

## Risk Factors Comparison 2025-04-02 to 2024-03-26 Form: 10-K

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Our ~~business~~ **Company** is subject to a number of risks, the most important of which are discussed below. You should consider carefully the following risks in addition to the other information contained in this **annual** report and our other filings with the SEC **(including the Company's Definitive Proxy Statement on Schedule 14A filed with the SEC on March 19, 2025 (as may be supplemented, the "Special Meeting Proxy Statement"))** before deciding to buy, sell or hold our common stock. If any of the following risks actually occur, our business **plan**, financial condition, ~~results of operations~~ and the market price of our common stock could be materially adversely affected, the value of our common stock could decline, and you may lose all or part of your investment. The risks and uncertainties described below are not the only ones facing our Company, but those that we consider to be material. **These risks and uncertainties take into account the completed Avenova Asset Sale and the Wound Care Divestiture under the heading "Risks Relating to Our Business," as well as the potential that we will effect the Dissolution of our Company or pursue other strategic alternatives, including a Potential Strategic Transaction (as defined below) under the heading "Risks Relating to the Potential Dissolution of our Company and Potential Strategic Transaction."** Additional risks not presently known to us or that we currently believe are immaterial may also significantly impair our business ~~operations~~, **the potential Dissolution of our Company, any other strategic alternatives, or ownership of our common stock**. It is important to note that our ~~Past past~~ financial performance ~~may will~~ not be a reliable indicator of future performance, and historical trends should not be used to anticipate results or trends in future periods. Please also read carefully the section in this **annual** report above entitled "Special Note Regarding Forward-Looking Statements." **Risks Relating to Our** ~~As a result of the completion of the Avenova Asset Sale and the Wound Care Divestiture, we no longer have a significant revenue generating Business-business~~ **There is substantial doubt about**, ~~Prior to the Avenova Asset Sale, our principal assets, product offerings and business primarily consisted of the production and commercialization of Avenova products, which was responsible for a majority of our revenue from 2015 until the completion of the Avenova Asset Sale. After completion of the Avenova Asset Sale and the Wound Care Divestiture in January 2025, our business operations and ability to generate revenue has been significantly reduced with a few remaining employees, limited operations, including fulfilling remaining contractual obligations for the manufacture and delivery of wound care products and performance of the services contemplated by the PRN Transition Services Agreement. Accordingly, until we either commence the Dissolution or complete an alternative strategic transaction, we will be generating minimal revenue and without currently having a significant underlying business to generate meaningful revenue, particularly when compared to our historic financial performance. The cash proceeds from the Avenova Asset Sale and the Wound Care Divestiture will continue to be used to fund~~ **as a going concern. We have sustained operating losses for the majority of our corporate history. In fiscal 2023, our expenses exceeded and ongoing liabilities until we are able to commence the Dissolution** ~~our- or revenues pursue another strategic alternative, which as we continue to invest in our commercialization efforts. We will need to deplete our remaining cash assets. Until we are able to generate significant revenues to achieve wind down our remaining business and maintain profitability operations through the Dissolution process or we pursue another strategic alternative available to us, which could include bankruptcy proceedings, we have not been able to achieve to date.~~ **Our operating cash flow currently is not sufficient to support our ongoing operations, and then we will expect to continue incurring expenses for our continuing operating operations losses, including the ongoing disclosure and negative compliance obligations as a public reporting company, such as the preparation and filing of this annual report, and utilize the cash on flows until revenues reach a level sufficient to support ongoing growth and hand that is comprised primarily of the proceeds from the Avenova Asset Sale and the Wound Care Divestiture to fund those expenses and to satisfy our liabilities. As a result, the longer it takes to complete the Dissolution or pursue another strategic alternative, the more our remaining cash assets will be depleted and limit potential distributions to stockholders, if any. We remain liable for claims and expenses that may arise related to our business operations prior to the completion of the Avenova Asset Sale and the Wound Care Divestiture. Accordingly Pursuant to the Purchase Agreement for the Avenova Asset Sale and the Trademark Acquisition Agreement for the Wound Care Divestiture, NovaBay generally retained pre-closing liabilities related to the operation of its eye care and wound care business, which may include amounts owed to our suppliers and potential claims related to products we sold our- or current cash resources the marketing of our products during the time we operated such business. While we are not aware sufficient to fund operations at the expected level of any activity beyond the third quarter of 2024. As such liabilities that may be material and have adequately accrued for these liabilities, there can be no assurances that additional expenditures funding or substantial revenue growth will not be needed incurred in both resolving the these short liabilities, which may impact our financial condition and the amount of proceeds available (if any) in the Dissolution.** ~~13 and long- term in order to pursue our business plan. We are continuing subject to contingent liabilities evaluate our current business plan and potential changes to our business and strategic direction. If we do not raise additional capital or our revenues do not reach sufficient levels in the near term, then we may need to implement additional cost reduction measures and changes to our current business plan and strategic direction. Such changes may include altering our existing operations and/or pursuing a strategic transaction, such as a divestiture of certain business or product lines and related to assets. By way of example, as part of our strategic direction, we recently sold DERMAdoctor for \$1.1 million. As a result of these--~~ **the Avenova Asset Sale and the Wound Care Divestiture** ~~circumstances, our financial statements include explanatory disclosures expressing substantial doubt about our ability to continue as a going concern. Our~~

