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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 20549

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**FORM 10-Q**

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**x QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the quarterly period ended March 31, 2016**

**or**

**o TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the transition period from                      to                      .**

**Commission File Number: 001-37350**

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**InVivo Therapeutics Holdings Corp.**

(Exact name of registrant as specified in its charter)

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**Nevada**  
(State or other jurisdiction of  
incorporation or organization)

**36-4528166**  
(I.R.S. Employer  
Identification Number)

**One Kendall Square  
Suite B14402  
Cambridge, MA**  
(Address of principal executive offices)

**02139**  
(Zip code)

**(617) 863-5500**  
(Registrant's telephone number, including area code)

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Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Accelerated filer ☒

Non-accelerated filer ☐  
(Do not check if a smaller reporting company)

Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of May 2, 2016, 31,908,054 shares of the registrant's common stock, \$0.00001 par value, were issued and outstanding.

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**INVIVO THERAPEUTICS HOLDINGS CORP.**  
**Quarterly Report on Form 10-Q for the Quarter Ended March 31, 2016**

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**PART I — FINANCIAL INFORMATION**

**Item 1. Financial Statements.**

**InVivo Therapeutics Holdings Corp.**  
**Consolidated Balance Sheets**  
(In thousands, except share and per-share data)  
(Unaudited)

	As of	
	March 31, 2016	December 31, 2015
<b>ASSETS:</b>		
Current assets:		
Cash and cash equivalents	\$ 45,767	\$ 20,194
Restricted cash	361	361
Prepaid expenses and other current assets	617	184
Total current assets	46,745	20,739
Property, equipment and leasehold improvements, net	846	938
Other assets	108	115
Total assets	\$ 47,699	\$ 21,792
<b>LIABILITIES AND STOCKHOLDERS' EQUITY:</b>		
Current liabilities:		
Accounts payable	\$ 438	\$ 521
Loan payable, current portion	403	395
Derivative warrant liability	2,954	1,907
Deferred rent, current portion	122	115
Accrued expenses	871	374
Total current liabilities	4,788	3,312
Loan payable, net current portion	1,171	1,275
Deferred rent, net current portion	242	276
Total liabilities	6,201	4,863

## Commitments and contingencies

### Stockholders' equity:

Common stock, \$0.00001 par value, authorized 50,000,000 shares; issued and outstanding 31,905,834 and 27,555,948 shares at March 31, 2016 and December 31, 2015, respectively.	1	1
Additional paid-in capital	181,689	150,497
Accumulated deficit	(140,192)	(133,569)
Total stockholders' equity	41,498	16,929
Total liabilities and stockholders' equity	\$ 47,699	\$ 21,792

See notes to the unaudited consolidated financial statements.

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### InVivo Therapeutics Holdings Corp. Consolidated Statements of Operations (In thousands, except share and per-share data) (Unaudited)

	Three Months Ended March 31,	
	2016	2015
Operating expenses:		
Research and development	\$ 2,568	\$ 2,303
General and administrative	2,999	3,208
Total operating expenses	5,567	5,511
Operating loss	(5,567)	(5,511)
Other income (expense):		
Interest income	54	1
Interest expense	(63)	(34)
Derivatives loss	(1,047)	(10,286)
Other income (expense), net	(1,056)	(10,319)
Net loss	\$ (6,623)	\$ (15,830)
Net loss per share, basic and diluted	\$ (0.24)	\$ (0.64)
Weighted average number of common shares outstanding, basic and diluted	28,171,606	24,909,876

See notes to the unaudited consolidated financial statements.

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### InVivo Therapeutics Holdings Corp. Consolidated Statements of Cash Flows (In thousands) (Unaudited)

	Three Months Ended March 31,	
	2016	2015
Cash flows from operating activities:		
Net loss	\$ (6,623)	\$ (15,830)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization expense	146	178
Non-cash derivatives loss	1,047	10,286
Common stock issued to 401(k) plan	51	53
Share-based compensation expense	1,153	1,265
Changes in operating assets and liabilities:		
Restricted cash	—	61
Prepaid expenses	(433)	529
Other assets	3	1
Accounts payable	(83)	224
Accrued expenses	512	320
Net cash used in operating activities	(4,227)	(2,913)

Cash flows from investing activities:		
Purchases of property and equipment	(50)	—
Net cash used in investing activities	(50)	—
Cash flows from financing activities:		
Proceeds from exercise of stock options	36	131
Repayment of note payable	—	(18)
Proceeds from exercise of warrants	—	2,819
Repayment of loan payable	(96)	—
Proceeds from issuance of common stock and warrants	29,910	11,038
Net cash provided by financing activities	29,850	13,970
Increase in cash and cash equivalents	25,573	11,057
Cash and cash equivalents at beginning of period	20,194	13,459
Cash and cash equivalents at end of period	<u>\$ 45,767</u>	<u>\$ 24,516</u>

See notes to the unaudited consolidated financial statements.

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**InVivo Therapeutics Holdings Corp.**  
**Consolidated Statements of Cash Flows (Concluded)**  
(In thousands)  
(Unaudited)

	Three Months Ended, March 31,	
	2016	2015
Supplemental disclosure of cash flow information and non-cash transactions:		
Cash paid for interest	<u>\$ 28</u>	<u>\$ 33</u>
Reclassification of derivative warrant liability to additional paid-in capital	<u>\$ —</u>	<u>\$ 4,866</u>

See notes to the unaudited consolidated financial statements.

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**InVivo Therapeutics Holdings Corp.**  
**Notes to Consolidated Financial Statements for the Quarter Ended March 31, 2016 (Unaudited)**  
(In thousands, except share and per-share data)

**1. NATURE OF OPERATIONS, BASIS OF PRESENTATION AND RECENT ACCOUNTING PRONOUNCEMENTS**

***Business***

InVivo Therapeutics Holdings Corp. was incorporated on April 2, 2003, and on October 26, 2010, acquired the business of InVivo Therapeutics Corporation, which was incorporated on November 28, 2005, and are continuing the existing business operations of InVivo Therapeutics Corporation as a wholly-owned subsidiary of InVivo Therapeutics Holdings Corp. Unless otherwise noted herein, the “Company” or “InVivo” refers to InVivo Therapeutics Holdings Corp. and its wholly owned subsidiary on a consolidated basis. The Company is a research and clinical-stage biomaterials and biotechnology company with a focus on the treatment of spinal cord injuries. Its proprietary technologies incorporate intellectual property licensed under the Company’s exclusive, world-wide license from Boston Children’s Hospital and the Massachusetts Institute of Technology, as well as intellectual property that has been developed internally in collaboration with its advisors and partners.

***Basis of Presentation***

The accompanying unaudited consolidated financial statements have been prepared in conformity with generally accepted accounting principles in the United States (“GAAP”) consistent with those applied in, and should be read in conjunction with, the Company’s audited financial statements and related footnotes for the year ended December 31, 2015 included in the Company’s Annual Report on Form 10-K as filed with the United States Securities and Exchange Commission (“SEC”) on March 4, 2016. The unaudited consolidated financial statements reflect all adjustments, consisting only of normal recurring adjustments, which are, in the opinion of management, necessary for a fair presentation of the Company’s financial position as of March 31, 2016 and its results of operations and cash flows for the interim period presented and are not necessarily indicative of results for subsequent interim periods or for the full year. The interim financial statements do not include all of the information and footnotes required by GAAP for complete financial statements as allowed by the relevant SEC rules and regulations; however, the Company believes that its disclosures are adequate to ensure that the information presented is not misleading.

***Reverse Stock Split***

On April 8, 2015, the Company effected a reverse stock split of its common stock, par value \$0.00001 per share, at a ratio of 1-for-4. As a result of the reverse stock split, (i) every four shares of the issued and outstanding common stock were automatically converted into one newly issued and outstanding share of common stock, without any change in the par value per share; (ii) the number of shares of common stock into which each outstanding warrant or option to purchase common stock is exercisable was proportionally decreased, and (iii) the number of shares of authorized shares of common stock outstanding was proportionally decreased. Shares of common stock underlying outstanding stock options and other equity instruments convertible into common stock were proportionately reduced and the respective exercise prices, if applicable, were proportionately increased in accordance with the terms of the agreements governing such securities.

### Recently Issued Accounting Pronouncements

In August 2014, the FASB issued ASU 2014-15, *Presentation of Financial Statements—Going Concern*, on disclosure of uncertainties about an entity's ability to continue as a going concern. This guidance addresses management's responsibility in evaluating whether there is substantial doubt about a company's ability to continue as a going concern and to provide related footnote disclosures. The guidance is effective for fiscal years ending after December 15, 2016 and for annual and interim periods thereafter, with early adoption permitted. The Company is currently in the process of evaluating the impact of the adoption of this ASU on the financial statements.

In February 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. ASU 2016-02, *Leases* ("ASU 2016-02"). The guidance in this ASU supersedes the leasing guidance in Topic 840, *Leases*. Under the new guidance, lessees are required to recognize lease assets and lease liabilities on the balance sheet for all leases with terms longer than 12 months. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the income statement. The new standard is effective for annual reporting periods beginning after December 15, 2019. The Company is currently evaluating the impact of this accounting standard

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### 2. CASH AND CASH EQUIVALENTS

As of March 31, 2016, the Company held \$45,767 in cash and cash equivalents. From time to time, the Company may have cash balances in financial institutions in excess of insurance limits. The Company has never experienced any losses related to these balances. The Company's cash equivalents are held in money market funds. Cash and cash equivalents consisted of the following (in thousands):

	March 31, 2016	December 31, 2015
Cash on deposit	\$ (100)	\$ 116
Money market fund and other short-term investments	45,867	20,078
Total cash and cash equivalents	<u>\$ 45,767</u>	<u>\$ 20,194</u>

### 3. RESTRICTED CASH

Restricted cash for the three months ended March 31, 2016 was \$361 and represented \$50 of security deposits related to the Company's credit card account and a \$311 cash account securing a standby letter of credit in favor of a landlord (see Note 5).

### 4. FAIR VALUE OF ASSETS AND LIABILITIES

The Company groups its assets and liabilities generally measured at fair value in three levels, based on the markets in which the assets and liabilities are traded and the reliability of the assumptions used to determine fair value.

Level 1 — Valuation is based on quoted prices in active markets for identical assets or liabilities. Level 1 assets and liabilities generally include debt and equity securities that are traded in an active exchange market. Valuations are obtained from readily available pricing sources for market transactions involving identical assets or liabilities.

Level 2 — Valuation is based on observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 — Valuation is based on unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. Level 3 assets and liabilities include financial instruments whose value is determined using pricing models, discounted cash flow methodologies, or similar techniques, as well as instruments for which the determination of fair value requires significant management judgment or estimation.

The Company uses valuation methods and assumptions that consider, among other factors, the fair value of the underlying stock, risk-free interest rate, volatility, expected life and dividend rates in estimating fair value for the warrants considered to be derivative instruments.

