is currently traded on the OTC Market. Such trading market is considered to be less efficient than that provided by a stock exchange such as The Nasdaq Stock Market. We intend to apply to have our common stock listed on The Nasdaq Stock Market. In order for us to list our common stock on The Nasdaq Stock Market, we must fulfill certain listing requirements. Set forth below are certain minimum quantitative listing requirements that we must meet, together with a comparison of how we currently stand with regard to the requirements.

Category	Nasdaq Requirement	BioRestorative Therapies, Inc.
Stockholders' equity (deficiency)	\$5,000,000 (3)	(\$2,694,382) (as of March 31, 2021)
Minimum bid price	\$4 (4)	\$0.00755 (as of June 23, 2021)
Unrestricted publicly-held shares (1)	1,000,000	2,793,076,468 (as of June 23, 2021)
Market value of unrestricted publicly-held shares (1)	\$15,000,000 (3)	\$21,087,727 (as of June 23, 2021)
Unrestricted round lot stockholders (2)	300	approximately 328 (as of June 23, 2021)

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- (1) "Unrestricted publicly-held shares" is defined as total shares outstanding less (a) any shares held by officers, directors and beneficial owners of 10% or more of our outstanding shares and (b) any shares subject to resale restrictions for any reason.
  - (2) Unrestricted round lot stockholders are record or beneficial holders of 100 unrestricted publicly-held shares or more. At least one-half of the minimum number of such round lot holders must each hold unrestricted shares with a minimum value of \$2,500.
  - (3) Nasdaq's listing rules provide for an alternative \$4,000,000 stockholders' equity requirement, but that threshold must be met in combination with a requirement that either (a) the market value of our outstanding common stock be at least \$50,000,000 (the "Market Value Standard") or (b) we have net income from continuing operations of \$750,000 in the latest fiscal year or two of the last three fiscal years and at least a \$5,000,000 market value of publicly held shares.
  - (4) Nasdaq's listing rules provide for an alternative \$3 minimum closing price requirement, but that threshold must be met in combination with a requirement that we have (a) average annual revenues of \$6,000,000 for three years or (b) net tangible assets of \$5,000,000 or (c) net tangible assets of \$2,000,000 and a three year operating history (the "Alternative Price Requirements"). Nasdaq's listing requirements also provide for an alternative \$2 minimum closing price requirement, but that threshold must be met in combination with the Market Value Standard and the Alternative Price Requirements.

The Nasdaq Stock Market also requires that an applicant have at least three market makers and comply with certain corporate governance requirements, including having at least three Audit Committee members (each of whom must be independent), at least two Compensation Committee members (each of whom must be independent) and a Board of Directors with a majority of independent members. In addition, director nominees must be selected, or recommended to the Board of Directors for selection, either by independent directors constituting a majority of the Board of Directors in a vote in which only independent directors participate or by a Nominating Committee comprised solely of independent directors. Currently, we satisfy the Audit Committee, Compensation Committee, Nominating Committee and Board of Directors composition and independence requirements. We do not currently satisfy the above independent director requirements.

No assurance can be given that, even if we satisfy the above listing requirements, our application to have our common stock listed on The Nasdaq Stock Market will be approved, or that, if our common stock is listed on The Nasdaq Stock Market, we will be able to satisfy the maintenance requirements for continued listing.

### **Effects of the Reverse Stock Split**

If the reverse stock split is approved and implemented, the principal effect will be to proportionately decrease the number of outstanding shares of our common stock based on the reverse stock split ratio selected by our Board of Directors. We have registered our common stock as a class under Section 12(g) of the Exchange Act, and we are subject to the periodic reporting and other requirements of the Exchange Act. Our shares of common stock currently trade on the OTC Market under the symbol "BRTX". The reverse stock split will not affect the registration of our common stock under the Exchange Act or the listing of our common stock on the OTC Market. Following the reverse stock split, our common

stock will continue to be listed on the OTC Market under the symbol “BRTX,” although it will be considered a new listing with a new CUSIP number. See, however, “Stock Exchange Requirements” above with regard to the contemplated application to list our common stock on The Nasdaq Stock Market.

Proportionate voting rights and other rights and preferences of the holders of our common stock will not be affected by the proposed reverse stock split (other than with regard to fractional shares as described below). For example, a holder of 2% of the voting power of the outstanding shares of our common stock immediately prior to the effectiveness of the reverse stock split will generally continue to hold 2% of the voting power of the outstanding shares of our common stock immediately following the reverse stock split. Moreover, the number of stockholders of record will not be affected by the reverse stock split. After the reverse stock split, the shares of our common stock will have the same voting rights and rights to dividends and distributions as, and will be identical in all other respects to, our common stock now authorized.

### **Risks Associated with the Reverse Stock Split**

There are risks associated with the reverse stock split, including that the reverse stock split may not result in a sustained increase in the per share price of our common stock. There is no assurance that:

- the market price per share of our common stock after the reverse stock split will rise in proportion to the reduction in the number of shares of our common stock outstanding;
- the reverse stock split will result in a per share price that will attract brokers and investors who do not trade in lower priced stocks; or
- the market price per share will either exceed or remain in excess of the minimum bid price required by The Nasdaq Stock Market, or that we will otherwise meet the requirements of The Nasdaq Stock Market.

### **Board Discretion to Implement or Abandon Reverse Stock Split**

The reverse stock split will be effected, if at all, only upon a determination by our Board of Directors that the reverse stock split (with a ratio determined by our Board of Directors as described above) is in our best interest. Such determination shall be based upon certain factors, including, but not limited to, our ability to meet stock exchange listing requirements, existing and expected marketability and liquidity of our common stock and the expense of effecting the reverse stock split. Notwithstanding approval of the reverse stock split by our stockholders, our Board of Directors may, in its sole discretion, abandon the proposal and determine, prior to the effectiveness of any filing with the Secretary of State of the State of Delaware, not to effect the reverse stock split. If our Board of Directors fails to implement the reverse stock split on or prior to the one year anniversary of this meeting, stockholder approval again would be required prior to implementing any reverse stock split.

### **Reduction in Authorized Common Stock**

In the event the Reverse Stock Split Proposal is approved, then, subject to stockholder approval of Proposal 5: “Amendment to Certificate of Incorporation to Reduce Number of Authorized Shares of Common Stock”, we may reduce the number of authorized shares of common stock, as discussed in Proposal 5.

### **Potential Anti-Takeover Effects of a Reverse Stock Split**

Release No. 34-15230 of the staff of the SEC requires disclosure and discussion of the effects of any action, including the proposals discussed herein, that may be used as an anti-takeover mechanism. As discussed in Proposal 5: “Amendment to Certificate of Incorporation to Reduce Number of Authorized Shares of Common Stock”, the reverse stock split, if effected, may result in a relative increase in the number of authorized but unissued shares of our common stock vis-à-vis the outstanding shares of our common stock and, could, under certain circumstances, have an anti-takeover effect, although this is not the purpose or intent of our Board of Directors. A relative increase in the number of authorized shares of common stock could have other effects on our stockholders, depending upon the exact nature and circumstances of any actual issuances of authorized but unissued shares. A relative increase in our authorized shares could potentially deter takeovers, including takeovers that our Board of Directors has determined are not in the best interest of our stockholders, in that additional shares could be issued (within the limits imposed by applicable law) in one or more transactions that could make a change in control or takeover more difficult. For example, we could issue additional shares so as to dilute the stock ownership or voting rights of persons seeking to obtain control without our agreement. Similarly, the issuance of additional shares to certain persons allied with our management could have the effect of making it more difficult to remove our current management by diluting the stock ownership or voting rights of persons seeking to cause such removal. The reverse stock split therefore may have the effect of discouraging unsolicited takeover attempts. By potentially discouraging initiation of any such unsolicited takeover attempts, the reverse stock split may limit the opportunity for our stockholders to dispose of their shares at the higher price generally available in takeover attempts or that may be available under a merger proposal. However, the Board of Directors is not aware of any attempt to take control of our Company and the Board of Directors has not considered the reverse stock split to be a tool to be utilized as a type of anti-takeover device.

### **Effective Date**

If implemented by our Board of Directors, the reverse stock split would become effective upon the filing of an amendment to our Certificate of Incorporation with the Secretary of State of the State of Delaware. On the effective date, shares of common stock issued and outstanding immediately prior thereto will be combined and converted, automatically and without any action on the part of the stockholders, into new shares of common stock in accordance with the reverse stock split ratio determined by the Board of Directors within the limits set forth in this proposal.

### **Fractional Shares**

No fractional shares of common stock will be issued as a result of the reverse stock split. Instead, stockholders who otherwise would be entitled to receive fractional shares will be entitled to receive a whole share of common stock.

## **Effect on Outstanding Stock Options and Warrants**

All outstanding options and warrants to purchase shares of our common stock, including any held by our officers and directors, would be adjusted as a result of the reverse stock split. In particular, the number of shares issuable upon the exercise of each instrument would be reduced, and the exercise price per share would be increased, in accordance with the terms of each instrument and based on the ratio of the reverse stock split.

Our 2021 Stock Incentive Plan (the “Plan”) is designed primarily to provide stock-based incentives to employees and non-employee directors. There are currently 4,700,000,000 shares of common stock authorized to be issued pursuant to the Plan, of which 1,173,917,974 shares of restricted stock have been issued and 2,347,835,948 shares are issuable upon the exercise of outstanding options. If the reverse stock split is approved by our stockholders and our Board of Directors decides to implement the reverse stock split, as of the effective date, the number of shares issuable pursuant to the Plan will be proportionately adjusted downward using the reverse stock split ratio selected by our Board of Directors.

## **Other Effect**

If approved and implemented, the reverse stock split will result in some stockholders owning “odd-lots” of fewer than 100 shares of common stock. Brokerage commissions and other costs of transactions in odd-lots are generally somewhat higher than the costs of transactions in “round-lots” of even multiples of 100 shares.

## **Exchange of Stock Certificates**

As soon as practicable after the effective date, stockholders will be notified that the reverse stock split has been effected. Our transfer agent will act as exchange agent for purposes of implementing the exchange of stock certificates. Holders of pre-reverse stock split shares (“Old Shares”) may be asked to surrender to the exchange agent certificates representing pre-reverse stock split shares in exchange for certificates representing post-reverse stock split shares (“New Shares”). No new certificates will be issued to a stockholder until such stockholder has surrendered such stockholder’s outstanding certificate(s) together with any other documentation required by the exchange agent. **Stockholders should not destroy any stock certificate representing Old Shares.**

## **No Appraisal Rights**

Under the Delaware General Corporation Law, our stockholders are not entitled to appraisal rights with respect to the proposed amendment to our Certificate of Incorporation to effect the reverse stock split.

## **Tax Consequences**

The proposed reverse stock split is being presented for approval based upon the expectation that, among other things, no gain or loss will be recognized by the holders of our common stock or by us.

Each stockholder will have a basis in the New Shares equal to the basis of the Old Shares. For purposes of determining whether gain or loss on a subsequent disposition is long-term or short-term, the holding period of the New Shares will include the period during which the corresponding Old Shares were held, provided such corresponding Old Shares were held as a capital asset on the date of filing of the amendment to our Certificate of Incorporation.

