

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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): June 19, 2020

GT Biopharma, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

000-08092

(Commission File Number)

94-1620407

(IRS Employer Identification No.)

**9350 Wilshire Blvd. Suite 203
Beverly Hills, CA 90212
Phone: (800) 304-9888**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

N/A

(Former name, former address and former fiscal year, if changed since last report)

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 (see General Instruction A.2. below):

- 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

N/A

Trading Symbol

N/A

Name of exchange on which registered

N/A

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

Emerging growth company

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

Item 1.01. Entry into a Material Definitive Agreement.

Settlement Agreement

On June 19, 2020, GT Biopharma, Inc. (the “Company”) entered into a settlement agreement (the “Settlement Agreement”) with Empery Asset Master Ltd., Empery Tax Efficient, LP and Empery Tax Efficient II, LP (collectively, the “Empery Funds”), Anthony Cataldo and Paul Kessler resolving all remaining disputes between the parties pertaining to certain convertible notes (the “Original Notes”) and warrants to purchase common stock, par value \$0.001 per share, of the Company (the “common stock”) (the “Original Warrants”) and, together with the Original Notes, the “Original Securities”) issued by the Company to the Empery Funds in January 2018. As previously disclosed, the Empery Funds made various allegations regarding failures by the Company to take certain actions required by the terms of the Original Securities.

As a result of the Settlement Agreement, the Company has agreed to pay the Empery Funds cash payments in an aggregate amount of \$200,000. In addition, pursuant to the Settlement Agreement, the Company has agreed to issue the Empery Funds, solely in exchange for the outstanding Original Securities, (i) an aggregate of 3,500,000 shares of common stock (the “Settlement Shares”), (ii) pre-funded warrants to purchase an aggregate of 5,500,000 shares of common stock (the “Settlement Warrants”) and (iii) senior convertible notes in an aggregate principal amount of \$450,000 (the “Settlement Notes”) and, together with the Settlement Shares and the Settlement Notes, the “Settlement Securities”). In connection with the exchange, the Original Securities will be cancelled and extinguished.

The Settlement Agreement also contains certain representations and warranties and covenants, including rights of participation for the Empery Funds to participate in certain future financing transactions of the Company and limitations on future variable rate transactions and “at-the-market offerings.”

Settlement Notes

The Settlement Notes are convertible, at the option of the applicable Empery Fund, at any time into shares of common stock at an initial conversion rate of \$0.20 per share, subject to certain beneficial ownership limitations. The conversion price is also subject to adjustment due to certain events, including stock dividends, stock splits and in connection with the issuance by the Company of common stock or common stock equivalents at an effective price per share lower than the conversion rate then in effect. The Settlement Notes have a term of six months, maturing on December 19, 2020, and bear interest at a rate of 10% per annum, subject to increase to 18% per annum upon and during the occurrence of an event of default. Interest is payable in cash or, at the holder’s option, in shares of common stock based on the conversion price then in effect.

Pursuant to the terms of the Settlement Notes, the Company is required to make an offer to repurchase, at the option of each Empery Fund, the Settlement Notes at price in cash equal to 100% of the aggregate principal amount of the Note plus accrued and unpaid interest, if any, to, but excluding, the date of repurchase following the consummation by the Company of a capital raising transactions, or a series of transactions, resulting in aggregate gross proceeds to the Company in excess of \$7.5 million. The Company may not otherwise prepay the Settlement Notes without the prior written consent of the applicable Empery Funds.

The Settlement Notes contain a number of other affirmative and negative covenants and events of default (including events of default related to certain change of control and other fundamental change transactions). Following an event of default, the Settlement Notes will become immediately due and payable in cash at a mandatory default amount equal to 130% of the outstanding principal amount of the Settlement Notes plus all other amounts, costs and expenses due in respect of the Settlement Notes.

Settlement Warrants

The Settlement Warrants expire on June 19, 2025 and provide for the purchase of up to an aggregate of 5,500,000 shares of common stock at an exercise price of \$0.20 per share, subject to adjustment in certain circumstances. The aggregate exercise price of the Settlement Warrants was deemed to be pre-funded to the Company in conjunction with each Empery Fund's exchange of the Original Securities pursuant to the Settlement Agreement. Exercise of the warrant is subject to certain additional terms and conditions, including certain beneficial ownership limitations.

The foregoing descriptions of the Settlement Agreement, Settlement Notes and Settlement Warrants do not purport to be complete and are qualified in their entirety by reference to the full text of the Settlement Agreement, form of Settlement Note and form of Settlement Warrant attached to this Current Report on Form 8-K as Exhibits 10.1, 10.2 and 10.3, respectively, and incorporated by reference into this Item 1.01. Each Empery Fund was issued a Settlement Note and Settlement Warrant in the amounts set forth on Schedule I to the Settlement Agreement.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off Balance Sheet Arrangement of a Registrant.

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.02.

The issuance of the Settlement Securities in exchange for the Original Securities is being made in reliance upon the exemption from registration provided by Section 3(a)(9) of the Securities Act of 1933, as amended.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

10.1	Settlement Agreement, dated as of June 19, 2020, among GT Biopharma, Inc., Empery Asset Master Ltd., Empery Tax Efficient, LP and Empery Tax Efficient II, LP, Anthony Cataldo and Paul Kessler.
10.2	Form of Convertible Note, dated June 19, 2020 (included in Exhibit 10.1).
10.3	Form of Pre-Funded Warrant to Purchase Common Stock, dated June 19, 2020 (included in Exhibit 10.1).

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is made and entered into by and among Empery Asset Master Ltd., Empery Tax Efficient, LP and Empery Tax Efficient II, LP (collectively, the “Empery Funds”), GT Biopharma Inc. (“GT Biopharma”), Anthony Cataldo (“Cataldo”) and Paul Kessler (“Kessler”). The Empery Funds, GT Biopharma, Cataldo and Kessler are each referred to as a “Party” and, collectively, as “Parties.”

WHEREAS, on January 22, 2018, the Empery Funds and GT Biopharma executed a Securities Purchase Agreement (the “SPA”) pursuant to which the Empery Funds purchased from GT Biopharma senior convertible notes (the “Original Notes”) and warrants (the “Original Warrants”) to purchase shares of GT Biopharma’s common stock, par value \$0.001 per share (the “Common Stock”);

WHEREAS, Anthony Cataldo was during certain relevant times Chairman of GT Biopharma’s Board of Directors, and Paul Kessler was and is a shareholder of GT Biopharma;

WHEREAS, a dispute arose between GT Biopharma and the Empery Funds regarding GT Biopharma’s obligations under the terms of the SPA and the Original Notes and Original Warrants issued thereunder;

WHEREAS, on August 1, 2018, GT Biopharma commenced an action against the Empery Funds captioned *GT Biopharma Inc., v. Empery Asset Master LTD., et al.*, Case No. 1:18-cv-06970 (GDB) (S.D.N.Y.) (the “SDNY Action”), alleging, *inter alia*, that the Empery Funds had improperly sold short GT Biopharma securities;

WHEREAS, on August 27, 2018, Cataldo commenced an action against the Empery Funds captioned *Anthony Cataldo v. Empery Asset Master LTD., et al.*, Case No. SC129731 (Sup. Ct. Cal.) (the “California Action”), alleging, *inter alia*, that the Empery Funds had tortiously interfered with Cataldo’s employment agreement by suggesting to GT Biopharma’s placement agent that GT Biopharma should “bolster” its management, and by engaging in the short selling alleged in the SDNY Action;

WHEREAS, the Empery Funds promptly provided GT Biopharma with trading records and third-party affidavits, demonstrating that the Empery Funds had not engaged in any of the trading alleged in either of the SDNY Action or California Action;

WHEREAS, on October 3, 2018, GT Biopharma voluntarily dismissed the SDNY Action against the Empery Funds without prejudice;

WHEREAS, on December 24, 2018, the Empery Funds commenced an action against GT Biopharma captioned *Empery Asset Master LTD., et al., v. GT Biopharma, Inc.*, Index No. 656408/2018 (Sup. Ct. N.Y. Cnty.) (as amended, the “New York Action”), alleging, *inter alia*, that GT Biopharma was in breach of certain of its obligations under the SPA (the New York Action, together with the SDNY Action and the California Action, are referred to herein as the “Litigations”);

WHEREAS, the New York Action was amended by the Empery Funds to assert claims against Kessler for tortious interference with the SPA and defamation;

WHEREAS, on February 8, 2019, Cataldo dismissed the California Action with prejudice against the Empery Funds;

WHEREAS, the Parties desire to fully settle and resolve all remaining issues, claims and causes of action that were raised, or that could have been raised, relating in every and any way to the Litigations and their relationship to each other, to avoid further expense and inconvenience of litigation, without any admission of liability or wrongdoing on the part of GT Biopharma, Cataldo or Kessler;