Assets and liabilities measured at fair value on a recurring basis are summarized below (in thousands):

	At March 31, 2016			
	Level 1	Level 2	Level 3	Fair Value
Cash equivalents	\$ 45,867	\$ —	\$ —	\$ 45,867
Derivative warrant liability	\$ —	\$ 2,954	\$ —	\$ 2,954
Liabilities:	At December 31, 2015			
	Level 1	Level 2	Level 3	Fair Value

Cash equivalents	\$ 20,078	\$ —	\$ —	\$ 20,078
Derivative warrant liability	\$ —	\$ 1,907	\$ —	\$ 1,907

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## 5. COMMITMENTS AND CONTINGENCIES

### *Operating Lease Commitment*

On November 29, 2011 and as amended on September 17, 2012, the Company entered into a commercial lease for 26,150 square feet of office, laboratory and manufacturing space (the “Facility”) in Cambridge, Massachusetts (as subsequently amended, the “Cambridge Lease”). The term of the Cambridge Lease is for six years and three months, with one five-year extension option. The Cambridge Lease also requires a standby letter of credit in the amount of \$311 (see Note 3).

The Cambridge Lease contains certain rent escalation clauses. The Company recognizes rent expense on a straight-line basis over the term of the Cambridge Lease and records the difference between the amount charged to expense and the rent paid as a deferred rent liability. As of March 31, 2016, the amount of deferred rent liability is \$364.

Pursuant to the terms of the Company’s non-cancelable lease agreements in effect at March 31, 2016, the future minimum rent commitments are as follows (in thousands):

<u>Periods ending March 31,</u>	
2017	1,269
2018	1,295
2019	761
Total	<u>\$ 3,325</u>

Total rent expense for the three months ended March 31, 2016 and 2015, including month-to-month leases, was \$287 and \$262, respectively.

On March 31, 2016, the company entered into a short term lease with CRISPRTherapeutics, as subtenant, to sub-lease 5,233 square feet of our Facility (the “Sublease”). The lease term is from April 1, 2016 through January 31, 2017. At the conclusion of the original lease period, the agreement will move to a month- to-month arrangement with either party having the right to cancel upon 30 days’ notice. On March 31, 2016, the Company received \$51 covering the first month’s rent and a security deposit under the terms of the Sublease. The funds received for the first month’s rent, \$25, and the funds received for the security deposit, \$26, are classified as a component of accrued expenses in the financial statements.

### *Litigation*

#### *Lawsuit with Former Employee*

In November 2013, we filed a lawsuit against Francis Reynolds, our former Chairman, Chief Executive Officer and Chief Financial Officer, in Middlesex Superior Court, Middlesex County, Massachusetts (*InVivo Therapeutics Holdings Corp. v. Reynolds, Civil Action No. 13-5004*). The complaint alleges breaches of fiduciary duties, breach of contract, conversion, misappropriation of corporate assets, unjust enrichment, corporate waste, and seeks monetary damages and an accounting. The lawsuit involves approximately \$500 worth of personal and/or exorbitant expenses that we allege Mr. Reynolds inappropriately caused us to pay while he was serving as our Chief Executive Officer, Chief Financial Officer, President and Chairman of our Board of Directors. On December 6, 2013, Mr. Reynolds answered the complaint, and filed counterclaims against us and our Board of Directors. The counterclaims allege two counts of breach of contract, two counts of breach of the covenant of good faith and fair-dealing, and tortious interference with a contract, and seek monetary damages and a declaratory judgment. The counterclaims involve Mr. Reynolds’s allegations that we and the Board interfered with the performance of his duties under the terms of his employment agreement, and that Mr. Reynolds was entitled to additional shares upon the exercise of certain stock options. On January 9, 2014, we, along with the directors named in the counterclaims, filed our answer. The parties are currently conducting pre-trial discovery. No judgments or substantive rulings are pending at this stage.

#### *Shareholder Matters and Investigations*

On July 31, 2014, a putative securities class action lawsuit was filed in the United States District Court for the District of Massachusetts, naming the Company and Mr. Reynolds, as defendants (the “Securities Class Action”). The lawsuit alleges violations of the Securities Exchange Act of 1934 in connection with allegedly false and misleading statements related to the timing and completion of the clinical study of the Company’s *Neuro-Spinal Scaffold* implant. The plaintiff seeks class

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certification for purchasers of the Company’s common stock during the period from April 5, 2013 through August 26, 2013 and unspecified damages. On April 3, 2015, the United States District Court for the District of Massachusetts dismissed the plaintiff’s claim with prejudice.

On May 4, 2015, plaintiff filed a notice of appeal of this decision. A mandatory mediation conference was held on September 10, 2015. Following that conference, on October 5, 2015, plaintiff/appellant filed his opening brief with the United States Court of Appeals for the First Circuit. The Company and the individual defendants/appellees filed their answering brief on November 5, 2015, and plaintiff/appellant filed his reply brief on December 10, 2015. The Court of Appeals heard oral argument on April 6, 2016.

On January 23, 2015, Shawn Luger, a purported shareholder of the Company, sent the Company a letter demanding that the Board of Directors take action to remedy purported breaches of fiduciary duties allegedly related to the claimed false and misleading statements that are the subject of the Securities Class Action (the “Shareholder Demand”). The Board of Directors completed its investigation of the matters raised in the Shareholder Demand and voted unanimously not to pursue any litigation against any current or former director, officer or employee of the Company with respect to the matters set forth in the Shareholder Demand.

On August 14, 2015, Shawn Luger filed a shareholder derivative lawsuit in the Superior Court of Suffolk County for the Commonwealth of Massachusetts on behalf of the Company against certain present and former board members and company executives alleging the same breaches of fiduciary duties purportedly set forth in the Shareholder Demand. On February 5, 2016, the Superior Court of Suffolk County dismissed the plaintiff’s claims with prejudice. On March 4, 2016, the plaintiff filed a notice of appeal of this decision.

In addition to the derivative lawsuit and the appeal of the Securities Class Action, the Company received investigation subpoenas from the Boston Regional Office of the SEC and the Massachusetts Securities Division of the Secretary of the Commonwealth of Massachusetts (“MSD”) requesting corporate documents also concerning, among other topics, the allegations raised by the Securities Class Action and the Shareholder Demand. The Company responded to the MSD’s subpoena on September 22, 2014 and October 8, 2014. On February 18, 2015, the Company received a second subpoena from the MSD requesting additional documents and information related to the same topics. The Company responded to this second subpoena on March 24, 2015. On October 21, 2015, the Company received a letter from the SEC notifying the Company that it has concluded its investigation of the Company and that it does not intend to recommend an enforcement action against the Company.

## 6. ACCRUED EXPENSES

Accrued expenses consisted of the following (in thousands):

	March 31, 2016	December 31, 2015
Accrued bonus	\$ 301	\$ —
Accrued payroll	178	85
Accrued vacation	164	81
Other accrued expenses	228	208
Total accrued expenses	<u>\$ 871</u>	<u>\$ 374</u>

## 7. LOAN PAYABLE

In October 2012, the Company entered into a loan agreement with the Massachusetts Development Finance Agency (“MassDev”). The loan agreement provided the Company with a \$2,000 line of credit from the Massachusetts Emerging Technology Fund, with \$200 designated to be used for working capital purposes and the remainder to be used for the purchase of capital equipment. The annual interest rate is fixed at 6.5% with interest-only payments for the first thirty months, commencing on November 1, 2012, and then equal interest and principal payments over the next fifty-four months, with the final maturity on October 5, 2019. Equal monthly principal payments of approximately \$41 became due commencing on May 1, 2015. Therefore, for the periods ending March 31, 2017, 2018, and 2019, principal payments of \$402, \$430, and \$459, respectively, will be due. The remaining balance of \$283 will be due October 5, 2019. In October 2012, the Company issued MassDev a warrant for the purchase of 9,037 shares of its common stock. The warrant has a seven-year term and is exercisable at \$6.64 per share. The fair value of the warrant was determined to be \$32 and was recorded as a deferred financing cost and is being amortized to interest expense over a seven-year period commencing in October 2012. Amortization of the deferred

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financing cost for the three months ended March 31, 2016 was \$1 and is included in interest expense in the Company’s consolidated statements of operations. The equipment line of credit is secured by substantially all the assets of the Company, excluding intellectual property. Interest expense related to this loan for the three months ended March 31, 2016 and 2015 was \$29 and \$31, respectively.

## 8. COMMON STOCK

The Company has authorized 50,000,000 shares of common stock, \$0.00001 par value per share, of which 31,905,834 shares were issued and outstanding as of March 31, 2016 and 27,555,948 shares were issued and outstanding as of December 31, 2015.

During the three months ended March 31, 2016, the Company issued an aggregate of 39,412 shares of common stock upon the exercise of stock options and received cash proceeds of approximately \$36.

During the three months ended March 31, 2016, the Company issued an aggregate of 10,193 shares of common stock with a fair value of approximately \$51 to the Company’s 401(k) plan as matching contributions.

In March 2016, the Company closed an underwritten public offering of an aggregate of approximately 4,293,333 shares of common stock and warrants to purchase 2,146,666 shares of common stock, at a price to the public of \$7.49 per share of common stock and \$0.01 per warrant. The net proceeds to the Company, after deducting underwriting discounts and offering expenses, were approximately \$29,910. The warrants have a per share exercise price of \$10.00, or approximately 133% of the public offering price of the common stock, are exercisable immediately, and expire on March 18, 2021. The Company intends to use the net proceeds from the offering to fund ongoing clinical trials and for general corporate purposes.

During the year ended December 31, 2015, the Company issued an aggregate of 316,177 shares of common stock upon the exercise of stock options, including stock options to purchase 52,224 shares of common stock exercised through cashless exercise provisions resulting in the issuance of 14,961 shares of common stock and stock options to purchase 301,216 shares of common stock exercised for cash, providing cash proceeds of \$1,068.

During the year ended December 31, 2015, the Company issued an aggregate of 1,379,575 shares of common stock upon the exercise of warrants, including warrants to purchase 40,955 shares of common stock exercised through cashless exercise provisions resulting in the issuance of 25,052 shares

of common stock and warrants to purchase 1,354,523 shares of common stock exercised for cash, providing net cash proceeds of \$7,789.

During the year ended December 31, 2015, the Company issued an aggregate of 17,437 shares of Common Stock with a fair value of \$201 to the Company's 401(k) plan as a matching contribution.

In January 2015, the Company closed a registered direct offering of an aggregate of 2,000,000 shares of common stock, resulting in net proceeds of \$11,038.

## 9. STOCK OPTIONS

In 2007, the Company adopted the 2007 Employee, Director and Consultant Stock Plan (the "2007 Plan"). Pursuant to the 2007 Plan, the Company's Board of Directors (or committees and/or executive officers delegated by the Board of Directors) may grant incentive and nonqualified stock options to the Company's employees, officers, directors, consultants and advisors.

On October 26, 2010, the Company's Board of Directors adopted, and the Company's shareholders subsequently approved, the 2010 Equity Incentive Plan (as subsequently amended, the "2010 Plan"). The 2010 Plan provides for grants of incentive stock options to employees, and nonqualified stock options and restricted Common Stock to employees, consultants and non-employee directors of the Company.

In April 2015, the Company's Board of Directors adopted, and the Company's shareholders subsequently approved, the 2015 Equity Incentive Plan (the "2015 Plan"). The 2015 Plan provides for grants of incentive stock options to employees, and nonqualified stock, restricted Common Stock, restricted stock units and stock appreciation rights to employees, consultants and non-employee directors of the Company. Upon approval of the 2015 Plan by the Company's shareholders on June 16, 2015, the 2010 Plan was terminated and no additional shares or share awards have been subsequently granted under the 2010 Plan. As of March 31, 2016, the total number of shares authorized for issuance under the 2015 Plan was 4,322,355 shares, consisting of 4,000,000 shares plus 322,355 shares that remained available for grant under the 2010 Plan at the time of its termination.