No ruling has been requested from the Internal Revenue Service with respect to the foregoing tax matters. **Stockholders should consult their own tax advisors as to the effect of the reverse stock split under applicable tax laws.**

## **Vote Required**

**The approval and adoption of the proposal to authorize our Board of Directors to effect a reverse stock split requires the affirmative vote of stockholders who hold a majority of the outstanding shares of common stock entitled to vote.**

## **Recommendation**

**The Board of Directors recommends that stockholders vote FOR the approval of the proposal to authorize the Board of Directors to effect the reverse stock split, as described above.**

## **PROPOSAL 5: AMENDMENT TO CERTIFICATE OF INCORPORATION TO REDUCE NUMBER OF AUTHORIZED SHARES OF COMMON STOCK**

In the event the Board, pursuant to stockholder authority, determines to effect a reverse stock split, as discussed in Proposal 4: “Amendment to Certificate of Incorporation to Effect a Reverse Stock Split” above, the number of shares of common stock that will be outstanding will be proportionately reduced based on the reverse stock split ratio selected. The number of shares of common stock that were issued and outstanding as of June 24, 2021 was 3,188,844,445. The number of shares of common stock that we are authorized to issue is 300,000,000,000.

The proposal being submitted to the stockholders provides that, in the event a reverse stock split is effected, our Board will have the discretion to reduce the number of our authorized shares of common stock to a number which results in a ratio of authorized shares of common stock to issued and outstanding shares of common stock that most closely approximates the ratio of our authorized common stock to issued and outstanding common stock immediately prior to the reverse stock split. Accordingly, assuming that our Board determines to implement a 1-for-1000 reverse stock split (which, based on the number of issued and outstanding shares of common stock as of June 24, 2021, would reduce the number of issued and outstanding shares to approximately 3,188,844), our Board would have the authority to reduce our authorized common stock



in the same proportion to 3,000,000,000. However, our Board will have the sole discretion to determine whether or not to implement such a reduction in authorized shares of common stock in connection with the reverse stock split. Alternatively, our Board will have the sole discretion to implement a reduction in authorized shares of common stock to a lesser or greater degree such that, following the reverse stock split, the ratio of authorized shares of common stock to issued and outstanding shares of common stock would be higher or lower than that in effect prior to the reverse stock split. Therefore, in the event that our Board determines to implement a reverse stock split but not to implement a proportionate or greater reduction in authorized shares of common stock, we would, in effect, have authority to issue a greater number of shares of common stock than prior to the reverse stock split.

### Vote Required

**The approval of the amendment to our Certificate of Incorporation to reduce the number of authorized shares of common stock requires the affirmative vote of stockholders who hold a majority of the outstanding shares of common stock entitled to vote.**

### Recommendation

**The Board of Directors recommends a vote FOR the approval of the proposal to authorize our Board of Directors, in connection with a reverse stock split and in its discretion, to reduce the number of shares of common stock authorized to be issued.**

## PROPOSAL 6: RATIFICATION OF SELECTION OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Audit Committee of our Board of Directors has selected Friedman LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2021.

Although ratification by stockholders is not required by our organizational documents or other applicable law, our Board of Directors has determined that requesting ratification by stockholders of the appointment of Friedman LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2021 is a matter of good corporate practice. If stockholders do not ratify the selection, the Audit Committee of our Board may reconsider whether or not to retain Friedman LLP, but may still retain them. Even if the selection is ratified, the Audit Committee, in its discretion, may change the appointment at any time during the year if it determines that such a change would be in the best interests of us and our stockholders.

Friedman LLP served as our independent registered public accountants for the fiscal years ended December 31, 2020 and 2019.

It is not expected that a representative of Friedman LLP will attend the meeting.

The following is a summary of the fees billed or expected to be billed to us by Friedman LLP for professional services rendered with respect to the fiscal years ended December 31, 2020 and 2019 and by Marcum LLP, our former independent registered public accountants, for professional services rendered with respect to the fiscal year ended December 31, 2019:

Fee Category	Friedman LLP		Marcum LLP	
	2020	2019	2019	
Audit Fees(1)	\$ 80,000	\$ 45,000	\$ 92,000	
Audit-Related Fees(2)	-	-	-	
Tax Fees(3)	-	-	11,000	
All Other Fees(4)	-	-	-	
	\$ 80,000	\$ 45,000	\$ 103,000	

- (1) Audit Fees consist of fees billed and expected to be billed (a) by Friedman LLP, for services rendered in connection with the audit of our consolidated financial statements for the fiscal years ended December 31, 2020 and 2019 and the review of our condensed consolidated financial statements included in our Quarterly Reports on Form 10-Q for the periods ended March 31, 2020, June 30, 2020 and September 30, 2020 and (b) for Marcum LLP, for services rendered in connection with the review of our condensed consolidated financial statements included in our Quarterly Reports on Form 10-Q for the periods ended March 31, 2019, June 30, 2019 and September 30, 2019 and the filing of Forms S-1 and S-8 registration statements.
- (2) Audit-Related Fees consist of fees billed for assurance and related services that are reasonably related to the performance of the audit of our financial statements and are not reported under "Audit Fees."
- (3) Tax Fees consist of fees billed for professional services related to preparation of our U.S. federal and state income tax returns and tax advice.
- (4) All Other Fees consist of fees billed for products and services provided by our independent registered public accountants, other than those disclosed above.

The Audit Committee is responsible for the appointment, compensation and oversight of the work of the independent registered public accountants, and approves in advance any services to be performed by the independent registered public accountants, whether audit-related or not. The Audit Committee reviews each proposed engagement to determine whether the provision of services is compatible with maintaining the independence of the independent registered public accountants. The fees shown above were pre-approved either by our Board or our Audit Committee.

### Vote Required

**The ratification of the selection of Friedman LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2021 requires the affirmative vote of stockholders who hold a majority of the shares of common stock present in person or represented by proxy at the meeting and entitled to vote.**

#### **Recommendation**

**The Board of Directors recommends that stockholders vote FOR the ratification of the selection of Friedman LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2021.**

#### **PROPOSAL 7: ADJOURNMENT TO SOLICIT ADDITIONAL PROXIES**

Stockholders are being asked to grant authority to proxy holders to vote in favor of one or more adjournments of the meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the meeting to adopt one or more of the foregoing proposals. If this proposal is approved, the meeting could be successively adjourned to any date. In accordance with our bylaws, a vote on adjournments of the meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the meeting to adopt one or more of the foregoing proposals may be taken in the absence of a quorum. We do not intend to call a vote on adjournments of the meeting to solicit additional proxies if the adoption of each of the foregoing proposals is approved at the meeting. If the meeting is adjourned to solicit additional proxies, stockholders who have already submitted their proxies will be able to revoke them at any time prior to their use.

#### **Vote Required**

**The approval of authority to adjourn the meeting requires the affirmative vote of stockholders who hold a majority of the shares of common stock present in person or represented by proxy at the meeting and entitled to vote.**

#### **Recommendation**

**The Board of Directors recommends that stockholders vote FOR adjournments of the meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the meeting to adopt one or more of the foregoing proposals.**

#### **STOCKHOLDER PROPOSALS**

Stockholder proposals intended to be presented at our next annual meeting of stockholders pursuant to the provisions of Rule 14a-8 of the SEC, promulgated under the Exchange Act, must be received at our offices in Melville, New York by March \_\_, 2022 for inclusion in our proxy statement and form of proxy relating to such meeting.

The following requirements with respect to stockholder proposals and stockholder nominees to our Board of Directors are included in our bylaws.

#### **Stockholder Proposals**

In order for a stockholder to make a proposal at an annual meeting of stockholders, under our bylaws, timely notice must be received by us in advance of the meeting. To be timely, a stockholder's notice must be delivered to or mailed and received by our Secretary at our principal executive offices not less than 45 days nor more than 75 days prior to the one-year anniversary of the date on which we first mailed the proxy materials for the preceding year's annual meeting of stockholders; provided, however, that if the meeting is convened more than 30 days prior to or delayed more than 30 days after the anniversary of the preceding year's annual meeting or if no annual meeting was held in the preceding year, to be timely a stockholder's notice must be received not later than the close of business on the later of (i) the 90<sup>th</sup> day before such annual meeting or (ii) the 10<sup>th</sup> day following the day on which public announcement of the date of such meeting is first made.

A stockholder's notice must set forth as to each matter the stockholder proposes to bring before the annual meeting certain information regarding the proposal, including the following:

- a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest (financial or other) of such stockholder in such business; and
- with respect to the stockholder proposing such business or the beneficial owner, if any, on whose behalf the proposal is made: (i) the name and address of each such party; (ii) the class and number of shares that are beneficially owned by each such party; (iii) any derivative instruments that are beneficially owned by each such party and any other opportunity to profit or share in any profit derived from any increase or decrease in the value of our capital stock; (iv) any proxy or arrangement pursuant to which either party has a right to vote any shares; (v) any short interest in any of our securities; (vi) any rights to dividends that are separated from our underlying shares; (vii) any proportionate interest in our capital stock or any derivative instruments held by a general or limited partnership in which either party is a general partner or beneficially owns a general partner; (viii) any performance-related fees (other than an asset-based fee) that each such party is entitled to based on any increase or decrease in the value of our capital stock or any derivative instruments; (ix) any other information relating to each such party that would be required to be disclosed in a proxy statement; and (x) a statement as to whether or not each such party will deliver a proxy statement and form of proxy to holders of at least that percentage of voting power of all of our shares of capital stock required under applicable law to carry the proposal.

#### **Stockholder Nominees**

In order for a stockholder to nominate a candidate for director at an annual meeting of stockholders, under our bylaws, timely notice of the nomination must be received by us in advance of the meeting. To be timely, a stockholder's notice must be delivered to or mailed and received by our Secretary at our principal executive offices not less than 45 days nor more than 75 days prior to the one-year anniversary of the date on which we first mailed the proxy materials for the preceding year's annual meeting of stockholders; provided, however, that if the meeting is convened more than 30 days prior to or delayed more than 30 days after the anniversary of the preceding year's annual meeting or if no annual meeting was

held in the preceding year, to be timely a stockholder's notice must be so received not later than the close of business on the later of (i) the 90<sup>th</sup> day before such annual meeting or (ii) the 10<sup>th</sup> day following the day on which public announcement of the date of such meeting is first made.

The stockholder sending the notice of nomination must describe various matters, including the following:

- as to each person whom the stockholder proposes to nominate for election as a director, all information relating to such person as would be required to be disclosed in solicitations of proxies for election of such nominee as a director pursuant to Regulation 14A under the Exchange Act;
- with respect to the stockholder proposing such nomination or the beneficial owner, if any, on whose behalf the nomination is made: (i) the name and address of each such party; (ii) the class and number of shares that are beneficially owned by each such party; (iii) any derivative instruments that are beneficially owned by each such party and any other opportunity to profit or share in any profit derived from any increase or decrease in the value of our capital stock; (iv) any proxy or arrangement pursuant to which either party has a right to vote any shares; (v) any short interest in any of our securities; (vi) any rights to dividends that are separated from our underlying shares; (vii) any proportionate interest in our capital stock or any derivative instruments held by a general or limited partnership in which either party is a general partner or beneficially owns a general partner; (viii) any performance-related fees (other than an asset-based fee) that each such party is entitled to based on any increase or decrease in the value of our capital stock or any derivative instruments; (ix) any other information relating to each such party that would be required to be disclosed in a proxy statement; and (x) a statement as to whether or not each such party will deliver a proxy statement and form of proxy to holders of at least that percentage of voting power of all of the shares of our capital stock reasonably believed to be sufficient to elect the nominee or nominees proposed to be nominated; and
- the written consent by the nominee, agreeing to serve as a director if elected.

