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

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**FORM 8-K**

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

**Date of Report (Date of earliest event reported): October 10, 2022**

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**KIROMIC BIOPHARMA, INC.**  
(Exact name of registrant as specified in its charter)

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<b>Delaware</b> (State or other jurisdiction of incorporation)	<b>001-39619</b> (Commission File Number)	<b>46-4762913</b> (IRS Employer Identification No.)
<b>7707 Fannin Street, Suite 140</b> <b>Houston, TX,</b> (Address of principal executive offices)	<b>77054</b> (Zip Code)	

**Registrant's telephone number, including area code (832) 968-4888**

**Not Applicable**  
(Former name or former address, if changed since last report)

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

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

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

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Common Stock, \$0.001 par value	KRBP	The Nasdaq Stock Market LLC

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

Emerging growth company

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

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

As previously reported, on March 7, 2022, entities related to Empery Asset Management, LP (the “Empery Entities”) and Sabby Management LLC (the “Sabby Entities”, together with the Empery Entities, the “Plaintiffs”) filed a complaint in the District Court for the Southern District of New York alleging claims against Kiromic BioPharma, Inc. (the “Company”) and certain current and former officers and directors of the Company (together with the Company, the “Initial Defendants”) for alleged violations of Sections 11, 12, and 15 of the Securities Act of 1933, as amended (the “Securities Act”) in connection with the purchase of Company’s common stock, par value \$0.001 per share (the “Common Stock”), through the Company’s public offering that closed on July 2, 2021. On July 22, 2022, the Plaintiffs amended their complaint to, among other things, include the underwriter in the public offering ThinkEquity LLC as a defendant (together with the “Initial Defendants”, the “Defendants”). The aforementioned litigation was entitled “Sabby Volatility Warrant Master Fund Ltd., et al. v. Kiromic BioPharma, Inc. et al., Case No. 22-cv-1927 (SDNY)” (the “Litigation”) in the United States District Court for the Southern District of New York.

On October 10, 2022, the Company, along with the other Initial Defendants, entered into a Stipulation of Settlement and Mutual Release with the Empery Entities and with the Sabby Entities (the “Settlement Agreements”), respectively, pursuant to which the Sabby Entities, the Empery Entities, the Company and the other Initial Defendants (the “Parties”) agreed to dismiss the case with prejudice against all Defendants (including ThinkEquity, LLC) with no admission of liability (the “Settlement”). As part of the Settlement, the Company will (a) make a \$75,000 cash payment to each of the Empery Entities and the Sabby Entities and (b) issue convertible notes (the “Settlement Notes”) in the aggregate principal amount of \$1,656,720 to each of the Empery Entities and the Sabby Entities (collectively, the “Settlement Consideration”). The Settlement Notes are convertible into shares of Common Stock (the “Conversion Shares”) at an initial conversion price per share of \$0.3068, representing the average of the closing price of the Common Stock reported on The Nasdaq Capital Market for the five (5) trading days prior to the entry of the Settlement Agreements, subject to a beneficial ownership limitation equivalent to 9.99%.

Both Settlement Agreements are conditioned upon the Company obtaining financing no later on October 18, 2022 for aggregate gross proceeds to the Company of not less than \$5 million (the “Conditional Financing”), after which within one business day the Parties shall promptly submit a joint motion seeking court approval of the Settlement Agreements under Section 3(a)(10) of the Securities Act (the “Joint Motion”). The Settlement Agreements shall become void if the Conditional Financing requirement is not satisfied or if the Court does not approve the Joint Motion by November 15, 2022. Upon receipt of the Settlement Consideration by the Plaintiffs, the Plaintiffs and the initial Defendants shall mutually release each other and their respective related persons from any and all manner of actions and proceedings relating to or arising out of the Litigation. While the Company is in discussions with potential financing sources and is working diligently with its advisors to obtain financing in order to satisfy the Conditional Financing requirement, there is no assurance that the Conditional Financing requirement will be satisfied by October 18, 2022. In addition, there is no assurance that the requisite court approval of the Joint Motion will be obtained by November 15, 2022 or that other terms and conditions to the Settlement under the Settlement Agreements will be met. Therefore there is no assurance that the Settlement will be achieved due to these important conditions that are largely outside of the Company’s control.

The foregoing description of the Settlement Agreements and the Settlement Notes is qualified in their entirety by reference to the full text of such Settlement Agreements and Settlement Notes, copies of which are attached hereto as exhibits 10.1, 10.2 and 10.3, respectively, and incorporated herein by reference.

**Item 3.02 Unregistered Sales of Equity Securities.**

Reference is made to the disclosure set forth under Item 1.01 above, which disclosure is incorporated herein by reference. The issuance of the Settlement Notes and the Conversion Shares will be under the exemption provided by Section 3(a)(10) of the Securities Act, subject to the court approval of the Joint Motion.

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**Item 9.01 Financial Statements and Exhibits.**

**(d) Exhibits**

<b>Exhibit No.</b>	<b>Description</b>
10.1	<a href="#"><u>Stipulation of Settlement and Mutual Release, dated October 10, 2022, by and among Kiromic Biopharma, Inc., Empery Asset Master, Ltd. and other parties</u></a>
10.2	<a href="#"><u>Stipulation of Settlement and Mutual Release, dated October 10, 2022, by and among Kiromic Biopharma, Inc., Sabby Volatility Warrant Master Fund Ltd. and other parties</u></a>
10.3	<a href="#"><u>Form of the Subordinated Convertible Promissory Note</u></a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

**SIGNATURES**

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

**Kiromic BioPharma, Inc.**

Date: October 14, 2022

By: /s/ Daniel Clark

Name: Daniel Clark

Title: Chief Financial Officer

**STIPULATION OF SETTLEMENT AND MUTUAL RELEASE**

**WHEREAS**, on July 2, 2021, Empery Asset Master, Ltd., Empery Tax Efficient, LP, and Empery Tax Efficient III, LP (collectively, the “Empery Funds”) participated in a public offering by Kiromic Biopharma, Inc. (“Kiromic” or the “Company”) pursuant to which the Empery Funds purchased an aggregate of 1,000,000 shares of common stock, par value \$0.001 per share (“Common Stock”) of Kiromic for \$5 million (the “Offering”);

**WHEREAS**, on June 25, 2021, Kiromic filed a registration statement (the “Registration Statement”) with the Securities Exchange Commission in connection with the Offering, signed by Maurizio Chiriva-Inernati, Tony Tontat, Gianluca Rotino, Pietro Bersani, Americo Cicchetti, Michael Nagel, and Jerry Schneider (collectively, the “Individual Defendants,” and together with Kiromic and ThinkEquity (as defined below), the “Defendants”) (Defendants, together with the Empery Funds, the “Parties”);

**WHEREAS**, on June 29, 2021, Kiromic filed a final prospectus (the “Prospectus,” and together with the Registration Statement, the “Offering Documents”) with the Securities Exchange Commission in connection with the Offering;

**WHEREAS**, the Empery Funds claim that the Offering Documents contained untrue statements of material fact, omitted material facts, and failed to make adequate disclosures concerning the imposition of a hold by the Food and Drug Administration relating to certain clinical trials that Kiromic was conducting;

**WHEREAS**, on March 7, 2022, the Empery Funds filed an action against Kiromic and the Individual Defendants in the United States District Court for the Southern District of New York, entitled *Sabby Volatility Warrant Master Fund Ltd., et al. v. Kiromic Biopharma Inc, et al.*, Civil Action No. 1:22-cv-01927, alleging violations of Sections 11, 12(a)(2) and 15 of the Securities Act (the “Action”);

**WHEREAS**, on July 22, 2022, the Empery Funds amended their complaint against Kiromic (the “Amended Complaint”), to add, among other things, ThinkEquity LLC (“ThinkEquity”) as a defendant;

**WHEREAS**, the Defendants (with the exception of ThinkEquity) moved to dismiss the Amended Complaint on September 22, 2022, and ThinkEquity filed an answer on September 17, 2022;

**WHEREAS**, the Defendants deny the allegations in the Amended Complaint and maintain that the Offering Documents complied in all respects with the Securities Act of 1933, the rules and regulations thereunder, and all other applicable law;