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Options issued under the 2007 Plan, the 2010 Plan, and the 2015 Plan (collectively, the "Plans") are exercisable for up to 10 years from the date of issuance. As of March 31, 2016, there were outstanding options to purchase an aggregate of 3,055,578 shares of common stock under the Plans, consisting of 205,863 shares under the 2007 Plan, 1,902,955 shares under the 2010 Plan and 946,760 shares under 2015 Plan. As of December 31, 2015, there were outstanding options to purchase an aggregate of 946,760 and 2,065,687 shares of common stock under the 2015 Plan and 2010 Plan, respectively. Options issued under the Plans are exercisable for up to 10 years from the date of issuance.

In March 2015, the Company's Board of Directors adopted, and the Company's shareholders subsequently approved, the Employee Stock Purchase Plan (the "ESPP"). The ESPP allows employees to buy company stock twice a year through after-tax payroll deductions at a discount from market. The board of directors initially authorized 187,500 shares for issuance under the ESPP. Commencing on the first day of fiscal 2016 and on the first day of each fiscal year thereafter during the term of the ESPP, the number of shares of common stock reserved for issuance shall be increased by the lesser of (i) 1% of our outstanding shares of Common Stock on such date, (ii) 50,000 shares or (iii) a lesser amount determined by the Board. In no event shall the aggregate number of shares reserved for issuance during the term of the ESPP exceed 1,250,000 shares. On January 1, 2016, the reserve was increased by 50,000 shares in accordance with the ESPP provisions.

In January 2016, 6,948 shares that were purchased as of December 31, 2015 were issued under the ESPP for the offering period commencing on July 1, 2015. The ESPP is considered a compensatory plan with the related compensation cost recognized over the six month offering period. As of March 31, 2016, approximately \$23 of employee payroll deductions have been withheld since December 31, 2015, the commencement of the current offering period and are included in accrued expenses in the accompanying balance sheet. The compensation expense related to the ESPP for the three months ended March 31, 2016 was \$11.

### *Share-based compensation*

For stock options issued and outstanding for the three months ended March 31, 2016 and 2015, the Company recorded non-cash, stock-based compensation expense of approximately \$1,153 and \$1,265, respectively, net of forfeitures.

The fair value of each option award is estimated on the date of grant using the Black-Scholes option pricing model that uses the assumptions noted in the following table. The Company uses historical data, as well as subsequent events occurring prior to the issuance of the financial statements, to estimate option exercises and employee terminations within the valuation model. The expected term of options granted under the Plans, all of which qualify as "plain vanilla," is based on the average of the contractual term (10 years) and the vesting period (generally, 48 months). For non-employee options, the expected term is the contractual term. The risk-free rate is based on the yield of a U.S. Treasury security with a term consistent with the option. The assumptions used principally in determining the fair value of options granted were as follows:

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	March 31, 2016
Risk-free interest rate	1.82%
Expected dividend yield	0.00%
Expected term (in years)	6.00
Expected volatility	116.05%

A summary of option activity as of March 31, 2016 and changes for the period then ended are presented below (in thousands, except per share data):

Options	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term in Years	Aggregate Intrinsic Value
Outstanding at December 31, 2015	3,253,310	\$ 7.47		
Granted	—	\$ —		
Forfeited	(158,320)	\$ 9.78		
Exercised	(39,412)	\$ 0.92		
Outstanding at March 31, 2016	3,055,578	\$ 7.43	7.98	\$ 2,962
Vested at March 31, 2016	1,333,571	\$ 6.91	6.75	\$ 2,162
Vested and expected to vest at March 31, 2016	2,482,522	\$ 7.35	7.75	\$ 2,674

The total fair value of options that vested for the three months ended March 31, 2016 was approximately \$1,230. As of March 31, 2016, there was approximately \$7,232 of total unrecognized compensation expense related to non-vested share-based option compensation arrangements. The unrecognized compensation expense is estimated to be recognized over a period of 2.72 years at March 31, 2016.

## 10. WARRANTS

The following table presents information about warrants to purchase common stock issued and outstanding at March 31, 2016:

Year Issued	Classification	Number of Warrants	Exercise Price	Date of Expiration
2010	Equity	354,342	\$ 5.60	10/26/2017 – 12/3/2017
2010	Equity	314,882	\$ 4.00	8/30/2017 – 12/3/2017
2011	Equity	85,785	\$ 12.24	12/21/2016
2012	Equity	6,054	\$ 6.64	10/5/2019
2014	Liability	587,950	\$ 3.87	5/09/2019
2016	Equity	2,146,666	\$ 10.00	3/18/2021
Total		3,495,679		
Weighted average exercise price			\$ 8.03	
Weighted average life in years			3.90	

On March 15, 2016, the Company closed an underwritten public offering of an aggregate of 4,293,333 shares of common stock and warrants to purchase an aggregate of 2,146,666 shares of common stock, at a price to the public of \$7.50 per share of common stock and \$0.00001 per warrant.

The warrants have an initial per share exercise price of \$10.00 (133% of public offering price of the common stock) and will expire on March 18, 2021. The warrants are immediately exercisable, at the option of each holder, in whole or in part, in cash (except in the case of a cashless exercise as discussed below). The exercise price and number of shares of common stock issuable upon exercise of the warrants will be subject to adjustment in the event of any stock split, reverse stock split, stock

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dividend, recapitalization, or similar transaction, among other events as described in the warrants. In the event that shares of common stock underlying the warrants are no longer registered under the Securities Exchange Act of 1934, as amended, the holder may, in its sole discretion, exercise the warrant in whole or in part and, in lieu of making cash payment, elect instead to receive upon such exercise the net number of shares of common stock determined according to the formula set forth in the warrant.

The fair value of the warrants was estimated at \$11,726 using a Black-Scholes model with the following assumptions: expected volatility of 112.82%, risk free interest rate of 1.34%, expected life of five years and no dividends.

The Company assessed whether the warrants require accounting as derivatives. The Company determined that the warrants were (1) indexed to the Company's own stock and (2) classified in stockholders' equity in accordance with Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 815, *Derivatives and Hedging*. As such, the Company has concluded the warrants meet the scope exception for determining whether the instruments require accounting as derivatives and should be classified in stockholders' equity.

## 11. DERIVATIVE INSTRUMENTS

The warrants issued in connection with the Company's May 2014 public offering have anti-dilution protection provisions that allow for the reduction in the exercise price of the warrants if the Company subsequently issues equity securities, including common stock or any security convertible or exchangeable for shares of common stock, for no consideration or for consideration less than the exercise price of the warrants. Accordingly, through March 2016, these warrants were accounted for as derivative liabilities. The Company used the Binomial Lattice option pricing model and assumptions that consider, among other factors, the fair value of the underlying stock, risk-free interest rate, volatility, expected life and dividend rates in estimating fair value for the warrants considered to be derivative instruments. Changes in fair value of the derivative financial instruments are recognized in the Company's consolidated statement of operations as a derivative gain or loss. The warrant derivative gains (losses) are non-cash income (expenses); and for the three months ended March 31, 2016 and 2015 a gain (loss) of \$(1,047) and \$(10,286), respectively, were included in other income (expense) in the Company's consolidated statement of operations.

	March 31, 2016	December 31, 2015
Risk-free interest rate	0.59%	0.65%
Expected dividend yield	0.00%	0.00%
Expected term (in years)	3.11	3.36
Expected volatility	104.00%	100.20%

The primary underlying risk exposure pertaining to the warrants is the change in fair value of the underlying Common Stock for each reporting period.

Changes in the derivative warrant liability for the three months ended March 31 are as follows (in thousands):

	Three Months Ended March 31,	
	2016	2015
Balance at December 31,	\$ 1,907	\$ 7,224
Reduction in derivative liability due to exercise and modification of warrants	—	(4,866)
Increase in the fair value of warrants and issuance of additional warrant pursuant to anti-dilution provision	1,047	10,286
Balance at March 31,	<u>\$ 2,954</u>	<u>\$ 12,644</u>

The March 2016 public offering resulted in a repricing of the existing warrants. The warrants prices were decreased from \$5.75 per share to \$3.87 per share. In addition, the number of warrants increased from 395,716 to 587,950. This modification was the primary driver in the increase in the warrant liability from year end 2015.

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## 12. SUBSEQUENT EVENTS

The Company has evaluated all events and transactions that occurred after the balance sheet date through the date of this filing. During this period, the Company did not have any material subsequent events that impacted its financial statements or disclosures.

### Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

*The following management’s discussion and analysis should be read in conjunction with the unaudited consolidated financial statements included elsewhere in this Quarterly Report and with our historical consolidated financial statements and the related notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2015 (the “2015 Annual Report”). The management’s discussion and analysis contains forward-looking statements within the meaning of the safe harbor provisions under Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). These statements include statements made regarding our commercialization strategy, future operations, cash requirements and liquidity, capital requirements and other statements on our business plans and strategy, financial position, and market trends. In some cases, you can identify forward-looking statements by terms such as “may,” “might,” “will,” “should,” “believe,” “plan,” “intend,” “anticipate,” “target,” “estimate,” “expect” and other similar expressions. These forward-looking statements are subject to risks and uncertainties that could cause actual results or events to differ materially from those expressed or implied by the forward-looking statements in this Quarterly Report, including factors such as our ability to raise substantial additional capital to finance our planned operations and to continue as a going concern, our ability to execute our strategy and business plan; the progress and timing of our development programs and regulatory approval for our products; the risk our research and development efforts do not lead to new products; the timing of commercializing our products; market acceptance of our products; our ability to retain management and other key personnel; and other factors detailed under “Risk Factors” in Item 1A of our 2015 Annual Report. These forward-looking statements speak only as of the date hereof. We do not undertake any obligation to update forward-looking statements to reflect events or circumstances occurring after the date of this Quarterly Report, except as required by law.*

*The discussion and analysis of our financial condition and results of operations are based on our financial statements, which we have prepared in accordance with U.S. generally accepted accounting principles. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenues and expenses during the reporting periods. On an ongoing basis, we evaluate such estimates and judgments, including those described in greater detail below. We base our estimates on historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.*

## Overview

We are a research and clinical-stage biomaterials and biotechnology company with a focus on treatment of spinal cord injuries (SCI). Our mission is to redefine the life of the SCI patient, and we are developing treatment options intended to provide meaningful improvement in patient outcomes following SCI. Our approach to treating acute SCI is based on our investigational *Neuro-Spinal Scaffold* implant, a bioresorbable polymer scaffold that is designed for implantation at the site of injury within a spinal cord contusion and is intended to treat acute spinal cord injury. We believe the *Neuro-Spinal Scaffold* implant is the only SCI therapy in development focused solely on treating acute SCI directly at the epicenter of the injury. The *Neuro-Spinal Scaffold* implant incorporates intellectual property licensed under an exclusive, worldwide license from Boston Children’s Hospital (“BCH”) and the Massachusetts Institute of Technology (“MIT”). We are continually evaluating other technologies and therapeutics that may be complementary to our development of the *Neuro-Spinal Scaffold* implant or offer the potential to bring us closer to our goal of redefining the life of the SCI patient.