These requirements are separate from and in addition to the requirements a stockholder must meet to have a proposal included in our proxy statement.

Any notice given pursuant to the foregoing requirements must be sent to our Secretary at 40 Marcus Drive, Suite One, Melville, New York 11747. **The foregoing is only a summary of the provisions of our bylaws that relate to stockholder proposals and stockholder nominations for director. Any stockholder desiring a copy of our bylaws will be furnished one without charge upon receipt of a written request therefor.**

## OTHER BUSINESS

While the accompanying Notice of Annual Meeting of Stockholders provides for the transaction of such other business as may properly come before the meeting, we have no knowledge of any matters to be presented at the meeting other than those listed as Proposals 1, 2, 3, 4, 5, 6 and 7 in the notice. However, the enclosed proxy gives discretionary authority in the event that any other matters should be presented.

## INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

This proxy statement is accompanied by a copy of our Annual Report on Form 10-K for the fiscal year ended December 31, 2020 (the "Form 10-K") and our Quarterly Report on Form 10-Q for the period ended March 31, 2021 (the "Form 10-Q").

The following information from our Form 10-K, as filed with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, is hereby incorporated by reference into this proxy statement:

- "Management's Discussion and Analysis of Financial Condition and Results of Operations," included in Item 7 thereof;
- our audited consolidated financial statements as of December 31, 2020 and 2019 and for the years then ended, included in Item 8 thereof (found following Item 16 thereof); and
- "Changes in and Disagreements with Accountants on Accounting and Financial Disclosure," included in Item 9 thereof.

The following information from our Form 10-Q, as filed with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, is hereby incorporated by reference into this proxy statement:

- our unaudited condensed consolidated financial statements as of March 31, 2021 and for the three months ended March 31, 2021 and 2020; and
- "Management's Discussion and Analysis of Financial Condition and Results of Operations," included in Part I, Item 2 thereof.

Any statement contained in a document incorporated herein by reference shall be deemed to be modified or superseded for purposes of this proxy statement to the extent that a statement contained herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this proxy statement.

Lance Alstodt  
Chief Executive Officer

Melville, New York  
July \_\_, 2021

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Appendix A  
Agreement and Plan of Merger

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# BIORESTORATIVE THERAPIES, INC.

## AGREEMENT AND PLAN OF MERGER

This **AGREEMENT AND PLAN OF MERGER** (“**Agreement**”), dated as of [\_\_\_\_], 2021, is entered into by and between BioRestorative Therapies, Inc., a Delaware corporation (the “**Company**”), and BioRestorative Therapies, Inc., a Nevada corporation and a wholly-owned subsidiary of the Company (“**NewCo**”).

WHEREAS, the Company, whose shares of common stock are registered pursuant to Section 12(g) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), desires to reincorporate as a Nevada corporation and has formed NewCo in order to effectuate the reincorporation.

WHEREAS, the board of directors of each of the Company and NewCo deems it advisable, fair to and in the best interests of such corporations and their respective stockholders that the Company be merged with and into NewCo, upon the terms and subject to the conditions herein stated, and that NewCo be the surviving corporation (the “**Reincorporation Merger**”).

NOW, THEREFORE, in consideration of the premises and the agreements of the parties hereto contained herein, intending to be legally bound, the parties hereto agree as follows:

### ARTICLE I THE REINCORPORATION MERGER; EFFECTIVE TIME

Section 1.1. The Reincorporation Merger. Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time (as defined in Section 1.2), the Company shall be merged with and into NewCo whereupon the separate existence of the Company shall cease. NewCo shall be the surviving corporation (the “**Surviving Corporation**”) in the Reincorporation Merger and shall continue to be a corporation formed under the laws of the State of Nevada. The Reincorporation Merger shall have the effects specified in the General Corporation Law of the State of Delaware, as amended (the “**DGCL**”) and the Nevada Revised Statutes, as amended (the “**NRS**”), and the Surviving Corporation shall succeed, without other transfer, to all of the assets and property (whether real, personal or mixed), rights, privileges, franchises, immunities and powers of the Company, and shall assume and be subject to all of the liabilities, obligations and restrictions of every kind and description of the Company, including, without limitation, all outstanding indebtedness of the Company.

Section 1.2. Effective Time. Unless this Agreement is terminated or abandoned in accordance with its terms, as soon as practicable following the satisfaction of the conditions set forth in Article V in accordance with the terms of this Agreement, the Company and NewCo shall cause Articles of Merger to be executed and filed with the Office of the Secretary of State of Nevada (the “**Nevada Articles of Merger**”) and a Certificate of Merger to be executed and filed with the Office of the Secretary of State of Delaware (the “**Delaware Certificate of Merger**”). The Reincorporation Merger shall become effective upon the date and time specified in the Nevada Articles of Merger and the Delaware Certificate of Merger (the “**Effective Time**”).

### ARTICLE II ARTICLES AND BYLAWS OF THE SURVIVING CORPORATION

Section 2.1. The Articles of Incorporation. The articles of incorporation of NewCo in effect at the Effective Time shall be amended and restated as set forth on Exhibit A hereto, and such amended and restated articles shall be the articles of incorporation of the Surviving Corporation (such articles of incorporation, as so amended and restated, the “**Articles of Incorporation**”), until thereafter amended in accordance with the provisions provided therein or applicable law.

Section 2.2. The Bylaws. Subject to the provisions of applicable laws, the bylaws of NewCo in effect at the Effective Time shall be the bylaws of the Surviving Corporation (the “**Bylaws**”), until thereafter amended in accordance with the provisions provided therein or applicable law.

### ARTICLE III OFFICERS, DIRECTORS, COMMITTEES, AND CORPORATE POLICIES OF THE SURVIVING CORPORATION

Section 3.1. Officers. The officers of the Company at the Effective Time shall, from and after the Effective Time, become the officers of the Surviving Corporation, until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Articles of Incorporation and the Bylaws.

Section 3.2. Directors. The board of directors of the Surviving Corporation effective as of, and immediately following, the Effective Time shall consist of all of the directors of the Company immediately prior to the Effective Time, each to serve in such capacity until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Articles of Incorporation and the Bylaws.

Section 3.3. Committees. Each committee of the board of directors of the Company existing immediately prior to the Effective Time shall, effective as of, and immediately following, the Effective Time, become a committee of the board of directors of the Surviving Corporation, consisting of the members of such committee of the Company immediately prior to the Effective Time and governed by the charter of such committee of the Company in existence immediately prior to the Effective Time, which charter shall, at the Effective Time, become the charter of such committee of the Surviving Corporation except that the governing law thereof shall be, from and after the Effective Time, the law of Nevada. Each member of a committee of the board of directors of the Surviving Corporation shall serve in such capacity until his or her successor has been duly elected or appointed and qualified or until his or her earlier death, resignation or removal in accordance with the applicable committee charter and the Bylaws.

Section 3.4. Corporate Policies. The corporate policies of the Surviving Corporation, including, without limitation, its code of business conduct, corporate governance guidelines, conflict policies and director independence guidelines, effective as of, and immediately following, the Effective Time shall consist of the corporate policies, including, without limitation, the code of business conduct, corporate governance guidelines, conflict policies and director independence guidelines, of the Company immediately prior to the Effective Time.

#### ARTICLE IV EFFECT OF THE MERGER ON CAPITAL STOCK; CERTIFICATES

Section 4.1. Effect of Merger on Capital Stock. At the Effective Time, as a result of the Reincorporation Merger and without any action on the part of the Company, NewCo or the stockholders of the Company:

(a) Each share of common stock, par value \$.0001, of the Company (“**Company Common Stock**”) issued and outstanding immediately prior to the Effective Time shall be converted (without the surrender of stock certificates or any other action by NewCo, the Company or the stockholders of the Company) into one fully paid and non-assessable share of common stock, par value \$.0001, of the Surviving Corporation (“**Surviving Corporation Common Stock**”), and all shares of Company Common Stock shall be canceled and retired and shall cease to exist.

(b) Each share of preferred stock, par value \$.01, of the Company (“**Company Preferred Stock**”) issued and outstanding immediately prior to the Effective Time, if any, shall be converted (without the surrender of stock certificates or any other action by NewCo, the Company or the stockholders of the Company) into one fully paid and non-assessable share of preferred stock, par value \$.01, of the Surviving Corporation (“**Surviving Corporation Preferred Stock**”), and all shares of Company Preferred Stock shall be canceled and retired and shall cease to exist.

(c) With respect to the number of shares of Company Common Stock reserved for issuance under the Company’s equity compensation plans (including all amendments or modifications, collectively, the “**Plans**”), an equal number of shares of Surviving Corporation Common Stock shall be so reserved. The Surviving Corporation shall assume the sponsorship of the Plans, the rights and obligations of the Company thereunder, and the rights and obligations of the Company under all award agreements evidencing any award issued under any Plan or any inducement award with respect to Company Common Stock (including all amendments and modifications, collectively, the “**Award Agreements**”), in each case in accordance with the terms thereof and applicable law. Each equity-based award with respect to Company Common Stock issued and outstanding immediately prior to the Effective Time that was granted pursuant to the Plans and the Award Agreements (an “**Equity Award**”) shall be converted into a corresponding equity-based award with respect to the number of shares of Surviving Corporation Common Stock equal to the number of shares of Company Common Stock underlying such Equity Award at the Effective Time, in accordance with the terms of the applicable Plan and Award Agreement. Such converted equity-based award shall be subject to the same terms and conditions applicable to the corresponding Equity Award prior to the conversion, including any vesting and forfeiture conditions. Further, none of the execution of this Agreement, the Reincorporation Merger or other transaction contemplated herein is intended, or shall be deemed, to constitute a “**Change in Control**” (or term of similar import) under any Plan, Award Agreement, employment agreement or other employee benefit plan of the Company or its affiliates.

(d) With respect to the number of shares of Company Common Stock reserved for issuance under the Company’s outstanding convertible notes and warrants at the Effective Time (the “**Convertible Notes and Warrants**”), an equal number of shares of Surviving Corporation Common Stock shall be so reserved. The Surviving Corporation shall assume the Convertible Notes and Warrants and the rights and obligations of the Company thereunder, in each case in accordance with the terms thereof and applicable law. Each Convertible Note and Warrant shall be converted into a corresponding convertible note and warrant of the Surviving Corporation. The Convertible Notes and Warrants shall be subject to the same terms and conditions applicable to the corresponding Convertible Notes and Warrants prior to the conversion. Further, none of the execution of this Agreement, the Reincorporation Merger or other transaction contemplated herein is intended, or shall be deemed, to constitute a “**Change in Control**” (or term of similar import) under any Convertible Note or Warrant.

(e) Each share of common stock, par value \$.0001, of NewCo registered in the name of the Company shall be reacquired by the Surviving Corporation and canceled and retired, and shall resume the status of authorized and unissued Surviving Corporation Common Stock. No shares of Surviving Corporation Common Stock or other securities of the Surviving Corporation shall be issued in respect thereof.