WHEREAS, GT Biopharma, Cataldo, and Kessler deny each and every one of the Empery Funds' allegations of wrongful conduct, and deny that any conduct challenged by the Empery Funds caused any damage whatsoever, and have asserted a number of defenses to the Empery Funds' claims;

WHEREAS, the Parties agree that this Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by GT Biopharma, Cataldo or Kessler, or of the truth of any claim or allegation or a waiver of any defenses thereto;

AND WHEREAS, the Parties, each acting on his, her or its own behalf, have approved of the settlement terms described below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, including in return for the promises and covenants undertaken by the Parties herein and the releases given herein, the Parties agree as follows:

1. Settlement Exchange:

a. Settlement Payment: Within three (3) Business Days of the date on which this Agreement is fully executed, GT Biopharma shall pay to each Empery Fund a cash payment in the amount set forth opposite such Empery Fund's name in column (2) of Schedule 1 attached hereto, for an aggregate amount of \$200,000 (the "Settlement Payment"). The Settlement Payment will be made to each Empery Fund via wire transfer of immediately available funds in accordance with the wire transfer information set forth opposite such Empery Fund's name in column (3) of Schedule 1 attached hereto.

b. Settlement Shares, Settlement Warrants and Settlement Notes: Within three (3) Business Days of the date on which this Agreement is fully executed, GT Biopharma shall: (x) credit the number of shares of Common Stock as set forth opposite each Empery Fund's name in column (4) of Schedule 1 attached hereto (the "Settlement Shares") to the balance account of such Empery Fund with The Depository Trust Company through its Deposit / Withdrawal at Custodian system in accordance with the DWAC Instructions set forth opposite such Empery Fund's name in column (5) of Schedule 1 attached hereto; (y) issue and deliver to each Empery Fund pre-funded warrants to purchase a number of shares of Common Stock as set forth opposite such Empery Fund's name in column (6) of Schedule 1 attached hereto, each in the form attached hereto as Exhibit A (each, a "Settlement Warrant" and collectively, the "Settlement Warrants") to the address set forth opposite such Empery Fund's name in column (8) of Schedule 1 attached hereto, and the aggregate exercise price of such Settlement Warrants is hereby deemed to be pre-funded to the Company on a cashless basis in conjunction with each Empery Fund's exchange of Original Notes and Original Warrants pursuant to this Agreement in full payment for the Settlement Warrant Shares (as defined below) (including, for the avoidance of doubt, the par value thereof); and (z) issue and deliver to each Empery Fund an aggregate principal amount of senior convertible notes as set forth opposite such Empery Fund's name in column (7) of Schedule 1 attached hereto, each in the form attached hereto as Exhibit B (each, a "Settlement Note" and collectively, the "Settlement Notes" and, together with the Settlement Shares and Settlement Warrants, the "Settlement Securities") to the address set forth opposite such Empery Fund's name in column (8) of Schedule 1 attached hereto, solely in exchange for the Original Notes and Original Warrants held by such Empery Fund. The date on which the Settlement Shares, the Settlement Warrants and the Settlement Notes are delivered to the Empery Funds is hereinafter referred to as the "Exchange Date." As used herein, "Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required to remain closed.

c. Original Notes and Original Warrants: Effective upon receipt of, and solely in exchange for, the Settlement Shares, the Settlement Warrants and Settlement Notes, the Original Notes and Original Warrants held by the Empery Funds, and the SPA, will be deemed cancelled and extinguished and all rights of the Empery Funds thereunder will terminate. Promptly following the Exchange Date, but in any event within ten (10) Business Days thereafter, the Empery Funds shall return the Original Notes and Original Warrants to GT Biopharma for cancellation. The Parties acknowledge and agree that the exchange of the Original Notes and Original Warrants for the Settlement Shares, Settlement Notes and Settlement Warrants is being made in reliance upon the exemption from registration provided by Section 3(a)(9) of the Securities Act of 1933, as amended (the "1933 Act").

2. Dismissal of New York Action With Prejudice: No later than three (3) Business Days following the Exchange Date, and in consideration for the Settlement Payment, the Empery Funds shall provide to GT Biopharma and Kessler a fully executed stipulation for the dismissal of the New York Action, with prejudice and on the merits, in the form attached hereto as Exhibit C (the "Stipulation"). No later than two (2) Business Days following GT Biopharma's and Kessler's receipt of the fully executed Stipulation from the Empery Funds, the Empery Funds shall file the fully executed Stipulation with the Court.

3. Releases and Covenant Not to Sue:

a. Empery Funds Releases: The Empery Funds on their own behalf and for and on behalf of each of their parent companies, subsidiaries, and direct or indirect affiliates, and any and all of their respective present, former, and future general partners, limited partners, officers, directors, shareholders, managers, members, trustees, employees, consultants, attorneys, and other agents in their respective capacities as such, and the heirs, executors, administrators, successors, and assigns of each of them (collectively, the "Empery Funds Releasors"), hereby completely and irrevocably releases and forever and finally discharges any and all claims, rights, demands, obligations, causes of action, counterclaims, defenses, rights of setoff, rights of rescission, liens, disputes, damages, liabilities, debts, costs, expenses (including attorneys' fees), payments, capital contributions, fees, bonds, covenants, contracts, agreements, judgments, charges, or losses of any kind or character whatsoever, in law or equity, whether presently known or unknown, asserted or unasserted, fixed or contingent, in contract, tort, or otherwise, that any of the Empery Funds Releasors had, presently may have or may have in the future against GT Biopharma, Cataldo, or Kessler, as well as, to the extent applicable, each of their respective parent companies, subsidiaries, direct and indirect affiliates, and any and all of their respective present, former and future officers, directors, shareholders, managers, members, partners, employees, consultants, attorneys, and other agents in their respective capacities as such (collectively, the "GT Biopharma and Individual Released Parties"), arising out of or by reason of any cause, matter, or thing relating to the Litigations. The release shall apply to Claims whether arising under any statute, rule or regulation, or under the law of any country, state, province, territory, or any other jurisdiction, or under principles of contract law, common law, or equity; provided that, and consistent with Section 3(f) of this Agreement, nothing herein shall release claims arising out of this Agreement.

b. GT Biopharma's Releases. GT Biopharma on its own behalf and for and on behalf of its parent companies, subsidiaries, and direct or indirect affiliates, and any and all of their respective present, former, and future general partners, limited partners, officers, directors, shareholders, managers, members, trustees, employees, consultants, attorneys, and other agents in their respective capacities as such, and the heirs, executors, administrators, successors, and assigns of each of them (collectively, the "GT Biopharma Releasers"), hereby completely and irrevocably releases and forever and finally discharges any and all claims, rights, demands, obligations, causes of action, counterclaims, defenses, rights of setoff, rights of rescission, liens, disputes, damages, liabilities, debts, costs, expenses (including attorneys' fees), payments, capital contributions, fees, bonds, covenants, contracts, agreements, judgments, charges, or losses of any kind or character whatsoever, in law or equity, whether presently known or unknown, asserted or unasserted, fixed or contingent, in contract, tort, or otherwise, that any of the GT Biopharma Releasers had, presently may have or may have in the future against the Empery Funds, as well as each of the Empery Funds' investment managers, subsidiaries, and direct or indirect affiliates, and any and all of their respective direct or indirect present, former and future officers, directors, shareholders, managers, members, partners, employees, consultants, attorneys, and other agents in their respective capacities as such (collectively, the "Empery Funds Released Parties"), arising out of or by reason of any cause, matter, or thing relating or ancillary to: (i) the Litigations (including each of the Empery Funds' status as holder of the Original Notes and/or the Original Warrants), (ii) the status of each of the Empery Funds as a holder of the Settlement Shares, Settlement Warrants and/or the Settlement Notes, or (iii) the status of each of the Empery Funds as a party to this Agreement and/or the SPA. The releases shall apply to Claims whether arising under any statute, rule or regulation, or under the law of any country, state, province, territory, or any other jurisdiction, or under principles of contract law, common law, or equity; provided that, consistent with Section 3(f) of this Agreement, nothing in this release shall release claims arising out of this Agreement or any Settlement Documents (as defined in Section 6(a) of this Agreement). For the avoidance of doubt, with respect to the SDNY Action, the release in this Section 3(b) shall have the same effect as a dismissal of the SDNY Action with prejudice.