## Our Clinical and Pre-Clinical Programs

We currently have a clinical development program for acute SCI and a pre-clinical development program for chronic SCI.

*Neuro-Spinal Scaffold™ implant for acute SCI*

Our leading product under development is our *Neuro-Spinal Scaffold* implant, an investigational bioresorbable polymer scaffold that is designed for implantation at the site of injury within a spinal cord contusion. The *Neuro-Spinal Scaffold* implant is intended to provide support to the surrounding tissue after injury, minimizing expansion areas of necrosis, and supporting endogenous

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healing/repair processes following injury. This form of appositional healing harbors the promise of sparing white matter, increasing neural sprouting, and diminishing post-traumatic cyst formation.

The *Neuro-Spinal Scaffold* implant is composed of two biocompatible and bioresorbable polymers that are cast to form a highly porous investigational product:

- Poly lactic-co-glycolic acid (PLGA), a polymer that is widely used in resorbable sutures and provides the biocompatible support for *Neuro-Spinal Scaffold* implant; and
- Poly-L-Lysine (PLL), a positively charged polymer commonly used to coat surfaces in order to promote cellular attachment.

Because of the complexity of spinal cord injuries, it is likely that multi-modal therapies will be required in order to maximize positive outcomes in SCI patients. In the future, we may attempt to further enhance the performance of our *Neuro-Spinal Scaffold* by multiple combination strategies involving electrostimulation devices, additional biomaterials, drugs approved by the U.S. Food & Drug Administration (“FDA”), or growth factors. We expect the *Neuro-Spinal Scaffold* will be regulated by the FDA as a Class III medical device

In late 2015, we completed our early feasibility pilot study of our *Neuro-Spinal Scaffold* under our approved Investigational Device Exemption application for the treatment of complete, traumatic acute spinal cord injury. The study was intended to capture the safety and feasibility of the *Neuro-Spinal Scaffold* for the treatment of complete functional spinal cord injury, as well as to gather preliminary evidence of the clinical effectiveness of the *Neuro-Spinal Scaffold*.

### *Bioengineered Neural Trails™ injection program for chronic SCI*

In December 2015, we announced our preclinical Bioengineered Neural Trails injection program for the treatment of chronic spinal cord injury. Bioengineered Neural Trails are injectable combinations of biomaterials and neural stem cells delivered using minimally-invasive surgical instrumentation and techniques to create trails across the chronic injury site. To support this program, we recently entered into an exclusive license agreement with the University of California, San Diego and an assignment agreement with James Guest, M.D., Ph.D., for issued patents covering technology related to the Bioengineered Neural Trails program, and we also have filed a provisional application in support of the Bioengineered Neural Trails injection program. We expect that our Bioengineered Neural Trails injection investigational product will be regulated by the FDA as a combination product, and we are targeting a pre-Investigational New Drug meeting with the FDA by the end of 2016.

Overall, we expect our research and development expenses to be substantial and to increase for the foreseeable future as we continue the development and clinical investigation of our current and future products. While we are currently focused on advancing the *Neuro-Spinal Scaffold* implant and the Bioengineered Neural Trails injection program, our research and development expenses will depend on the determinations we make as to the scientific and clinical prospects of each product candidate, as well as our ongoing assessment of the regulatory requirements and each product’s commercial potential. In addition, we may make acquisitions of businesses, technologies or intellectual property rights that we believe would be necessary, useful or complementary to our current business. There can be no assurance that we will be able to successfully develop or acquire any product, or that we will be able to recover our development or acquisition costs, whether upon commercialization of a developed product or otherwise. We cannot provide assurance that any of our programs under development or any acquired technologies or products will result in products that can be marketed or marketed profitably. If our development-stage programs or any acquired products or technologies do not result in commercially viable products, our results of operations could be materially adversely affected.

We incorporated under the laws of the state of Nevada on April 2, 2003 as Design Source, Inc. On October 26, 2010, we acquired the business of InVivo Therapeutics Corporation, which was founded in 2005, and are continuing the existing business operations of InVivo Therapeutics Corporation as our wholly-owned subsidiary. We changed our name to InVivo Therapeutics Holdings Corp. in connection with the acquisition.

## **Recent Events**

In January 2016, the FDA approved converting the pilot study of our *Neuro-Spinal Scaffold* into a pivotal probable benefit study formally known as The **INSPIRE** Study: InVivo Study of Probable Benefit of the *Neuro-Spinal Scaffold* for Safety and Neurologic Recovery in Subjects with Complete Thoracic AIS A Spinal Cord Injury. The purpose of the study is to evaluate whether the *Neuro-Spinal Scaffold* is safe and demonstrates probable benefit for the treatment of complete T2-T12/L1 spinal cord injury. The primary endpoint is defined as the proportion of patients achieving an improvement of at least one AIS grade by 6 months

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post-implantation. Additional endpoints of The INSPIRE Study include a reduction in pain and improvements in sensory and motor scores, bladder and bowel function, Spinal Cord Independence Measure and quality of life.

The INSPIRE study is currently approved to enroll up to 12 patients, but we expect that the FDA will approve the full 20 patients, inclusive of the five pilot patients, following review of the complete 6-month data package for the first five patients. There are currently 19 clinical sites participating in The INSPIRE Study, inclusive of additional sites announced in the first quarter of 2016 at Thomas Jefferson University Hospital and the University of Virginia Health System. We plan to submit our five-patient, 6-month data package in the second quarter of 2016.

In February 2016, we received approval of a protocol amendment for The INSPIRE Study. The amended protocol establishes the Objective Performance Criterion (OPC), which is a measure of study success used in clinical studies designed to demonstrate safety and probable benefit in support of an HDE approval. The OPC for The INSPIRE Study is defined as 25% or more of the patients in the study demonstrating an improvement of at least one AIS grade by six months post-implantation. Although our OPC is the fundamental component to demonstrate probable benefit, the OPC is not the only variable that the FDA evaluates when reviewing an HDE application. Approval is not guaranteed if the OPC is met, and even if the OPC is not met, the FDA may approve a therapy if probable benefit is supported by a comprehensive review of all clinical endpoints and preclinical results, as demonstrated by the sponsor's body of evidence. Since The INSPIRE Study is designed to enroll 20 patients with complete (AIS A) spinal cord injuries (inclusive of the 5 patients enrolled in the company's pilot trial), the OPC equates to having five patients convert to any other AIS grade by six months post-implantation.

We are targeting completion of the study, which includes completion of enrollment, follow-up, and submission of the HDE application, in 2017.

In late February 2016, the FDA accepted our proposed HDE modular shell submission and review process for the *Neuro-Spinal Scaffold*. Our HDE modular shell is comprised of three modules, a preclinical studies module, a manufacturing module, and a clinical data module. As part of its review process, the FDA reviews modules, which are individual sections of the HDE submission, on a rolling basis. Following the submission of each module, the FDA reviews and provides feedback, typically within 90 days, allowing the applicant to receive feedback and potentially resolve any deficiencies during the review process. Upon receipt of the final module, which constitutes the complete HDE submission, the FDA will make a filing decision which may trigger the review clock for an approval decision.

In March 2016, we announced that the fifth patient in The INSPIRE Study had improved from complete AIS A spinal cord injury to an incomplete AIS B spinal cord injury between the three-month and the six-month post-injury assessment. In April 2016, we announced that the sixth patient in The INSPIRE Study had improved from complete AIS A spinal cord injury to an incomplete AIS B spinal cord injury between the one-month and the two-month post-injury assessment. In April 2016, we announced that the eighth patient enrolled into The INSPIRE Study died after injuries from a severe motor vehicle accident and unrelated to the investigational product.

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### *March 2016 Offering*

In March 2016, we closed an underwritten public offering of an aggregate of 4,293,333 shares of common stock and warrants to purchase an aggregate of 2,146,666 shares of common stock, which included the exercise by the underwriters in full of their over-allotment option. The shares of common stock and warrants were initially sold as units, with each unit consisting of one share of common stock and 0.50 of a warrant to purchase one share of common stock. The units were sold at a price to the public of \$7.50 per unit, and were mandatorily separable upon issuance. Pursuant to the underwriters' over-allotment option, we sold to the underwriters 560,000 additional shares of common stock at a price of \$7.49 per share and warrants to purchase an additional 280,000 shares of common stock at a price of \$0.01 per warrant.

The warrants have an initial per share exercise price of \$10.00 (133% of public offering price of the common stock) and will expire on March 18, 2021. The warrants are immediately exercisable, at the option of each holder, in whole or in part, in cash (except in the case of a cashless exercise pursuant to the terms thereof). The exercise price and number of shares of common stock issuable upon exercise of the warrants will be subject to adjustment in the event of any stock split, reverse stock split, stock dividend, recapitalization, reorganization or similar transaction, among other events as described in the warrants. In addition, the exercise price and the number of shares issuable upon exercise of the warrants are subject to adjustment upon any distributions of assets, including cash, stock or other property to our stockholders. In the event that shares of common stock underlying the warrants are no longer registered under the Securities Exchange Act of 1934, as amended, the holder may, in its sole discretion, exercise the warrant in whole or in part and, in lieu of making cash payment, elect instead to receive upon such exercise the net number of shares of common stock determined according to the formula set forth in the warrant.

The fair value of the warrants was estimated at \$11,726 using a Black-Scholes model with the following assumptions: expected volatility of 112.82%, risk free interest rate of 1.34%, expected life of five years and no dividends.

The Company assessed whether the warrants require accounting as derivatives. The Company determined that the warrants were (1) indexed to the Company's own stock and (2) classified in stockholders' equity in accordance with Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 815, *Derivatives and Hedging*. As such, the Company has concluded the warrants meet the scope exception for determining whether the instruments require accounting as derivatives and should be classified in stockholders' equity.

The net proceeds, after deducting underwriting discounts and offering expenses, were approximately \$29.9 million. We expect this amount to be sufficient to meet our operating and capital requirements through the end of 2017, and intend to use the proceeds to fund ongoing clinical trials and for general corporate purposes.

### **Critical Accounting Policies and Estimates**

Our consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period.

On an ongoing basis, we evaluate our estimates and judgments for all assets and liabilities, stock-based compensation expense and the fair value determined for stock purchase warrants classified as derivative liabilities. We base our estimates and judgments on historical experience, current economic and industry conditions and on various other factors that we believe to be reasonable under the circumstances. Such factors form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. There have been no changes in our critical accounting policies and estimates from the disclosure provided in our 2015 Annual Report.

We believe that full consideration has been given to all relevant circumstances that we may be subject to, and the consolidated financial statements accurately reflect our best estimate of the results of operations, financial position and cash flows for the periods presented.

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## Results of Operations

### *Comparison of the Three Months Ended March 31, 2016 and 2015 (in thousands)*

#### Research and Development Expenses

Research and development expenses consisted primarily of payments to contract research organizations and payroll. Research and development expenses for the three months ended March 31, 2016 were \$2,568, a increase of \$265 when compared to the three months ended March 31, 2015. The increase in research and development expenses for the three months ended March 31, 2016 is primarily attributed to higher salaries and associated benefits costs of \$231, reflecting the full year impact of new hires. In addition, clinical trial costs rose \$108 due to an increase in the number of patients in the trial and the opening of additional clinical trial sites. Higher lab supply costs of \$35 and travel costs of \$28 also contributed to this year over year increase. Partly offsetting these cost increases was a reduction in stock compensation expense of \$77, lower consulting and contract research costs of \$56 and other expenses of \$4.