Section 4.2. Certificates. At and after the Effective Time, all of the outstanding certificates which immediately prior thereto represented shares of Company Common Stock, Company Preferred Stock, or options, warrants or other securities of the Company shall be deemed for all purposes to evidence ownership of and to represent a number of shares of Surviving Corporation Common Stock or Surviving Corporation Preferred Stock equal to the number of shares of Company Common Stock or Company Preferred Stock represented thereby or that were acquirable pursuant to such options, warrants or other securities of the Surviving Corporation, as the case may be, into which the shares of Company Common Stock, Company Preferred Stock, or options, warrants or other securities of the Company represented by such certificates shall have been converted as herein provided and shall be so registered on the books and records of the Surviving Corporation or its transfer agent. The registered owner of any such outstanding certificate shall, until such certificate shall have been surrendered for transfer or otherwise accounted for to the Surviving Corporation or its transfer agent, have and be entitled to exercise any voting and other rights with respect to, and to receive any dividends and other distributions upon, the shares of Surviving Corporation Common Stock, Surviving Corporation Preferred Stock, or options, warrants or other securities of the Surviving Corporation, as the case may be, evidenced by such outstanding certificate, as above provided.

#### ARTICLE V CONDITIONS

Section 5.1. Conditions to the Obligations of Each Party. The respective obligation of each party hereto to effectuate the Reincorporation Merger is subject to satisfaction of the following conditions:

(a) the holders of a majority of the outstanding shares of Company Common Stock shall have adopted this Agreement in accordance with applicable law and the certificate of incorporation and bylaws of the Company prior to the Effective Time; and

(b) any and all consents, approvals, authorizations or permits, filings or notifications deemed in the sole discretion of the Company to be material to the consummation of the Reincorporation Merger (“**Required Consents**”) shall have been obtained and shall be in full force and effect, including, without limitation, (i) consents, registrations, approvals, findings of suitability, licenses, declarations, notifications or filings required to be made, given or obtained under applicable laws, rules and regulations in connection with this Agreement or the consummation of the Reincorporation Merger, and (ii) supplements, agreements, amendments, conveyances, instruments, consents, approvals, authorizations and other documents to be executed and/or delivered by the Company in connection with any agreements the Company or its affiliates have entered for the provision of debt financing; *provided, however*, that either of the parties hereto may waive this condition (b), in its sole discretion to the extent permitted by law, with respect to any and all Required Consents.

## ARTICLE VI TERMINATION

Section 6.1. Termination. This Agreement may be terminated and the Reincorporation Merger may be abandoned at any time prior to the Effective Time, whether before or after the adoption of this Agreement by the holders of Company Common Stock referred to in Section 5.1, if the board of directors of the Company determines for any reason that the consummation of the Reincorporation Merger would be inadvisable or not in the best interests of the Company and its stockholders. In the event of the termination and abandonment of this Agreement, this Agreement shall become null and void and have no effect, without any liability on the part of either the Company or NewCo, or any of their respective stockholders, directors or officers.

## ARTICLE VII MISCELLANEOUS AND GENERAL

Section 7.1. Modification or Amendment. Subject to the provisions of applicable laws, at any time prior to the Effective Time, the parties hereto may modify or amend this Agreement; *provided, however*, that an amendment made subsequent to the adoption of this Agreement by the holders of Company Common Stock shall not (a) alter or change the amount or kind of shares and/or rights to be received in exchange for or on conversion of all or any of the shares of the Company, (b) alter or change any provision of the Articles of Incorporation or the bylaws of the Surviving Corporation that will become effective immediately following the Reincorporation Merger other than as provided herein or (c) alter or change any of the terms or conditions of this Agreement if such alteration or change would adversely affect the holders of capital stock of either of the parties hereto.

Section 7.2. Counterparts. This Agreement may be executed in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

Section 7.3. Governing Law. This Agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of Nevada, without regard to the conflicts of law principles thereof to the extent that such principles would direct a matter to another jurisdiction.

Section 7.4. Entire Agreement. This Agreement constitutes the entire agreement and supersedes all other prior agreements, understandings, representations and warranties both written and oral, among the parties, with respect to the subject matter hereof.

Section 7.5. No Third Party Beneficiaries. This Agreement is not intended to confer upon any person other than the parties hereto any rights or remedies hereunder.

Section 7.6. Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any person or any circumstance, is determined by any court or other authority of competent jurisdiction to be invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

Section 7.7. Headings. The headings herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof.

*[Signature page follows]*

**THE COMPANY:**

BIORESTORATIVE THERAPIES, INC.

By: \_\_\_\_\_

Name: Lance Alstodt

Title: Chief Executive Officer

**NEWCO:**

BIORESTORATIVE THERAPIES, INC.

By: \_\_\_\_\_

Name: Lance Alstodt

Title: Chief Executive Officer

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Appendix B  
Nevada Articles of Incorporation

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**CERTIFICATE OF  
AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
BIORESTORATIVE THERAPIES, INC.**

Pursuant to the provisions of Nevada Revised Statutes 78.390 and 78.403, the undersigned officer of BioRestorative Therapies, Inc., a Nevada corporation (the “Corporation”), does hereby certify as follows:

A. The Agreement and Plan of Merger, dated as of [●], 2021 by and between BioRestorative Therapies, Inc., a Delaware corporation (“Parent”), and the Corporation (the “Merger Agreement”) provides for the amendment and restatement of the Corporation’s articles of incorporation as set forth below.

B. The Merger Agreement, and the amendment and restatement of the Corporation’s articles of incorporation contemplated thereby and as set forth below, have been duly approved by the board of directors of the Corporation and Parent, the sole stockholder of the Corporation, which is sufficient for approval thereof. The board of directors of the Corporation and Parent have determined and declared such amendment and restatement to be advisable, fair to and in the best interests of the Corporation.

C. This certificate sets forth the text of the articles of incorporation of the Corporation, as amended and restated in their entirety to this date as follows:

**AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF BIORESTORATIVE THERAPIES, INC.**

ARTICLE I  
NAME

The name of the Corporation is BioRestorative Therapies, Inc. (the “Corporation”).

ARTICLE II  
REGISTERED OFFICE

The Corporation may, from time to time, in the manner provided by law, change the registered agent and registered office within the State of Nevada. The Corporation may also maintain an office or offices for the conduct of its business, either within or without the State of Nevada.

ARTICLE III  
PURPOSE

The Corporation is formed for the purpose of engaging in any lawful activity for which corporations may be organized under the laws of the State of Nevada.

ARTICLE IV  
CAPITAL STOCK

(A) Authorized Stock. The total number of shares of all stock which the Corporation shall have authority to issue is 300,020,000,000 shares, consisting of: (i) 300,000,000,000 shares of common stock, par value \$.0001 per share (the “Common Stock”) and (ii) 20,000,000 shares, par value \$.01 per share, designated as preferred stock (the “Preferred Stock”). All cross references in each subdivision of this ARTICLE IV refer to other paragraphs in such subdivision unless otherwise indicated.

(B) Preferred Stock.

(1) Designation. The shares of Preferred Stock are hereby authorized to be issued from time to time in one or more series, the shares of each series to have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions as are specified in the resolution or resolutions adopted by the board of directors of the Corporation (the “Board of Directors”) providing for the issue thereof. Such Preferred Stock may be convertible into, or exchangeable for, at the option of either the holder or the Corporation or upon the happening of a specified event, shares of any other class or classes or any other series of the same or any other class or classes of capital stock of the Corporation at such price or prices or at such rate or rates of exchange and with such adjustments as shall be stated and expressed in these Articles of Incorporation, as amended from time to time (these “Articles of Incorporation”) or in the resolution or resolutions adopted by the Board of Directors providing for the issue thereof.

(2) Authority Vested in the Board. Authority is hereby expressly vested in the Board of Directors, subject to the provisions of this ARTICLE IV and to the limitations prescribed by law, to authorize the issue from time to time of one or more series of Preferred Stock and, with respect to each such series, to fix by resolution or resolutions adopted by the affirmative vote of a majority of the directors then in office providing for the issue of such series the voting powers, full or limited, if any, of the shares of such series and the designations, preferences and relative, participating, optional or other special rights and the qualifications, limitations or restrictions thereof. The authority of the Board of Directors with respect to each series shall include, but not be limited to, the determination of the following:

(a) The designation of such series.

(b) The dividend rate of such series, the conditions and dates upon which such dividends shall be payable, the relation which such dividends shall bear to the dividends payable on any other class or classes or series of the Corporation’s capital stock, and whether

such dividends shall be cumulative or noncumulative.

(c) Whether the shares of such series shall be subject to redemption by the Corporation at the option of either the Corporation or the holder or both or upon the happening of a specified event and, if made subject to any such redemption, the times or events, prices and other terms and conditions of such redemption.

(d) The terms and amount of any sinking fund provided for the purchase or redemption of the shares of such series.

(e) Whether the shares of such series shall be convertible into, or exchangeable for, at the option of either the holder or the Corporation or upon the happening of a specified event, shares of any other class or classes or of any other series of the same or any other class or classes of the Corporation's capital stock, and, if provision is made for conversion or exchange, the times or events, prices, rates, adjustments and other terms and conditions of such conversions or exchanges.

(f) The restrictions, if any, on the issue or reissue of any additional Preferred Stock.

(g) The rights of the holders of the shares of such series upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

(h) The provisions as to voting, optional and/or other special rights and preferences, if any.

(3) Certificate. Before the Corporation shall issue any shares of Preferred Stock of any series, a certificate of designation setting forth a copy of the resolution or resolutions of the Board of Directors, and establishing the voting powers, if any, and the designations, preferences and relative, participating, optional or other special rights, if any, and the qualifications, limitations or restrictions thereof, if any, relating to the shares of Preferred Stock of such series, and the number of shares of Preferred Stock of such series authorized by the Board of Directors to be issued, shall be made and signed by an officer of the Corporation and filed in the manner prescribed by the Nevada Revised Statutes, as amended from time to time (the "NRS").

(C) Common Stock.

(1) Voting Rights. The holders of Common Stock will be entitled to notice of and to attend all meetings of the stockholders of the Corporation and shall be entitled to one vote per share on all matters to be voted on by the Corporation's stockholders.

(2) Dividends. Subject to all provisions of this ARTICLE IV, including the rights of holders of any Preferred Stock having preference as to dividends and except as otherwise provided by these Articles of Incorporation or the NRS, the holders of the Common Stock shall be entitled to receive dividends when and as declared by the Board of Directors, out of any funds legally available for such purpose. When and as dividends are declared thereon, whether payable in cash, property or securities of the Corporation, the holders of Common Stock will be entitled to share, ratably according to the number of shares of Common Stock held by them, in such dividends.

(3) Liquidation Rights. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or any distribution of any of its assets to any of its stockholders other than by dividends from funds legally available therefor, and other than payments made upon redemptions or purchases of shares of the Corporation, after payment in full of the amount which the holders of Preferred Stock are entitled to receive in such event, the holders of Common Stock shall be entitled to share, ratably according to the number of shares of Common Stock held by them, in the remaining assets of the Corporation available for distribution to its stockholders.

(D) Voting Power. The Corporation shall not issue nonvoting equity securities. As to any classes of securities possessing voting power, an appropriate distribution of such power shall be made among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of a default in the payment of such dividends.

ARTICLE V  
BYLAWS

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, amend or repeal the bylaws of the Corporation (as amended from time to time, the "Bylaws"). Any adoption, amendment or repeal of the Bylaws by the Board of Directors shall require the approval of a majority of the Whole Board. For purposes of these Articles of Incorporation, the term "Whole Board" shall mean the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships. The stockholders shall also have the power to adopt, amend or repeal the Bylaws; provided, however, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by these Articles of Incorporation, the affirmative vote of the holders of at least seventy-five percent (75%) of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws. Elections of directors need not be by written ballot unless the Bylaws shall so provide. Meetings of stockholders may be held within or without the State of Nevada, virtually and/or in person, as the Bylaws provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Nevada at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws.