c. Cataldo and Kessler Releases. Cataldo and Kessler on their own behalf and for and on behalf of each of their respective present, former, and future general partners, limited partners, employees, consultants, attorneys, and other agents in their respective capacities as such, and the heirs, executors, administrators, successors, and assigns of each of them (collectively, the "Individual Releasers"), hereby completely and irrevocably release and forever and finally discharge any and all claims, rights, demands, obligations, causes of action, counterclaims, defenses, rights of setoff, rights of rescission, liens, disputes, damages, liabilities, debts, costs, expenses (including attorneys' fees), payments, capital contributions, fees, bonds, covenants, contracts, agreements, judgments, charges, or losses of any kind or character whatsoever, in law or equity, whether presently known or unknown, asserted or unasserted, fixed or contingent, in contract, tort, or otherwise, that any of the Individual Releasers had, presently may have or may have in the future against Empery Funds Released Parties, arising out of or by reason of any cause, matter, or thing relating or ancillary to: (i) the Litigations (including each of the Empery Funds' status as a holder of the Original Notes and/or Original Warrants), (ii) the status of each of the Empery Funds as a holder of the Settlement Shares, the Settlement Warrants and/or the Settlement Notes, or (iii) the status of each of the Empery Funds as a party to this Agreement and/or the SPA. The releases shall apply to Claims whether arising under any statute, rule or regulation, or under the law of any country, state, province, territory, or any other jurisdiction, or under principles of contract law, common law, or equity; provided that nothing in this release shall release claims arising out of this Agreement.

d. Covenant Not to Sue; Defense: Except as necessary to enforce this Agreement and the Settlement Documents, each Party on its own behalf and on behalf of any other Person purporting to act by, through or on behalf of such Party, hereby covenants, represents, and warrants that it will forever refrain from suing to enforce or to recover, directly or indirectly, under any claims released by this Agreement, to the extent such releases become effective. This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the undertakings contained here. As used herein, "Person" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and any government or any department or agency thereof.

e. Unknown Claims: The Parties each acknowledge that he, she or it may discover facts in addition to or different from those that he, she or it now knows or believes to be true with respect to the matters released herein, but that it is the express intention of the Parties, except as necessary to enforce this Agreement and the Settlement Documents, to fully, finally and forever settle and release any and all claims released hereby, known or unknown, suspected or unsuspected, which now exists, heretofore existed, or may hereafter exist, and without regard to the subsequent discovery or existence of such additional or different facts. Except that Bristol Investment Fund, Ltd., and its affiliated entities, do not release or discharge any claims they may have, now or in the future, as to GT Biopharma and unrelated to the Litigations. In furtherance of this intention, the Parties each acknowledge that they have been advised of and expressly waive any and all provisions, rights and benefits of California Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties shall also be deemed expressly to have waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code Section 1542 or that would otherwise limit the releases and waivers contained in this Agreement.

The Parties each acknowledge that the foregoing waiver was separately bargained for and an integral aspect of the settlement of which this release is a part.

f. Enforcement of This Agreement: For the avoidance of doubt, notwithstanding the foregoing or any other provisions of this Agreement, the releases and covenants not to sue in this Section 3 shall not apply to any disputes or claims that may arise in the future relating to the enforcement of the terms of this Agreement or the Settlement Documents issued pursuant thereto.

4. Acknowledgment of Empery Funds' Alleged Trading: GT Biopharma, Cataldo and Kessler each hereby acknowledge that the Empery Funds did not engage in short selling alleged in the SDNY Action or the California Action.

5. 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. For the avoidance of doubt, the Acknowledgment of Empery Funds' Alleged Trading in Section 4 of this Agreement does not modify in any way the releases and covenants not to sue in Section 3 of this Agreement, and, accordingly, the acknowledgment in Section 4 of this Agreement shall not serve as the basis for any future claim. Nor will the Parties argue in or before any court, administrative agency, tribunal, or make any public statement whatsoever, that this Agreement or the acknowledgment in Section 4 of this Agreement is or may be construed as an admission by GT Biopharma, Cataldo, or Kessler of any wrongdoing or liability.

6. Representations and Covenants of GT Biopharma

a. Authorization; Enforcement; Validity. GT Biopharma has the requisite power and authority to enter into and perform its obligations under this Agreement, the Settlement Notes, the Settlement Warrants and each of the other agreements, instruments, certificates or documents entered into by the parties hereto in connection with the transactions contemplated by this Agreement (collectively, the "Settlement Documents") and to issue the Settlement Shares, the Settlement Warrants and Settlement Notes in exchange for the Original Notes and Original Warrants, all in accordance with the terms hereof and thereof. The execution and delivery of this Agreement and the other Settlement Documents by GT Biopharma and the consummation by GT Biopharma of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Settlement Shares, the Settlement Warrants and Settlement Notes, have been duly authorized by GT Biopharma's Board of Directors, and no further filing, consent, or authorization is required by GT Biopharma, its Board of Directors or its stockholders. This Agreement and the other Settlement Documents are duly executed and delivered by GT Biopharma, and constitute the legal, valid and binding obligations of GT Biopharma, enforceable against GT Biopharma in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

b. Issuance of Securities. In each case subject to the terms of the Settlement Documents, the issuance of the Settlement Shares, the Settlement Warrants and the Settlement Notes are duly authorized and, upon issuance in accordance with the terms hereof, shall be validly issued, fully paid and free from all preemptive or similar rights, taxes, liens and charges and other encumbrances with respect to the issue thereof and the Common Stock issued pursuant to the Settlement Warrants and the Settlement Notes shall be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, taxes, liens, charges and other encumbrances with respect to the issue thereof, with the holder of the Settlement Shares, the Settlement Warrant Shares and the Settlement Conversion Shares (as defined below) being entitled to all rights accorded to a holder of Common Stock. The Settlement Shares, the Settlement Warrants and the Settlement Notes and the Common Stock issued pursuant to the Settlement Warrants and the Settlement Notes will not bear any restrictive legend under applicable securities laws, rules and regulations. For the purposes of Rule 144 promulgated under the 1933 Act, GT Biopharma acknowledges that the holding period of the Settlement Shares, the Settlement Warrants and the Settlement Notes may be tacked onto the holding period of the Original Notes and the Original Warrants and GT Biopharma agrees not to take a position contrary to this Section 6(b). As of the Exchange Date, a number of shares of Common Stock shall have been duly authorized and reserved for issuance which equals or exceeds (the "Required Reserved Amount") the sum of (i) 150% of the maximum number of shares of Common Stock issuable pursuant to the terms of the Settlement Notes (the "Settlement Conversion Shares") based on the initial Conversion Price (as defined in the Settlement Notes) (without taking into account any limitations on the issuance thereof pursuant to the terms of the Settlement Notes) and (ii) the maximum number of shares of Common Stock issuable upon exercise of the Settlement Warrants (the "Settlement Warrant Shares") (without taking into account any limitations on the exercise of the Warrants set forth in the Warrants). As of the date hereof, there are 679,300,567 shares of Common Stock authorized and unissued. So long as any Empery Funds owns any Settlement Warrants and/or Settlement Notes, GT Biopharma shall take all action necessary to at all times have authorized, and reserved for the purpose of issuance, no less than the Required Reserve Amount. If at any time the number of shares of Common Stock authorized and reserved for issuance is not sufficient to meet the Required Reserved Amount, GT Biopharma will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize the reservation of additional shares to meet the GT Biopharma's obligations under this Section 6(b), and, in the case of an insufficient number of authorized shares, obtain stockholder approval of an increase in such authorized number of shares, and voting the management shares of GT Biopharma in favor of an increase in the authorized shares of GT Biopharma to ensure that the number of authorized shares is sufficient to meet the Required Reserved Amount.

c. No Conflicts. The execution, delivery and performance of the Settlement Documents by GT Biopharma and the consummation by GT Biopharma of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Settlement Shares, the Settlement Warrants and/or Settlement Notes) will not (i) result in a violation of the certificate of incorporation of GT Biopharma or its bylaws, any memorandum of association, certificate of incorporation, certificate of formation, any certificate of designations or other constituent documents of GT Biopharma or any of its Subsidiaries (as defined in the Settlement Notes), any capital stock of GT Biopharma or any of its Subsidiaries or the articles of association or bylaws of GT Biopharma or any of its Subsidiaries, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) in any respect under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which GT Biopharma or any of its Subsidiaries is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including other foreign, federal and state securities laws and regulations and the rules and regulations of the OTC QB (the "Principal Market") and including all applicable laws of the State of Delaware and any foreign, federal and state laws, rules and regulations) applicable to GT Biopharma or any of its Subsidiaries or by which any property or asset of GT Biopharma or any of its Subsidiaries is bound or affected, except, in the case of clauses (ii) and (iii) above, where such conflict, violation or default would not result, individually or in the aggregate, in a Material Adverse Effect (as defined below).