#### General and Administrative Expenses

General and administrative expenses consisted primarily of payroll, rent and professional services. General and administrative expenses for the three months ended March 31, 2016 were \$2,999, which reflected a decrease of \$209 when compared to the three months ended March 31, 2015. The decline in general and administrative expenses for the three months ended March 31, 2016 was attributed to reduced legal expenses of \$588 and lower stock compensation expense of \$36. These decreases were offset by higher consulting fees of \$132, higher salaries and associated benefits of \$121, NASDAQ annual listing fees of \$55 and recruiting fees of \$52.

#### Other Income and Expense

Other expense for the three months ended March 31, 2016 was \$1,056, which was comprised of interest income of \$54, interest expense of \$63 and a derivative loss of \$1,047. The three months ended March 31, 2016 reflected a decline in expense of \$9,263 when compared to the three months ended March 31, 2015. The decrease in other expense for the three months ended March 31, 2016 was primarily related to the change in deferred warrant liability of \$9,239.

#### Liquidity and Capital Resources *(in thousands)*

Since inception, we have devoted substantially all of our efforts to business planning, research and development, recruiting management and technical staff, acquiring operating assets and raising capital. At March 31, 2016, we had total assets of \$47,699 and total liabilities of \$6,201, resulting in stockholders' equity of \$41,498, and a net loss of \$6,623.

We have historically financed our operations primarily through the sale of equity securities. In March 2016, we closed an underwritten public offering of an aggregate of 4,293,333 shares of common stock and warrants to purchase an aggregate of 2,146,666 shares of common stock, at a price to the public of \$7.49 per share of common stock and \$0.01 per warrant. The underwriting discount was 6% of the public offering price of the shares, or \$0.45 per share and 0.0000006 per warrant. The warrants have an initial per share exercise price of \$10.00 (133% of public offering price of the common stock) and will expire on March 18, 2021.

We believe our current cash and cash equivalents are adequate to fund our operations through the end of 2017. At March 31, 2016, we had cash of approximately \$45,767.

Net cash used in operating activities for the three months ended March 31, 2016 was approximately \$4,227, as compared to net cash used in operating activities of approximately \$2,913 for the three months ended March 31, 2015. The change in net cash used in operating activities for the three months ended March 31, 2016 as compared to the same period in the prior year was primarily due to an insurance settlement received in the first quarter of 2015. We also have significant commitments that will require the use of cash in operating activities in future periods, including our obligations under current operating leases. Our committed lease obligations amount to approximately \$3,325. Total commitments due for the remainder of fiscal 2016 under operating leases are approximately \$948.

Net cash used in investing activities for the three months ended March 31, 2016 totaled approximately \$50 for purchases of capital equipment. There was no comparable expense in 2015.

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Net cash provided by financing activities was approximately \$29,850 for the three months ended March 31, 2016 primarily consisting of the proceeds from our March 2016 offering, as compared to net cash provided by financing activities of approximately \$13,970 for the three months ended March 31, 2015, which was primarily related to proceeds from our January 2015 offering.

In July 2015, we entered into a Sales Agreement (the "Sales Agreement") with Cowen and Company, LLC ("Cowen") pursuant to which we may issue and sell from time to time shares of Common Stock having aggregate sales proceeds of up to \$50 million through an "at the market" equity offering program (the "ATM") under which Cowen acts as our sales agent. We did not make any sales under the Sales Agreement during the three months ended March 31, 2016. The Sales Agreement was terminated in March 2016.

We intend to pursue opportunities to obtain additional financing in the future through equity and/or debt financings. We have filed with the SEC, and the SEC declared effective, a universal shelf registration statement which permits us to issue up to \$100 million worth of registered equity securities. Under this effective shelf registration, we have the flexibility to issue registered securities, from time to time, in one or more separate offerings or other transactions with

the size, price and terms to be determined at the time of issuance. Registered securities issued using this shelf may be used to raise additional capital to fund our working capital and other corporate needs, for future acquisitions of assets, programs or businesses, and for other corporate purposes.

We may pursue various other dilutive and non-dilutive funding alternatives upon the results of our ongoing pivotal probable benefit study and the extent to which we require additional capital to proceed with development of some or all of our product candidates on expected timelines. The source, timing and availability of any future financing will depend principally upon market conditions and the status of our clinical development programs. Funding may not be available when needed, at all, or on terms acceptable to us. Lack of necessary funds may require us, among other things, to delay, scale back or eliminate some or all of our research and product development programs, planned clinical trials, and our capital expenditures or to license our potential products or technologies to third parties.

### Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future material effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources.

### Item 3. Quantitative and Qualitative Disclosures About Market Risk.

We are exposed to market risk related to change in interest rates which could affect our operating results, financial position and cash flows. We manage our exposure to these market risks through our regular operating and financing activities. We do not use derivative financial instruments for speculative or trading purposes. For discussion of our market risk exposure, refer to Item 7A., “Quantitative and Qualitative Disclosures About Market Risk,” in our 2015 Annual Report. There are no material changes in market risk from the disclosure provided in our 2015 Annual Report.

### Item 4. Controls and Procedures.

#### Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) of the Exchange Act) as of the end of the period covered by this report. Based on that evaluation, our Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures as of the end of the period covered by this report were effective in ensuring that information required to be disclosed by us in reports that we file or submit under the Exchange Act is (i) recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms and (ii) accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

#### Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting that occurred during the quarter ended March 31, 2016 that have materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

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## PART II—OTHER INFORMATION

### Item 1. Legal Proceedings.

#### *Lawsuit with Former Employee*

In November 2013, we filed a lawsuit against Francis Reynolds, our former Chairman, Chief Executive Officer and Chief Financial Officer, in Middlesex Superior Court, Middlesex County, Massachusetts (*InVivo Therapeutics Holdings Corp. v. Reynolds, Civil Action No. 13-5004*). The complaint alleges breaches of fiduciary duties, breach of contract, conversion, misappropriation of corporate assets, unjust enrichment, corporate waste, and seeks monetary damages and an accounting. The lawsuit involves approximately \$500 worth of personal and/or exorbitant expenses that we allege Mr. Reynolds inappropriately caused us to pay while he was serving as our Chief Executive Officer, Chief Financial Officer, President and Chairman of our Board of Directors. On December 6, 2013, Mr. Reynolds answered the complaint, and filed counterclaims against us and our Board of Directors. The counterclaims allege two counts of breach of contract, two counts of breach of the covenant of good faith and fair-dealing, and tortious interference with a contract, and seek monetary damages and a declaratory judgment. The counterclaims involve Mr. Reynolds’s allegations that we and the Board interfered with the performance of his duties under the terms of his employment agreement, and that Mr. Reynolds was entitled to additional shares upon the exercise of certain stock options. On January 9, 2014, we, along with the directors named in the counterclaims, filed our answer. The parties are currently conducting pre-trial discovery. No judgments or substantive rulings are pending at this stage.

#### *Shareholder Matters and Investigations*

On July 31, 2014, a putative securities class action lawsuit was filed in the United States District Court for the District of Massachusetts, naming the Company and Mr. Reynolds, as defendants (the “Securities Class Action”). The lawsuit alleges violations of the Securities Exchange Act of 1934 in connection with allegedly false and misleading statements related to the timing and completion of the clinical study of the Company’s *Neuro-Spinal Scaffold* implant. The plaintiff seeks class certification for purchasers of the Company’s common stock during the period from April 5, 2013 through August 26, 2013 and unspecified damages. On April 3, 2015, the United States District Court for the District of Massachusetts dismissed the plaintiff’s claim with prejudice.

On May 4, 2015, plaintiff filed a notice of appeal of this decision. A mandatory mediation conference was held on September 10, 2015. Following that conference, on October 5, 2015, plaintiff/appellant filed his opening brief with the United States Court of Appeals for the First Circuit. The Company and the individual defendants/appellees filed their answering brief on November 5, 2015, and plaintiff/appellant filed his reply brief on December 10, 2015. The Court of Appeals heard oral argument on April 6, 2016.

On January 23, 2015, Shawn Luger, a purported shareholder of the Company, sent the Company a letter demanding that the Board of Directors take action to remedy purported breaches of fiduciary duties allegedly related to the claimed false and misleading statements that are the subject of the Securities

Class Action (the “Shareholder Demand”). The Board of Directors completed its investigation of the matters raised in the Shareholder Demand and voted unanimously not to pursue any litigation against any current or former director, officer or employee of the Company with respect to the matters set forth in the Shareholder Demand.

On August 14, 2015, Shawn Luger filed a shareholder derivative lawsuit in the Superior Court of Suffolk County for the Commonwealth of Massachusetts on behalf of the Company against certain present and former board members and company executives alleging the same breaches of fiduciary duties purportedly set forth in the Shareholder Demand. On February 5, 2016, the Superior Court of Suffolk County dismissed the plaintiff’s claims with prejudice. On March 4, 2016, the plaintiff filed a notice of appeal of this decision.

In addition to the derivative lawsuit and the appeal of the Securities Class Action, we received investigation subpoenas from the Boston Regional Office of the SEC and the Massachusetts Securities Division of the Secretary of the Commonwealth of Massachusetts (“MSD”) requesting corporate documents also concerning, among other topics, the allegations raised by the Securities Class Action and the Shareholder Demand. We responded to the MSD’s subpoena on September 22, 2014 and October 8, 2014. On February 18, 2015, we received a second subpoena from the MSD requesting additional documents and information related to the same topics. We responded to this second subpoena on March 24, 2015. On October 21, 2015, we received a letter from the SEC notifying us that it has concluded its investigation of us and that it does not intend to recommend an enforcement action against us.

#### **Item 1A. Risk Factors.**

There have been no material changes in the risk factors previously disclosed in Part I, Item 1A. “Risk Factors” of our 2015 Annual Report.

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#### **Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.**

None.

#### **Item 3. Defaults Upon Senior Securities.**

None.

#### **Item 4. Mine Safety Disclosures.**

Not applicable.

#### **Item 5. Other Information.**

None.

#### **Item 6. Exhibits.**

The Exhibits listed in the Exhibit Index immediately preceding such Exhibits are filed with or incorporated by reference in this Quarterly Report.

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### **SIGNATURES**

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

#### **INVIVO THERAPEUTICS HOLDINGS CORP.**

Date: May 6, 2016

By: /s/ Steven F. McAllister  
Name: Steven F. McAllister  
Title: Chief Financial Officer  
(Principal Financial Officer)

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### **EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description</b>
3.1	Amended and Restated Bylaws of InVivo Therapeutics Holdings Corp., as amended.

4.1	Form of Warrant to be issued pursuant to the Underwriting Agreement dated March 15, 2016 (incorporated by reference from Exhibit 4.1 to the Company’s Current Report on Form 8-K, as filed with the SEC on March 15, 2016)
31.1	Certification of the Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of the Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of the Principal Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of the Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Label Linkbase Document
101.PRE	XBRL Taxonomy Presentation Linkbase Document

AMENDED AND RESTATED  
BYLAWS  
OF  
INVIVO THERAPEUTICS HOLDINGS CORP.,  
a Nevada Corporation  
(March 29, 2016)

ARTICLE I  
OFFICES

Section 1. Principal Office and Registered Agent. The principal office of the Corporation and the registered agent of the Corporation shall be as the Board of Directors may from time to time determine or the business of the Corporation may require.