ARTICLE VI  
AMENDMENTS TO ARTICLES

The Corporation reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation. Notwithstanding any other provision of these Articles of Incorporation or any provision of law that might otherwise permit a lesser vote or no vote, but in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by these Articles of

Incorporation, the affirmative vote of the holders of at least seventy-five percent (75%) of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required to amend or repeal this ARTICLE VI, the third sentence of ARTICLE V, ARTICLE VII, Section (A) or (B) of ARTICLE X or ARTICLE XI.

#### ARTICLE VII INDEMNIFICATION; EXCULPATION

(A) Indemnification. To the fullest extent permitted under the NRS (including, without limitation, NRS 78.7502, NRS 78.751 and 78.752) and other applicable law, the Corporation shall indemnify directors and officers of the Corporation in their respective capacities as such and in any and all other capacities in which any of them serves at the request of the Corporation.

(B) Limitation on Liability. The liability of directors and officers of the Corporation shall be eliminated or limited to the fullest extent permitted by the NRS. If the NRS is amended to further eliminate or limit or authorize corporate action to further eliminate or limit the liability of directors or officers, the liability of directors and officers of the Corporation shall be eliminated or limited to the fullest extent permitted by the NRS, as so amended from time to time.

(C) Repeal and Conflicts. Any amendment to or repeal of any provision or section of this ARTICLE VII shall be prospective only, and shall not apply to or have any effect on the right or protection of, or the liability or alleged liability of, any director or officer of the Corporation existing prior to or at the time of such amendment or repeal. In the event of any conflict between any provision or section of this ARTICLE VII and any other article of the Articles of Incorporation, the terms and provisions of this ARTICLE VII shall control.

#### ARTICLE VIII SPECIAL PROVISIONS REGARDING DISTRIBUTIONS

Notwithstanding anything to the contrary in these Articles of Incorporation or the Bylaws, the Corporation is hereby specifically allowed to make any distribution that otherwise would be prohibited by NRS 78.288(2)(b).

#### ARTICLE IX STOCKHOLDER RIGHTS

For the avoidance of doubt, no stockholder of the Corporation shall have any preemptive rights, and no stockholder of the Corporation shall have any cumulative voting rights.

#### ARTICLE X ACTIONS BY STOCKHOLDERS

(A) Action by Written Consent. Subject to the rights of the holders of any series of Preferred Stock, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders, unless otherwise authorized by the Board of Directors in its sole discretion acting pursuant to a resolution adopted by a majority of the Whole Board.

(B) Special Meetings of Stockholders. Special meetings of stockholders of the Corporation may be called only by the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board or by the Chairman of the Board.

(C) Stockholder Nominations and Proposals. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws.

#### ARTICLE XI BOARD OF DIRECTORS

(A) Number of Directors; Classified Board. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the number of directors shall be fixed from time to time exclusively by the Board of Directors. The directors, other than those who may be elected by the holders of any series of Preferred Stock under specified circumstances, shall be divided into three classes, with the term of office of the first class to expire at the Corporation's first annual meeting of stockholders following the date of adoption of these Articles of Incorporation, the term of office of the second class to expire at the Corporation's second annual meeting of stockholders following the date of adoption of these Articles of Incorporation and the term of office of the third class to expire at the Corporation's third annual meeting of stockholders following the date of adoption of these Articles of Incorporation, with each director to hold office until his or her successor shall have been duly elected and qualified. At each annual meeting of stockholders, (i) directors elected to succeed those directors whose terms expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election, with each director to hold office until his or her successor shall have been duly elected and qualified; and (ii) if authorized by a resolution of the Board of Directors, directors may be elected to fill any vacancy on the Board of Directors, regardless of how such vacancy shall have been created.

(B) Quorum; Action by the Board. A majority of the directors then in office shall constitute a quorum for all purposes at any meeting of the Board of Directors, and, except as otherwise expressly required by law or by these Articles of Incorporation, all matters shall be determined by the affirmative vote of a majority of the directors present at any meeting at which a quorum is present.

(C) Vacancies. Subject to the rights of the holders of any series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, disqualification, removal from office or other cause shall, unless otherwise required by law or by resolution of the Board of Directors, be filled only by a majority vote of the directors then in office, though less than a quorum (and not by stockholders), and directors so chosen shall serve for

a term expiring at the annual meeting of stockholders at which the term of office of the class to which they have been chosen expires, with each director to hold office until his or her successor shall have been duly elected and qualified. No decrease in the authorized number of directors shall shorten the term of any incumbent director.

(D) Removal. Subject to the rights of the holders of any series of Preferred Stock then outstanding, any director, or the entire Board of Directors, may be removed from office at any time, but only by the affirmative vote of the holders of at least seventy-five percent (75%) of the voting power of all of the then-outstanding shares of capital stock of the Corporation then entitled to vote at an election of directors, voting together as a single class.

IN WITNESS WHEREOF, the undersigned has set his hand to these Articles of Incorporation on this [●] day of [●], 2021.

BioRestorative Therapies, Inc.

By: \_\_\_\_\_  
Lance Alstodt  
Chief Executive Officer

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Appendix C  
Nevada Bylaws

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**BYLAWS  
OF  
BIORESTORATIVE THERAPIES, INC.**

**ARTICLE I  
Offices, Corporate Seal**

Section 1.01 **Offices.** BioRestorative Therapies, Inc. (the “**Corporation**”) shall have a registered office, a principal office and such other offices as the board of directors of the Corporation (the “**Board of Directors**”) may determine.

Section 1.02 **Corporate Seal.** The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

**ARTICLE II  
Meetings of Stockholders**

Section 2.01 **Place and Time of Meetings.** Meetings of the stockholders may be held at such place, on such date and at such time as may be designated by the Board of Directors.

Section 2.02 **Annual Meetings.** The annual meeting of the stockholders of the Corporation shall be held at such place, virtually and/or in person in accordance with applicable law, on such date and at such time as designated by the Board of Directors. The purpose of this meeting shall be for the election of directors and for the transaction of such other business as may properly come before the meeting. Except as otherwise restricted by the articles of incorporation of the Corporation (as amended or amended and restated from time to time, the “**Articles of Incorporation**”) or applicable law, the Board of Directors may postpone, reschedule or cancel any annual meeting of stockholders.

Section 2.03 **Special Meetings.** Special meetings of the stockholders for any purpose or purposes, other than those required by statute, may be called at any time by the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board or by the Chairman of the Board. For purposes of these Bylaws (as amended or amended and restated from time to time, the “**Bylaws**”), the term “**Whole Board**” shall mean the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships. Business transacted at any special meeting shall be limited to the purposes stated in the notice. Except as otherwise restricted by the Articles of Incorporation or applicable law, the Board of Directors may postpone, reschedule or cancel any special meeting of stockholders.

Section 2.04 **Quorum; Adjourned Meetings.** The holders of one-third of the shares outstanding and entitled to vote present in person or by proxy (regardless of whether the proxy has authority to vote on all matters) shall constitute a quorum for the transaction of business at any annual or special meeting, unless or except to the extent that the presence of a larger number may be required by law or by the rules of any stock exchange upon which the Corporation’s securities are listed. If a quorum is not present at a meeting, those present shall adjourn to such day as they shall agree upon by majority vote. Notice of any adjourned meeting need not be given if the time and place thereof are announced at the meeting at which the adjournment is taken. However, if a new record date is fixed for the adjourned meeting, notice of the adjourned meeting must be given to each stockholder of record as of the new record date. At adjourned meetings at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally noticed. If a quorum is present, the stockholders may continue to transact business until adjournment notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Section 2.05 **Organization.** At each meeting of the stockholders, the Chairman of the Board or in his or her absence the Chief Executive Officer or in his or her absence the chairman chosen by a majority of the voting power of the stockholders present in person or proxy shall act as chairman; and the Secretary of the Corporation, or in his or her absence an Assistant Secretary, or in his or her absence any person whom the chairman of the meeting shall appoint, shall act as secretary of the meeting.

Section 2.06 **Voting.** Each stockholder of the Corporation entitled to vote at a meeting of stockholders shall be entitled to one vote in person or by proxy for each share of stock having voting rights held by such stockholder and registered in his, her or its name on the books of the Corporation. Upon the request of any stockholder present in person or by proxy at any meeting of the stockholders and entitled to vote at such meeting, or if directed by the chairman of the meeting in his or her discretion, the vote on any question before a meeting or the election of directors shall be by written ballot. All questions at a meeting shall be decided by a majority vote of the number of shares entitled to vote represented at the meeting at the time of the vote except where otherwise required by statute, the Articles of Incorporation or these Bylaws. For the election of directors, the persons receiving the largest number of votes cast (up to and including the number of directors to be elected) shall be directors.

Section 2.07 **Inspectors of Election.** At each meeting of the stockholders, the chairman of such meeting may appoint one or more inspectors of election, subject to the requirements of applicable law. Each inspector of election so appointed shall first subscribe an oath or affirmation to execute the duties of an inspector of election at such meeting with strict impartiality and according to the best of his or her ability. Such inspectors of election, if any, may (a) ascertain the number of shares outstanding and the voting power of each; (b) determine the number of shares represented at a meeting and the validity of the proxies or ballots; (c) count all votes and ballots; (d) determine any challenges made to any determination made by the inspectors; (e) certify in a report in writing to the secretary of such meeting the determination of the number of shares represented at the meeting and the results of all votes and ballots. An inspector of election need not be a stockholder of the Corporation, and any officer or employee of the Corporation may be an inspector of election on any question other than a vote for or against his or her election to any position with the Corporation or on any other question in which he or she may be directly interested.

Section 2.08 **Notices of Meetings and Consents.** Except as otherwise provided by the Articles of Incorporation or by the Nevada Revised Statutes (as amended from time to time, the “**NRS**”), a written notice of each annual and special meeting of stockholders shall be given not less than 10 nor more than 60 days before the date of such meeting to each stockholder of record of the Corporation entitled to vote at such meeting by

delivering such notice of meeting to such stockholder personally or depositing the same in the United States mail, postage prepaid, directed to him or her at the post office address shown upon the records of the Corporation. Service of notice is complete upon mailing. Every notice of a meeting of stockholders shall state the place, date and hour of the meeting, the means of electronic communication, if any, by which the stockholder or the proxies thereof shall be deemed to be present and vote and, in the case of a special meeting the purpose or purposes for which the meeting is called. The notice shall be delivered in accordance with, and shall contain or be accompanied by such additional information as may be required by, the NRS, including, without limitation, NRS 78.379, 92A.120 or 92A.410.

Section 2.09 **Proxies**. Each stockholder entitled to vote at a meeting of stockholders may authorize a proxy to represent him at the meeting by an instrument executed in writing. Each such proxy shall be valid until its expiration or revocation in a manner permitted by the laws of the State of Nevada. A proxy may be irrevocable if it states that it is irrevocable and, if, and only as long as, it is coupled with an interest sufficient to support an irrevocable power. Subject to the above, any proxy may be revoked if an instrument or transmission revoking it or a properly created proxy bearing a later date is filed with or transmitted to the Secretary or another person appointed by the Corporation to count the votes of stockholders and determine the validity of proxies and ballots, or, in the case of a meeting of stockholders, the stockholder revokes the proxy by attending the meeting and voting the stockholder's shares in person, in which case, any vote cast by the person or persons designated by the stockholder to act as a proxy or proxies must be disregarded by the Corporation when the votes are counted.