financial statements do not include any adjustments that **could** might result from the outcome of the uncertainty regarding our ability to continue as a going concern. Future reports on our financial statements may continue to include such disclosures. If we cannot continue as a going concern, our stockholders may lose their entire investment in our securities. We require additional capital to finance our operations as currently conducted, which may not be available to us on acceptable terms or at all and may result in dilution to our existing stockholders. Our current cash resources are not sufficient to fund operations at the expected level of activity beyond the third quarter of 2024, and we therefore require additional capital to fund our operations. As of December 31, 2023, our cash and cash equivalents were \$ 3. 1 million and we had an accumulated deficit of \$ 174. 8 million. If we raise additional capital through public or private equity offerings, the ownership interest of our existing stockholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect our stockholders' rights. If we raise additional capital through debt financing, we may be subject to covenants limiting or restricting our ability to take specific actions, such as incurring additional debt or making capital expenditures. If we are unable to obtain adequate financing on commercially reasonable terms or at all when needed, we may have to implement additional cost reduction measures and / or make changes to our current business, which may have a material adverse effect on our business, financial condition, and results of operations. Our future success **Pursuant to the Purchase Agreement for the Avenova Asset Sale, the purchase price is subject** largely dependent on the successful commercialization of our products, particularly Avenova Spray. If we are unable to **a post- closing** establish and maintain adequate sales, marketing and distribution capabilities or enter into or maintain agreements with third parties to do so, we may be unable to successfully commercialize our products, specifically Avenova Spray. While we believe we are working **capital adjustment, upward or downward, that will be limited** to create an **amount** efficient commercial organization, we may not be able to correctly judge the size and experience of **up** the sales and marketing force and the scale of distribution necessary to **\$ 500** be successful. Establishing and maintaining sales, **000** marketing, and distribution capabilities are expensive and time-consuming. Such expenses may **The Net Working Capital Adjustment will be mutually determined** disproportionate compared to the revenues we may be able to generate on sales of Avenova Spray, which could cause our commercialization efforts to be unprofitable or less profitable than expected. Acceptance and use of Avenova Spray by physicians, retail partners, wholesale customers and other customers may depend on a number of factors including: (i) perceptions by members of the healthcare community, including physicians, about the safety and effectiveness of our products; (ii) published studies demonstrating the cost-effectiveness of our products relative to competing products; (iii) availability of reimbursement for our products from government or commercial payers; and (iv) effectiveness of marketing and distribution efforts by us and our licensees **PRN commencing April 17, 2025 (ninety (90) days after the closing of the Avenova Asset Sale). If the Net Working Capital Adjustment is determined to be in favor of PRN, it would reduce up to the full amount of the \$ 500, 000 that was placed into and an distributors escrow account at the closing of the Avenova Asset Sale until the six (6) month anniversary of closing, if or July 17, 2025. As part of the Avenova Asset Sale, we also agreed to indemnify PRN for breaches of any . The failure representation, warranty, or covenant made by us in the Purchase Agreement, for losses arising out of or in connection with excluded assets or excluded liabilities, and for certain other matters, subject to, in certain cases, customary deductibles and caps and exceptions to such deductibles and caps, including in the case of fraud. Successful indemnification claims by PRN would first reduce the Escrow, and thereafter, NovaBay would be directly responsible for any indemnification claims of our products to find market acceptance would harm our business and could require us to seek additional financing to fund our operations. Goodwill Separately, intangible and pursuant to other -- the assets Trademark Acquisition Agreement for the Wound Care Divestiture, we also agreed to provide limited indemnification to Phase One for losses arising from our 2021 DERMA doctor Acquisition have become fully impaired, which adversely impacted our profitability in 2023 and 2022. We are required under U. S. Generally Accepted Accounting Principles ("GAAP") to test our goodwill for impairment annually or more frequently if indicators for potential impairment exist. Additionally, at least annually at year end, or more frequently at interim periods, we periodically review our intangible and other long-lived assets for impairment. During the fourth quarters of 2023 and 2022, we performed our annual testing for goodwill, intangible and other long-lived asset impairment which resulted in us recording goodwill, intangible and other asset impairment charges of \$ 2. 6 million and \$ 6. 7 million, relating to our DERMA doctor business for the years ended December 31, 2023 and 2022, respectively, which significantly increased our net losses for each year. We face substantial competition in the eyecare market in which we operate. Avenova Spray faces intense competition in the eyecare market, which is focused on cost-effectiveness, price, service, product effectiveness and quality, patient convenience and technological innovation. There is substantial competition in the eyecare market from companies of all sizes in the United States and abroad, including, among others, large companies such as Allergan plc and Shire plc, and against products such as Restasis, Xiidra, eye wipes, baby shampoo and soap. There are also over-the-counter products that contain hypochlorous acid that compete with Avenova Spray. The companies that we compete against in the eyecare industry may have substantially greater financial, technical and marketing resources, longer operating histories, greater brand recognition and larger customer bases than we do and may be able to respond more effectively to changing business and economic conditions than we can. If our competitors respond more quickly to new or emerging technologies and changes in customer requirements, our products may be rendered obsolete or non-competitive. In addition, if our competitors develop more effective or affordable products, or achieve earlier intellectual property protection or product commercialization than we do, our operating results will materially suffer. Competition may increase further as existing competitors enhance their offerings or additional companies enter our markets or modify their existing products to compete directly with our products. We may not be able to sustain growth as competitive pressures, including pricing pressure from competitors, increase. Our ability to compete depends on the continued strength of our brand and products, the success of our marketing, innovation and execution strategies, the continued diversity of our product offerings, the successful management of new product introductions and innovations, strong operational execution, including in order fulfillment, and our success in entering new markets and expanding our business in existing geographies. If**

we are unable to continue to compete effectively, it could have a material adverse effect on our business, results of operations and financial condition. We are dependent on third parties to manufacture, supply and distribute our products. Any interruption or failure by these suppliers or other disruptions to our supply chain may materially adversely affect our business, financial condition, results of operations and cash flows. Our ability to make, move, and sell our products is critical to our success. Historically, we have predominately relied on a single product, Avenova Spray, for our primary revenue stream, which is comprised of our proprietary, stable and pure form of hypochlorous acid. Damage or disruption to our supply chain, including third-party manufacturing **claim involving a material breach or nonperformance of representations**, assembly **warranties, covenants, agreements and obligations of the Company contained in the Trademark Acquisition Agreement. Our liability or for transportation indemnification of Phase One for any such losses is limited to 50 % of the purchase price for the Wound Care Trademarks, or \$ 250 thousand. Any Net Working Capital Adjustment in favor of PRN or successful claims for indemnification made by PRN will reduce the Escrow payable to us or otherwise be payable by us from our cash assets, and any successful claims for indemnification made by Phase One will be payable by us from our cash assets, which, in any of these circumstances, would further reduce the amount of our cash assets and the amount of cash that may ultimately be available for** distribution capabilities, due to weather **our stockholders in the Dissolution or otherwise**, including **if** any potential effects of climate change. **We may be subject to litigation**, which is expensive natural disaster, fire or explosion, terrorism, pandemics, strikes, government action, armed conflict, war (such as the conflicts between Israel and Hamas, Russia and Ukraine, and China and Taiwan) or other reasons beyond our control or the control of our suppliers and business partners, could **divert** impair our ability to manufacture or **our attention** sell our products. **As** Failure to take adequate steps to mitigate the likelihood or potential impact of such events, or to effectively manage such events if they occur, particularly when a product is sourced from a single supplier or location, could adversely affect our business or financial results - **result**. Any interruption or failure by **of having completed the Avenova Asset Sale and the Wound Care Divestiture** **our- or addressing our existing** suppliers, distributors and other partners to meet their obligations on schedule or in accordance with our expectations, misappropriation of our proprietary information, including trade secrets and **outstanding liabilities to** know-how, or any termination by these third parties of their arrangements **or otherwise in connection** with the Dissolution, we may **be subject to potential litigation, including commercial litigation or claims by holders of our securities, including securities class action litigation. We recently settled disputes with three warrant holders of the Company that resulted in the aggregate net payment of \$ 1, 466, 511 to such warrant holders, which amount reflects a reduction of the aggregate exercise price paid by such warrant holders to the Company in connection with such settlement of \$ 348, 337. Litigation could also arise from our prior operations, and related to products sold, before the completion of the Avenova Asset Sale and the Wound Care Divestiture. Any such claims, with or without merit, or litigation initiated against us**, which, in each case, could be the result of **one in substantial costs and divert** or **our many factors outside of remaining management resources and attention from completing the Dissolution in a timely manner** **our- or control pursuing another strategic alternative**, could delay or prevent the manufacture or commercialization of our products, disrupt our operations or cause reputational harm to our company, particularly with wholesale customers, any or all of which could **increase** have a material adverse effect on our business **expenses**, financial condition, results **ultimately decrease the amount of our** operations and cash **and other assets available** flows. If we underestimate or overestimate demand for **distribution (if** our products and do not maintain appropriate inventory levels, our net revenues or working capital could be negatively impacted. Our ability to manage our inventory levels to meet demand for our products is important for our business. If we overestimate or underestimate demand for any **)** of our products, we may not maintain appropriate inventory levels, we could have excess inventory that we may need to hold for a long period of time, write down, sell at prices lower than expected or **our stockholders as part of the Dissolution and possibly force** discard, which could negatively impact our reputation, net sales, working capital or cash flows from working capital, or cause us **into** to incur excess and obsolete inventory charges. We generally finance our working capital needs through our cash and cash flows from operations, and if we do not have enough cash and cash flows from our operations, then we may not be able to produce the inventories required to meet demand, which could result in a **bankruptcy situation** loss of sales, the loss of wholesale customers and / or retail partners and adversely impact our reputation. - 14- We have sought and continue to seek to improve our payable terms, which could also adversely affect our relations with our suppliers. Significant disruptions of information technology systems or breaches of information security could adversely affect our businesses. We rely **relied** upon information technology systems to **historically** operate **our eye care and wound care** businesses, **and we continue to use such systems in our performance of the PRN Transition Services Agreement**. In the ordinary course of business, we **have collect-collected**, store **stored** and transmit **transmitted** large amounts of confidential information (including, but not limited to, personal information and intellectual property), and we **continue to** deploy and operate an array of technical and procedural controls to maintain the confidentiality and integrity of such confidential information. We also have outsourced aspects of our operations to third parties, including significant elements of our information technology infrastructure and, as a result, we **are managing-have managed** independent vendor relationships with third parties who may or could have access to our confidential information. The size and complexity of our information technology and information security systems, and those of our third-party vendors with whom we contract, make such systems potentially vulnerable to service interruptions or to security breaches from inadvertent or intentional actions by our employees or vendors, or from attacks by malicious third parties. Such attacks are of ever-increasing levels of sophistication and are made by groups and individuals with a wide range of motives and expertise, including organized criminal groups, “hacktivists,” nation states and others. While we have invested in the protection of data and information technology, there can be no assurance that our efforts will prevent service interruptions or security breaches. Any such interruption or breach of our systems could adversely affect **us our business operations** and / or result in the loss of critical or sensitive confidential information or intellectual property, and could result in financial, legal, business and reputational harm to us. Adverse **There can be no guarantees that the Dissolution will be**