**WHEREAS**, the Parties desire to fully settle and resolve all issues and claims that relate in any way to the allegations set forth in the Action without the admission of any fault or liability on the part of any of the Parties;

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**WHEREAS**, prior to the execution of this Agreement by all Parties, the Empery Funds voluntarily dismissed their claims against ThinkEquity without prejudice;

**AND WHEREAS**, the Parties, each acting on his or its own behalf and having been represented by counsel, have approved the settlement terms described below;

**NOW, THEREFORE**, in consideration of and in return for the promises and covenants undertaken by the Parties herein and the releases given herein, the adequacy of which consideration is acknowledged, the Parties agree as follows:

1. Settlement Consideration. No later than two business days following the later of (i) the approval of the Proposed Order (as defined in Section 3 below) by a court of competent jurisdiction and (ii) Kiromic obtaining the Conditional Financing (as defined in Section 2 below), Kiromic shall issue to the Empery Funds (a) convertible notes (the form of which is attached hereto as Exhibit A) (the "Settlement Notes") in the aggregate principal amount of \$1,656,720 and (b) immediately available funds by wire transfer in the aggregate of \$75,000 (the "Settlement Payment," and, together with the Settlement Notes, the "Settlement Consideration"). The percentage of each component of the Settlement Consideration shall be allocated to each of the Empery Funds pursuant to the table attached hereto as Exhibit B. The allocation in Exhibit B was exclusively determined by the Empery Funds; Defendants shall have no responsibility for or liability relating to the Exhibit B allocation. The Settlement Notes will be convertible into shares of Common Stock (the "Conversion Shares") in accordance with their terms at an initial conversion price per share equal to the average of the closing price of the Common Stock reported on The Nasdaq Capital Market for the five (5) trading days prior to the entry of this Agreement, and will provide that conversion of the Settlement Notes will be subject to the "Beneficial Ownership Limitation" set forth in each Settlement Note.

2. [Intentionally Omitted]

3. Conditional Financing. This Agreement is conditioned upon Kiromic obtaining financing no later than 5:00 p.m. (Eastern time) on October 18, 2022 for aggregate gross proceeds to Kiromic of not less than \$5 million (the "Conditional Financing"). For the avoidance of doubt, this Agreement shall have no force or effect, and shall be *void ab initio*, (i) unless and until Kiromic obtains the Conditional Financing on or prior to 5:00 p.m. (Eastern time) on October 18, 2022 or (ii) if a court of competent jurisdiction shall not have approved the Proposed Order (as defined below) on or prior to 5:00 p.m. (Eastern time) on November 15, 2022. No later than 9:30 a.m. (Eastern time) on the business day immediately following closing of the Conditional Financing, Kiromic shall issue a press release disclosing the material terms of the Conditional Financing. Each of Kiromic and Empery Funds hereby acknowledges and agrees that following the issuance of such press release that no Empery Fund shall be in possession of any material non-public information about Kiromic received from Kiromic, any of its subsidiaries or any of their respective officers, directors, employees, affiliates or agents. Kiromic understands and confirms that the Empery Funds will be relying on the foregoing covenant in effecting transactions in securities of Kiromic.

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4. Joint 3(a)(10) Motion. The Parties (other than ThinkEquity) agree that the Settlement Notes and the Conversion Shares shall be issued subject to an exemption pursuant to Section 3(a)(10) of the Securities Act of 1933. No later than one business day following the satisfaction of the Conditional Financing, the Parties shall submit a proposed order approving issuance pursuant to Section 3(a)(10) of the Securities Act of 1933 in the form attached hereto as Exhibit C (the “Proposed Order”), together with any supporting documents. At the same time, the Parties will also jointly seek expedited consideration of the Proposed Order, seeking that the court decide it on or before November 15, 2022.

5. Dismissal of the Action With Prejudice. No later than two (2) business days following the delivery of the Settlement Consideration in accordance with Section 1 of this Agreement (the date on which such Settlement Consideration is delivered, the “Delivery Date”), the Empery Funds shall cause Defendants to be dismissed with prejudice from the Action by filing a fully executed stipulation and proposed order of dismissal in the form attached hereto as Exhibit D (the “Dismissal Stipulation”), provided that Defendants have executed and delivered to the Empery Funds a copy of the Dismissal Stipulation.

6. Release of the Defendants by Empery Funds. Upon receipt of the Settlement Consideration, the Empery Funds, on behalf of themselves, their members, managers, affiliates, agents, subsidiaries, investors, partners, directors, employees, attorneys, representatives, predecessors, successors and assigns, and the executors, administrators, associates, and related or affiliated persons or entities of each of the foregoing (collectively, the “Empery Funds Releasers”), being legally competent to contract, automatically, irrevocably, and fully and forever release and discharge the Defendants and their respective members, managers, affiliates, agents, subsidiaries, investors, partners, directors, employees, attorneys, representatives, predecessors, successors and assigns, and the executors, administrators, associates, and related or affiliated persons or entities of each of the foregoing (collectively, the “Released Defendants”) from any and all manner of actions, obligations, suits, proceedings, matters, disputes, claims or causes of action, harm, damages or injuries whatsoever (including without limitation arising out of a breach of any duty, law, or rule) known or unknown, suspected or unsuspected, contingent or non-contingent, alleged or not alleged, which now exist, heretofore have existed or come into existence in the future, upon any theory of law or equity, whenever or however arising (whether contractual, common law, statutory, federal, state, local, or otherwise, including but not limited to any claims for compensatory or punitive damages, or for attorneys' fees, costs or disbursements of any kind), relating to or arising out of the Offering Documents, the Empery Funds' trading in Kiromic securities, and/or the allegations in the Action (collectively, the “Released Claims”). Notwithstanding anything herein to the contrary, the Released Claims shall not include any suit, action, or proceeding to enforce the terms of this Agreement.

7. [Intentionally Omitted]

8. Release of the Empery Funds. Upon delivery of the Settlement Consideration, Defendants on their behalf and on behalf of their members, managers, affiliates,

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agents, subsidiaries, investors, partners, directors, employees, attorneys, representatives, predecessors, successors and assigns, and the executors, administrators, associates, and related or affiliated persons or entities of each of the foregoing (collectively, the “Defendant Releasers”), being legally competent to contract, automatically, irrevocably, and fully and forever release and discharge the Empery Funds and their respective members, managers, affiliates, agents, employees, subsidiaries, investors, partners, directors, attorneys, representatives, predecessors, successors and assigns, and the executors, administrators, associates, and related or affiliated persons or entities of each of the foregoing (collectively, the “Empery Funds Released Parties”) from any and all manner of actions, obligations, suits, proceedings, matters, disputes, claims or causes of action, harm, damages or injuries whatsoever (including without limitation arising out of a breach of any duty, law, or rule), known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, heretofore have existed or come into existence in the future, upon any theory of law or equity, whenever or however arising (whether contractual, common law, statutory, federal, state, local, or otherwise, including but not limited to any claims for compensatory or punitive damages, or for attorneys' fees, costs or disbursements of any kind), relating to or arising out of the Released Claims. Notwithstanding anything herein to the contrary, the Released Claims shall not include any suit, action, or proceeding to enforce the terms of this Agreement.

9. Covenant Not to Sue. Upon the payment and receipt of the Settlement Consideration, the Empery Funds and the Released Defendants irrevocably covenant and agree not to sue, or commence, or cause or encourage anyone else (directly or indirectly) to sue or commence, or threaten to sue or commence, any action, claim, cause of action, arbitration, or legal proceeding of any nature whatsoever, whether legal or equitable, based on any Released Claim. The preceding sentence shall not apply to any action to enforce this Agreement or any action filed by ThinkEquity for indemnity or contribution against Kiromic. The Empery Funds further agree that if a class action is certified (for settlement purposes or otherwise) in Karp v. Kiromic Biopharma, Inc., et al., Case No. 22-cv-6690-VM (United States District Court for the Southern District of New York) or Podmore v. Kiromic Biopharma, Inc., et al., Case No. 22-cv-8433-VM (United States District Court for the Southern District of New York), the Empery Funds will opt-out of the class and not submit any claim for recovery.