Section 2.10 **Waiver of Notice**. Notice of any annual or special meeting may be waived either before, at or after such meeting in writing signed or by transmission of an electronic record by the person or persons entitled to the notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting to the transacting of any business because the meeting is not lawfully called or convened.

Section 2.11 **Written Action**. Subject to any restrictions set forth in the Articles of Incorporation, any action that may be taken at a meeting of the stockholders may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the actions so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be required to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

#### Section 2.12 **Order of Business**.

(a) **Proper Business**. At any annual or special meeting of the stockholders, only such business shall be conducted or considered (including, in the case of an annual meeting, nominations of persons for election to the Board of Directors), as shall have been properly brought before the meeting. For such business to be properly brought before a meeting, nominations and proposals of other business must be: (a) specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (b) otherwise properly brought before such meeting, by or at the direction of the Board of Directors or (c) otherwise properly requested to be brought before such meeting by a stockholder of the Corporation in accordance with these Bylaws.

(b) **Authority of Chairman**. Except as otherwise provided by law, the Articles of Incorporation or these Bylaws, the chairman of any annual or special meeting shall have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with these Bylaws and, if any proposed nomination or other business is not in compliance with these Bylaws, to declare that no action shall be taken on such nomination or other proposal and such nomination or other proposal shall be disregarded.

#### Section 2.13 **Notice of Stockholder Business and Nominations**.

(a) **Timing Requirements**. With respect to any nominations or any other business to be brought before an annual meeting, a stockholder's notice shall be considered timely if it is delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day and not later than the close of business on the ninetieth (90th) day prior to the first anniversary of the preceding year's annual meeting; provided, however, that, in the event that the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to the date of such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to the date of such annual meeting or, if the first public announcement of the date of such annual meeting is less than one hundred (100) days prior to the date of such annual meeting, the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation.

With respect to any business to be properly requested to be brought before an annual meeting, a stockholder's notice shall be considered timely if it is delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day and not later than the close of business on the later of the ninetieth (90th) day prior to the date of such annual meeting or, if the first public announcement of the date of such annual meeting is less than one hundred (100) days prior to the date of such annual meeting, the tenth (10th) day following the day on which public announcement is first made by the Corporation of the date of the annual meeting.

Except as required by the NRS or Section 8.01 of these Bylaws, in no event shall any adjournment or postponement of an annual or special meeting of stockholders, as applicable, or the public announcement thereof, commence a new time period for the giving of a stockholder's notice as described above.

(b) **Disclosure Requirements**. To be in proper form, a stockholder's notice to the Secretary must include the following, as applicable: as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made: (i) the name and address of such stockholder, as they appear on the Corporation's books and of such beneficial owner or Control Person (as defined below), if any, (ii) the number of shares of the Corporation which are, directly or indirectly, owned beneficially and of record by such stockholder and such beneficial owner or Control Person, if any (iii) a representation that the stockholder intends to appear at the meeting in person or by proxy to submit the business specified in such notice, (iv) if the notice relates to any business other than a nomination of director(s), a brief description of the business desired to be brought before the meeting, including the complete text of any resolutions proposed for consideration, and the reasons for conducting such business at the meeting, (v) any direct or indirect personal or other interest of the stockholder in the business



to be submitted, (vi) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder or beneficial owner and by any Control Person or any other person acting in concert with any of the foregoing, the effect or intent of which is to mitigate loss, manage risk or benefit from changes in the share price of any class of the Corporation's stock, or maintain, increase or decrease the voting power of the stockholder or beneficial owner with respect to shares of stock of the Corporation, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting, (vii) a representation whether the stockholder or the beneficial owner, if any, and any Control Person will engage in a solicitation with respect to the nomination or business and, if so, the name of each participant (as defined in Item 4 of Schedule 14A under the Securities Exchange Act of 1934) in such solicitation and whether such person intends or is part of a group which intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding stock required to approve or adopt the business to be proposed (in person or by proxy) by the stockholder and (viii) any other information relating to such stockholder, beneficial owner or Control Person, if any, that would be required to be disclosed in a proxy statement and form of proxy or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder. For purposes of this Section 2.13, a "Control Person" shall be a director, executive, managing member or control person of such stockholder giving the notice or, if the notice is given on behalf of a beneficial owner on whose behalf the nomination is made or the business is proposed, as to such beneficial owner.

Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Securities Exchange Act of 1934.

### **ARTICLE III**

#### **Board of Directors**

Section 3.01 **General Powers.** The business of the Corporation shall be managed by the Board of Directors.

Section 3.02 **Number, Qualification and Term of Office.** The exact number of directors shall be determined from time to time solely by resolution adopted by the affirmative vote of a majority of the directors then in office. The Board of Directors shall be divided into three classes, as nearly equal in number as possible, designated: Class I, Class II and Class III (each, a "Class"). In the case of any increase or decrease, from time to time, in the number of directors, the number of directors in each class shall be apportioned as nearly equal as possible. Except as otherwise provided in the Articles of Incorporation, each director shall serve for a term ending on the date of the third annual meeting of the Corporation's stockholders following the annual meeting at which such director was elected; provided, however, that each director initially appointed to Class I shall serve for an initial term expiring at the Corporation's first annual meeting of stockholders following the effectiveness of this provision; each director initially appointed to Class II shall serve for the initial term expiring at the Corporation's second annual meeting of stockholders following the effectiveness of this provision; and each director initially appointed to Class III shall serve for an initial term expiring at the Corporation's third annual meeting of stockholders following the effectiveness of this provision; provided further, that the term of each director shall continue until the election and qualification of a successor and be subject to such director's earlier death, resignation or removal. Directors need not be stockholders.

Section 3.03 **Annual Meeting.** As soon as practicable after each election of directors, the Board of Directors shall meet at the registered office of the Corporation, or at such other place previously designated by the Board of Directors, for the purpose of electing the officers of the Corporation and for the transaction of such other business as may come before the meeting.

Section 3.04 **Regular Meetings.** Regular meetings of the Board of Directors shall be held from time to time at such time and place as may be fixed by resolution adopted by a majority of the directors then in office.

Section 3.05 **Special Meetings.** Special meetings of the Board of Directors may be called by the Chairman of the Board, the Chief Executive Officer, or by any two of the directors and shall be held from time to time at such time and place as may be designated in the notice of such meeting.

Section 3.06 **Notice of Meetings.** No notice need be given of any annual or regular meeting of the Board of Directors. Notice of each special meeting of the Board of Directors shall be given by the Secretary who shall give at least one day's notice thereof to each director by telephone, electronic transmission including email, or in person. Notice shall be effective upon receipt. For purposes hereof, one day's notice shall be satisfied by delivery of such notice as shall result in the director receiving notice by 5:00 p.m., New York City time, on the day immediately preceding the date of the meeting (provided that the time of the meeting is no earlier than 8:00 a.m., New York City time).

Section 3.07 **Waiver of Notice.** Notice of any meeting of the Board of Directors may be waived either before, at, or after such meeting in writing signed by each director. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 3.08 **Quorum and Voting.** A majority of the directors then in office shall constitute a quorum for the transaction of business. The vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless these Bylaws, the Articles of Incorporation or the NRS require a greater number.

Section 3.09 **Vacancies.** Unless otherwise provided by applicable law or the Articles of Incorporation, (a) the Board of Directors may increase the authorized number of Directors and (b) any newly created directorships resulting from an increase in the authorized number of Directors and vacancies occurring in the Board of Directors for any cause, may be (i) filled by the affirmative votes of a majority of the remaining members of the Board of Directors, although less than a quorum, (ii) filled by a sole remaining Director or (iii) elected by a plurality of the votes cast at an annual or special meeting of the Shareholders. A Director so elected shall be elected to hold office until the expiration of the term of

office of the Director whom he or she has replaced or until a successor is elected and qualified, or until the Director's earlier death, resignation or removal, subject in all cases to any applicable requirements in the Articles of Incorporation.

Section 3.10 **Removal**. Any director may be removed from office at any meeting of the stockholders either with or without cause by the vote of the holders of not less than seventy-five percent (75%) of the voting power of the issued and outstanding stock entitled to vote generally in the election of directors, excluding stock entitled to vote only upon the happening of a fact or event unless such fact or event shall have occurred. If the entire Board of Directors or any one or more directors be so removed, new directors may be elected at the same meeting.

Section 3.11 **Committees of Directors**. The Board of Directors may, by resolution adopted by a majority of the directors then in office, designate one or more committees, each to consist of one or more of the directors of the Corporation, which, to the extent provided in the resolution and subject to applicable law, may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Such committee or committees shall have such name or names as may be determined by the resolution adopted by the directors. The committees shall keep regular minutes of their proceedings and report the same to the Board of Directors when required. Unless otherwise provided for in a resolution of the Board of Directors designating a committee pursuant to this Section 3.11: (i) a majority of the authorized number of members of such committee shall constitute a quorum for the transaction of business of such committee and (ii) the vote of a majority of the members of such committee present at a meeting of such committee at which a quorum is present shall be the act of such committee except where otherwise required by these Bylaws or the charter of such committee.

Section 3.12 **Written Action**. Any action required or permitted to be taken at a meeting of the Board of Directors or any committee thereof may be taken without a meeting if, before or after the action, all directors or committee members consent thereto in writing. The written consent may be signed manually or electronically (or by any other means then permitted under the NRS), and may be so signed in counterparts, including, without limitation, facsimile or email counterparts, and the written consent shall be filed with the minutes of proceedings of the Board of Directors or committee.

Section 3.13 **Compensation**. Unless otherwise restricted by the certificate of incorporation, the Board of Directors shall have the authority to fix the compensation of the directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or paid a stated salary or paid other compensation as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed compensation for attending committee meetings. If the Board of Directors establishes the compensation of directors pursuant to this Section 3.13, such compensation is presumed to be fair to the Corporation unless proven unfair by a preponderance of the evidence.

Section 3.14 **Conference Communications**. Directors may participate in any meeting of the Board of Directors, or of any duly constituted committee thereof, by means of any conference telephone, electronic communications, videoconferencing, teleconferencing or other comparable communication technique or technology permitted under the NRS, including, without limitation, a telephone conference or similar method of communication whereby all persons participating in the meeting can hear and communicate to each other. If any such means are utilized, the Corporation shall, to the extent required under the NRS, implement reasonable measures to (a) verify the identity of each person participating through such means as a director or member of the committee, as the case may be, and (b) provide the directors or members of the committee a reasonable opportunity to participate in the meeting and to vote on matters submitted to the directors or members of the committee, including an opportunity to communicate, and to read or hear the proceedings of the meeting in a substantially concurrent manner with such proceedings. For the purposes of establishing a quorum and taking any action at the meeting, such directors participating pursuant to this Section 3.14 shall be deemed present in person at the meeting.

## **ARTICLE IV**

### **Officers**

Section 4.01 **Number**. The officers of the Corporation shall consist of a Chairman of the Board, a Chief Executive Officer, a President, one or more Vice Presidents, a Secretary, a Treasurer and such other officers as may from time to time be appointed by the Board of Directors. Any person may hold two or more offices.

Section 4.02 **Election, Term of Office, and Qualifications**. At each annual meeting of the Board of Directors, all officers shall be elected. Such officers shall hold office until the next annual meeting of the directors or until their successors are elected and qualified, or until their earlier resignation or removal, or until such office is eliminated by a vote of the directors then in office. Unless they have resigned or been removed, officers who may be directors shall hold office until the election and qualification of their successors, notwithstanding an earlier termination of their directorship.