d. Consents. GT Biopharma is not required to obtain any consent, authorization or order of, or make any filing or registration with, any court, governmental agency or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its obligations under or contemplated by the Settlement Documents, in each case in accordance with the terms hereof or thereof, other than (i) the filings required pursuant to Section 6(j) of this Agreement, (ii) the notice and/or application(s), if any, required to be delivered pursuant to Section 6(k) of this Agreement and (iii) those already obtained or effected on or prior to the date hereof. GT Biopharma is not in violation of the listing requirements of the Principal Market and has no knowledge of any facts or circumstances that would reasonably lead to delisting or suspension of the Common Stock on the Principal Market in the foreseeable future. The issuance by GT Biopharma of the Settlement Shares, the Settlement Warrants or Settlement Notes shall not have the effect of delisting or suspending the Common Stock from the Principal Market.

e. FAST Compliance. While any Settlement Shares, Settlement Warrants or Settlement Notes are outstanding, GT Biopharma shall maintain a transfer agent that participates in the DTC Fast Automated Securities Transfer Program.

f. Right of Participation.

i. (a) Until the first date that (i) less than 10% of the aggregate amount of the Settlement Notes are outstanding and (ii) no Event of Default (as defined in the Settlement Notes) nor an event which with the passage of time or the giving of notice could become an Event of Default is pending, upon any proposed financing through the issuance by GT Biopharma or any of its Subsidiaries of Common Stock, Common Stock Equivalents (as defined below), Indebtedness (as defined below) or a combination thereof, other than (i) a rights offering to all holders of Common Stock which does not include extending such rights offering to holders of Settlement Notes or (ii) an Exempt Issuance (each a "Subsequent Financing"), the Empery Funds shall have the right to participate in up to an amount of the Subsequent Financing equal to 100% of the Subsequent Financing (the "Participation Maximum"), pro rata (i) to each other in proportion to the aggregate principal amount of Settlement Notes issued to them pursuant to this Agreement and (ii) to each other Person holding Permitted Indebtedness (as defined in the Settlement Notes) and having a similar right of participation in such Subsequent Financing, on the conditions and price provided for in the Subsequent Financing, unless the Subsequent Financing is an underwritten public offering, in which case GT Biopharma shall notify each Empery Fund of such public offering when it is lawful for GT Biopharma to do so, but no Empery Fund shall be entitled to purchase any particular amount of such public offering without the approval of the lead underwriter of such underwritten public offering.

ii. At least ten (10) Trading Days (as defined in the Settlement Notes) prior to the closing of the Subsequent Financing, GT Biopharma shall deliver to each Empery Fund a written notice of its intention to effect a Subsequent Financing (“Pre-Notice”), which Pre-Notice shall ask such Empery Fund if it wants to review the details of such financing (such additional notice, a “Subsequent Financing Notice”). Upon the request of an Empery Fund, and only upon a request by such Empery Fund, for a Subsequent Financing Notice, GT Biopharma shall promptly, but no later than one (1) Trading Day after such request, deliver a Subsequent Financing Notice to such Empery Fund. The requesting Empery Fund shall be deemed to have acknowledged that the Subsequent Financing Notice may contain material non-public information. The Subsequent Financing Notice shall describe in reasonable detail the proposed terms of such Subsequent Financing, the amount of proceeds intended to be raised thereunder and the Person or Persons through or with whom such Subsequent Financing is proposed to be effected and shall include a term sheet or similar document relating thereto as an attachment.

iii. Any Empery Fund desiring to participate in such Subsequent Financing must provide written notice to GT Biopharma by not later than 5:30 p.m. (New York City time) on the tenth (10th) Trading Day after all of the Empery Funds have received the Pre-Notice that such Empery Fund is willing to participate in the Subsequent Financing, the amount of such Empery Fund’s participation, and representing and warranting that such Empery Fund has such funds ready, willing, and available for investment on the terms set forth in the Subsequent Financing Notice. If GT Biopharma receives no such notice from an Empery Fund as of such tenth (10th) Trading Day, such Empery Fund shall be deemed to have notified GT Biopharma that it does not elect to participate.

iv. If by 5:30 p.m. (New York City time) on the fifteenth (15th) Trading Day after all of the Empery Funds have received the Pre-Notice, notifications by the Empery Funds of their willingness to participate in the Subsequent Financing (or to cause their designees to participate) is, in the aggregate with similar notifications from all other Persons holding Permitted Indebtedness and having similar rights of participation in the Subsequent Financing, less than the total amount of the Participation Maximum of the Subsequent Financing, then GT Biopharma may affect the remaining portion of such Subsequent Financing on the terms and with the Persons set forth in the Subsequent Financing Notice and the Empery Funds shall simultaneously affect their portion of such Subsequent Financing as set forth in their notifications to GT Biopharma consistent with the terms set forth in the Subsequent Financing Notice.

v. If by 5:30 p.m. (New York City time) on the fifth (5th) Trading Day after all of the Empery Funds have received the Pre-Notice, GT Biopharma receives responses to a Subsequent Financing Notice from Empery Funds, seeking to purchase more than the aggregate amount of the Participation Maximum, each such Empery Funds shall have the right to purchase its Pro Rata Portion (as defined below) of the Participation Maximum. “Pro Rata Portion” means the ratio of (x) the principal amount of the Settlement Notes issued hereunder to an Empery Fund participating under this Section 6(f) and (y) the sum of the aggregate principal amounts of Settlement Notes issued hereunder to all Empery Funds participating under this Section 6(f) plus the sum of the aggregate principal amount of Permitted Indebtedness held by other Persons who have elected to participate in the Subsequent Financing under rights of participation similar to this Section 6(f).

vi. GT Biopharma must provide the Empery Funds with a second Subsequent Financing Notice, and the Empery Funds will again have the right of participation set forth above in this Section 6(f), if the Subsequent Financing subject to the initial Subsequent Financing Notice is not consummated for any reason on the terms set forth in such Subsequent Financing Notice within sixty (60) Trading Days after the date of the initial Subsequent Financing Notice.

vii. GT Biopharma and each Empery Funds agree that if any Empery Fund elects to participate in the Subsequent Financing, the transaction documents related to the Subsequent Financing shall not include any term or provision whereby such Empery Fund shall be required to agree to any restrictions on trading as to any of the securities issued hereunder (for avoidance of doubt, the securities purchased in the Subsequent Financing shall not be considered securities purchased hereunder) or be required to consent to any amendment to or termination of, or grant any waiver, release or the like under or in connection with, this Agreement, without the prior written consent of such Empery Fund.

viii. Notwithstanding anything to the contrary in this Section 6(f) and unless otherwise agreed to by such Empery Fund, GT Biopharma shall either confirm in writing to such Empery Fund that the transaction with respect to the Subsequent Financing has been abandoned or shall publicly disclose its intention to issue the securities in the Subsequent Financing, in either case in such a manner such that such Empery Fund will not be in possession of any material, non-public information, by the seventeenth (17th) Trading Day following delivery of the Subsequent Financing Notice. If by such seventeenth (17th) Trading Day, no public disclosure regarding a transaction with respect to the Subsequent Financing has been made, and no notice regarding the abandonment of such transaction has been received by such Empery Funds, such transaction shall be deemed to have been abandoned and such Empery Funds shall not be deemed to be in possession of any material, non-public information with respect to GT Biopharma or any of its Subsidiaries.

ix. For the purposes of this Section 6(f): (x) "Common Stock Equivalents" means any securities of GT Biopharma or its 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; (y) "Exempt Issuance" means the issuance of (A) shares of Common Stock or options to employees, officers or directors of GT Biopharma pursuant to any stock or option plan duly adopted for such purpose, by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose, (B) securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Agreement, provided that such securities and any term thereof have not been amended since the date of this Agreement to increase the number of such securities or to decrease the issue price, exercise price, exchange price or conversion price of such securities and which securities and the principal terms thereof are described in the SEC Documents (as defined below), (C) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of GT Biopharma, provided that any such issuance shall only be to a Person (or to the equity holders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of GT Biopharma and shall be intended to provide to GT Biopharma substantial additional benefits in addition to the investment of funds, but shall not include a transaction in which GT Biopharma is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities, (D) as set forth on Schedule 6(f), and (e) securities issued or issuable to the Empery Funds and their assigns pursuant to the Settlement Documents including without limitation, this Section 6(f), or upon exercise, conversion or exchange of any such securities.