Section 2. Other Offices. The Corporation may also have offices at such other places both within and without the State of Nevada as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II  
STOCKHOLDERS

Section 1. Place of Meeting. All meetings of the stockholders shall be held at the principal office of the Corporation, or at such other place within or without the State of Nevada as shall be specified or fixed in the notices or waivers of notice thereof.

Section 2. Quorum; Action by Vote; Adjournment of Meeting. Unless otherwise required by law or provided in the Articles of Incorporation or these Bylaws, the holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at any meeting of stockholders for the transaction of business. When a quorum is present at any meeting of stockholders, (i) 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 and (ii) with respect to the election of directors, directors must be elected by a plurality of the votes cast at the election. The stockholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Notwithstanding the other provisions of the Articles of Incorporation or these Bylaws, the chairman of the meeting or the holders of a majority of the issued and outstanding stock, present in person or represented by proxy, at any meeting of stockholders, whether or not a quorum is present, shall have the power to adjourn such meeting from time to time, without any notice other than announcement at the meeting of the time and place of the holding of the adjourned meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new

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record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at such meeting. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the meeting as originally called.

Section 3. Annual Meetings. An annual meeting of the stockholders, for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, within or without the State of Nevada, on such date, and at such time as the Board of Directors shall fix and set forth in the notice of the meeting.

Section 4. Special Meetings. Special meetings of stockholders of the Corporation may be called only by the Chairman of the Board, the President or the Board of Directors pursuant to a resolution approved by a majority of the entire Board of Directors of the Corporation (as determined in accordance with the Bylaws of the Corporation). Notwithstanding anything contained in the Articles of Incorporation or Bylaws of the Corporation to the contrary, the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend or repeal this Section 4 or adopt any provision inconsistent with any provision of this Section 4.

Section 5. Record Date. For the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders, or any adjournment thereof, or entitled 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 of the Corporation may fix in advance, a date as the record date for any such determination of stockholders, which date shall not be more than sixty (60) days nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action.

If the Board of Directors does not fix a record date for any meeting of the stockholders, the record date for determining stockholders entitled to notice of or to vote at such meeting shall be at the close of business on the day next preceding the day on which notice is given, or, if in accordance with Article VIII, Section 3 of these Bylaws, notice is waived, at the close of business on the day next preceding the day on which the meeting is held. If, in accordance with Section 12 of this Article II, corporate action without a meeting of stockholders is to be taken, the record date for determining stockholders entitled to express consent to such corporate action in writing, when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent is expressed. The record date for determining stockholders for any other purpose shall be at the close of business on the date on which the Board of Directors adopts the resolution relating thereto.

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; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 6. Notice of Meetings. Written notice signed by the President, Vice President, Secretary, or Assistant Secretary, or other persons as the President or Board of Directors may designate, of the place, date and hour of all meetings, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be given by or at the direction of the Chairman of the Board or the President, the Secretary or the other person(s) calling the meeting to each stockholder entitled to vote thereat not less than ten (10) nor more than sixty (60) days before the date of the meeting. Such notice may be delivered either personally or by mail. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the Corporation.

Section 7. Stock List. A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in the name of such stockholder, shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at the offices of the Corporation in Cambridge, Massachusetts, or a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or if not

so specified, at the place where the meeting is to be held. The stock list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 8. Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to a corporate action in writing without a meeting may authorize another person or persons to act for him by proxy. Proxies for use at any meeting of stockholders shall be in writing and filed with the Secretary, or such other officer as the Board of Directors may from time to time determine by resolution, before or at the time of the meeting. All proxies shall be received and taken charge of and all ballots shall be received and canvassed by the secretary of the meeting who shall decide all questions touching upon the qualification of voters, the validity of the proxies and the acceptance or rejection of votes, unless an inspector or inspectors shall have been appointed by the chairman of the meeting, in which event such inspector or inspectors shall decide all such questions.

No proxy shall be valid after six (6) months from its date, unless the proxy provides for a longer period, which in no event may exceed seven (7) years. Each proxy shall be revocable unless expressly provided therein to be irrevocable and coupled with an interest sufficient in law to support an irrevocable power.

Should a proxy designate two or more persons to act as proxies, unless such instrument shall provide the contrary, a majority of such persons present at any meeting at which their powers thereunder are to be exercised shall have and may exercise all the powers of voting or giving consents thereby conferred, or if only one be present, then such powers may be exercised by that one; or, if an even number attend and a majority do not agree on any particular issue, each proxy so attending shall be entitled to exercise such powers in respect of the same portion of the shares as he is of the proxies representing such shares.

Section 9. Voting, Elections; Inspections. Unless otherwise required by law or provided in the Articles of Incorporation, each stockholder shall have one vote for each share of stock entitled to vote which is registered in his name on the record date for the meeting. Shares registered in the name of another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the bylaw (or comparable instrument) of such corporation may prescribe, or in the absence of such provision, as the Board of Directors (or comparable body) of such corporation may determine. Shares registered in the name of a deceased person may be voted by his executor or administrator, either in person or by proxy.

All voting, except as required by the Articles of Incorporation or where otherwise required by law, may be by a voice vote; provided, however, that upon demand therefor by stockholders holding a majority of the issued and outstanding stock present in person or by proxy at any meeting a stock vote shall be taken. Every stock vote shall be taken by written ballots, each of which shall state the name of the stockholder or proxy voting and such other information as may be required under the procedure established for the meeting. All elections of directors shall be by ballot, unless otherwise provided in the Articles of Incorporation.

At any meeting at which a vote is taken by ballots, the chairman of the meeting may appoint one or more inspectors, each of whom shall subscribe an oath or affirmation to execute faithfully the duties of inspector at such meeting with strict impartiality and according to the best of his ability. Such inspector shall receive the ballots, count the votes and make and sign a certificate of the result thereof. The chairman of the meeting may appoint any person to serve as inspector, except no candidate for the office of director shall be appointed as an inspector.

Unless otherwise provided in the Articles of Incorporation, cumulative voting for the election of directors shall be prohibited.

Section 10. Conduct of Meetings. The meetings of the stockholders shall be presided over by the Chairman of the Board, or if he is not present, by the President, or if neither the Chairman of the Board nor the President is present, by a chairman elected at the meeting. The Secretary of the Corporation, if present, shall act as secretary of such meetings, or if he is not present, an Assistant Secretary shall so act; if neither the Secretary nor an Assistant Secretary is present, then a secretary shall be appointed by the chairman of the meeting. The chairman of

any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him in order.

Section 11. Treasury Stock. The Corporation shall not vote, directly or indirectly, shares of its own stock owned by it and such shares shall not be counted for quorum purposes.

Section 12. Action Without Meeting. Any action required or permitted to be taken by the stockholders of the Corporation must be effected at an annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders. Notwithstanding

anything contained in the Articles of Incorporation or Bylaws of the Corporation to the contrary, the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend or repeal this Section 12 or adopt any provision inconsistent with any provision of this Section 12.

Section 13. Nominations and Business at Stockholder Meetings.

(A) Annual Meetings of Stockholders. (1) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders (a) pursuant to the Corporation's notice of meeting, (b) by or at the direction of the Board of Directors or (c) by any stockholder of the Corporation (i) who was a stockholder of record at the time of giving of notice provided for in this Section 13, and at the time of the annual meeting, (ii) is entitled to vote at the meeting and (iii) complies with the notice procedures set forth in this Section 13 as to such business or nomination.

(2) Without qualification, for any nominations or any other business to be properly brought before an annual meeting by a stockholder pursuant to clause (3) of paragraph (A) of this Section 13, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such other business must otherwise be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 60th day nor earlier than the close of business on the 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 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 90th day prior to such annual meeting and not later than the close of business on the later of the 60th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period for the giving of a stockholder's notice as described above.

(3) To be in proper form, a stockholder's notice (whether given pursuant to paragraph A(1) above or paragraph B below) to the Secretary must:

(a) set forth, 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, if any, (ii) (A) the class or series and number of shares of the Corporation which are, directly or indirectly, owned beneficially and of record by such stockholder and such beneficial owner, (B) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a "Derivative Instrument") directly or indirectly owned beneficially by such stockholder and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (C) any proxy, contract, arrangement, understanding, or relationship pursuant to which such stockholder has a right to vote any shares of any security of the Company, (D) any short interest in any security of the Company (for purposes of this Section 13, a person shall be deemed to have a short interest in a security if such person, directly or indirectly, through any contract,

arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (E) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder that are separated or separable from the underlying shares of the Corporation, (F) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (G) any performance-related fees (other than an asset-based fee) that such stockholder is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice including, without limitation, any such interests held by members of such stockholder's immediate family sharing the same household (which information shall be supplemented by such stockholder and beneficial owner, if any, not later than 10 days after the record date for the meeting to disclose such ownership as of the record date), and (iii) any other information relating to such stockholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement 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, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder;

(b) if the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the meeting, set forth (i) 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 of such stockholder and beneficial owner, if any, in such business and (ii) a description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder;

(c) set forth, as to each person, if any, whom the stockholder proposes to nominate for election or reelection to the Board of Directors (i) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) and (ii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K (or any successor rule) if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and

(d) with respect to each nominee for election or reelection to the Board of Directors, include a completed, dated and signed questionnaire, representation and agreement and any other information required by paragraph (D) below.

(4) Notwithstanding anything in the second sentence of paragraph (A)(2) of this Section 13 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least 70 days prior to the first anniversary of the preceding year's annual

meeting, a stockholder's notice required by this Section 13 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(B) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (1) by or at the

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direction of the Board of Directors or (2) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who (a) is a stockholder of record at the time of giving of notice provided for in this Section 13, (b) is entitled to vote at the meeting, and (c) complies with the notice procedures set forth in this Section 13 as to such nomination. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph (A)(2) of this Section 13 with respect to any nomination (including the completed and signed questionnaire, representation and agreement required by paragraph D below) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 90th day prior to the date of such special meeting and not later than the close of business on the later of the 60th day prior to the date of such special meeting or, if the first public announcement of the date of such special meeting is less than 70 days prior to the date of such special meeting, the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period for the giving of a stockholder's notice as described above.

(C) General. (2) Only such persons who are nominated in accordance with the procedures set forth in this Section 13 shall be eligible to serve as directors and only such other business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 13. Except as otherwise provided by law, the Articles of Incorporation or these Bylaws, the Chairman of the meeting shall have the power and duty 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 the procedures set forth in this Section 13, and, if any proposed nomination or business is not in compliance with this Section 13, to declare that such defective proposal or nomination shall be disregarded.

(2) For purposes of this Section 13, "public announcement" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(3) Notwithstanding the foregoing provisions of this Section 13, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 13; provided, however, that any reference in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to paragraph (A)(1)(c) or paragraph (B) of this Section 13. Nothing in this Section 13 shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of Preferred Stock if and to the extent provided for under law, the Articles of Incorporation or these Bylaws.