Section 4.03 **Removal and Vacancies**. Any officer may be removed from his or her office by a majority vote of the directors then in office with or without cause. A vacancy among the officers by death, resignation, removal, or otherwise shall be filled for the unexpired term by the Board of Directors.

Section 4.04 **Chairman of the Board**. The Chairman of the Board, if one is elected, shall preside at all meetings of the stockholders and directors and shall have such other duties as may be prescribed, from time to time, by the Board of Directors.

Section 4.05 **Chief Executive Officer**. The Chief Executive Officer shall be the chief executive officer of the Corporation and shall have responsibility for the general management, control and supervision of the business and affairs of the Corporation, subject to the control of the Board of Directors and of any duly authorized committee of the Board of Directors. The Chief Executive Officer may sign and execute, in the name of the Corporation, deeds, mortgages, bonds, contracts and other instruments, unless (a) the signing and execution thereof is expressly

delegated by resolution of the Board of Directors or by these Bylaws to some other officer or agent of the Corporation or (b) applicable law provides otherwise. In general, the Chief Executive Officer shall perform all duties incident to the office of Chief Executive Officer of a corporation and such other duties as may from time to time be assigned to the Chief Executive Officer by resolution of the Board of Directors. Unless otherwise appointed by the Board of Directors, the Chief Executive Officer shall be the Chairman of the Board.

Section 4.06 **President**. The President shall be the chief operating officer of the Corporation. He or she shall have general responsibility for the management and control of the operations of the Corporation and shall perform all duties and have all powers which are commonly incident to the office of chief operating officer or which are delegated to him or her by the Board of Directors. The President may sign and execute, in the name of the Corporation, deeds, mortgages, bonds, contracts and other instruments, unless (a) the signing and execution thereof is expressly delegated by resolution of the Board of Directors or by these Bylaws to some other officer or agent of the Corporation or (b) applicable law provides otherwise.

Section 4.07 **Vice President**. Each Vice President shall have such powers and duties as may be delegated to him or her by the Board of Directors. One Vice President shall be designated by the Board of Directors to perform the duties and exercise the powers of the President in the event of the President's absence or disability.

Section 4.08 **Treasurer**. The Treasurer shall keep accurate accounts of all moneys of the Corporation received or disbursed. The Treasurer shall deposit all moneys, drafts and checks in the name of and to the credit of the Corporation in such banks and depositories as the Board of Directors shall from time to time designate. The Treasurer shall have power to endorse for deposit all notes, checks and drafts received by the Corporation. The Treasurer shall disburse the funds of the Corporation as ordered by the Board of Directors, making proper vouchers therefor. The Treasurer shall render to the Chief Executive Officer and the Board of Directors whenever required an account of all his or her transactions as Treasurer and of the financial condition of the Corporation and shall perform such other duties as may from time to time be prescribed by the Board of Directors or by the Chief Executive Officer.

Section 4.09 **Secretary**. The Secretary shall be secretary of and shall attend all meetings of the stockholders and Board of Directors and shall record all proceedings of such meetings in the minute book of the Corporation. The Secretary shall give proper notice of meetings of stockholders and the Board of Directors. The Secretary shall perform such other duties as may from time to time be prescribed by the Board of Directors or by the Chief Executive Officer.

Section 4.10 **Duties of other Officers**. The duties of such other officers and agents as the Board of Directors may designate shall be set forth in the resolution creating such office or by subsequent resolution.

Section 4.11 **Compensation**. The officers of the Corporation shall receive such compensation for their services as may be determined from time to time by resolution of the Board of Directors or by one or more committees to the extent so authorized from time to time by the Board of Directors.

## **ARTICLE V**

### **Shares and Their Transfer**

Section 5.01 **Shares of Stock**. The shares of stock of the Corporation shall be represented by a certificate, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the stock of the Corporation shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of any such resolution providing for uncertificated shares, every holder of stock of the Corporation theretofore represented by certificates and, upon request, every holder of uncertificated shares, shall be entitled to a certificate, to be in such form as shall be prescribed by the Board of Directors, certifying the number of shares in the Corporation owned by such holder. The certificates for such shares shall be numbered in the order in which they shall be issued and shall be signed in the name of the Corporation by the Chairman of the Board, the Chief Executive Officer, the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary. Every certificate surrendered to the Corporation for exchange or transfer shall be cancelled, and no new certificate or certificates shall be issued in exchange for any existing certificate until such certificate shall have been so cancelled, except in cases provided for in Section 5.05.

Section 5.02 **Issuance of Stock**. The Board of Directors is authorized to cause to be issued stock of the Corporation up to the full amount authorized by the Articles of Incorporation in such amounts and for such consideration as may be determined by the Board of Directors. Treasury shares may be disposed of by the Corporation for such consideration as may be fixed by the Board of Directors.

Section 5.03 **Transfer Agent**. The Corporation may from time to time maintain one or more transfer offices or agents and registry offices or agents at such place(s) as may be determined from time to time by the Board of Directors.

Section 5.04 **Transfer of Stock**. Transfer of stock on the books of the Corporation may be authorized only by the record holder of such stock, the holder's legal representative or the holder's attorney lawfully constituted in writing and, in the case of stock represented by a certificate or certificates, upon surrender of the certificate or the certificates for such stock, and, in the case of uncertificated stock, upon receipt of proper transfer instructions and compliance with appropriate procedures for transferring stock in uncertificated form (in each case, with such proof of the authenticity of signature as the Corporation or its transfer agent may reasonably require). The Corporation may treat as the absolute owner of stock of the Corporation the person or persons in whose name stock is registered on the books of the Corporation. The Board of Directors may from time to time establish rules and regulations governing the issuance, transfer and registration of shares of stock of the Corporation.

Section 5.05 **Loss of Certificates**. Any stockholder claiming a certificate for stock to be lost, stolen, mutilated or destroyed shall make an affidavit of that fact in such form as the Board of Directors may require and shall, if the Board of Directors so requires, give the Corporation a bond of indemnity in form, in an amount, and with one or more sureties satisfactory to the Board of Directors, to indemnify the Corporation against any claims which may be made against it on account of the alleged loss, theft or destruction of the certificate or issuance of such new

certificate. The Corporation may then issue (a) a new certificate or certificates of stock or (b) uncertificated shares, for the same number of shares represented by the certificate claimed to have been lost, stolen, mutilated or destroyed.

Section 5.06 **Facsimile Signatures**. Whenever any certificate is countersigned by a transfer agent or by a registrar other than the Corporation or its employee, then the signatures of the officers or agents of the Corporation may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed on any such certificate shall cease to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation as though the person who signed such certificate or whose facsimile signature or signatures had been placed thereon were such officer, transfer agent or registrar at the date of issue.

## **ARTICLE VI**

### **Books and Records, Audit, Fiscal Year**

Section 6.01 **Books and Records**. The Board of Directors of the Corporation shall cause to be kept: (a) a share ledger which shall be a charge of an officer designated by the Board of Directors; (b) records of all proceedings of stockholders and directors; and (c) such other records and books of account as shall be necessary and appropriate to the conduct of the corporate business.

Section 6.02 **Audit**. The Board of Directors shall cause the records and books of account of the Corporation to be audited at least once in each fiscal year and at such other times as it may deem necessary or appropriate.

Section 6.03 **Annual List**. The Board of Directors shall cause to be filed with the Nevada Secretary of State in each year the annual list required by law.

Section 6.04 **Fiscal Year**. The fiscal year of the Corporation shall end on December 31 of each year.

## **ARTICLE VII**

### **Indemnification; Expenses**

Section 7.01 **Indemnification**. The Corporation shall indemnify and hold harmless, and the Board of Directors may authorize the purchase and maintenance of insurance or make other financial arrangements for the purpose of such indemnification, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, in such manner, under such circumstances and to the fullest extent permitted by the Articles of Incorporation and the NRS.

Section 7.02 **Payment of Expenses**. In addition to any other rights of indemnification permitted by the laws of the State of Nevada or as may be provided for by the Corporation in the Articles of Incorporation, these Bylaws or by agreement, the expenses of directors and officers incurred in defending any threatened, pending or completed action, suit or proceeding (including, without limitation, an action, suit or proceeding by or in the right of the Corporation), whether civil, criminal, administrative or investigative, involving alleged acts or omissions of such director or officer in his or her capacity as a director or officer of the Corporation, or while serving in any capacity at the request of the Corporation as a director, officer, employee, agent, member, manager, managing member, partner or fiduciary of, or in any other capacity for, another corporation, limited liability company, partnership, joint venture, trust or other enterprise, shall be paid by the Corporation or through insurance purchased and maintained by the Corporation or through other financial arrangements made by the Corporation, as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined by a court of competent jurisdiction that he or she is not entitled to be indemnified by the Corporation. To the extent that an officer or director is successful on the merits or otherwise in defense of any such action, suit or proceeding, or in the defense of any claim, issue or matter therein, the Corporation shall indemnify him or her against expenses, including attorneys' fees, actually and reasonably incurred by him or her in connection with the defense.

Section 7.03 **Amendment**. No amendment to or repeal of this ARTICLE VII approved by the directors or stockholders of the Corporation shall apply to or have any effect on the right or protection of any director or officer of the Corporation existing prior to such amendment or repeal.

## **ARTICLE VIII**

### **Miscellaneous**

Section 8.01 **Fixing Date for Determination of Stockholders of Record**.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action.

(b) If no record date is fixed:

(1) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(2) The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent is expressed.

(3) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

(c) A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting or to any postponement of any meeting of stockholders to a date not more than 60 days after the record date; provided, that the Board of Directors may fix a new record date for the adjourned meeting and must fix a new record date if the meeting is adjourned to a date more than 60 days later than the date set forth the original meeting.

Section 8.02 **Periods of Time**. During any period of time prescribed by these Bylaws, the date from which the designated period of time begins to run shall not be included, and the last day of the period so computed shall be included.

Section 8.03 **Voting Securities Held by the Corporation**. Unless otherwise ordered by the Board of Directors, the Chief Executive Officer shall have full power and authority on behalf of the Corporation (a) to attend, to act and to vote at any meeting of security holders or owners of other entities in which the Corporation may hold securities or ownership interests; (b) to execute any proxy for such meeting on behalf of the Corporation; or (c) to execute a written action in lieu of a meeting of such other entity on behalf of the Corporation. At such meeting, by such proxy or by such writing in lieu of meeting, the Chief Executive Officer shall possess and may exercise any and all rights and powers incident to the ownership of such securities or ownership interests that the Corporation might have possessed and exercised if it had been present. The Board of Directors may, from time to time, confer like powers upon any other person or persons.

Section 8.04 **Purchase and Sale of Securities**. Unless otherwise ordered by the Board of Directors, the Chief Executive Officer shall have power and authority on behalf of the Corporation to purchase, sell, transfer or encumber any and all securities or ownership interests of any other entity owned by the Corporation and may execute and deliver such documents as may be necessary to effectuate such purchase, sale, transfer or encumbrance. The Board of Directors may, from time to time, confer like powers upon any other person or persons.

## **ARTICLE IX**

### **Amendments**

Section 9.01 **Amendments**. These Bylaws may be amended, altered or repealed by a vote of the majority of the Whole Board; provided, however, that, with respect to the power of holders of capital stock to adopt, amend and repeal Bylaws of the Corporation, notwithstanding any other provision of these Bylaws or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the capital stock of the Corporation required by law, these Bylaws or any Preferred Stock, the affirmative vote of the holders of at least 75% of the voting power of all of the then-outstanding shares entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of these Bylaws..