10. Confidentiality. The Parties agree that the terms and conditions of this Agreement are confidential and they will not disclose the terms to any third parties except: (i) to their respective attorneys; (ii) as required by any court of competent jurisdiction or regulatory institution; (iii) as required by any city, state, or federal rule, regulation or law; (iv) to any accountants or tax preparation professionals and to the extent necessary to accurately file city, state and federal taxes; and (v) to any investor or potential investor that is obligated pursuant to a customary confidentiality agreement to keep the information confidential. Notwithstanding the foregoing, the Parties agree that to the extent an investor or potential investor of any Party specifically asks about the status, resolution, or outcome of the Action, the Party who receives any such inquiry may respond by indicating that the Parties have reached a settlement pursuant to which the Parties have amicably resolved any differences they may have had, have obtained the results they were seeking, and are satisfied with the terms. The Parties further agree that

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monetary damages alone are inadequate to compensate the other Parties for injury caused or threatened by a breach of the confidentiality restrictions set forth in this Paragraph and that preliminary and permanent injunctive relief restraining and prohibiting the violation of these confidentiality restrictions is a necessary and appropriate remedy in the event of such a breach. Notwithstanding the foregoing, the Parties are in no way prohibited from obtaining, in addition to injunctive relief, an award of monetary damages against any person or entity breaching this Paragraph. The Parties further agree that ThinkEquity may utilize information about the settlement, as necessary, in connection with any indemnity action that it asserts against Kiromic.

11. Binding Effect. This Agreement binds and inures to the benefit of the Parties and their respective past and present agents, employees, family members (including current and former spouses), assigns, attorneys, representatives, officers, directors, shareholders, successors, assigns, transferees, insurers and sureties, and all of their subsidiaries, parents, predecessors, successors and affiliated companies.

12. No Admission. It is understood and agreed that this Agreement is a compromise and settlement of the claims released herein, and it shall not be construed as an admission, concession, or indication of the validity of any claim, defense, liability, obligation, or wrongdoing.

13. Entire Agreement. This Agreement contains the entire agreement among the Parties and shall not be modified in any way except in writing executed by the Party to be bound thereby. No statements, promises, or inducements by any of the signatories or any agent of any of the signatories shall be valid or binding unless they are contained in this Agreement. This Agreement supersedes and replaces any and all alleged or actual prior agreements or understandings. Any antecedent or contemporaneous extrinsic representations and warranties made in the negotiation or preparation of the Agreement are intended to be merged into this Agreement and are of no further force or effect.

14. Construction. The language of all parts of this Agreement shall in all cases be construed as a whole, according to their fair meaning, and not strictly for or against any of the Parties. This Agreement was prepared jointly by the Parties, and no presumptions or rules of interpretation based upon the identity of the Party preparing or drafting the Agreement, or any part thereof, shall be applicable or invoked.

15. Governing Law. As to Empery Funds and Kiromic only, this Agreement shall be considered to have been negotiated, executed and delivered, and to be wholly performed in the State of New York, and the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of New York without giving effect to that State's choice of law principles. Empery Funds and Kiromic agree that the exclusive jurisdiction for any legal proceeding arising out of or relating to this Agreement shall be the United States District Court for the Southern District of New York, and Empery Funds and Kiromic hereby waive any challenge to personal jurisdiction or venue in that court.

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16. Authority to Bind. To the extent any person or entity executes this Agreement in a representative capacity for either Party, he or she hereby represents and warrants that he or she is authorized to enter into this Agreement on behalf of that Party, that all necessary authorizations or other resolutions have been passed or obtained, and that this Agreement shall be a legal, valid, and binding obligation on that Party.

17. Notices. As to Empery Funds and Kiromic only, any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon delivery, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party), (iii) upon delivery, when sent by electronic mail (provided that the sending party does not receive an automated rejection notice); or (iv) one Business Day after deposit with an overnight courier service, in each case properly addressed to the party to receive the same. The addresses, facsimile numbers and e-mail addresses for such communications shall be:

If to the Empery Funds:

c/o Empery Asset Management, LP  
1 Rockefeller Plaza, Suite 1205  
Attention: Ryan M. Lane  
Telephone: +1(212) 608-3300  
Email: notices@emperyam.com

With a copy (for informational purposes only) to:

Andrew Gladstein  
Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, New York 10022  
Telephone: (212) 756-2000  
Facsimile: (212) 593-5955  
E-mail: andrew.gladstein@srz.com

If to Kiromic:

Kiromic Biopharma Inc.  
Attention: Pietro Bersani, Chief Executive Officer  
7707 Fannin, Suite 140  
Houston, TX 77054  
Telephone: (832) 968-4888  
E-mail: pbersani@kiromic.com

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With a copy (for informational purposes only) to:

Hogan Lovells US LLP  
390 Madison Ave.  
New York, NY 10017  
Attention: William M. Regan, Esq.  
Telephone: (212) 918-3000  
E-Mail: William.Regan@hoganlovells.com

18. Severability. If any provision or provisions contained in this Agreement shall contravene or be invalid under any applicable law, such contravention or invalidity shall not invalidate the whole Agreement, but the Agreement shall be construed as not containing the particular provision or provisions held to be invalid, and the rights and obligations of the Parties shall be construed and enforced accordingly.

19. Headings. The section headings contained in each section of this Agreement are intended solely for convenience of reference and shall not limit or expand the express terms of this Agreement or otherwise be used in its construction.

20. Counterpart Signature Pages. This Agreement may be executed in one or more counterparts with facsimile, scanned or DocuSign signatures being deemed original, any of which need not contain the signatures of all Parties but all signed counterparts taken together will constitute one and the same agreement, with the exception of Exhibit A, which must be executed with original, wet ink signatures.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by themselves or their duly authorized representatives on the respective dates set forth below.

**EMPERY ASSET MASTER, LTD.**

**By: Empery Asset Management, LP**

By: /s/ Brett Director

Name: Brett Director

Title: General Counsel

Date: October 9, 2022

**EMPERY TAX EFFICIENT, LP**

**By: Empery Asset Management, LP**

By: /s/ Brett Director

Name: Brett Director

Title: General Counsel

Date: October 9, 2022

**EMPERY TAX EFFICIENT III, LP**

**By: Empery Asset Management, LP**

By: /s/ Brett Director

Name: Brett Director

Title: General Counsel

Date: October 9, 2022

**KIROMIC BIOPHARMA, INC.**

By: /s/ Pietro Bersani

Name: Pietro Bersani

Title: Chief Executive Officer

Date: October 8, 2022

**Americo Cicchetti**

/s/ Americo Cicchetti

Name: Americo Cicchetti

Date: October 10, 2022

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**Michael Nagel**

/s/ Michael Nagel

Name: Michael Nagel

Date:

**Jerry Schneider**

/s/ Jerry Schneider

Name: Jerry Schneider

Date: October 10, 2022

**Pietro Bersani**

/s/ Pietro Bersani

Name: Pietro Bersani

Date: October 8, 2022

**Gianluca Rotino**

/s/ Gianluca Rotino

Name: Gianluca Rotino

Date: October 9, 2022

**Tony Tontat**

Name: Tony Tontat

Date:

**Maurizio Chiriva-Inernati**

/s/ Maurizio Chiriva-Inernati

Name: Maurizio Chiriva-Inernati

Date: October 10, 2022

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**STIPULATION OF SETTLEMENT AND MUTUAL RELEASE**

**WHEREAS**, on July 2, 2021, Sabby Volatility Warrant Master Fund Ltd. (“Sabby”) participated in a public offering by Kiromic Biopharma, Inc. (“Kiromic” or the “Company”) pursuant to which Sabby purchased an aggregate of 500,000 shares of common stock, par value \$0.001 per share (“Common Stock”) of Kiromic for \$2.5 million (the “Offering”);

**WHEREAS**, on June 25, 2021, Kiromic filed a registration statement (the “Registration Statement”) with the Securities Exchange Commission in connection with the Offering, signed by Maurizio Chiriva-Inernati, Tony Tontat, Gianluca Rotino, Pietro Bersani, Americo Cicchetti, Michael Nagel, and Jerry Schneider (collectively, the “Individual Defendants,” and together with Kiromic and ThinkEquity (as defined below), the “Defendants”);