g. Solvency. As of the date hereof, neither GT Biopharma nor any of its Subsidiaries has taken any steps to seek protection pursuant to any bankruptcy law nor does GT Biopharma have knowledge that its creditors or its Subsidiaries' creditors intend to initiate involuntary bankruptcy proceedings or knowledge of any fact which would reasonably lead a creditor to do so. GT Biopharma, individually, and GT Biopharma and its subsidiaries, on a consolidated basis, are not as of the date hereof, and after giving effect to the transactions contemplated hereby will not be, Insolvent. As used herein, "Insolvent" means, with respect to any Person, (i) the present fair saleable value of such Person's assets is less than the amount required to pay such Person's total Indebtedness (as defined in Section 6(o)), (ii) such Person is unable to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured, (iii) such Person intends to incur or believes that it will incur debts that would be beyond its ability to pay as such debts mature or (iv) such Person has unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted.

h. Shell Company Status. GT Biopharma is not, and has never been, an issuer identified in Rule 144(i)(1) of the 1933 Act.

i. SEC Filings. As of their respective filing dates, GT Biopharma's filings with the United States Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934, as amended (the "Exchange Act") since January 23, 2018 (the "SEC Documents"), complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. GT Biopharma represents that, as of the date hereof, no material event or circumstance has occurred which would be required to be publicly disclosed or announced on a Current Report on Form 8-K, either as of the date hereof or solely with the passage of time by GT Biopharma but which has not been so publicly announced or disclosed.

j. Disclosure of Transactions and Other Material Information. GT Biopharma shall file a current report on Form 8-K reasonably acceptable to the Empery Funds (the "8-K Filing") on or before 8:30 a.m., New York City time, on the first Business Day after this Agreement has been duly executed and delivered, in the form required by the 1934 Act, relating to the transactions contemplated by this Agreement and attaching a form of this Agreement, the form of the Settlement Warrant and the form of the Settlement Note (including, without limitation, all schedules and exhibits to such agreement, if any) as an exhibit to such filing. From and after the filing of the 8-K Filing with the SEC, no Empery Fund shall be in possession of any material, nonpublic information received from GT Biopharma, any of its Subsidiaries or any of their respective officers, directors, employees or agents that is not disclosed in the 8-K Filing. In addition, effective upon the filing of the 8-K Filing, GT Biopharma acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between GT Biopharma, any of its Subsidiaries or any of their respective officers, directors, employees or agents, on the one hand, and any Empery Fund or any of their respective affiliates, on the other hand, shall terminate and be of no further force or effect. GT Biopharma shall not, and shall cause each of its subsidiaries and its and each of their respective officers, directors, employees and agents, not to, provide any Empery Fund with any material, nonpublic information regarding GT Biopharma or any of its subsidiaries from and after the date hereof without the express prior written consent of such Empery Fund or as otherwise contemplated hereby. To the extent that GT Biopharma, any of its subsidiaries or any of their respective officers, directors, affiliates employees or agents delivers any material, non-public information to any Empery Fund without such Empery Fund's consent, GT Biopharma hereby covenants and agrees that no Empery Fund shall have any duty of confidentiality to GT Biopharma, any of its Subsidiaries or any of their respective officers, directors, employees or agents with respect to, or a duty to GT Biopharma, any of its Subsidiaries or any of their respective officers, directors, employees or agents not to trade on the basis of, such material, non-public information. GT Biopharma understands and confirms that the Empery Funds will rely on the foregoing representations in effecting transactions in securities of GT Biopharma.

k. Listing. GT Biopharma shall, if applicable, take all steps necessary to promptly secure the listing or quotation of all of (i) Settlement Shares, Settlement Conversion Shares and Settlement Warrant Shares without regard to any limitation on the conversion of the Settlement Notes or exercise of the Settlement Warrants and (ii) any capital stock of GT Biopharma issued or issuable with respect to the Settlement Shares, the Settlement Warrants, the Settlement Warrant Shares, the Settlement Notes or the Settlement Conversion Shares, as applicable, as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise (the “Listed Securities”) upon the Principal Market or any other national securities exchange or automated quotation system, if any, upon which the Common Stock is then listed and shall maintain such listing of all Listed Securities. GT Biopharma shall pay all fees and expenses in connection with satisfying its obligations under this Section 6(k).

l. No Integration Actions. None of GT Biopharma, any of its affiliates or any Person acting on behalf of GT Biopharma or such affiliate will sell, offer for sale or solicit offers to buy in respect of any security (as defined in the 1933 Act) that would be integrated with the issuance of the Settlement Shares, the Settlement Warrants and Settlement Notes in a manner that would require the registration under the 1933 Act of the issuance to the Empery Funds or require shareholder approval under the rules and regulations of the Principal Market, and GT Biopharma will take all action that is appropriate or necessary to assure that its offerings of other securities will not be integrated for purposes of the 1933 Act or the rules and regulations of the Principal Market with the issuance of the Settlement Shares, the Settlement Warrants and Settlement Notes contemplated hereby.

m. Additional Settlement Notes: Variable Securities. For so long as any Settlement Notes remain outstanding, GT Biopharma shall not, in any manner, (i) issue or sell any rights, warrants or options to subscribe for or purchase Common Stock or directly or indirectly convertible into or exchangeable or exercisable for Common Stock at a price which varies or may vary with the market price of the Common Stock, including by way of one or more reset(s) to any fixed price unless the conversion, exchange or exercise price of any such security cannot be less than the then applicable Conversion Price with respect to the Common Stock into which any Settlement Note is convertible (collectively, “Variable Rate Transactions”) or (ii) enter into any agreement, or issue any securities pursuant to any agreement, including, without limitation, an equity line of credit, at-the-market offering or similar agreement, whereby GT Biopharma may issue securities at a future determined price.

n. Corporate Existence. So long as any Empery Fund beneficially owns any Settlement Warrants and/or Settlement Notes, GT Biopharma shall (i) maintain its corporate existence and (ii) not be party to any Fundamental Transaction (as defined in the Settlement Warrants and the Settlement Notes) unless GT Biopharma is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Settlement Warrants and the Settlement Notes.

o. Indebtedness and Other Contracts. Neither GT Biopharma nor any of its Subsidiaries (i) except as disclosed in Schedule 6(o)(i) attached hereto, has any outstanding Indebtedness as of the date hereof, (ii) except as disclosed in Schedule 6(o)(ii) attached hereto, is a party to any contract, agreement or instrument as of the date hereof, the violation of which, or default under which, by the other party(ies) to such contract, agreement or instrument could reasonably be expected to result in a Material Adverse Effect (as defined below), (iii) except as disclosed in Schedule 6(o)(iii) attached hereto, is in violation of any term of or in default under any contract, agreement or instrument relating to any Indebtedness as of the date hereof, except where such violations and defaults would not result, individually or in the aggregate, in a Material Adverse Effect, or (iv) except as disclosed in Schedule 6(o)(iv) attached hereto, is a party to any contract, agreement or instrument relating to any Indebtedness as of the date hereof, the performance of which, in the judgment of GT Biopharma's officers, has or is expected to have a Material Adverse Effect. Schedule 6(o) provides a detailed description of the material terms of any such outstanding Indebtedness as of the date hereof. For purposes of this Agreement: (x) "Indebtedness" of any Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services, including, without limitation, "capital leases" in accordance with generally accepted accounting principles, consistently applied, during the periods involved ("GAAP") (other than trade payables entered into in the ordinary course of business consistent with past practice), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with GAAP, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, deed of trust, lien, pledge, charge, security interest or other encumbrance of any nature whatsoever in or upon any property or assets (including accounts and contract rights) with respect to any asset or property owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; (y) "Contingent Obligation" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto; and (z) "Material Adverse Effect" means any material adverse effect on the business, properties, assets, liabilities, operations, results of operations, condition (financial or otherwise) or prospects of GT Biopharma and its Subsidiaries, taken as a whole, or on the transactions contemplated hereby or on the other Settlement Documents or by the agreements and instruments to be entered into in connection herewith or therewith, or on the authority or ability of GT Biopharma to perform any of its obligations under any of the Settlement Documents.

p. Indemnification: To the fullest extent permitted by law, GT Biopharma will, and hereby does, indemnify, hold harmless and defend each of the Empery Funds, the directors, officers, partners, members, employees, agents, representatives of, and each Person, if any, who controls any Investor within the meaning of the 1933 Act or the 1934 Act (each, an “Indemnified Person”), against any losses, claims, damages, liabilities, judgments, fines, penalties, charges, costs, reasonable attorneys’ fees, amounts paid in settlement or expenses, joint or several (collectively, “Claims”), incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened, whether or not an indemnified party is or may be a party thereto (“Indemnified Damages”), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of, relate to, or are based upon: (a) any misrepresentation or breach of any representation or warranty made by GT Biopharma in the Settlement Documents, (b) any breach of any covenant, agreement or obligation of GT Biopharma contained in the Settlement Documents or (c) any cause of action, suit or claim brought or made against such Indemnified Person by a third party (including for these purposes a derivative action brought on behalf of GT Biopharma) and arising out of, resulting from, or ancillary to: (i) the status of each of the Empery Funds as a holder of the Original Notes and/or the Original Warrants; (ii) the execution, delivery, performance or enforcement of the Settlement Documents, (iii) the status of each of the Empery Funds as a holder of the Settlement Shares, the Settlement Warrants and/or the Settlement Notes, or (iv) the status of each of the Empery Funds as a party to this Agreement and/or the SPA. For the avoidance of doubt, the violations set forth in this Section 6(p) are intended to apply, and shall apply, to direct claims between asserted by or against any Indemnified Person, on the one hand, and GT Biopharma, on the other, as well as any third party claims asserted by or against an Indemnified Person. GT Biopharma shall reimburse the Indemnified Persons, promptly as such expenses are incurred and are due and payable, for any reasonable and invoiced legal fees or other reasonable and invoiced expenses incurred by them in connection with investigating or defending any such Claim.