completed and, if not completed, it may be very difficult for us to identify strategic alternatives to maximize the remaining value for NovaBay and its stockholders. The Dissolution is subject to approval by our stockholders, which we are seeking at the New Special Meeting. While we continue to believe that the Dissolution is currently the best opportunity for us to maximize the remaining value of the Company for our stockholders, there are risks and uncertainties as to whether stockholders will approve the Dissolution at the New Special Meeting, including taking into consideration that we were not able to obtain stockholder approval for the Dissolution at our previously held special meeting of stockholders convened on November 22, 2024, and subsequently adjourned and finally reconvened on January 30, 2025. If it is not completed for any reason, we may have to continue our limited business operations while exploring other strategic alternatives that are available to return capital to stockholders in a manner intended to maximize value. Given our past voting challenges with respect to the Dissolution, we have engaged a financial advisor to explore additional strategic options, which may include mergers, reverse mergers, strategic partnerships, and licensing and sub-licensing transactions (“ Potential Strategic Transaction ”). However, particularly in light of our limited business operations, our recent completion of the Avenova Asset Sale and the Wound Care Divestiture (constituting substantially all of our assets), our announced intent to complete the Dissolution, and the generally competitive market for such a Potential Strategic Transaction, our efforts to identify other business strategies may be hindered and we may not be able to identify an alternate transaction on the necessary timing before our cash runs out. Even if we are able to identify and pursue a Potential Strategic Transaction, any such alternatives may not result in greater (or even equivalent) stockholder value than the proposed Dissolution and such alternatives may entail additional risks and costs. As a result of such risks or if we do not identify a Potential Strategic Transaction, there is a high probability that, in such situation, we may have to cease all operations, make an assignment for the benefit of any creditors, turn NovaBay over to a third- party management company or liquidator or file for bankruptcy protection. If we fail to successfully execute the Dissolution or a Potential Strategic Transaction, our shareholders may lose their entire investment.- 15- We cannot assure you as to the amount of distributions, if any, to be made to our stockholders. To the extent we proceed with the Dissolution, we cannot predict with certainty the timing, amount, or number of distributions, if any, to our stockholders. As of February 28, 2025, we had approximately \$ 10. 4 million in cash and cash equivalents. We currently estimate that we will expend between \$ 6. 8 million and \$ 9. 9 million after March 1, 2025, which would be used to pay all expenses (including operating expenses up until the filing of a certificate of dissolution with the Secretary of State of the State of Delaware (the “ Certificate of Dissolution ”) in accordance with the Delaware General Corporation Law (the “ DGCL ”)) and other known, non- contingent liabilities, and which also includes reasonable provision for expenses of liquidation and potential, contingent or unknown liabilities as required by Delaware law. We currently estimate that the aggregate amount of liquidating distributions to stockholders will be between \$ 0. 7 million and \$ 5. 6 million, or between \$ 0. 13 and \$ 0. 97 per share of common stock (based on 5, 831, 269 shares of common stock and other equity outstanding as of March 18, 2025). This amount may be paid in one or more distributions. Any such distributions would not occur until after the Certificate of Dissolution is filed, and we cannot predict the timing or amount of any such distributions, or whether any such distributions will occur, as uncertainties as to the ultimate amount of our liabilities, the operating costs and amounts to be set aside for claims, obligations and provisions during the liquidation and winding- up process, and the related timing to complete such transactions, make it impossible to predict with certainty the actual net cash amount, if any, that will ultimately be available for distribution to stockholders or the timing of any such distributions. Examples of uncertainties that could reduce the value of distributions to our stockholders include: (i) our incurrence of expenses relating to the Dissolution being different than estimated; (ii) unanticipated costs relating to the defense, satisfaction or settlement of lawsuits or other claims that may be threatened against us or our current or former directors or officers; (iii) amounts necessary to resolve claims, including unforeseen claims, of any creditors or other third parties; and (iv) delays in the Dissolution or other winding up process. In addition, as we wind down, we will continue to incur expenses from the remaining operations, such as operating costs, severance payments, payments to any continuing employees or consultants, lease rental payments, directors’ and officers’ insurance, taxes, legal, accounting and financial advisory fees and expenses related to our filing obligations with the SEC, which will reduce amounts that will be available for distribution to our stockholders, if any. We have attempted to estimate reasonable reserves for such liabilities, obligations, expenses and claims against us; however, those estimates may be inaccurate. Accordingly, stockholders may receive substantially less than the amount that we currently estimate that they may receive, or they may receive no distribution at all. We intend to rely on the “ safe harbor ” procedures under Sections 280 and 281 (a) of the DGCL to, among other things, obtain an order from the Delaware Court of Chancery establishing the amount and form of security for pending claims for which the Company is a party, contingent or unmatured contract claims for which the holder declined the Company’ s offer of a security, and unknown claims that, based on facts known to the Company, are likely to arise or become known within three (3) years of filing of the Certificate of Dissolution (or such longer period of time as the Delaware Court of Chancery may determine) (the “ Court Order ”), and pay or make reasonable provision for our uncontested known claims and expenses and establish reserves for other claims as required by the Court Order and the DGCL. We expect to distribute all of our remaining assets in excess of the amount to be used by us to pay claims and fund the reserves required by the Court Order and pay our operating expenses through the completion of the dissolution and winding- up process to our stockholders. The Court Order will reflect the Delaware Court of Chancery’ s own determination as to the amount and form of security reasonably likely to be sufficient to provide compensation for all known, contingent and potential future claims against us. There can be no assurances that the Delaware Court of Chancery will not require us to withhold additional amounts in excess of the amounts that we believe are sufficient to satisfy our potential claims and liabilities. Accordingly, our stockholders may not receive any distributions of our