**WHEREAS**, on June 29, 2021, Kiromic filed a final prospectus (the “Prospectus,” and together with the Registration Statement, the “Offering Documents”) with the Securities Exchange Commission in connection with the Offering;

**WHEREAS**, Sabby claims that the Offering Documents contained untrue statements of material fact, omitted material facts, and failed to make adequate disclosures concerning the imposition of a hold by the Food and Drug Administration relating to certain clinical trials that Kiromic was conducting;

**WHEREAS**, on March 7, 2022, Sabby and its co-plaintiffs Empery Asset Master, Ltd, Empery Tax Efficient, LP and Empery Tax Efficient III, LP (collectively with Sabby, “Plaintiffs”) filed an action against Kiromic and the Individual Defendants in the United States District Court for the Southern District of New York, entitled *Sabby Volatility Warrant Master Fund Ltd. et al. v. Kiromic Biopharma, Inc., et al.*, Civil Action No. 1:22-cv-01927, alleging violations of Sections 11, 12(a)(2) and 15 of the Securities Act (the “Action”);

**WHEREAS**, on July 22, 2022, the Plaintiffs amended their complaint against Kiromic (the “Amended Complaint”), to add, among other things, ThinkEquity LLC (“ThinkEquity”) as a defendant;

**WHEREAS**, the Defendants (with the exception of ThinkEquity) moved to dismiss the Amended Complaint on September 22, 2022, and ThinkEquity filed an answer on September 17, 2022;

**WHEREAS**, the Defendants deny the allegations in the Amended Complaint and maintain that the Offering Documents complied in all respects with the Securities Act of 1933, the rules and regulations thereunder, and all other applicable law;

**WHEREAS**, the Plaintiffs and Defendants (the “Parties”) desire to fully settle and resolve all issues and claims that relate in any way to the allegations set forth in the Action without the admission of any fault or liability on the part of any of the Parties;

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**WHEREAS**, prior to the execution of this Agreement by all Parties, Sabby voluntarily dismissed their claims against ThinkEquity without prejudice;

**AND WHEREAS**, the Parties, each acting on his or its own behalf and having been represented by counsel, have approved the settlement terms described below;

**NOW, THEREFORE**, in consideration of and in return for the promises and covenants undertaken by the Parties herein and the releases given herein, the adequacy of which consideration is acknowledged, the Parties agree as follows:

1. Settlement Consideration. No later than two business days following the later of (i) the approval of the Proposed Order (as defined in Section 3 below) by a court of competent jurisdiction and (ii) Kiromic obtaining the Conditional Financing (as defined in Section 2 below), Kiromic shall issue to Sabby (a) a convertible note (the form of which is attached hereto as Exhibit A) (the "Settlement Note") in the aggregate principal amount of \$1,656,720 and (b) immediately available funds by wire transfer in the aggregate of \$75,000 (the "Settlement Payment," and, together with the Settlement Note, the "Settlement Consideration"). The Settlement Note will be convertible into shares of Common Stock (the "Conversion Shares") in accordance with its terms at an initial conversion price per share equal to the average of the closing price of the Common Stock reported on The Nasdaq Capital Market for the five (5) trading days prior to the entry of this Agreement, and will provide that conversion of the Settlement Notes will be subject to the "Beneficial Ownership Limitation" set forth in each Settlement Note.

2. Conditional Financing. This Agreement is conditioned upon Kiromic obtaining financing no later than 5:00 p.m. (Eastern time) on October 18, 2022 for aggregate gross proceeds to Kiromic of not less than \$5 million (the "Conditional Financing"). For the avoidance of doubt, this Agreement shall have no force or effect, and shall be *void ab initio*, (i) unless and until Kiromic obtains the Conditional Financing on or prior to 5:00 p.m. (Eastern time) on October 18, 2022 or (ii) if a court of competent jurisdiction shall not have approved the Proposed Order (as defined below) on or prior to 5:00 p.m. (Eastern time) on November 15, 2022. No later than 9:30 a.m. (Eastern time) on the business day immediately following closing of the Conditional Financing, Kiromic shall issue a press release disclosing the material terms of the Conditional Financing. Each of Kiromic and Sabby hereby acknowledges and agrees that following the issuance of such press release that Sabby shall not be in possession of any material non-public information about Kiromic received from Kiromic, any of its subsidiaries or any of their respective officers, directors, employees, affiliates or agents. Kiromic understands and confirms that Sabby will be relying on the foregoing covenant in effecting transactions in securities of Kiromic.

3. Joint 3(a)(10) Motion. The Parties (other than ThinkEquity) agree that the Settlement Notes and the Conversion Shares shall be issued subject to an exemption pursuant to Section 3(a)(10) of the Securities Act of 1933. No later than one business day following the satisfaction of the Conditional Financing, the Parties shall submit a proposed order approving issuance pursuant to Section 3(a)(10) of the Securities Act of 1933 in the form attached hereto as

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Exhibit B (the “Proposed Order”), together with any supporting documents. At the same time, the Parties will also jointly seek expedited consideration of the Proposed Order, seeking that the court decide it on or before November 15, 2022.

4. Dismissal of the Action With Prejudice. No later than two (2) business days following the delivery of the Settlement Consideration in accordance with Section 1 of this Agreement (the date on which such Settlement Consideration is delivered, the “Delivery Date”), Sabby shall cause Defendants to be dismissed with prejudice from the Action by filing a fully executed stipulation and proposed order of dismissal in the form attached hereto as Exhibit C (the “Dismissal Stipulation”), provided that Defendants have executed and delivered to the Sabby a copy of the Dismissal Stipulation.

5. Release of the Defendants by Sabby. Upon receipt of the Settlement Consideration, Sabby, on behalf of itself, its members, managers, affiliates, agents, subsidiaries, investors, partners, directors, employees, attorneys, representatives, predecessors, successors and assigns, and the executors, administrators, associates, and related or affiliated persons or entities of each of the foregoing (collectively, the “Sabby Releasers”), being legally competent to contract, automatically, irrevocably, and fully and forever release and discharge the Defendants and their respective members, managers, affiliates, agents, subsidiaries, investors, partners, directors, employees, attorneys, representatives, predecessors, successors and assigns, and the executors, administrators, associates, and related or affiliated persons or entities of each of the foregoing (collectively, the “Released Defendants”) from any and all manner of actions, obligations, suits, proceedings, matters, disputes, claims or causes of action, harm, damages or injuries whatsoever (including without limitation arising out of a breach of any duty, law, or rule) known or unknown, suspected or unsuspected, contingent or non-contingent, alleged or not alleged, which now exist, heretofore have existed or come into existence in the future, upon any theory of law or equity, whenever or however arising (whether contractual, common law, statutory, federal, state, local, or otherwise, including but not limited to any claims for compensatory or punitive damages, or for attorneys' fees, costs or disbursements of any kind), relating to or arising out of the Offering Documents, Sabby's trading in Kiromic securities, and/or the allegations in the Action (collectively, the “Released Claims”). Notwithstanding anything herein to the contrary, the Released Claims shall not include any suit, action, or proceeding to enforce the terms of this Agreement.

6. [Intentionally Omitted].

7. Release of Sabby. Upon delivery of the Settlement Consideration, Defendants on their behalf and on behalf of their members, managers, affiliates, agents, subsidiaries, investors, partners, directors, employees, attorneys, representatives, predecessors, successors and assigns, and the executors, administrators, associates, and related or affiliated persons or entities of each of the foregoing (collectively, the “Defendant Releasers”), being legally competent to contract, automatically, irrevocably, and fully and forever release and discharge Sabby and its respective members, managers, affiliates, agents, employees, subsidiaries, investors, partners, directors, attorneys, representatives, predecessors, successors and assigns, and the executors, administrators, associates, and related or affiliated persons or

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entities of each of the foregoing (collectively, the “Sabby Released Parties”) from any and all manner of actions, obligations, suits, proceedings, matters, disputes, claims or causes of action, harm, damages or injuries whatsoever (including without limitation arising out of a breach of any duty, law, or rule), known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, heretofore have existed or come into existence in the future, upon any theory of law or equity, whenever or however arising (whether contractual, common law, statutory, federal, state, local, or otherwise, including but not limited to any claims for compensatory or punitive damages, or for attorneys' fees, costs or disbursements of any kind), relating to or arising out of the Released Claims. Notwithstanding anything herein to the contrary, the Released Claims shall not include any suit, action, or proceeding to enforce the terms of this Agreement.