(D) Submission of Questionnaire, Representation and Agreement; Other Information. To be eligible to be a nominee for election or reelection as a director of the Corporation, a person must deliver (in accordance with the time periods prescribed for delivery of notice under Section 13) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (1) is not and will not become a party to (a) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (b) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (2) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been

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disclosed therein, and (3) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation. The Corporation may also require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

(E) Amendment. Notwithstanding any other provisions of the Articles of Incorporation or the Bylaws of the Corporation (and notwithstanding the fact that a lesser percentage may be specified by law, the Articles of Incorporation or the Bylaws of the Corporation), the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of the Corporation, voting together as a single class, shall be required to alter, amend, repeal or adopt any provision inconsistent with this Section 13.

### ARTICLE III

#### BOARD OF DIRECTORS

Section 1. (a) Number, Election and Terms of Directors. The business and affairs of the Corporation shall be managed by a Board of Directors which shall consist of not less than one (1) nor more than thirteen (13) persons, who need not be residents of the State of Nevada or stockholders of the Corporation. The exact number of directors within the minimum and maximum limitations specified in the preceding sentence shall be fixed from time to time by the Board of Directors pursuant to a resolution adopted by a majority of the entire Board of Directors.

(b) Classification of Directors. In lieu of electing the entire number of directors annually, the Board of Directors may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of the directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification, the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes.

(b) Newly Created Directorships. A directorship to be filled by reason of any increase in the number of directors may be filled (i) by election at an annual or special meeting of stockholders called for that purpose or (ii) by the Board of Directors for a term of office continuing only until the next election of one or more directors by the stockholders- provided that the Board of Directors may not fill more than two such directorships during the period between any two successive annual meetings of stockholders.

(c) Vacancies in the Board of Directors. Any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled by a majority vote of the directors then in office, and directors so chosen shall hold office for a term expiring at the annual meeting of stockholders at which the term of the class to which they have been elected expires. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

(d) Removal of Directors. Any director, or the entire Board of Directors, may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

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(e) Amendment, Repeal, etc. Notwithstanding any other provisions of the Articles of Incorporation or the Bylaws of the Corporation (and notwithstanding the fact that a lesser percentage may be specified by law, the Articles of Incorporation or the Bylaws of the Corporation), the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of the Corporation, voting together as a single class, shall be required to alter, amend, repeal or adopt any provision inconsistent with this Section 1.

Section 2. Quorum. Unless otherwise provided in the Articles of Incorporation, a majority of the total number of directors shall constitute a quorum for the transaction of business of the Board of Directors and 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.

Section 3. Place of Meetings, Order of Business. The directors may hold their meetings and may have an office and keep the books of the Corporation, except as otherwise provided by law, in such place or places, within or without the State of Nevada, as the Board of Directors may from time to time determine by resolution. The meetings of the Board of Directors shall be presided over by the Chairman of the Board, or if he is not present, by the President, and the business of the meeting shall be transacted in such order as shall from time to time be determined by the Chairman of the Board, or in his absence, by the President, or by resolution of the Board of Directors.

Section 4. First Meeting. Each newly elected Board of Directors may hold its first meeting for the purpose of organization and the transaction of business, if a quorum is present, immediately after and at the same place as the annual meeting of the stockholders. Notice of such meeting shall not be required. At the first meeting of the Board of Directors in each year at which a quorum shall be present, held next after the annual meeting of stockholders, the Board of Directors shall proceed to the election of the officers of the Corporation.

Section 5. Regular Meetings. Regular meetings of the Board of Directors shall be held at such times and places as shall be designated from time to time by resolution of the Board of Directors. Notice of such regular meetings shall not be required.

Section 6. Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board, the President or on the written request of any two directors, by the Secretary, in each case on at least twenty-four (24) hours personal, written, telegraphic, cable or wireless notice to each director. Such notice, or any waiver thereof pursuant to Article VIII, Section 3 hereof, need not state the purpose or purposes of such meeting, except as may otherwise be required by law or provided for in the Articles of Incorporation or these Bylaws.

Section 7. Compensation. Unless otherwise restricted by the Articles of Incorporation, the Board of Directors shall have the authority to fix the compensation of directors.

Section 8. Action Without a Meeting; Telephone Conference Meeting. Unless otherwise restricted by the Articles of Incorporation, any action required or permitted to be taken at any meeting of the Board of Directors, or any committee designated by the Board of Directors, may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, either originally or in counterparts, consent thereto in writing, which written consent may be given in the form of electronic mail or wireless transmission. Such consent shall have the same force and effect as a unanimous vote at a meeting, and may be stated as such in any document or instrument filed with the Secretary of State of Nevada.

Unless otherwise restricted by the Articles of Incorporation, subject to the requirement for notice of meetings, members of the Board of Directors, or members of any committee designated by the Board of Directors, may participate in a meeting of such Board of Directors or committee, as the case may be, by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such a meeting shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

Section 9. Approval or Ratification of Acts or Contracts by Stockholders. The Board of Directors in its discretion may submit any act or contract for approval or ratification at any annual meeting of the stockholders, or at any special meeting of the stockholders called for the purpose of considering any such act or contract, and any act or contract that shall be approved or be ratified by the vote of the stockholders holding a majority of the issued and outstanding shares of stock of the Corporation entitled to vote and present in person or by proxy at such meeting (provided that a quorum is present), shall be as valid and as binding upon the Corporation and upon all the stockholders as if it has been approved or ratified by every stockholder of the Corporation. In addition, any such act or contract may be approved or ratified by the written consent of stockholders holding a majority of the issued and outstanding shares of capital stock of the Corporation entitled to vote and such consent shall be as valid and as binding upon the Corporation and upon all the stockholders as if it had been approved or ratified by every stockholder of the Corporation.

Section 10. Limitation on Directors' Liability. Except as otherwise provided by law, a director shall not be personally liable for monetary damages as such for any action taken, or failure to take any action, unless:

- (a) The director has breached or failed to perform the duties of his office as provided in the Nevada General Corporation Law; and
- (b) The breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.

#### ARTICLE IV

##### COMMITTEES

Section 1. Designation; Powers. The Board of Directors may, by resolution passed by a majority of the whole board, designate one or more committees, including, if they shall so determine, an executive committee, each such committee to consist of one or more of the directors of the Corporation. Any such designated committee shall have and may exercise such of the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation as may be provided in such resolution, except that no such Committee shall have the power or authority of the Board of Directors in reference to amending the Articles of Incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution of the Corporation, or amending, altering or repealing the Bylaws or adopting new Bylaws for the Corporation and, unless such resolution or the Articles of Incorporation expressly so provides, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock. Any such designated committee may authorize the seal of the Corporation to be affixed to all papers which may require it. In addition to the above, such committee or committees shall have such other powers and limitations of authority as may be determined from time to time by resolution adopted by the Board of Directors.

Section 2. Procedure; Meetings, Quorum. Any committee designated pursuant to Section 1 of this Article shall choose its own chairman, shall keep regular minutes of its proceedings and report the same to the Board of Directors when requested, shall fix its own rules or procedures, and shall meet at such times and at such place or places as may be provided by such rules, or by resolution of such committee or resolution of the Board of Directors. At every meeting of any such committee, the presence of a majority of all the members thereof shall constitute a quorum and the affirmative vote of a majority of the members present shall be necessary for the adoption by it of any resolution.

Section 3. Substitution of Members. 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 such committee. In the absence or disqualification of a member of a committee, the member or members

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 the absent or disqualified member.

#### ARTICLE V

##### OFFICERS

Section 1. Number, Titles and Term of Office. The officers of the Corporation shall be a President, one or more Vice Presidents (any one or more of whom may be designated Executive Vice President or Senior Vice President), a Treasurer, a Secretary, a Registered Agent and, if the Board of Directors so elects, a Chairman of the Board and such other officers as the Board of Directors may from time to time elect or appoint. Each officer shall hold office until his successor shall be duly elected and shall qualify or until his death or until he shall resign or shall have been removed in the manner hereinafter provided. Any number of offices may be held by the same person, unless the Articles of Incorporation provides otherwise. Except for the Chairman of the Board, if any, no officers need be a director.

Section 2. Salaries. The salaries or other compensation of the officers and agents of the Corporation shall be fixed from time to time by the Board of Directors.

Section 3. Removal. Any officer or agent elected or appointed by the Board of Directors may be removed, either with or without cause, by the vote of a majority of the whole Board of Directors at a special meeting called for the purpose, or at any regular meeting of the Board of Directors, provided the notice for such meeting shall specify that the matter of any such proposed removal will be considered at the meeting but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 4. Vacancies. Any vacancy occurring in any office of the Corporation may be filled by the Board of Directors.

Section 5. Powers and Duties of the Chief Executive Officer. The President shall be the chief executive officer of the Corporation unless the Board of Directors designates the Chairman of the Board as chief executive officer. Subject to the control of the Board of Directors and the executive committee (if any), the chief executive officer shall have general executive charge, management and control of the properties, business and operations of the Corporation with all such powers as may be reasonably incident to such responsibilities; he may agree upon and execute all leases, contracts,

evidences of indebtedness and other obligations in the name of the Corporation and may sign all certificates for shares of capital stock of the Corporation and shall have such other powers and duties as designated in accordance with these Bylaws and as from time to time may be assigned to him by the Board of Directors.

Section 6. Powers and Duties of the Chairman of the Board. The Chairman of the Board shall have no administrative duties relating to the Corporation or its property and he shall act as a consultant and advisor to the President. The Chairman of the Board shall preside when present at meetings of the stockholders and the Board of Directors. In addition, he shall exercise such other powers and perform such other duties as may be assigned to him from time to time by the Board of Directors or as may be prescribed by the Bylaws.

Section 7. Powers and Duties of the President. Unless the Board of Directors otherwise determines, the President shall have the authority to agree upon and execute all leases, contracts, evidences of indebtedness and other obligations in the name of the Corporation; and he shall have such other powers and duties as designated in accordance with these Bylaws and as from time to time may be assigned to him by the Board of Directors.

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Section 8. Vice Presidents. In the absence of the President, or in the event of his inability or refusal to act, a Vice President designated by the Board of Directors shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions of the President. In the absence of a designation by the Board of Directors of a Vice President to perform the duties of the President, or in the event of his absence or inability or refusal to act, the Vice President who is present and who is senior in terms of time as a Vice President of the Corporation shall so act. The Vice Presidents shall perform such other duties and have such other powers as the chief executive officer or the Board of Directors may from time to time prescribe.

Section 9. Treasurer. The Treasurer shall have responsibility for the custody and control of all the funds and securities of the Corporation, and he shall have such other powers and duties as designated in these Bylaws and as from time to time may be assigned to him by the Board of Directors. He shall perform all acts incident to the position of Treasurer, subject to the control of the chief executive officer and the Board of Directors; and he shall, if required by the Board of Directors, give such bond for the faithful discharge of his duties in such form as the Board of Directors may require.

Section 10. Assistant Treasurers. Each Assistant Treasurer shall have the usual powers and duties pertaining to his office, together with such other powers and duties as designated in these Bylaws and as from time to time may be assigned to him by the chief executive officer or the Board of Directors. The Assistant Treasurers shall exercise the powers of the Treasurer during that officer's absence or inability or refusal to act.