remaining assets for a substantial period of time, if at all, after satisfaction of all claims. As a result of these and other factors, we cannot assure you as to any amounts, if any, to be distributed to our stockholders if the Board proceeds with the Dissolution. If our stockholders do not approve the Dissolution at the New Special Meeting, we will not be able to proceed with the Dissolution and no liquidating distributions will be made. We cannot predict the timing of the distributions to stockholders. Our current intention is that, if the Dissolution is approved by our stockholders and the Board proceeds with the Dissolution, then the Certificate of Dissolution would be filed as soon as practical following the New Special Meeting; however, ultimately, the decision of whether or not to proceed with the Dissolution will be made by the Board in its sole discretion. If our stockholders approve the Plan of Dissolution, the Board has not set a deadline to make its decision to proceed with the effectiveness of the Dissolution. No further stockholder approval would be required to effect the Dissolution. Under the DGCL, before a dissolved corporation may make any distribution to its stockholders, it must pay or make reasonable provision to pay all of its claims and obligations, including all contingent, conditional or unmaturing contractual claims known to the corporation, as determined by the Board and pursuant to the “ safe harbor ” procedures approved by the Court Order. We can provide no assurance as to if or when any such distribution will be made, and we cannot provide any assurance as to the amount to be paid to each stockholder in any such distribution, if one is made. The Board intends to seek to distribute funds to our stockholders as quickly as possible, as permitted by the DGCL, and will take all reasonable actions to optimize the distributable value to our stockholders. We anticipate that distributions, if any, to our stockholders will be made in cash, and may be made at any time with initial distributions to stockholders anticipated to occur in nine (9) to twelve (12) months from the effective time of the Dissolution (the “ Effective Time ”).- 16- The precise timing of any distributions to our stockholders will depend on and could be delayed due to many factors, including without limitation, the time it takes to obtain the Court Order and whether a creditor or other third party seeks an injunction against the making of additional distributions to stockholders on the basis that the amounts to be distributed are needed to satisfy our liabilities or other obligations to the extent not previously reserved for. As a result of these and other factors, we are unable to predict the timing of distributions, if any are made, to our stockholders. The Board may determine not to proceed with the Dissolution. Even if the Dissolution is approved by our stockholders at the New Special Meeting, the Board may determine, in the exercise of its fiduciary duties, not to proceed with the Dissolution. If the Board elects to pursue any strategic alternative to the Dissolution, including a Potential Strategic Transaction, our stockholders may not receive any of the funds that might otherwise be available for distribution to our stockholders. The decision of whether or not to proceed with the Dissolution will be made by the Board in its sole discretion and the Board has not set a deadline to make its decision to proceed with or abandon the Dissolution after stockholder approval. Our stockholders may be liable to our creditors for part or all of the amount received from us in our liquidating distributions if reserves are inadequate. Under the DGCL, we would be required, in connection with the Dissolution, to pay or make reasonable provision for payment of our liabilities and obligations. To the extent the Dissolution is approved by stockholders and the Board determines to proceed with the Dissolution, we will establish a reserve, consisting of cash or other assets that we believe will be adequate for the satisfaction of all of our current known expenses and unknown, contingent and / or conditional claims and liabilities. The estimated amount of the reserve is established by the Board, and approved by the Delaware Court of Chancery; however, such estimated amount may not be adequate to cover all of our claims and obligations. Under the DGCL, if we fail to create an adequate contingency reserve for payment of our expenses, claims and obligations, each stockholder could be held liable for payment to our creditors for claims. However, to the extent the “ safe harbor ” procedures under Sections 280 and 281 (a) of the DGCL are followed as we plan to, a stockholder will not be liable for any claim in excess of the lesser of (a) the stockholders’ pro rata share of the claim and (b) the amount distributed to the stockholder, and only with respect to claims that began before the expiration of a post- dissolution period of at least three (3) years (or longer as the Delaware Court of Chancery shall in its discretion direct). If our stockholders vote against the Dissolution pursuant to the Plan of Dissolution, we may pursue other strategic alternatives; which may not result in greater (or even equivalent) stockholder value than the proposed Dissolution and may entail additional risks and costs (e. g., bankruptcy). If our stockholders do not approve the Dissolution or the Board does not proceed with the Dissolution, we will continue our corporate existence and the Board will continue to explore what, if any, strategic alternatives are available, including a Potential Strategic Transaction, to return capital to stockholders in a manner intended to maximize value in light of its discontinued business activities. Any Potential Strategic Transaction or other strategic alternative that we may pursue and complete is subject to a number of risks, including risks related to: • whether such transaction can be identified in a timely manner and completed; • the successful integration with a potential transaction partner following the closing of any such transaction; • depleting our remaining cash resources whether prior to or following a Potential Strategic Transaction; • litigation resulting from a Potential Strategic Transaction; • continuing to have insufficient revenues to offset expenses after completing a Potential Strategic Transaction; • challenges maintaining our internal standards, controls, procedures and policies; • entering markets in which we have no prior experience and where we may not succeed; and • any impairment of intangible assets, such as goodwill, or depreciation and amortization expenses associated with the Potential Strategic Transaction.- 17- As a result, if some or all of such risks occur, it is unlikely that a Potential Strategic Transaction or other strategic alternative would result in greater stockholder value than the Dissolution, and pursuing a Potential Strategic Transaction, if we are not successful, may result in our Company seeking bankruptcy protection or protection under other insolvency laws. If we proceed with the Dissolution, our stockholders will not be able to buy or sell shares of our common stock after we close our stock transfer books at the Effective Time of the Dissolution. If stockholders approve the Dissolution and the Board determines to proceed with the Dissolution, we intend to close our stock transfer books and discontinue recording transfers of our common stock at the Effective Time of the Dissolution as