8. Covenant Not to Sue. Upon the payment and receipt of the Settlement Consideration, Sabby and the Released Defendants irrevocably covenant and agree not to sue, or commence, or cause or encourage anyone else (directly or indirectly) to sue or commence, or threaten to sue or commence, any action, claim, cause of action, arbitration, or legal proceeding of any nature whatsoever, whether legal or equitable, based on any Released Claim. The preceding sentence shall not apply to any action to enforce this Agreement or any action filed by ThinkEquity for indemnity or contribution against Kiromic. Sabby further agrees that if a class action is certified (for settlement purposes or otherwise) in *Karp v. Kiromic Biopharma, Inc., et al.*, Case No. 22-cv-6690-VM (United States District Court for the Southern District of New York) or *Podmore v. Kiromic Biopharma, Inc., et al.*, Case No. 22-cv-8433-VM (United States District Court for the Southern District of New York), Sabby will opt-out of the class and not submit any claim for recovery.

9. Confidentiality. The Parties agree that the terms and conditions of this Agreement are confidential and they will not disclose the terms to any third parties except: (i) to their respective attorneys; (ii) as required by any court of competent jurisdiction or regulatory institution; (iii) as required by any city, state, or federal rule, regulation or law; (iv) to any accountants or tax preparation professionals and to the extent necessary to accurately file city, state and federal taxes; and (v) to any investor or potential investor that is obligated pursuant to a customary confidentiality agreement to keep the information confidential. Notwithstanding the foregoing, the Parties agree that to the extent an investor or potential investor of any Party specifically asks about the status, resolution, or outcome of the Action, the Party who receives any such inquiry may respond by indicating that the Parties have reached a settlement pursuant to which the Parties have amicably resolved any differences they may have had, have obtained the results they were seeking, and are satisfied with the terms. The Parties further agree that monetary damages alone are inadequate to compensate the other Parties for injury caused or threatened by a breach of the confidentiality restrictions set forth in this Paragraph and that preliminary and permanent injunctive relief restraining and prohibiting the violation of these confidentiality restrictions is a necessary and appropriate remedy in the event of such a breach. Notwithstanding the foregoing, the Parties are in no way prohibited from obtaining, in addition to injunctive relief, an award of monetary damages against any person or entity breaching this Paragraph. The Parties further agree that ThinkEquity may utilize information about the settlement, as necessary, in connection with any indemnity action that it asserts against Kiromic.

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10. Binding Effect. This Agreement binds and inures to the benefit of the Parties and their respective past and present agents, employees, family members (including current and former spouses), assigns, attorneys, representatives, officers, directors, shareholders, successors, assigns, transferees, insurers and sureties, and all of their subsidiaries, parents, predecessors, successors and affiliated companies.

11. No Admission. It is understood and agreed that this Agreement is a compromise and settlement of the claims released herein, and it shall not be construed as an admission, concession, or indication of the validity of any claim, defense, liability, obligation, or wrongdoing.

12. Entire Agreement. This Agreement contains the entire agreement among the Parties and shall not be modified in any way except in writing executed by the Party to be bound thereby. No statements, promises, or inducements by any of the signatories or any agent of any of the signatories shall be valid or binding unless they are contained in this Agreement. This Agreement supersedes and replaces any and all alleged or actual prior agreements or understandings. Any antecedent or contemporaneous extrinsic representations and warranties made in the negotiation or preparation of the Agreement are intended to be merged into this Agreement and are of no further force or effect.

13. Construction. The language of all parts of this Agreement shall in all cases be construed as a whole, according to their fair meaning, and not strictly for or against any of the Parties. This Agreement was prepared jointly by the Parties, and no presumptions or rules of interpretation based upon the identity of the Party preparing or drafting the Agreement, or any part thereof, shall be applicable or invoked.

14. Governing Law. As to Sabby and Kiromic only, this Agreement shall be considered to have been negotiated, executed and delivered, and to be wholly performed in the State of New York, and the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of New York without giving effect to that State's choice of law principles. Sabby and Kiromic agree that the exclusive jurisdiction for any legal proceeding arising out of or relating to this Agreement shall be the United States District Court for the Southern District of New York, and Sabby and Kiromic hereby waive any challenge to personal jurisdiction or venue in that court.

15. Authority to Bind. To the extent any person or entity executes this Agreement in a representative capacity for either Party, he or she hereby represents and warrants that he or she is authorized to enter into this Agreement on behalf of that Party, that all necessary authorizations or other resolutions have been passed or obtained, and that this Agreement shall be a legal, valid, and binding obligation on that Party.

16. Notices. As to Sabby and Kiromic only, any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon delivery, when sent by facsimile (provided confirmation of transmission is

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mechanically or electronically generated and kept on file by the sending party), (iii) upon delivery, when sent by electronic mail (provided that the sending party does not receive an automated rejection notice); or (iv) one Business Day after deposit with an overnight courier service, in each case properly addressed to the party to receive the same. The addresses, facsimile numbers and e-mail addresses for such communications shall be:

If to Sabby:

c/o Sabby Management, LLC  
115 Hidden Hills Drive  
Spicewood, Texas 78669  
Attention: Robert Grundstein, General Counsel  
Telephone: (646) 307-4500  
Email: rgrundstein@sabbymanagement.com

With a copy (for informational purposes only) to:

Thomas Fleming  
Olshan Frome Wolosky LLP  
1325 Avenue of the Americas  
New York, New York 10019  
Telephone: (212) 451-2300  
Facsimile: (212) 451-2222  
E-mail: tfleming@olshanlaw.com

If to Kiromic:

Kiromic Biopharma Inc.  
Attention: Pietro Bersani, Chief Executive Officer  
7707 Fannin, Suite 140  
Houston, TX 77054  
Telephone: (832) 968-4888  
E-mail: pbersani@kiromic.com

With a copy (for informational purposes only) to:

Hogan Lovells US LLP  
390 Madison Ave.  
New York, NY 10017  
Attention: William M. Regan, Esq.  
Telephone: (212) 918-3000  
E-Mail: William.Regan@hoganlovells.com

17. Severability. If any provision or provisions contained in this Agreement shall contravene or be invalid under any applicable law, such contravention or invalidity shall not invalidate the whole Agreement, but the Agreement shall be construed as not containing the

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particular provision or provisions held to be invalid, and the rights and obligations of the Parties shall be construed and enforced accordingly.

18. Headings. The section headings contained in each section of this Agreement are intended solely for convenience of reference and shall not limit or expand the express terms of this Agreement or otherwise be used in its construction.

19. Counterpart Signature Pages. This Agreement may be executed in one or more counterparts with facsimile, scanned or DocuSign signatures being deemed original, any of which need not contain the signatures of all Parties but all signed counterparts taken together will constitute one and the same agreement, with the exception of Exhibit A, which must be executed with original, wet ink signatures.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by themselves or their duly authorized representatives on the respective dates set forth below.