## **ARTICLE X**

### **General**

Section 10.01 **Forum for Adjudication of Disputes**. To the fullest extent permitted by law, and unless the Corporation consents in writing to the selection of an alternative forum, the Eighth Judicial District Court of Clark County, Nevada, shall be the sole and exclusive forum for any actions, suits or proceedings, whether civil, administrative or investigative or that assert any claim or counterclaim (a) brought in the name or right of the Corporation or on its behalf, (b) asserting a claim for breach of any fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (c) arising or asserting a claim arising pursuant to any provision of NRS Chapters 78 or 92A or any provision of the Articles of Incorporation or these Bylaws or (d) asserting a claim governed by the internal affairs doctrine. In the event that the Eighth Judicial District Court of Clark County, Nevada does not have jurisdiction over any such action, suit or proceeding, then any other state district court located in the State of Nevada shall be the sole and exclusive forum therefor and in the event that no state district court in the State of Nevada has jurisdiction over any such action, suit or proceeding, then a federal court located within the State of Nevada shall be the sole and exclusive forum therefor. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 10.01.

Section 10.02 **Application of These Bylaws**. In the event that any provisions of these Bylaws are or may be in conflict with (a) any law of the United States, of the State of Nevada, or of any governmental body or power having jurisdiction over this Corporation, or over the subject matter to which such provision of these Bylaws applies, or may apply, or (b) the Articles of Incorporation, such provision of these Bylaws shall be inoperative to the extent only that the operation thereof conflicts with such law or the Articles of Incorporation, and shall in all other respects be in full force and effect.

Section 10.03 **Invalid Provisions**. If any part of these Bylaws is held invalid or inoperative for any reason, the remaining parts, so far as possible and reasonable, shall be valid and operative.

These Bylaws are hereby adopted by the Corporation as of \_\_\_\_\_, 2021.

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Appendix D  
Appraisal Rights

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**§ 262. Appraisal rights [For application of this section, see § 17; 82 Del. Laws, c. 45, § 23; and 82 Del. Laws, c. 256, § 24].**

(a) Any stockholder of a corporation of this State who holds shares of stock on the date of the making of a demand pursuant to subsection (d) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger or consolidation, who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to § 228 of this title shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder's shares of stock under the circumstances described in subsections (b) and (c) of this section. As used in this section, the word "stockholder" means a holder of record of stock in a corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words; and the words "depository receipt" mean a receipt or other instrument issued by a depository representing an interest in 1 or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository.

(b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation to be effected pursuant to § 251 (other than a merger effected pursuant to § 251(g) of this title), § 252, § 254, § 255, § 256, § 257, § 258, § 263 or § 264 of this title:

(1) Provided, however, that no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of the meeting of stockholders to act upon the agreement of merger or consolidation (or, in the case of a merger pursuant to § 251(h), as of immediately prior to the execution of the agreement of merger), were either: (i) listed on a national securities exchange or (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in § 251(f) of this title.

(2) Notwithstanding paragraph (b)(1) of this section, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to §§ 251, 252, 254, 255, 256, 257, 258, 263 and 264 of this title to accept for such stock anything except:

- a. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect thereof;
- b. Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock (or depository receipts in respect thereof) or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or held of record by more than 2,000 holders;
- c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing paragraphs (b)(2)a. and b. of this section; or
- d. Any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing paragraphs (b)(2)a., b. and c. of this section.

(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under § 253 or § 267 of this title is not owned by the parent immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

(4) [Repealed.]

(c) Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the provisions of this section, including those set forth in subsections (d), (e), and (g) of this section, shall apply as nearly as is practicable.

(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders who was such on the record date for notice of such meeting (or such members who received notice in accordance with § 255(c) of this title) with respect to shares for which appraisal rights are available pursuant to subsection (b) or (c) of this section that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this section and, if 1 of the constituent corporations is a nonstock corporation, a copy of § 114 of this title. Each stockholder electing to demand the appraisal of such stockholder's shares shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of such stockholder's shares; provided that a demand may be delivered to the corporation by electronic transmission if directed to an information processing system (if any) expressly designated for that purpose in such notice. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such stockholder's shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or

(2) If the merger or consolidation was approved pursuant to § 228, § 251(h), § 253, or § 267 of this title, then either a constituent corporation before the effective date of the merger or consolidation or the surviving or resulting corporation within 10 days thereafter shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section and, if 1 of the constituent corporations is a nonstock corporation, a copy of § 114 of this title. Such notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify such stockholders of the effective date of the merger or consolidation. Any stockholder entitled to appraisal rights may, within 20 days after the date of giving such notice or, in the case of a merger approved pursuant to § 251(h) of this title, within the later of the consummation of the offer contemplated by § 251(h) of this title and 20 days after the date of giving such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder's shares; provided that a demand may be delivered to the corporation by electronic transmission if directed to an information processing system (if any) expressly designated for that purpose in such notice. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder's shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either (i) each such constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation or (ii) the surviving or resulting corporation shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice or, in the case of a merger approved pursuant to § 251(h) of this title, later than the later of the consummation of the offer contemplated by § 251(h) of this title and 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder's shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than 10 days prior to

the date the notice is given, provided, that if the notice is given on or after the effective date of the merger or consolidation, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

(e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder who has complied with subsections (a) and (d) of this section hereof and who is otherwise entitled to appraisal rights, may commence an appraisal proceeding by filing a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party shall have the right to withdraw such stockholder's demand for appraisal and to accept the terms offered upon the merger or consolidation. Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsections (a) and (d) of this section hereof, upon request given in writing (or by electronic transmission directed to an information processing system (if any) expressly designated for that purpose in the notice of appraisal), shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation (or, in the case of a merger approved pursuant to § 251(h) of this title, the aggregate number of shares (other than any excluded stock (as defined in § 251(h)(6)(d) of this title)) that were the subject of, and were not tendered into, and accepted for purchase or exchange in, the offer referred to in § 251(h)(2)), and, in either case, with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such statement shall be given to the stockholder within 10 days after such stockholder's request for such a statement is received by the surviving or resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) of this section hereof, whichever is later. Notwithstanding subsection (a) of this section, a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person may, in such person's own name, file a petition or request from the corporation the statement described in this subsection.

(f) Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which shall within 20 days after such service file in the office of the Register in Chancery in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Register in Chancery, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the stockholders shown on the list at the addresses therein stated. Such notice shall also be given by 1 or more publications at least 1 week before the day of the hearing, in a newspaper of general circulation published in the City of Wilmington, Delaware or such publication as the Court deems advisable. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

(g) At the hearing on such petition, the Court shall determine the stockholders who have complied with this section and who have become entitled to appraisal rights. The Court may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any stockholder fails to comply with such direction, the Court may dismiss the proceedings as to such stockholder. If immediately before the merger or consolidation the shares of the class or series of stock of the constituent corporation as to which appraisal rights are available were listed on a national securities exchange, the Court shall dismiss the proceedings as to all holders of such shares who are otherwise entitled to appraisal rights unless (1) the total number of shares entitled to appraisal exceeds 1% of the outstanding shares of the class or series eligible for appraisal, (2) the value of the consideration provided in the merger or consolidation for such total number of shares exceeds \$1 million, or (3) the merger was approved pursuant to § 253 or § 267 of this title.

(h) After the Court determines the stockholders entitled to an appraisal, the appraisal proceeding shall be conducted in accordance with the rules of the Court of Chancery, including any rules specifically governing appraisal proceedings. Through such proceeding the Court shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. Unless the Court in its discretion determines otherwise for good cause shown, and except as provided in this subsection, interest from the effective date of the merger through the date of payment of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during the period between the effective date of the merger and the date of payment of the judgment. At any time before the entry of judgment in the proceedings, the surviving corporation may pay to each stockholder entitled to appraisal an amount in cash, in which case interest shall accrue thereafter as provided herein only upon the sum of (1) the difference, if any, between the amount so paid and the fair value of the shares as determined by the Court, and (2) interest theretofore accrued, unless paid at that time. Upon application by the surviving or resulting corporation or by any stockholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, proceed to trial upon the appraisal prior to the final determination of the stockholders entitled to an appraisal. Any stockholder whose name appears on the list filed by the surviving or resulting corporation pursuant to subsection (f) of this section and who has submitted such stockholder's certificates of stock to the Register in Chancery, if such is required, may participate fully in all proceedings until it is finally determined that such stockholder is not entitled to appraisal rights under this section.

(i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. Payment shall be so made to each such stockholder, in the case of holders of uncertificated stock forthwith, and the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court's decree may be enforced as other decrees in the Court of Chancery may be enforced, whether such surviving or resulting corporation be a corporation of this State or of any state.

(j) The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney's fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.

(k) From and after the effective date of the merger or consolidation, no stockholder who has demanded appraisal rights as provided in subsection (d) of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation); provided, however, that if no petition for an appraisal shall be filed within the time provided in subsection (e) of this section, or if such stockholder shall deliver to the surviving or resulting corporation a written withdrawal of such stockholder's demand for an appraisal and an acceptance of the merger or consolidation, either within 60 days after the effective date of the merger or consolidation as provided in subsection (e) of this section or thereafter with the written approval of the corporation, then the right of such stockholder to an appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in the Court of Chancery shall be dismissed as to any stockholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just; provided, however, that this provision shall not affect the right of any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party to withdraw such stockholder's demand for appraisal and to accept the terms offered upon the merger or consolidation within 60 days after the effective date of the merger or consolidation, as set forth in subsection (e) of this section.

(l) The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.



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Date \_\_\_\_\_

**ANNUAL MEETING OF STOCKHOLDERS OF**

**BIORESTORATIVE THERAPIES, INC.**

**AUGUST 17, 2021**

**Please date, sign and mail  
your proxy card in the  
envelope provided  
as soon as possible.**

**Important Notice Regarding the Availability of Proxy Materials for the Stockholder Meeting to be Held on August 17, 2021:**

The proxy statement, Form 10-K for the year ended December 31, 2020 and Form 10-Q for the period ended March 31, 2021 are available electronically to the Company's stockholders of record as of the close of business on June 24, 2021 at [www.proxyvote.com](http://www.proxyvote.com).

**Please detach along perforated line and mail in the envelope provided.**

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**BIORESTORATIVE THERAPIES, INC.**

**This Proxy is Solicited on Behalf of the Board of Directors**

The undersigned hereby appoints Lance Alstodt as proxy, with the power to appoint his substitute, and hereby authorizes him to represent and vote, as designated on the reverse side, all the shares of common stock of BioRestorative Therapies, Inc. held of record by the undersigned at the close of business on June 24, 2021 at the Annual Meeting of Stockholders to be held on August 17, 2021 or any adjournment thereof.

**IF YOU VOTE BY TELEPHONE OR BY INTERNET, DO NOT MAIL THE PROXY CARD. YOUR TELEPHONE OR INTERNET VOTE AUTHORIZES THE NAMED PROXY TO VOTE IN THE SAME MANNER AS YOU VOTED YOUR PROXY CARD. THE TELEPHONE AND INTERNET VOTING FACILITIES WILL CLOSE AT 11:59 P.M. ON AUGUST 16, 2021.**

**(Continued and to be signed on the reverse side)**