set forth in the Certificate of Dissolution. After we close our stock transfer books, we will not record any further transfers of our common stock on our books except by will, intestate succession or operation of law. Therefore, shares of our common stock will not be freely transferable after such date. As a result of the closing of the stock transfer books, all liquidating distributions in the Dissolution will be made pro rata to the stockholders of record as of the Effective Time of the Certificate of Dissolution, with distribution (if any) anticipated to occur in nine (9) to twelve (12) months from the Effective Time. Further stockholder approval will not be required in connection with the implementation of the Plan of Dissolution, including the sale or disposition of all or substantially all of our assets following the Effective Time of the Dissolution pursuant to the Plan of Dissolution. The approval of the Dissolution by the requisite vote of our stockholders at the New Special Meeting will grant full and complete authority to the Board and executive officers, without further stockholder action, to decide whether to proceed with the Dissolution pursuant to the Plan of Dissolution in accordance with any applicable provision of Delaware law. If we proceed with the Dissolution, then following the Effective Time, we may sell, distribute or otherwise dispose of our remaining non-cash assets without further stockholder approval. As a result, after the Effective Time, the Board may, in order to maximize value for our stockholders and creditors, authorize actions in implementing the Plan of Dissolution, including the specific terms and prices for the sales and dispositions of its remaining assets, with which stockholders may not agree. If we proceed with the Dissolution, our stockholders may not be able to recognize a loss for U.S. federal income tax purposes until they receive a final distribution from us. If stockholders approve the Dissolution and the Board determines to proceed with the Dissolution, distributions made pursuant to the Plan of Dissolution are intended to be treated as received by a stockholder in exchange for international the stockholder's shares of our common stock. Accordingly, the amount of any such distribution allocable to a block of shares of our common stock owned by a U.S. stockholder will reduce the stockholder's tax basis in such shares, but not below zero. Any excess amount allocable to such shares will be taxable as capital gain. Such gain generally will be taxable as long-term capital gain if the shares have been held for more than one year. Any tax basis remaining in a share of our common stock following the final liquidating distribution by the Company will be treated as a capital loss. The deductibility of capital losses is subject to limitations. You should consult your tax advisor as to the particular tax consequences of the Dissolution to you, particularly due to the tax treatment of any liquidating distribution varying among different stockholders, including the applicability of any U.S. federal, state, local and non-U.S. tax laws. The loss of members of our senior executive management team could adversely affect our ability to operate our remaining business and administer the Dissolution process. Our ability to operate our remaining business and administer the Dissolution process in a cost effective and efficient manner, to the extent our stockholders approve the Dissolution and the Board determines to proceed with the Dissolution, depends, in large part, on the continued service of our senior executive management team, including our Chief Executive Officer, Justin M. Hall, and our Interim Chief Financial Officer, Tommy Law. Following the sale of substantially all of our assets as a result of the Avenova Asset Sale, our remaining senior executive officers and employees: (i) have been performing the post-closing services under the terms of the PRN Transition Services Agreement; (ii) are currently managing our remaining business operations and supporting our Company's identification and evaluation of potential strategic alternatives; and (iii) are expected to provide certain support to our Company in connection with the Dissolution, to the extent the Dissolution is approved by stockholders and the Board determines to proceed with the Dissolution. Accordingly, the loss of one or both of our remaining senior executive officers would adversely impact our ability to operate the remaining business and may result in delays or potential inefficiencies, with respect to the Dissolution process, to the extent it proceeds. Resources may be wasted in searching for Potential Strategic Transactions that are not completed, which could materially adversely affect stockholder value, including distributions as part of the Dissolution (if any). As disclosed, simultaneously with our Company pursuing the Dissolution, we have also engaged a financial advisor to explore any Potential Strategic Transactions that may be available, which is an ongoing expense to the Company. Any investigation of a specific Potential Strategic Transaction and the negotiation, drafting and execution of relevant agreements, disclosure documents and other instruments would require substantial management time and attention and substantial costs for accountants, attorneys, and others. Furthermore, if we reach an agreement relating to a specific Potential Strategic Transaction, we may fail to complete the transaction for any number of reasons, including those beyond our control. Any such event will result in a loss to us of the related costs incurred which could reduce distributions to stockholders (if any) and materially adversely affect subsequent attempts to identify and effect another business opportunity. Our disposal of historical assets and operations through the Avenova Asset Sale and the Wound Care Divestiture could result in our Company becoming a "shell company" if we do not complete the Dissolution or an Alternative Strategic Transaction. As a result, we may ultimately become subject to more stringent reporting requirements, offering limitations and resale restrictions. Although we currently have our significantly reduced business, that includes fulfilling remaining contractual obligations for the manufacture and delivery of wound care products and performance of the services contemplated by the PRN Transition Services Agreement, such business may no longer be conducted in the near future and our business operations and assets would consist primarily of any remaining cash and cash equivalents. As such, we could be a "shell company" under SEC rules and regulations, and, in such event, if we do not receive approval for or proceed with the Dissolution, and instead engage in a Potential Strategic Transaction, it is possible that certain requirements for shell company business combinations could be applicable, which include: • the potential future combined company needing to file a Form 8-K to report the Form 10 type information after closing the combination transaction with the SEC reflecting its status as an entity that is not a shell company;- 18- • us and the potential future combined company not being eligible to use a Form S-3 until 12 full calendar months after closing of the combination transaction; • the potential future combined company needing to wait at least 60 calendar days after closing of the merger to file a Form S-

8 for any equity plans or awards; and • the potential future combined company being an “ineligible issuer” for three years following the closing of the combination transaction, which will prevent the combined company from (i) incorporating by reference in its Form S-1 filings, (ii) using a free writing prospectus, or (iii) taking advantage of well-known seasoned issuer status despite its public float. The foregoing SEC requirements could increase our or the potential future combined company’s time and cost of raising capital, offering stock under equity plans, and complying with securities laws.

**Risks Relating to Owning Our Common Stock** The price of our common stock may fluctuate substantially, which may result in losses to our stockholders. The stock prices of our Company and many other companies in our market segment have generally experienced wide fluctuations in response to various factors. Broad economic, market and political conditions could industry factors may negatively affect the market price of our business, financial condition and results of operations of our common stock. Our business is sensitive to general economic conditions and consumer spending. Therefore, we face risks associated with U. S. and international economic conditions, including a recession or other economic downturn, and are subject to events beyond our control including armed conflict, war, public health crises (such as the COVID-19 pandemic), trade disputes, economic sanctions, and their collateral impacts. In particular, consumer spending on discretionary premium items, as well as eyecare products is influenced and may be impacted by general economic conditions, wage and salary levels, trends in consumer confidence and spending, interest rates, inflation, and the availability of discretionary income.

**Completion of the Avenova Asset Sale** and consumer credit. Further, adverse U. S. or international economic conditions, including recessionary conditions, or periods of inflation or high energy prices may contribute to higher unemployment levels, decreased consumer spending, reduced credit availability and declining consumer confidence and demand, poses a risk to our business. These economic conditions could cause some of our retail customers or suppliers to experience cash flow or credit problems and impair their financial condition, which could disrupt our business and adversely affect product orders, payment patterns and default rates and increase our bad debt expense. In addition, deterioration in global financial markets could make future financing difficult or more expensive, which could have a material adverse effect on our ability to finance the acquisition of inventory for sale to our customers. Additional concerns include abrupt political change, terrorist activity, and armed conflict and any escalation or expansion thereof, including but not limited to the dispute between Israel and Hamas, Russia and Ukraine, and China and Taiwan, which pose a risk of further general economic disruption.