**SABBY VOLATILITY WARRANT MASTER FUND LTD.**

**By: Sabby Management, LLC**

By: /s/ Robert Grundstein

Name: Robert Grundstein

Title: General Counsel

Date:

**KIROMIC BIOPHARMA, INC.**

By: /s/ Pietro Bersani

Name: Pietro Bersani

Title: Chief Executive Officer

Date: October 8, 2022

**Americo Cicchetti**

/s/ Americo Cicchetti

Name: Americo Cicchetti

Date: October 10, 2022

**Michael Nagel**

/s/ Michael Nagel

Name: Michael Nagel

Date: October 10, 2022

**Jerry Schneider**

/s/ Jerry Schneider

Name: Jerry Schneider

Date: October 10, 2022

**Pietro Bersani**

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/s/ Pietro Bersani

Name: Pietro Bersani  
Date: October 8, 2022

**Gianluca Rotino**

/s/ Gianluca Rotino

Name: Gianluca Rotino  
Date: October 9, 2022

**Tony Tontat**

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Name: Tony Tontat

Date:

**Maurizio Chiriva-Inernati**

/s/ Maurizio Chiriva-Inernati

Name: Maurizio Chiriva-Inernati  
Date: October 10, 2022

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**AS PROVIDED IN THIS NOTE, PAYMENT OF PRINCIPAL, INTEREST AND OTHER AMOUNTS PAYABLE IN RESPECT OF THIS NOTE IS SUBORDINATED AND JUNIOR IN RIGHT OF PAYMENT TO ALL “SENIOR INDEBTEDNESS” (AS SUCH TERM IS DEFINED IN THIS NOTE).**

**KIROMIC BIOPHARMA, INC.**

**SUBORDINATED CONVERTIBLE PROMISSORY NOTE**

[\$ [ ]

Dated: October [ ], 2022

FOR VALUE RECEIVED, Kiromic BioPharma, Inc., a Delaware corporation (the “Company”), promises to pay to the order of [ ], the initial registered holder hereof, or its permitted assigns (“Holder”), upon the terms set forth below, the principal sum of \$[ ], plus interest on the unpaid principal balance hereof at the rate of [ ] percent (*[to insert the minimum Applicable Federal Rate]*%) per annum (the “Stated Rate”).

This Subordinated Convertible Promissory Note (this “Note”) is issued pursuant to that Stipulation of Settlement and Mutual Release of even date herewith by and among the Company and Holder (the “Settlement Agreement”). All capitalized terms used in this Note, but not otherwise defined herein, shall have the meanings ascribed to them in the Settlement Agreement.

The term “Note” and all references thereto, as used throughout this instrument, shall mean this instrument as originally executed, or if later amended or supplemented, then as so amended or supplemented.

**DEFINITIONS**

In addition to the terms defined elsewhere in this Note, the following terms have the meanings indicated in this section of definitions:

“Affiliate” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

“Bid Price” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Notes then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“Business Day” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however,

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for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to “stay at home”, “shelter-in-place”, “non-essential employee” or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

“Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the Common Stock of the Company, par value \$0.001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

“Common Stock Equivalents” means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Notes” means the Settlement Notes (as defined in the Settlement Agreement).

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Settlement Agreement” means that certain Settlement Agreement dated October [ ], 2022, by and among the Company, the Holder and the other parties thereto.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Subsidiary” means any subsidiary of the Company and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

“Trading Day” means a day on which the Common Stock is traded on a Trading Market.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

“Transfer Agent” means [ ], the current transfer agent of the Company, with a mailing address of [ ], and any successor transfer agent of the Company.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market

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value of a share of Common Stock as determined by an independent appraiser selected in good faith by the holders of a majority in interest of the Notes then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

1. Calculation of Interest.

(a) Interest on the outstanding principal balance hereof shall be calculated at the Stated Rate based on a 365 day year and shall commence accruing on the date hereof and, to the extent all or any portion of the principal balance hereof has not been converted in accordance with the provisions hereof, shall be payable in arrears on the fifth (5<sup>th</sup>) day (if such day is not a Business Day (as defined in Section 4(c)(i) below) then the next Business Day) following each anniversary of the date hereof and at such other time as the outstanding principal balance hereof with respect to which such interest has accrued becomes due and payable hereunder (each such date on which interest is payable, an “Interest Payment Date”). Notwithstanding the foregoing, the accrued and unpaid interest on all or any portion of the principal balance hereof converted in accordance with the provisions hereof shall automatically be deemed to have been satisfied by virtue of the delivery of the Conversion Shares on the Conversion Share Delivery Date with respect to such principal and the Company shall have no further obligation to pay such interest. In addition, if Holder delivers a Conversion Notice in respect of all or any portion of the principal balance hereof on or prior to any Interest Payment Date, the accrued and unpaid interest on such principal balance shall not be payable on such Interest Payment Date and shall be deemed satisfied as provided in the preceding sentence so long as such principal balance is thereafter converted in accordance with the terms hereof.

(b) The principal balance and accrued but unpaid interest under this Note (to the extent not converted in accordance with the terms of this Note) shall be due and payable on [*insert the fifth anniversary of the date hereof*] (the “Maturity Date”).

(c) The Company may not prepay the principal balance and interest under this Note until the Maturity Date, except that on thirty (30) days’ prior notice it may prepay this Note, without penalty or premium, in connection with the closing of a Fundamental Change; provided, the Holder shall remain entitled to convert this Note as set forth herein after receipt of such prepayment notice until the Note is prepaid in full.

2. Events of Default.

(a) “Event of Default,” wherever used herein, means any one of the following events (whatever the reason and whether it shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body):

(i) the failure by the Company to make payment of principal or interest due under this Note at the Maturity Date; and

(ii) any commencement by the Company of a case under any applicable bankruptcy or insolvency laws as now or hereafter in effect or any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to the Company; or any commencement against the Company of any bankruptcy, insolvency or other proceeding which remains undismissed for a period of sixty (60) days; or the adjudication of the Company as insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding is entered; or the appointment of any custodian, receiver or the like for the Company or any substantial part of the Company’s property which continues undischarged or unstayed for a period of sixty (60) days;

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or any general assignment by the Company for the benefit of its creditors; or any statement in writing by the Company indicating an inability to pay its debts generally as they become due.

(b) If any Event of Default occurs, then upon such occurrence, in addition to all rights and remedies of Holder under this Note, applicable law or otherwise, all such rights and remedies being cumulative, not exclusive and enforceable alternatively, successively and concurrently, Holder may, at its option, declare due any or all of the Company's obligations, liabilities and indebtedness owing to Holder under this Note whereupon the then unpaid aggregate balance thereof together with all accrued but unpaid interest thereon as of such date shall immediately be due and payable, together with all reasonable out-of-pocket expenses of collection hereof, including, but not limited to, reasonable out-of-pocket attorneys' fees and legal expenses (for this purpose, the Company shall pay all reasonable out-of-pocket trial and appellate attorneys' fees, costs and expenses, paid or incurred by Holder in connection with collection of this Note). If the foregoing unpaid aggregate balance, accrued interest, expenses and collection costs are not paid upon demand upon the occurrence of an Event of Default (collectively, the "Default Balance"), such Default Balance shall bear interest until paid in full at the Stated Rate plus [2]% per annum or the maximum interest rate then permitted under applicable law (whichever is less) (the "Default Rate"). From and after maturity of this Note (whether upon the scheduled Maturity Date, or by acceleration or otherwise), the Default Balance shall bear interest until paid in full at the Default Rate.

Holder need not provide and the Company hereby waives any presentment, demand, protest or other notice of any kind, and Holder may immediately and without expiration of any grace period enforce any and all of its rights and remedies hereunder and all other remedies available to it under applicable law. Such declaration may be rescinded and annulled by Holder at any time prior to payment hereunder.

### 3. Subordination.

(a) The indebtedness evidenced by this Note, and the payment of the principal hereof, interest hereon and other amounts hereunder, is wholly subordinated, junior and subject in right of payment, to the prior payment of all Senior Indebtedness of the Company now outstanding or hereinafter incurred. "Senior Indebtedness" means all obligations under the following, including the principal of, premium on, if any, interest on and other amounts payable under (i) all indebtedness of the Company for monies borrowed from banks, trust companies, insurance companies and other financial institutions, including commercial paper and accounts receivable sold or assigned by the Company to such institutions, letters of credit, hedging obligations, bank services and treasury management obligations and other obligations owing to financial institutions for banking services customarily provided, (ii) all indebtedness of the Company for monies borrowed by the Company from other persons or entities, (iii) obligations of the Company as lessee under leases of real or personal property, (iv) principal of, and premium, if any, and interest on any indebtedness or obligations of others of the kinds described above assumed or guaranteed in any manner by the Company, (v) deferrals, renewals, extensions and refundings of any such indebtedness or obligations described above, and (vi) any other indebtedness of the Company which the Company and the Holder may hereafter from time to time expressly and specifically agree in writing shall constitute Senior Indebtedness.