Section 11. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors, committees of directors and the stockholders, in books provided for that purpose; he shall attend to the giving and serving of all notices; he may in the name of the Corporation affix the seal of the Corporation to all contracts of the Corporation and attest the affixation of the seal of the Corporation thereto; he may sign with the other appointed officers all certificates for shares of capital stock of the Corporation; he shall have charge of the certificate books, transfer books and stock ledgers, and such other books and papers as the Board of Directors may direct, all of which shall at all reasonable times be open to inspection of any director upon application at the office of the Corporation during business hours; he shall have such other powers and duties as designated in these Bylaws and as from time to time may be assigned to him by the Board of Directors; and he shall in general perform all acts incident to the office of Secretary, subject to the control of the chief executive officer and the Board of Directors.

Section 12. Assistant Secretaries. Each Assistant Secretary shall have the usual powers and duties pertaining to his office, together with such other powers and duties as designated in these Bylaws and as from time to time may be assigned to him by the chief executive officer or the Board of Directors. The Assistant Secretaries shall exercise the powers of the Secretary during that officer's absence or inability or refusal to act.

Section 13. Resident Agent. The Resident Agent shall be either a natural person or a corporation, resident or located in the State of Nevada. Along with all other powers authorized by law, the Articles of Incorporation or these Bylaws the Registered Agent may accept legal process, demand or notice authorized by law to be served upon the Corporation.

Section 14. Action with Respect to Securities of Other Corporations. Unless otherwise directed by the Board of Directors, the chief executive officer shall have the power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of security holders of or with respect to any action of security holders of any other corporation in which this Corporation may hold securities and otherwise to exercise any and all rights and powers which this Corporation may possess by reason of its ownership of securities in such other corporations.

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## ARTICLE VI

### INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS

Section 1. To the fullest extent allowed by Nevada law, any director of the Corporation shall not be liable to the corporation or its shareholders for monetary damages for an act or omission in the director's capacity as a director, except that this Article V does not eliminate or limit the liability of a director for:

- (a) an act or omission which involves intentional misconduct, fraud or a knowing violation of law; or
- (b) the payment of dividends in violation of N.R.S. 78.300.

Section 2. The Corporation shall indemnify each director, officer, agent and employee, now or hereafter serving the Corporation, each former director, officer, agent and employee, and each person who may now or hereafter serve or who may have heretofore served at the Corporation's request as a director, officer, agent or employee of another corporation or other business enterprise, and the respective heirs, executors, administrators and personal representatives of each of them against all expenses actually and reasonably incurred by, or imposed upon, him in connection with the defense of any claim, action, suit or proceeding, civil or criminal against him by reason of his being or having been such director, officer, agent or employee, except in

relation to such matters as to which he shall be adjudged by a court of competent jurisdiction after exhaustion of all appeals therefrom in such action, suit or proceedings to be liable for gross negligence or willful misconduct in the performance of duty. For purposes hereof, the term “expenses” shall include but not be limited to all expenses, costs, attorneys’ fees, judgments (including adjudications other than on the merits), fines, penalties, arbitration awards, costs of arbitration and sums paid out and liabilities actually and reasonably incurred or imposed in connection with any suit, claim, action or proceeding, and any settlement or compromise thereof approved by the Board of Directors as being in the best interests of the Corporation. However, in any case in which there is no disinterested majority of the Board of Directors available, the indemnification shall be made: (1) only if the Corporation shall be advised in writing by counsel that in the opinion of counsel (a) such officer, director, agent or employee was not adjudged or found liable for gross negligence or willful misconduct in the performance of duty as such director, officer, agent or employee or the indemnification provided is only in connection with such matters as to which the person to be indemnified was not so liable, and in the case of settlement or compromise, the same is in the best interests of the Corporation; and (b) indemnification under the circumstances is lawful and falls within the provisions of these Bylaws and (2) only in such amount as counsel shall advise the Corporation in writing is, in his opinion, proper. In making or refusing to make any payment under this or any other provisions of these Bylaws, the Corporation, its directors, officers, employees and agents shall be fully protected if they rely upon the written opinion of counsel selected by, or in the manner designated by, the Board of Directors.

Section 3. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Corporation as authorized in these Bylaws.

Section 4. The Corporation may indemnify each person, though he is not or was not a director, officer, employee or agent of the Corporation, who served at the request of the Corporation on a committee created by the Board to consider and report to it in respect of any matter. Any such indemnification may be made under the provisions hereof and shall be subject to the limitations hereof, except that (as indicated) any such committee member need not be nor have been a director, officer, employee or agent of the Corporation.

Section 5. The provisions hereof shall be applicable to actions, suits or proceedings (including appeals) commenced after the adoption hereof, whether arising from acts or omissions to act occurring before or after the adoption hereof.

Section 6. The indemnification provisions herein provided shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, or by law or statute, both as to action in his official capacity and as to action in

another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or Agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, and persons described in Section 4 of this Article above, against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of these Bylaws.

## ARTICLE VII

### CAPITAL STOCK

Section 1. Certificates of Stock. The shares of capital stock of the Corporation shall be represented by a certificate, unless the Board of Directors of the Corporation adopts a resolution permitting shares to be uncertificated. Every holder of capital stock of the Corporation shall be entitled to have a certificate for shares of capital stock. The certificates for shares of the capital stock of the Corporation shall be in such form, not inconsistent with that required by law and the Articles of Incorporation, as shall be approved by the Board of Directors. The President or a Vice President shall cause to be issued to each stockholder one or more certificates, under the seal of the Corporation or a facsimile thereof if the Board of Directors shall have provided for such seal, and signed by the President or a Vice President and the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer certifying the number of shares (and, if the stock of the Corporation shall be divided into classes or series, the class and series of such shares) owned by such stockholder in the Corporation; provided however, that any of or all the signatures on the certificate may be facsimile. The stock record books and the blank stock certificate books shall be kept by the Secretary, or at the office of such transfer agent or transfer agents as the Board of Directors may from time to time by resolution determine. In case any officer, transfer agent or registrar who shall have signed or whose facsimile signature or signatures shall have been placed upon any such certificate or certificates shall have ceased to be such officer, transfer agent or registrar before such certificate is issued by the Corporation, such certificate may nevertheless be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The stock certificates shall be consecutively numbered and shall be entered in the books of the Corporation as they are issued and shall exhibit the holder’s name and number of shares.

Section 2. Transfer of Shares. Stock of the Corporation shall be transferable in the manner prescribed by applicable law and in these Bylaws. Transfers of stock shall be made on the books of the Corporation, and in the case of certificated shares of stock, only by the person named in the certificate or by such person’s attorney lawfully constituted in writing and upon the surrender of the certificate therefor, properly endorsed for transfer and payment of all necessary transfer taxes; or, in the case of uncertificated shares of stock, upon receipt of proper transfer instructions from the registered holder of the shares or by such person’s attorney lawfully constituted in writing, and upon payment of all necessary transfer taxes and compliance with appropriate procedures for transferring shares in uncertificated form; provided, however, that such surrender and endorsement, compliance or payment of taxes shall not be required in any case in which the officers of the Corporation shall determine to waive such requirement. With respect to certificated shares of stock, every certificate exchanged, returned or surrendered to the Corporation shall be marked “Cancelled,” with the date of cancellation, by the Secretary or Assistant Secretary of the Corporation or the transfer agent thereof. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

Section 3. Ownership of Shares. The Corporation shall be entitled to treat the holder of record of any share or shares of capital stock of the Corporation as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or

whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Nevada.

Section 4. Regulations Regarding Certificates. The Board of Directors shall have the power and authority to make all such rules, restrictions and regulations as they may deem expedient concerning the issue, transfer and registration or the replacement of certificates for shares of capital stock of the Corporation.

Section 5. Lost or Destroyed Certificates. The Board of Directors may determine the conditions upon which a new certificate of stock may be issued in place of a certificate which is alleged to have been lost, stolen or destroyed; and may, in their discretion, require the owner of such certificate or his legal representative to give bond, with sufficient surety, to indemnify the Corporation and each transfer agent and registrar against any and all losses or claims which may arise by reason of the issue of a new certificate in the place of the one so lost, stolen or destroyed.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

Section 1. Fiscal Year. The fiscal year of the Corporation shall be such as established from time to time by the Board of Directors.

Section 2. Corporate Seal. The Board of Directors may provide a suitable seal containing the name of the Corporation. The Secretary shall have charge of the seal (if any). 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 the Assistant Secretary or Assistant Treasurer.

Section 3. Notice and Waiver of Notice. Whenever any notice is required to be given by law, the Articles of Incorporation or under the provisions of these Bylaws, said notice shall be deemed to be sufficient if given (i) by telegraphic, cable, electronic mail or wireless transmission or (ii) by deposit of the same in a post office box in a sealed prepaid wrapper addressed to the person entitled thereto at his post office address, as it appears on the records of the Corporation, and such notice shall be deemed to have been given on the day of such transmission or mailing as the case may be.

Whenever notice is required to be given by law, the Articles of Incorporation or under any of the provisions of these Bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to 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 transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice unless so required by the Articles of Incorporation or the Bylaws.

Section 4. Resignations. Any director, member of a committee or officer may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the chief executive officer or Secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

Section 5. Facsimile Signatures. In addition to the provisions for the use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors.

Section 6. Reliance Upon Books, Reports and Records. Each director and each member of any committee designated by the Board of Directors shall, in the performance of his duties, be fully protected in relying in good faith upon the books of account or reports made to the Corporation by any of its officers, or by an independent certified public accountant, or by an appraiser selected with reasonable care by the Board of Directors or by any such committee, or in relying in good faith upon other records of the Corporation.

## ARTICLE IX

### AMENDMENTS

The Board of Directors shall have the power to adopt, amend and repeal from time to time the Bylaws of the Corporation, subject to the right of the stockholders entitled to vote by law with respect thereto to amend or repeal such Bylaws as adopted or amended by the Board of Directors; provided, however, that in the case of amendments by stockholders or any repeal by stockholders, notwithstanding any other provisions of these Bylaws or any other 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, the Articles of Incorporation or these Bylaws, the affirmative vote of the holders of at least 80 percent of the voting power of the then outstanding shares of the Corporation entitled to vote, voting together as a single class, shall be required to alter, amend or repeal any provision of these Bylaws.

## SARBANES-OXLEY SECTION 302(a) CERTIFICATION

I, Mark D. Perrin, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of InVivo Therapeutics Holdings Corp.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 6, 2016

/s/ Mark D. Perrin

Mark D. Perrin  
Chief Executive Officer  
(Principal Executive Officer)

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## SARBANES-OXLEY SECTION 302(a) CERTIFICATION

I, Steven F. McAllister, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of InVivo Therapeutics Holdings Corp.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 6, 2016

/s/ Steven F. McAllister  
Steven F. McAllister  
Chief Financial Officer  
(Principal Financial Officer)

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**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of InVivo Therapeutics Holdings Corp. (the “Company”) for the quarter ended March 31, 2016, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Mark D. Perrin, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

Date: May 6, 2016

/s/ Mark D. Perrin

Mark D. Perrin

Chief Executive Officer

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**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of InVivo Therapeutics Holdings Corp. (the “Company”) for the quarter ended March 31, 2016 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Steven F. McAllister, and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

Date: May 6, 2016

/s/ Steven F. McAllister

Steven F. McAllister

Chief Financial Officer

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