**Risk Related to Government Regulation** We expect continuous revenue from sales of Avenova Spray, which is classified as a cleared medical device by the FDA, but we cannot guarantee that the FDA will continue to allow us to market and sell Avenova Spray as a cleared medical device, which marketing inability would halt our sales and marketing of Avenova Spray and cause us to lose revenue and materially and adversely affect our results of operations and the value of our business. Our ability to continue commercializing Avenova Spray and generating revenue from Avenova Spray depends upon, among other things: • our cash position the FDA allowing us to continue marketing Avenova Spray as an FDA cleared medical device; • acceptance of actual or anticipated variations in our expenses, particularly as we pursue the medical community; • **Dissolution or any Potential Strategic Transaction**; • any unanticipated contingent liabilities or litigation that may arise; and • adverse developments with respect to the Dissolution or any other safety Potential Strategic Transaction. Our common stock will likely be delisted from the NYSE American, and in connection with the Dissolution we plan to initiate steps to exit from certain reporting requirements under the Exchange Act. If the exit process is protracted, we will continue to bear the expense of being a public reporting company despite having no source of revenue. Our common stock is currently registered under the Exchange Act, which requires that we comply with certain public reporting and proxy statement requirements. Compliance with these requirements is costly and time-consuming; however, it aids in information being widely publicly available to our stockholders and has historically been beneficial in capital raise transactions. The Avenova Spray Asset Sale constituted the sale of substantially all of our assets. Under the NYSE American continued listing requirements, the completion of the sale of substantially all of our assets may cause the NYSE American to delist our shares. Further, pursuant to a Deficiency Letter received from the NYSE American on April 18, 2024, we are currently subject to the procedures and requirements of Section 1009 of the Company Guide related to not meeting the NYSE American’s predicate devices continued listing standards related to stockholders’ equity, which also may cause the NYSE American to commence delisting procedures. Our NYSE listing is currently subject to a plan of compliance through October 18, 2025. While we are subject to this plan, the Company is subject to quarterly monitoring for compliance with the plan. If the Company does not regain compliance with the NYSE American’s listing standards by October 18, 2025, or if the Company does not make progress consistent with its plan, then the NYSE American may initiate delisting procedures. To the extent the NYSE American does not delist our shares and the Board determines to effect the Dissolution after having received stockholder approval at the New Special Meeting, we plan to notify FINRA of our impending dissolution and request that our common stock stop trading on the NYSE American on the effective date of the Dissolution or as soon thereafter as is reasonably practicable. Whether or not the Dissolution is completed, and regardless of whether our shares are delisted from the NYSE American, we will have an obligation to continue to comply with the applicable reporting requirements of the Exchange Act until we have exited from such reporting requirements.

**19- We plan to initiate steps to exit from such reporting requirements in order to curtail expenses; however, such process may be protracted and we may be required to continue to make certain filings with the SEC. Accordingly, we will continue to incur expenses that will reduce any amount available for distribution, including expenses of complying with public company reporting requirements and paying our service providers, among others. If our reporting obligations cease, publicly available information about us will be substantially reduced. To the extent the NYSE American delists our common stock from trading on its exchange and the Dissolution is not approved or implemented or is otherwise delayed, we will not be eligible to apply to list our securities on the NYSE**

American or on another national securities exchange due to our inability to currently meet the initial listing standards applicable to a newly listed company, and we could face significant material adverse consequences, including during any period between such delisting and the effective date of the Dissolution, such as reduced liquidity for our securities, limited availability of market quotations for our securities and a determination that our common stock is a “ penny stock,” which will require brokers trading in our common stock to adhere to more stringent rules and possibly result in a reduced level of trading activity in the secondary trading market for our securities, and a substantial impairment on our ability to raise additional funds in connection with a Potential Strategic Transaction, if needed. Further, the National Securities Markets Improvement Act of 1996, which is a federal statute, prevents or preempts the states from regulating the sale of certain securities, which are referred to as “ covered securities.” Because our common stock is currently listed on the NYSE American, our common stock qualifies as covered securities under such statute. Although the states are preempted from regulating the sale of our securities, the federal statute does allow the states to investigate companies if there is a suspicion of fraud, and, if there is a finding of fraudulent activity, the then the states can regulate or bar the sale of covered securities in a particular case. If we were no longer listed on the NYSE American, our common stock would not be a covered security and we would be subject to regulation in each state in which we offer our securities. Our stockholders may experience significant dilution as a result of the conversion of the Series B Preferred Stock and the potential exercise of outstanding common stock purchase warrants. We have a significant number of patients who use Avenova Spray; ● coverage Company securities that are or will be convertible and / or exercisable into shares of or our reimbursement common stock.As of March 25, 2025, these Company securities include 131 shares of Series B Preferred Stock that are convertible into 15,454,065 shares of common stock, 21 Unsecured Convertible Notes that are convertible into 107,146 shares of common stock and common stock warrants exercisable for 74,382,753, 447,613 shares of common stock.As of December 31, 2023, 2023-2025, we had 115,230,816, 150 shares of common stock issued and outstanding.Subsequent to December 31,2023,as of March 21,2024- 204,we had 30,098,150 shares of common stock issued and outstanding.Accordingly,upon the conversion or exercise (as applicable) of some or all of the Series B Preferred Stock,the Series C Preferred Stock,convertible notes and common stock warrants,as well as the exercise of stock options and other equity based awards that have been or will be issued and / or granted by case may us,the percentage ownership and voting power held by our existing stockholders will be significantly reduced and our stockholders could experience significant dilution.If such dilution were to occur ahead of the Dissolution, distributions to stockholders ( if we enter into any) would reduce as a result future transaction that reduces the applicable conversion price of such securities dilution. We have not paid dividends or repurchased stock in the past and do not expect to pay dividends or repurchase stock in the future,and any return on investment may be limited to the value of our stock.We have never paid cash dividends on,or repurchased shares of,our common stock and do not anticipate paying cash dividends or repurchasing shares of our common stock in the foreseeable future,unless in connection with a Potential Strategic Transaction. In addition-While we anticipate making distributions to stockholders in connection with the Dissolution,we do not anticipate paying any dividends or repurchasing any shares of our Series B Preferred Stock ;however, before the Dissolution or if the Dissolution is not completed.If we pay dividends on our shares of common stock,we are required to pay dividends on our Series B Preferred Stock on an as converted basis.The payment of dividends on,or the repurchase of shares of,our common stock or Series B Preferred Stock will depend on our earnings,financial condition and other business and economic factors affecting us at such time as our Board of Directors may consider relevant.If we do not pay dividends or repurchase stock or if the Dissolution is not completed with related distributions to stockholders,holders of our common stock will experience a return on their investment in our shares only if our stock price appreciates.Risks Related to Potential Litigation The pharmaceutical and biopharmaceutical industries are characterized by patent litigation,and any litigation or claim against us may impose substantial costs on us,place a significant strain on our financial resources,divert the attention of management from our business and harm our reputation.There has been substantial litigation in the pharmaceutical third- their investment in our shares only if our stock price appreciates or if part of a Potential Strategic Transaction. - party payors 20- We may issue additional shares of Avenova Spray; ● our common stock, other series or classes of preferred stock or other equity securities without our your ability to successfully approval, which would dilute your ownership interests and may depress the market price Avenova Spray to both doctors and patients; and ● the amount and nature of competition from competing companies your shares. If we do not proceed with similar products. Revenue from the Dissolution, we may issue additional shares of our common stock, the other Avenova series or classes of preferred stock, in addition to our Series B Preferred Stock, units, warrants or other equity securities of equal or senior rank in the future in order to fund our operations, provide working capital brand-- and will be subject to for other purposes, including in connection with , among other things, regulatory-executing upon a Potential Strategic Transaction, repricing of warrants or other outstanding securities. These issuances of additional securities shall occur without stockholder approval in most circumstances. Our issuance of additional shares of our common stock, preferred stock or other equity securities of equal or senior rank could have the following effects: ● your proportionate ownership interest in NovaBay will decrease; ● the relative voting strength of each previously outstanding share of common stock may be diminished; and ● the market uncertainties that price of your shares of common stock may be outside of decline. Offers our- or availability control. The clearance that we have received from the FDA for sale of a substantial number of shares of our common stock, including as a result of the conversion of the Series B Preferred Stock, conversion of the Unsecured Convertible Notes and / our- or Avenova Spray, NeutroPhase, PhaseOne and other-- the exercise of outstanding warrants products is subject to strict limitations on the indicated uses for which the products may be cause the price of our publicly traded securities to decline. Sales of a significant number of shares of our common stock in the public marketed-- market could depress - The labeling, packaging, adverse event reporting, storage, advertising, promotion, and record keeping for all our products, including those-- the market price of our common stock. For example,