7. Representations and Covenants of Cataldo and Kessler:

a. Authorization; Enforcement; Validity. Each of Cataldo and Kessler has the legal capacity and right to execute, deliver, enter into and perform his obligations under this Agreement and each of the other Settlement Documents in accordance with the terms hereof and thereof. This Agreement and the other Settlement Documents are duly executed and delivered by each of Cataldo and Kessler, and constitute the legal, valid and binding obligations of each of Cataldo and Kessler, enforceable against Cataldo and Kessler in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors’ rights and remedies.

8. Non Disparagement. Each of the Empery Funds, GT Biopharma, Cataldo, and Kessler, severally and not jointly, agrees that, from and after the execution of this Agreement, each of them shall not make, publish or communicate, or encourage any other Person to make, publish or communicate, any Disparaging (as defined below) remarks, comments, or statements concerning any other Person that is subject to, or a signatory of, this Agreement. As used herein, “Disparaging” remarks, comments or statements are those that impugn the character, honesty, integrity, morality, or business acumen or abilities in connection with any aspect of the operation of business of, or reflect negatively upon, the individual or entity being disparaged. Each of the Empery Funds, GT Biopharma, Cataldo, and Kessler, severally and not jointly, further agrees that, from the execution of this Agreement, they shall not encourage any other Person to consider, threaten, or file any action, claim, suit, inquiry, or proceeding against any Person that is subject to, or a signatory of, this Agreement. This provision shall in no way limit the ability of any party to enforce the Settlement Documents. ..

9. Confidentiality: The Parties agree that the negotiations that resulted in this Agreement, are confidential and they will not disclose them to any third party except: (i) to their respective attorneys, accountants and insurers; (ii) as required by, or for use in, any court of competent jurisdiction or regulatory body or agency; (iii) as required by any federal, state or municipal rule, regulation or law; (iv) to any tax preparation professional and to the extent necessary to accurately file city, state and federal taxes; and, (v) with respect to the Empery Funds only, to any limited partner, potential investor or any other Person if, in the Empery Funds' own judgment, disclosure is necessary to explain, for any business purpose, the background, circumstances, and/or results of the Litigations.

10. Entire Agreement; Amendments: This Agreement and any schedules and exhibits hereto constitute the entire agreement among the Parties as to the settlement and supersede any prior agreements among the Parties with respect to the subject matter of this Agreement. No representations, warranties or inducements have been made or relied upon by any Party concerning this Agreement or its exhibits, other than the representations, warranties and covenants expressly set forth in such documents. This Agreement shall not be modified or amended in any way except in writing executed by or on behalf of each Party to be bound thereby or by their respective successors-in-interest.

11. Voluntary and Informed Assent: Each Party to this Agreement represent and agree that the Party has read and fully understood the provisions of this Agreement, that they are fully competent to enter into and sign this Agreement, and that they are executing this Agreement voluntarily, free of any duress or coercion.

12. Construction: The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any Party. 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.

13. 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.

14. Choice of Law: 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.

15. Dispute Resolution: The Parties agree that the exclusive jurisdiction for any legal proceeding arising out of or relating to this Agreement shall be the Supreme Court of the State of New York, New York County, and all Parties hereby waive any challenge to personal jurisdiction or venue in that court.

16. Waiver: The waiver by any Party of any breach of this Agreement by the other shall not be deemed a waiver of that or any other prior or subsequent breach of any provision of this Agreement by any other Party.

17. Severability: If any provision or provisions of this Agreement or the settlement shall be held to 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 illegal, invalid or unenforceable, and the remaining rights and obligations of the Parties shall remain in full force and effect and construed and enforced accordingly so long as this Agreement as so modified continues to express, without material change, the original intentions of the Parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the Parties or the practical realization of the benefits that would otherwise be conferred upon the Parties. The Parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

18. Effect of Cancellation or Termination: If the settlement set forth in this Agreement does not become effective, or is terminated, reversed or vacated by a court of competent jurisdiction for any reason, then, notwithstanding anything herein to the contrary, the settlement set forth in this Agreement shall be null and void and of no further force or effect, and each Party shall be restored to his, her or its respective position as it existed prior to the execution of this Agreement, including for statute of limitations purposes. Neither the existence of this Agreement, the facts of its existence, the terms hereof or any statements or negotiations between the Parties relating hereto shall be admissible in evidence or shall be referred to for any purpose in any subsequent litigation, action or proceeding, except in a proceeding to enforce its terms.

19. Binding Effect: This Agreement binds and inures to the benefit of the Parties and their respective past and present agents, employees, attorneys, representatives, officers, directors, shareholders, successors, assigns, transferees, insurers and sureties, and all of their subsidiaries, parents, predecessors, successors and controlled or affiliated companies.

20. Authority: Each Person signing this Agreement on behalf of any Party represents and warrants that such Person has full authority to enter into this Agreement and to lawfully and effectively release each other party to this Agreement as set forth herein, free of any rights of settlement, approval, subrogation, or other condition or impediment.

21. Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement or the Settlement Shares, the Settlement Warrants or Settlement Notes issued hereunder 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 GT Biopharma:

GT Biopharma, Inc.
9350 Wilshire Blvd, Suite 203
Beverly Hills, CA 90212
Email: sww@gtbiopharma.com; ajc@gtbiopharma.com

With a copy to (for informational purposes only):

Perrie Weiner
Baker McKenzie
1901 Avenue of the Stars Suite 950
Telephone: (310) 201-4709
Facsimile: (310) 201-4721
E-mail: perrie.weiner@bakermckenzie.com

If to Cataldo:

c/o GT Biopharma, Inc.
9350 Wilshire Blvd, Suite 203
Beverly Hills, CA 90212
Email: ajc@gtbiopharma.com

With a copy to (for informational purposes only):

Perrie Weiner
Baker McKenzie
1901 Avenue of the Stars Suite 950
Telephone: (310) 201-4709
Facsimile: (310) 201-4721
E-mail: perrie.weiner@bakermckenzie.com

If to Kessler:

Amy Wang
Bristol Capital Advisors, LLC
662 N. Sepulveda Blvd., Suite 300
Los Angeles, California 90049
Main Line: (310) 331-8480
Direct Line: (310) 331-8485
Facsimile: (310) 331-8490
E-mail: amy@bristolcompanies.net

With a copy to (for informational purposes only):

Perrie Weiner
Baker McKenzie
1901 Avenue of the Stars Suite 950
Telephone: (310) 201-4709
Facsimile: (310) 201-4721
E-mail: perrie.weiner@bakermckenzie.com

If to the Empery Funds:

c/o Empery Asset Management, LP
1 Rockefeller Plaza, Suite 1205
Attention: Ryan M. Lane
Facsimile: 1 212 608 3307
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

22. Specific Performance. Each Party hereto acknowledges and agrees, on behalf of itself, herself or himself and its, her or his affiliates, that irreparable harm would occur in the event any of the provisions of this Agreement or any of the other Settlement Documents were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties will be entitled to specific relief hereunder, including, without limitation, an injunction or injunctions to prevent and enjoin breaches of the provisions of this Agreement and/or the other Settlement Documents and to enforce specifically the terms and provisions hereof and thereof, in addition to any other remedy to which they may be entitled at law or in equity.

23. Counterpart Signature Pages: This Agreement may be executed in any number of counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned, all counterparts when taken together shall constitute the entire Agreement.

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.

Dated: June 19, 2020

GT BIOPHARMA, INC.