(b) Without limiting the foregoing, the Company and Holder acknowledge and agree that:

(1) all payments required hereunder shall be paid by the Company when due so long as (A) no default or event of default shall have occurred and be continuing under any Senior Indebtedness, and (B) no default or event of default would arise under any Senior Indebtedness as a result of any such payment;

(2) if any payment is prohibited from being made by the operation of the foregoing clause (1) (a "Blockage Event"), then such payment shall be made by the Company upon the discontinuance of such Blockage Event; and

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(3) so long as any amounts remain outstanding under any Senior Indebtedness, Holder shall not: (i) accelerate any amounts owing under this Note or bring any proceeding against the Company under any bankruptcy, reorganization, readjustment of debt, arrangement of debt, receivership, liquidation or insolvency law or statute of the federal or any state government; or (ii) after the occurrence and during the continuance of any Blockage Event, exercise or enforce any right or remedy available to Holder with respect to any property or assets of the Company, including by way of demanding payment, or commencing and pursuing any action or proceeding against the Company to recover all or any part of the amounts owing under this Note.

(c) Notwithstanding anything to the contrary in this Section 3, in no event shall this Section 3 limit the ability of Holder to file lawsuits to prevent the running of any applicable statute of limitations. If Holder receives any payment in respect of this Note that Holder is not entitled to receive under the provisions of this Section 3, Holder will hold the amount so received in trust for the creditors under any Senior Indebtedness and will promptly turn over such payment to such creditors in the form received for application to then existing Senior Indebtedness (whether or not due), in such manner of application as such creditors may deem appropriate.

(d) Holder further agrees (i) that each of the creditors under any Senior Indebtedness shall be third party beneficiaries of the agreements set forth in this Section 3 and shall be entitled to enforce the provisions of this Section 3 directly against Holder as if such creditor were a direct party hereto and (ii) at the request of the Company, to enter into a subordination agreement with any creditor under any Senior Indebtedness in its standard form, if required. No amendment to the accelerate Maturity Date or the timing of any payment hereunder, increase the interest rate, or increase the principal amount of this Note may be made without the consent of the applicable creditors under any Senior Indebtedness. Notwithstanding anything to the contrary set forth in this Section 3, nothing shall prevent the Holder from receiving Conversion Shares upon the conversion of this Note in accordance with Section 4 below or from receiving liquidated damages or "Buy-In" damages, as set forth in Section 4 below.

4. Conversion of Note. This Note shall be convertible into shares (the "Conversion Shares") of the Company's common stock, par value \$0.001 per share (the "Common Stock"), on the terms and conditions set forth in this Section 4.

(a) Conversion Right. Subject to and upon compliance with the provisions of this Note, for as long as this Note is outstanding, the Holder shall have the right, at any time on or after the date hereof and at its option to convert the Conversion Amount (as defined below) into fully paid and nonassessable shares of Common Stock in accordance with Section 4(c) at the Conversion Rate (as defined below). Conversion of this Note may be made in whole or in part by delivery to the Company of a duly executed PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Conversion in the form annexed hereto (the "Notice of Conversion"); provided, that the Holder shall not convert the Note in part for a number of Conversion Shares that are less than 5% of the issued and outstanding shares of Common Stock of the Company as of the date of such conversion. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Note to the Company until the Note is no longer outstanding, in which case, the Holder shall surrender this Note to the Company for cancellation within three (3) Trading Days of the date on which the final Notice of Conversion is delivered to the Company. Partial conversion of this Note resulting in conversion of less than all of the Conversion Amount shall have the effect of lowering the Conversion Amount outstanding hereunder. The Holder and the Company shall maintain records showing the number of Conversion Shares converted and the date of such conversion. The Company shall deliver any objection to the Notice of Conversion within one (1) Business Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of this paragraph, following the conversion of a portion of the Note, the number of**

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**Conversion Shares available for conversion hereunder at any given time may be less than the amount stated on the face hereof.**

(b) Conversion Rate. The number of shares of Common Stock issuable upon conversion of any Conversion Amount pursuant to Section 4(a) shall be determined by dividing (x) such Conversion Amount by (y) the Conversion Price (the "Conversion Rate").

(i) "Conversion Amount" means the entire outstanding and unpaid principal balance of this Note that may be converted hereunder, subject to the Beneficial Ownership Limitation, and shall exclude the accrued and unpaid interest with respect to such principal balance and the Default Balance, if any.

(ii) "Conversion Price" means, as of any Conversion Date (as defined below) or other date of determination, \$0.3068, subject to adjustment as provided herein.

(c) Mechanics of Conversion.

i. Delivery of Conversion Shares Upon Conversion. The Company shall cause the Conversion Shares converted hereunder to be transmitted by the Transfer Agent to the Holder by either, at the sole election of the Holder, (A) crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system or (B) by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Conversion Shares to which the Holder is entitled pursuant to such conversion to the address specified by the Holder in the Notice of Conversion by the date that is the earlier of (i) two (2) Trading Days after the delivery to the Company of the Notice of Conversion and (ii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Conversion (such date, the "Conversion Share Delivery Date"). Upon delivery of the Notice of Conversion, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Conversion Shares with respect to which this Note has been converted, irrespective of the date of delivery of the Conversion Shares.

If the Company fails for any reason to deliver to the Holder the Conversion Shares subject to the Notice of Conversion by the Conversion Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of the Conversion Shares subject to such conversion (based on the VWAP of the Common Stock on the date of the applicable Notice of Conversion), \$10 per Trading Day (increasing to \$20 per Trading Day on the third Trading Day after the Conversion Share Delivery Date) for each Trading Day after such Conversion Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Note remains outstanding and convertible. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Conversion.

ii. Delivery of New Note Upon Conversion. If this Note shall have been converted in part, the Company shall, at the request of a Holder and upon surrender of this Note, at the time of delivery of the Conversion Shares, deliver to the Holder a new Note evidencing the rights of the Holder to purchase the unconverted Conversion Shares called for by this Note, which new Note shall in all other respects be identical with this Note.

iii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Conversion Shares pursuant to Section 4(c)(i) by the Conversion Share Delivery Date, then the Holder will have the right to rescind such conversion.

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iv. Compensation for Buy-In on Failure to Timely Deliver Conversion Shares Upon Conversion. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Conversion Shares in accordance with the provisions of Section 4(c)(i) above pursuant to an conversion on or before the Conversion Share Delivery Date (other than any such failure that is solely due to any action or inaction by the Holder with respect to such conversion), and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Conversion Shares which the Holder anticipated receiving upon such conversion (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Conversion Shares that the Company was required to deliver to the Holder in connection with the conversion at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Note and equivalent number of Conversion Shares for which such conversion was not honored (in which case such conversion shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its conversion and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon conversion of the Note as required pursuant to the terms hereof.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of this Note. As to any fraction of a share which the Holder would otherwise be entitled to receive upon such conversion, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of Conversion Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Conversion Shares, all of which taxes and expenses shall be paid by the Company, and such Conversion Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that, in the event that Conversion Shares are to be issued in a name other than the name of the Holder, this Note when surrendered for conversion shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

vii. Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely conversion of this Note, pursuant to the terms hereof.

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(d) Certain Adjustments.

(i) Stock Dividends and Splits. If the Company, at any time while this Note is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon conversion of this Note), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon conversion of this Note shall be proportionately adjusted such that the aggregate Conversion Price of this Note shall remain unchanged. Any adjustment made pursuant to this Section 4(d)(i) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(ii) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 4(d)(i) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to all of the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Note (without regard to any limitations on conversion hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(iii) Pro Rata Distributions. During such time as this Note is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Note, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Note (without regard to any limitations on conversion hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the

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participation in such Distribution (provided, however, that, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(iv) Fundamental Transaction. If, at any time while this Note is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company or any Subsidiary, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock or 50% or more of the voting power of the common equity of the Company, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires 50% or more of the outstanding shares of Common Stock or 50% or more of the voting power of the common equity of the Company (each a "Fundamental Transaction"), then, upon any subsequent conversion of this Note, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 4(h) on the conversion of this Note), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Note is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 4(h) on the conversion of this Note). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Note following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Note in accordance with the provisions of this Section 4(d) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Note a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Note which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity)

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equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Note (without regard to any limitations on the conversion of this Note) prior to such Fundamental Transaction, and with an conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Note immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall be added to the term "Company" under this Note (so that from and after the occurrence or consummation of such Fundamental Transaction, each and every provision of this Note and the other Transaction Documents referring to the "Company" shall refer instead to each of the Company and the Successor Entity or Successor Entities, jointly and severally), and the Successor Entity or Successor Entities, jointly and severally with the Company, may conversion every right and power of the Company prior thereto and the Successor Entity or Successor Entities shall assume all of the obligations of the Company prior thereto under this Note and the other Transaction Documents with the same effect as if the Company and such Successor Entity or Successor Entities, jointly and severally, had been named as the Company herein.