sales of shares of common stock that are issuable upon conversion of not subject to FDA clearance, are subject to extensive regulatory requirements. In addition, there can be no assurance that government regulations applicable to Series B Preferred Stock, the conversion of the Unsecured Convertible Notes and / our products will not change and thereby prevent the marketing exercise of some outstanding warrants may cause the price of our publicly traded securities to decline all our products for a period of time or permanently. The FDA's policies shares of common stock underlying the shares of Series B Preferred Stock, the Unsecured Convertible Notes and outstanding warrants represent, in the aggregate, approximately 84 % of the total number of shares of common stock outstanding as of March 25, 2025. Upon conversion or exercise, as the case may change and additional government regulations may be enacted that, of those securities, the shares of common stock we issue upon such conversion or exercise could be sold into modify, prevent or delay regulatory approval of our products. We cannot predict the likelihood public market nature or extent of and such sales could be significant and have an adverse government regulation that may arise from future legislation or administrative action, either in the U. S. or in other countries. We cannot guarantee that Avenova Spray, our other cleared products, or products that may be approved or cleared for marketing in the future, will not be materially adversely impacted -- impact by a change in industry standards or regulations. If changes to industry standards, practices or regulations applicable to Avenova Spray or our other cleared products that we may market and sell in the future cause a delay in continued commercialization or if we cannot make a change to satisfy the industry standards, practices or regulations, we may not be able to meet market demand which may have a materially adverse effect on the price our business, financial condition, results of our common stock operations, and prospects. Additionally, the FDA may request that we submit another 510 (k) premarket submission that compares to another predicate device. If we are unable to find an adequate predicate device that is substantially equivalent to Avenova Spray for the treatment claims that we use to sell and market Avenova Spray, we may not be able to obtain the necessary FDA clearance to continue to market and sell Avenova Spray without performing comprehensive clinical trials. In such conversion event, we would need to seek premarket approval from the FDA for or exercise the applicable product before we could continue to sell and market Avenova Spray in the United States, which would be significantly more time consuming, expensive, and uncertain. Avenova Spray is not approved by the FDA as a drug, and we rely solely on the 510 (k) clearance for Avenova Spray and certain of our other products as a medical device. Our business and future growth depend on the development, use and sale of products that are subject to FDA regulation, clearance and approval. Under the U. S. Federal Food, Drug, and Cosmetic Act and other laws, we are prohibited from promoting our products for off-label uses. This means that we may not make claims about the safety or effectiveness of our products and may not proactively discuss or provide information on the use of our products, except as allowed by the FDA. As Avenova Spray is a medical device, we may only make very limited claims that pertain to its cleared intended use. Without claims of efficacy, market acceptance of our products may be slow. The 510 (k) status of Avenova Spray also affects our ability to obtain formal insurance reimbursement by payors and affects our ability to obtain Medicare coverage. There is significant risk that the FDA or other federal or state law enforcement authorities may determine that the nature and scope of our sales and marketing activities constitutes the promotion of our products for non-FDA approved uses in violation of applicable law and as the sale of unapproved drugs, which is prohibited under applicable law. We face the risk that the FDA may take enforcement action against us for the way that we promote and sell our products. This risk may grow with the increased visibility of Avenova Spray online, as well as the FDA's increased focus on antimicrobial products in the wake of the COVID-19 pandemic. We also face the risk that the FDA or other regulatory authorities might pursue enforcement actions based on past activities that we have discontinued or changed, including sales activities, arrangements with institutions and doctors, educational and training programs and other activities. Government investigations concerning the promotion of unapproved drug products, off-label use and related issues are typically expensive, disruptive and burdensome and generate negative publicity. If our promotional activities are found to be in violation of applicable law or if we agree to a settlement in connection with an enforcement action, we would likely face significant fines and penalties and be required to substantially limit and change our sales and promotion activities. Developments after a product reaches the market may adversely affect sales of our products. Even after obtaining regulatory clearances, certain developments may decrease demand for our products, including the re-review of products that are already marketed; new scientific information and evolution of scientific theories; the recall or loss of regulatory clearance of products that are already marketed; changing government standards or public expectations regarding safety, efficacy, or labeling changes; and greater scrutiny in advertising and promotion. If previously unknown side effects are discovered or if there is an increase in negative publicity regarding known side effects of a product, it could significantly reduce demand for the product or require us to take actions that could negatively affect sales, including removing the product from the market, restricting its distribution or applying for labeling changes. In addition, some health authorities appear to have become more cautious when examining new products and are re-reviewing select products that are already marketed, adding further to the uncertainties in the regulatory processes. There is also greater regulatory scrutiny, especially in the United States, on advertising (in particular, direct to consumer advertising), promotion and pricing of pharmaceutical products. Certain regulatory changes or decisions could make it more difficult for us to sell raise additional financing in connection with a Potential Strategic Transaction through the sale of equity our or equity products. If we are not able to maintain regulatory compliance, we may be subject to fines, suspension or withdrawal of regulatory clearance, product recalls, seizure of products, operating restrictions, injunctions, warning letters, criminal prosecution and other enforcement actions. Any of these events could prevent us from marketing our products and our business may not be able to continue past such concerns. If any of the above occurs to Avenova Spray, our business, results of operations, financial condition and cash flows could be materially adversely affected. We do not have our own manufacturing capacity, and we rely on partnering arrangements or third party manufacturers related securities in the future at a time and / for or at a price the manufacture of our products and potential products. The FDA and other governmental authorities require that all our products be manufactured in strict compliance with federal Quality Systems Regulations ("QSR") and other applicable government regulations and corresponding