/s/ Steven Weldon
Name: Steven Weldon
Title: Chief Financial Officer

Dated: June 19, 2020

/s/ Anthony Cataldo
Anthony Cataldo

Dated: June 18, 2020

EMPERY ASSET MASTER LTD., EMPERY TAX EFFICIENT, LP, EMPERY TAX EFFICIENT II, LP

By: Empery Asset Management, LP, its authorized agent

/s/ Brett Director
Name: Brett Director
Title: General Counsel

Dated: June 18, 2020

/s/ Paul Kessler
Paul Kessler

[Signature Page—Settlement Agreement]

EXHIBIT A
FORM OF SETTLEMENT WARRANT

EXHIBIT B
FORM OF SETTLEMENT NOTE

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Empery Asset Master, Ltd., Empery Tax Efficient, LP and Empery Tax Efficient II, :
LP

Plaintiffs,

vs.

GT Biopharma Inc. and Paul Kessler

Defendants.

Index No.:

**STIPULATION OF VOLUNTARY DISCONTINUANCE WITH
PREJUDICE**

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, that the above-captioned action (the "Action") and all claims that were asserted or could have been asserted in the Action are hereby voluntarily dismissed with prejudice, with each party bearing its own legal costs, attorney's fees and expenses.

IT IS HEREBY FURTHER STIPULATED AND AGREED, that this stipulation may be filed, without further notice, with the Clerk of the Court and may be executed by facsimile and in counterparts.

Dated: June __, 2020
New York, New York

Andrew Gladstein
Schulte Roth & Zabel LLP
919 Third Ave
New York, NY 10022

Attorneys for the Empery Funds

Perrie Weiner
Baker McKenzie
1901 Avenue of the Stars
Suite 950
Los Angeles, CA 90067

Attorneys for GT Biopharma Inc. and Paul Kessler

SO ORDERED:

SCHEDULE 1

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Buyer	Amount of Settlement Payment	Wire Instructions for Delivery of Settlement Payment	Number of Settlement Shares	DWAC Instructions for Delivery of Settlement Shares	Number of Warrant Shares	Aggregate Principal Amount of Settlement Notes	Address for Delivery of Settlement Warrants and Settlement Notes
Empery Asset Master Ltd.	\$87,599.93	Wire instructions previously provided to GT Biopharma	1,532,999	DWAC instructions previously provided to GT Biopharma	2,408,998	\$197,099.84	c/o Empery Asset Management, LP1 Rockefeller Plaza, Suite 1205New York, NY 10020Attention: Ryan M. LaneTelephone: 212 608 3300Email: notices@emperyam.com
Empery Tax Efficient, LP	\$9,488.87	Wire instructions previously provided to GT Biopharma	166,055	DWAC instructions previously provided to GT Biopharma	260,944	\$21,349.97	c/o Empery Asset Management, LP1 Rockefeller Plaza, Suite 1205New York, NY 10020Attention: Ryan M. LaneTelephone: 212 608 3300Email: notices@emperyam.com
Empery Tax Efficient, LP	\$23,811.29	Wire instructions previously provided to GT Biopharma	416,698	DWAC instructions previously provided to GT Biopharma	654,810	\$53,575.40	c/o Empery Asset Management, LP1 Rockefeller Plaza, Suite 1205New York, NY 10020Attention: Ryan M. LaneTelephone: 212 608 3300Email: notices@emperyam.com
Empery Tax Efficient II, LP	\$79,099.91	Wire instructions previously provided to GT Biopharma	1,384,248	DWAC instructions previously provided to GT Biopharma	2,175,248	\$177,974.80	c/o Empery Asset Management, LP1 Rockefeller Plaza, Suite 1205New York, NY 10020Attention: Ryan M. LaneTelephone: 212 608 3300Email: notices@emperyam.com
TOTAL	\$200,000.00		3,500,000		5,500,000	\$450,000.00	

SCHEDULE 6(f)

1. The issuance of up to an additional \$4,500,000 aggregate principal amount of senior convertible notes to individuals or entities other than the Empery Funds.

The issuance of Common Stock in connection with exercise or conversion of Permitted Indebtedness, warrants or convertible preferred stock, in each case, in accordance with their terms.

SCHEDULE 6(o)

Schedule 6(o)(i)

Convertible Notes / Debentures

As of the date of the Agreement, there were \$15,294,365.74 aggregate principal amount of convertible notes and 10% senior convertible debentures outstanding which were issued pursuant to securities purchase agreements entered into with numerous investors (collectively, the “Existing Notes”).

The Existing Notes are convertible, at the holder’s option, at any time into shares of the Common Stock at a conversion rate that is subject to adjustment due to certain events, including stock dividends, stock splits and in connection with the issuance by the Company of Common Stock or common stock equivalents at an effective price per share lower than the conversion rate then in effect. The conversion price for the Existing Notes is currently \$0.20 per share. In addition, certain of the outstanding Existing Notes will be subject to mandatory conversion in connection with the completion of a subsequent financing in the amount of \$15 million, subject to certain beneficial ownership limitations.

The Existing Notes generally have terms of six months to one year. The Existing Notes each accrue interest at a rate of 10% per annum, subject to increase to 18% per annum upon and during the occurrence of an event of default. Interest is payable in cash or, at the holder’s option, in shares of Common Stock based on the conversion price then in effect.

Office Lease Agreement

On October 1, 2018, the Company entered into a three-year lease agreement for its principal office in Westlake Village, California with Sheffield Properties of Illinois, Inc. (the “Office Lease”). The Office Lease is classified as a capital lease under GAAP.

Gemini Pharmaceuticals Line of Credit Facility

On November 8, 2010, the Company entered into a financing arrangement with Gemini Pharmaceuticals, Inc. (“Gemini”), a product development and manufacturing partner of the Company, pursuant to which Gemini made a \$250,000 strategic equity investment in the Company and agreed to make a \$750,000 purchase order line of credit facility available to the Company (the “Gemini Line of Credit”). The outstanding principal of all advances under the Gemini Line of Credit will bear interest at the rate of interest of prime plus 2% per annum. As of the date of the Agreement, there is \$31,000 outstanding under the Gemini Line of Credit.

Schedule 6(o)(ii)

Clinical Trial Agreement, dated as of September 6, 2019, between the Company and the University of Minnesota.

Schedule 6(o)(iii)

1. \$13,277,365.74 aggregate principal amount of the Existing Notes
2. Office Lease
3. Gemini Line of Credit

Schedule 6(o)(iv)

\$15,294,365.74 aggregate principal amount of Existing Notes

[FORM OF SETTLEMENT NOTE]

Original Issue Date: June 19, 2020

Principal Amount: _____

Original Conversion Price (subject to adjustment herein): \$0.20

**CONVERTIBLE NOTE
DUE DECEMBER 19, 2020**

THIS CONVERTIBLE NOTE is one of a series of duly authorized and validly issued Notes of **GT BIOPHARMA, INC.**, a Delaware corporation, ("**Borrower**"), having its principal place of business at 9350 Wilshire Blvd, Suite 203, Beverly Hills, CA 90212, due December 19, 2020 (the "**Maturity Date**") (this note, the "**Note**" and, collectively with the other notes of such series, the "**Notes**").

FOR VALUE RECEIVED, Borrower promises to pay to _____ or its registered assigns (the "**Holder**"), with an address at: _____, or shall have paid pursuant to the terms hereunder, the principal sum of _____ (_____) on the Maturity Date or such earlier date as this Note is required or permitted to be repaid as provided hereunder, and to pay interest, if any, to the Holder on the aggregate unconverted and then outstanding principal amount of this Note in accordance with the provisions hereof.

This Note is subject to the following additional provisions:

Section 1. Definitions. For the purposes hereof, in addition to the terms defined elsewhere in this Note, (a) capitalized terms not otherwise defined herein shall have the meanings set forth in the Settlement Agreement and (b) the following terms shall have the following meanings:

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"**Alternate Consideration**" shall have the meaning set forth in Section 5(e).

"**Bankruptcy Event**" means any of the following events: (a) Borrower or any Subsidiary thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to Borrower or any Subsidiary thereof, (b) there is commenced against Borrower or any Subsidiary thereof any such case or proceeding that is not dismissed within 60 days after commencement, (c) Borrower or any Subsidiary thereof is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered, (d) Borrower or any Subsidiary thereof suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 calendar days after such appointment, (e) Borrower or any Subsidiary thereof makes a general assignment for the benefit of creditors, (f) Borrower or any Subsidiary thereof calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts, (g) Borrower or any Subsidiary thereof admits in writing that it is generally unable to pay its debts as they become due, or (h) Borrower or any Subsidiary thereof, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

“Beneficial Ownership Limitation” shall have the meaning set forth in Section 4(e).

“Business Day” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are required by law or other governmental action to close.

“Buy-In” shall have the meaning set forth in Section 4(d)(v).