(v) Calculations. All calculations under this Section 4(d) shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 4(d), the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

(vi) Notice to Holder.

- i. Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 4(d), the Company shall promptly deliver to the Holder by email a notice setting forth the Conversion Price after such adjustment and any resulting adjustment to the number of the Conversion Shares and setting forth a brief statement of the facts requiring such adjustment.
  - ii. Notice to Allow Conversion by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or notes to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company (or any of its Subsidiaries) is a party, any sale or transfer of all or substantially all of its assets, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by email to the Holder at its last email address as it shall appear upon the Note Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or Notes, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such
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dividend, distributions, redemption, rights or Notes are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Note constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to conversion this Note during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

(e) Reservation. So long as this Note is outstanding, the Company shall take all action necessary to reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of this Note, such number of shares of Common Stock as shall from time to time be necessary to effect the conversion of this Note in full.

(f) Section 3(a)(10) of the Securities Act of 1933. Holder acknowledges and agrees that this Note and the Conversion Shares acquired upon conversion of this Note shall be issued subject to an exemption pursuant to Section 3(a)(10) of the Securities Act. Accordingly, all Conversion Shares shall be issued without any restrictive legends.

(g) Compliance with Applicable Laws. Holder agrees to comply with all applicable laws, rules and regulations of all federal and state securities regulators, including but not limited to, the Commission, the Financial Industry Regulatory Authority, and applicable state securities regulators with respect to disclosure, filings and any other requirements resulting in any way from the issuance, transfer or conversion of this Note.

(h) Holder's Conversion Limitations. The Company shall not effect any conversion of this Note, and a Holder shall not have the right to convert this Note, pursuant to Section 4 or otherwise, to the extent that after giving effect to such issuance after conversion as set forth on the applicable Notice of Conversion, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates (such Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below), provided the foregoing Beneficial Ownership Limitation will not apply in connection with a conversion conditioned on the occurrence of a Fundamental Change. For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon conversion of this Note with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) conversion of the remaining, nonconverted portion of this Note beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 4(h), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the

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Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 4(h) applies, the determination of whether this Note is convertible (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Note is convertible shall be in the sole discretion of the Holder, and the submission of a Notice of Conversion shall be deemed to be the Holder's determination of whether this Note is convertible (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Note is convertible, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination and shall have no liability for conversion of this Note that are not in compliance with the Beneficial Ownership Limitation, provided this limitation of liability shall not apply if the Holder has detrimentally relied on outstanding share information provided by the Company or the Transfer Agent. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 4(h), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Trading Days confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Note, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of this Note. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 4(h), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon conversion of this Note held by the Holder and the provisions of this Section 4(h) shall continue to apply.

Any increase in the Beneficial Ownership Limitation will not be effective until the 61<sup>st</sup> day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 4(h) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Note.

5. Transferability. This Note and all rights hereunder are transferable, in whole or in part, upon surrender of this Note at the principal office of the Company or its designated agent, together with a written assignment of this Note substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Note or Notes in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Note evidencing the portion of this Note not so assigned, and this Note shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Note to the Company unless the Holder has assigned this Note in full, in which case, the Holder shall surrender this Note to the Company within three (3) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Note in full. The Note, if properly assigned in

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accordance herewith, may be exercised by a new holder for the purchase of Conversion Shares without having a new Note issued.

6. New Note. This Note may be divided or combined with other Notes upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Notes are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 5, as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Note or Notes in exchange for the Note or Notes to be divided or combined in accordance with such notice. All Notes issued on transfers or exchanges shall be dated the initial issuance date of this Note and shall be identical with this Note except as to the number of Conversion Shares issuable pursuant thereto

7. Cumulative Rights and Remedies. The rights and remedies of Holder expressed herein are cumulative and not exclusive of any rights and remedies otherwise available under this Note or applicable law (including at equity). The election of Holder to avail itself of any one or more remedies shall not be a bar to any other available remedies.

8. Lost or Stolen Note. If this Note is lost, stolen, mutilated or otherwise destroyed, the Company shall execute and deliver to Holder a new convertible note containing the same terms, and in the same form, as this Note. In such event, the Company may require Holder to deliver to the Company an affidavit of lost instrument and customary indemnity in respect thereof as a condition to the delivery of any such new convertible note, but not the posting of any bond.

9. Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Note shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Note (whether brought against a party hereto or their respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Note and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If either party shall commence an action, suit or proceeding to enforce any provisions of this Note, the prevailing party in such action, suit or proceeding shall be reimbursed by the other party for their reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

10. Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Note, if the Company willfully and knowingly fails to comply with any provision of this Note, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in

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collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

11. Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by e-mail, or sent by a nationally recognized overnight courier service, addressed to the Company, at [ ], Attention: [ ], email address: [ ], or such other email address or address as the Company may specify for such purposes by notice to the Holders. Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered personally, by e-mail, or sent by a nationally recognized overnight courier service addressed to each Holder at the e-mail address or address of such Holder appearing on the books of the Company. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the time of transmission, if such notice or communication is delivered via e-mail at the e-mail address set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the time of transmission, if such notice or communication is delivered via e-mail at the e-mail address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K..

12. Taxes. The Company shall be solely responsible for any necessary tax or assessment relating to this Note.

13. Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to convert this Note, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

14. Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Note. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Note and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

15. Successors and Assigns. Subject to applicable securities laws, this Note and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Note are intended to be for the benefit of any Holder from time to time of this Note and shall be enforceable by the Holder or holder of Note Shares.

16. Amendment. This Note may be modified or amended or the provisions hereof waived with the written consent of the Company, on the one hand, and the Holder, on the other hand.

17. Severability. Wherever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Note.

18. Headings. The headings used in this Note are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Note.

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19. Cancellation. After all unpaid principal and interest owed on this Note has been paid in full or converted, this Note shall be surrendered to the Company for cancellation and shall not be reissued.

*Signature Page Follows*

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IN WITNESS WHEREOF, the undersigned has signed this Note on behalf of the "Company" and not as a surety or guarantor or in any other capacity.

**KIROMIC BIOPHARMA, INC.**

By: \_\_\_\_\_  
Name:  
Title:

Accepted and Acknowledged:

**[INITIAL HOLDER]**

By: \_\_\_\_\_  
Name:  
Title:  
Date:

*Signature Page to Convertible Note*

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**EXHIBIT A**  
**NOTICE OF CONVERSION**

Reference is made to the Convertible Note (the "Note") issued to the undersigned by Kiromic BioPharma, Inc. (the "Company"). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount (as defined in the Note) of the Note indicated below into shares of Common Stock, par value \$0.001 per share, (the "Common Stock") of the Company, as of the date specified below.

Date of Conversion:

Aggregate Conversion Amount to be converted:

**Please confirm the following information**

A. Conversion Price:

B. Number of shares of Common Stock to be issued:

C. Please DWAC the Common Stock into which the Note is being converted in the following name and to the following account:

Broker no: \_\_\_\_\_

Account no: \_\_\_\_\_

D. If in Certificated Form, deliver to:

E. Facsimile Number:

F. E-mail Address:

**Authorization**

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

Name:

Title:

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**ASSIGNMENT FORM**

*(To assign the foregoing Note, execute this form and supply required information. Do not use this form to convert shares.)*

FOR VALUE RECEIVED, the foregoing Note and all rights evidenced thereby are hereby assigned to

Name:

(Please Print)

Address:

(Please Print)

**Phone Number:**

\_\_\_\_\_

**Email Address:**

\_\_\_\_\_

Dated: \_\_\_\_\_, \_\_\_\_\_

Holder's Signature: \_\_\_\_\_

Holder's Address: \_\_\_\_\_