foreign standards. We do not currently operate manufacturing facilities for the production of our products. As a result, we **deem** have partnered with third parties to manufacture our products or rely on contract manufacturers to supply, store and distribute our products and help us meet legal requirements. As we have limited control over our commercial partners, any performance failure on their part (including failure to deliver compliant, quality components or finished goods on a timely basis) could affect the commercialization of our products, producing additional losses and reducing or delaying product revenues. If any of our commercial partners or manufacturers have violated or is alleged to have violated any laws or regulations during the performance of their obligations to us, it is possible that we could suffer significant financial, operational and reputational harm or other negative outcomes, including possible legal consequences. Our products require precise, high-quality manufacturing. The failure to achieve and maintain high manufacturing standards could result in patient injury or death, product recalls or withdrawals, delays or failures in product testing or delivery, cost overruns or other problems that could seriously harm our business. Contract manufacturers and partners often encounter difficulties involving production yields, quality control and quality assurance, as well as shortages of qualified personnel. Accordingly, we and our third-party manufacturers are also subject to periodic unannounced inspections by the FDA to determine compliance with the FDA's requirements, including primarily cGMP, the QSR, medical device reporting regulations and other applicable government regulations and corresponding foreign standards, including ISO 13485. The results of these inspections can include inspectional observations on FDA's Form 483, untitled letters, warning letters, or other forms of enforcement. If the FDA were to conclude that we are not in compliance with applicable laws or regulations, or that any of our FDA-cleared products are ineffective, make additional therapeutic claims that are not commensurate to the accepted labeling claims, or pose an unreasonable **reasonable** health risk, the FDA could take a number of regulatory actions, including preventing us from manufacturing any or all of our **or appropriate** products or performing laboratory testing on human specimens, which could materially adversely affect our **or** business. In addition, a prolonged interruption in the manufacturing of one or more of our products as a result of non-compliance could decrease our supply of products available for sale, which could reduce our net sales, gross profits and market share, as well as harm our overall business, prospects, financial condition and results of operations. Avenova Spray's FDA clearance and our other products that have been cleared by the FDA or products that we may obtain FDA clearance in the future, if at all. **If we become a "shell company," the holders of our restricted securities and control securities will not be able to sell their securities in reliance on Rule 144. We may become a "shell company," as that term is defined by the applicable federal securities laws. Applicable provisions of Rule 144 specify that during that time that we are subject to limitations a "shell company" and for a period of one year thereafter, holders of our restricted securities cannot sell those securities in reliance on Rule 144. This restriction** the intended uses for which the product may **have** be marketed, which can reduce our potential **adverse effects on certain holders converting** to successfully commercialize the product and generate revenue from the product. If the FDA determines that our promotional materials, labeling, training or **our Series B Preferred Stock** other marketing or educational activities constitute promotion of an unapproved use, it could request that we cease or modify our training or promotional materials or subject us to regulatory enforcement actions. It is also possible that other federal, state or foreign enforcement authorities might take action if they **the** consider **Unsecured Convertible Notes** our **or** training or **exercising warrants before** other **the Dissolution or** promotional materials to constitute promotion of an **any future efforts to raise** unapproved use, which could result in significant fines or penalties under other statutory authorities. In addition **additional capital through unregistered offerings**, we may be required to conduct costly post-market testing and surveillance to monitor the **extent needed in connection** safety or effectiveness of our products, and we must comply with medical device reporting requirements where applicable for Avenova Spray, including the reporting of adverse events and malfunctions related to our products. Later discovery of previously unknown problems with our products, including unanticipated adverse events or adverse events of unanticipated severity or frequency, manufacturing problems, or failure to comply with regulatory requirements such as QSR, may result in changes to labeling, restrictions on such products or manufacturing processes, withdrawal of the products from the market, voluntary or mandatory recalls, a **Potential Strategic Transaction** requirement to repair, replace or refund the cost of any medical device we manufacture or distribute, fines, suspension of regulatory clearance to one or all of our products that may be cleared in the future, product seizures, injunctions or the imposition of civil or criminal penalties which would adversely affect our business, operating results and prospects. If we were to lose, or have restrictions imposed on, FDA clearances we may receive in the future, our business, operations, financial condition and results of operations would likely be materially adversely impacted.

**Risks Relating to Owning Our Common Stock** The price of our common stock may fluctuate substantially, which may result in losses to our stockholders. The stock prices of our company and many other companies in our market segments have generally experienced wide fluctuations in response to various factors, some of which are beyond our control, including those that are unrelated to our operating performance. Broad market and industry factors may negatively affect the market price of our common stock, regardless of our actual operating performance. The market price of our common stock is likely to be volatile and could fluctuate in response to, among other things:

- the announcement of new products by us or our competitors;
- the announcement of partnering arrangements by us or our competitors;
- our ability to effectively manage our future growth;
- actual or anticipated variations in quarterly operating results;
- our cash position;
- our failure to meet the estimates and projections of the investment community or that we may otherwise provide to the public;
- adverse developments concerning our suppliers or distributors;
- adverse developments concerning our customers, including the reduction in products purchased and / or loss of customers;
- our inability to obtain adequate supplies and components for our products or inability to do so at acceptable prices;
- the failure to increase net sales or increases in our operating expenses;
- changes in our earnings estimates, investors' perceptions, recommendations by securities analysts or our failure to achieve analysts' earnings estimates;
- the sale of a substantial number of shares of common stock by any large stockholder, especially within a short period of time;
- general, economic and market conditions, including volatility in the financial markets, a decrease in consumer confidence and other factors unrelated to our operating performance or the operating performance of our

~~competitors; and~~ Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited. Under Section 382 of the Internal Revenue Code of 1986, as amended (the “ Code ”), if a corporation undergoes an “ ownership change, ” generally defined as a greater than 50 % change (by value) in its equity ownership over a three- year period, the corporation’ s ability to use its pre- change net operating loss (“ NOL ”) carryforwards and other pre- change tax attributes (such as research tax credits) to offset its post- change income may be limited. Since our formation, we have raised capital through the issuance of capital stock on many occasions which, combined with the purchasing stockholders’ subsequent disposition of those shares, may have resulted in one or more changes of control, as defined by Section 382 of the Code. We have not currently completed a study to assess whether any change of control has occurred, or whether there have been multiple changes of control since our formation, due to the significant complexity and cost associated with such study. If we have experienced a change of control at any time since our formation, our NOL carryforwards and tax credits may not be available, or their utilization could be subject to an annual limitation under Section 382. In addition, since we may ~~need to raise~~ **complete a Potential Strategic Transaction, which may include raising** additional **capital** funding to finance our operations, we may undergo further ownership changes in the future. If we earn net taxable income, our ability to use our pre- change NOL carryforwards to offset United States federal taxable income may be subject to limitations, which could potentially result in increased future tax liability to us. ~~If we are unable to comply with the continued listing requirements of the NYSE American, then our common stock would be delisted from the NYSE American, which would limit investors’ ability to effect transactions in our common stock and subject us to additional trading restrictions. Our Common Stock is currently listed on the NYSE American. If we are unable to comply with the continued listing requirements of the NYSE American, our Common Stock would be delisted from the NYSE American, which would limit investors’ ability to effect transactions in our Common Stock and subject us to additional trading restrictions. In order to maintain our listing, we must maintain certain share prices, financial and share distribution targets, including maintaining a minimum amount of stockholders’ equity and a minimum number of public stockholders. In addition to these objective standards, NYSE American may delist the securities of any issuer for other reasons involving the judgment of NYSE American. Historically, our stockholders’ equity has at times been below the minimum requirements of Section 1003 (a) of the Company Guide though we have met all such minimum requirements since September 30, 2020. In accordance with Section 1009 (h) of the Company Guide, if we are again determined to be below any of the continued listing standards in the future, the NYSE American will take the appropriate action which, depending on the circumstances, may include initiating its compliance procedures or initiating delisting proceedings. If our Common Stock is delisted, this could, among other things, substantially impair our ability to raise additional funds ; result in a loss of institutional investor interest and fewer financing opportunities for us ; and / or result in potential breaches of representations or covenants of our warrants, subscription agreements or other agreements pursuant to which we made representations or covenants relating to our compliance with applicable listing requirements. Claims related to any such breaches, with or without merit, could result in costly litigation, significant liabilities and diversion of our management’ s time and attention and could have a material adverse effect on our financial condition, business and results of operations. If the NYSE American delists our common stock from trading on its exchange and we are not able to list our securities on another national securities exchange, we expect the common stock would qualify to be quoted on an over- the- **21** - **counter market. If this were to..... factors may harm our competitive position.** ITEM 1B. UNRESOLVED STAFF COMMENTS~~