“Change of Control Transaction” means, other than by means of conversion or exercise of the Notes and the securities issued together with the Notes, the occurrence after the date hereof of any of (a) an acquisition by an individual or legal entity or “group” (as described in Rule 13d-5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock of Borrower, by contract or otherwise) of in excess of 50% of the voting securities of Borrower, (b) Borrower merges into or consolidates with any other Person, or any Person merges into or consolidates with Borrower and, after giving effect to such transaction, the stockholders of Borrower immediately prior to such transaction own less than 50% of the aggregate voting power of Borrower or the successor entity of such transaction, (c) Borrower sells or transfers all or substantially all of its assets to another Person and the stockholders of Borrower immediately prior to such transaction own less than 50% of the aggregate voting power of the acquiring entity immediately after the transaction, (d) a replacement at one time or within a three year period of more than one-half of the members of the Board of Directors which is not approved by a majority of those individuals who are members of the Board of Directors on the Original Issue Date (or by those individuals who are serving as members of the Board of Directors on any date whose nomination to the Board of Directors was approved by a majority of the members of the Board of Directors who are members on the date hereof), or (e) the execution by Borrower of an agreement to which Borrower is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (d) above.

“Conversion” shall have the meaning ascribed to such term in Section 4.

“Conversion Date” shall have the meaning set forth in Section 4(a).

“Conversion Price” shall have the meaning set forth in Section 4(c).

“Conversion Shares” means, collectively, the shares of Common Stock issuable upon conversion of this Note in accordance with the terms hereof.

“Dilutive Issuance” shall have the meaning set forth in Section 5(b).

“Event of Default” shall have the meaning set forth in Section 8(a).

“Fundamental Transaction” shall have the meaning set forth in Section 5(e).

“Interest Payment Date” shall have the meaning set forth in Section 2(a).

“Liens” means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

“Majority in Interest” means, at any given time, the Holders then holding at least 51% in principal amount of the then outstanding Notes and Other Notes.

“Mandatory Default Amount” means the sum of (a) 130% of the outstanding principal amount of this Note and (b) all other amounts, costs, and expenses due in respect of this Note.

“Material Adverse Effect” shall have the meaning ascribed to such term in the Settlement Agreement.

“New York Courts” shall have the meaning set forth in Section 9(d).

“Note Register” shall have the meaning set forth in Section 3(c).

“Notice of Conversion” shall have the meaning set forth in Section 4(a).

“Option of Holder to Elect Purchase” shall have the meaning set forth in Section 2(h).

“Original Issue Date” means the date of the first issuance of the Notes, regardless of any transfers of any Note and regardless of the number of instruments which may be issued to evidence such Notes.

“Other Holders” means holders of Other Notes.

“Other Notes” means Notes nearly identical to this Note issued to other Holders pursuant to the Settlement Agreement.

“Permitted Indebtedness” means (a) the Indebtedness set forth on Schedule A attached hereto; (b) any liabilities for borrowed money or amounts owed not in excess of \$10,000 in the aggregate (other than trade accounts payable incurred in the ordinary course of business); (c) all guaranties, endorsements and other contingent obligations in respect of Indebtedness of others, whether or not the same are or should be reflected in Borrower’s consolidated balance sheet (or the notes thereto) not affecting more than \$10,000 in the aggregate, except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; (d) the present value of any lease payments not in excess of \$100,000 due under leases required to be capitalized in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved (“GAAP”); (e) any liabilities for borrowed money that are junior to this Note pursuant to an intercreditor agreement acceptable to Majority in Interest, and the holders of which are not granted any security interest; (f) up to \$7,500,000 aggregate principal amount of liability for borrowed money incurred after the Original Issue Date that rank *pari passu* to this Note and the holders of which are not granted any security interest; and (g) any other liability for borrowed money incurred on or after the Repurchase Offer Trigger Date; provided that Borrower shall comply (or shall have previously complied) with the requirements of Section 2(h).

“Permitted Lien” means the individual and collective reference to the following: (a) Liens for taxes, assessments and other governmental charges or levies not yet due or Liens for taxes, assessments and other governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of Borrower) have been established in accordance with GAAP, (b) Liens imposed by law which were incurred in the ordinary course of Borrower’s business, such as carriers’, warehousemen’s and mechanics’ Liens, statutory landlords’ Liens, and other similar Liens arising in the ordinary course of Borrower’s business, and which (x) do not individually or in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of Borrower and its consolidated Subsidiaries or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing for the foreseeable future the forfeiture or sale of the property or asset subject to such Liens, and (c) Liens in connection with Permitted Indebtedness under clauses (a), (b), (c) and (g) thereunder.

“Person” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

“Repurchase Amount” shall have the meaning set forth in Section 2(h).

“Repurchase Date” has the meaning set forth in Section 2(h).

“Repurchase Notice” shall have the meaning set forth in Section 2(h).

“Repurchase Offer” shall have the meaning set forth in Section 2(h).

“Repurchase Offer Trigger Date” means the date upon which Borrower consummates a capital raising transaction, or the last in a series of capital raising transactions, in each case, consisting of the sale by Borrower or its Subsidiaries of Common Stock, Common Stock Equivalents, Indebtedness or a combination thereof, which transaction, or series of transactions, result in aggregate gross proceeds to Borrower of \$7,500,000 or more.

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

“Settlement Agreement” means that certain Settlement Agreement, dated as of June 19, 2020, by and among Borrower, Empery Asset Master, Ltd., Empery Tax Efficient, LP and Empery Tax Efficient II, LP, Anthony Cataldo and Paul Kessler.

“Share Delivery Date” shall have the meaning set forth in Section 4(d)(ii).

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares, stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding. Unless the context otherwise requires, references herein to a “Subsidiary” refer to a Subsidiary of Borrower.

“Successor Entity” shall have the meaning set forth in Section 5(e).

“Trading Day” means a day on which the principal Trading Market is open for trading.

“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, the New York Stock Exchange, the OTC Bulletin Board, the OTCQB, the OTCQX or the OTC Pink Marketplace (or any successors to any of the foregoing).

“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 any of the Nasdaq markets or exchanges is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the OTC Bulletin Board, (c) if the Common Stock is not then listed or quoted for trading on the OTC Bulletin Board and if prices for the Common Stock are then reported on the OTCQX, OTCQB or OTC Pink Marketplace maintained by the OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the volume weighted average price of the Common Stock on the first such facility (or a similar organization or agency succeeding to its functions of reporting prices), 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 Majority in Interest and reasonably acceptable to Borrower, the fees and expenses of which shall be paid by Borrower.

Section 2. Interest and General Provisions.

a) Payment of Interest in Cash or Kind Borrower shall pay interest to the Holder on the aggregate unconverted and then outstanding principal amount of this Note at the rate of 10% per annum, payable on each Conversion Date (as to that principal amount then being converted), on the Repurchase Date and on the Maturity Date (each such date, an “Interest Payment Date”) (if any Interest Payment Date is not a Business Day, then the applicable payment shall be due on the next succeeding Business Day), in cash or, at the Holder’s option in connection with an Interest Payment Date occurring on a Conversion Date, the Repurchase Date or the Maturity Date, in duly authorized, validly issued, fully paid and non-assessable shares of Common Stock based on the Conversion Price then in effect. Borrower may not pay any interest in shares of Common Stock to the extent such payment shall cause the Holder to exceed the Beneficial Ownership Limitation. Following the occurrence and during the continuance of an Event of Default, then from the first date of such occurrence, the annual interest rate on this Note shall be eighteen percent (18%). Such interest shall be due and payable on each Interest Payment Date or upon any redemption or acceleration of this Note.

b) Payment Grace Period Except as described in this Note, Borrower shall not have any grace period to pay any monetary amounts due under this Note.

c) Conversion Privileges. The Conversion Rights set forth in Section 4 shall remain in full force and effect immediately from the date hereof and until the Note is paid in full regardless of the occurrence of an Event of Default. This Note shall be payable in full on the Repurchase Date, if applicable, or the Maturity Date, unless previously converted into Common Stock in accordance with Section 4 hereof.

d) Application of Payments. Interest on this Note shall be calculated on the basis of a 360-day year and the actual number of days elapsed. Payments made in connection with this Note shall be applied first to amounts due hereunder other than principal and interest, thereafter to interest and finally to principal.

e) Pari Passu. Except as otherwise set forth herein, all payments made on this Note and the Other Notes and all actions taken by Borrower with respect to this Note and the Other Notes, shall be made and taken *pari passu* with respect to this Note and the Other Notes. Notwithstanding anything to the contrary contained herein or in the Settlement Documents (as defined in the Settlement Agreement), it shall not be considered non-*pari passu* for a Holder or Other Holder to elect (i) to receive interest paid in Common Stock or for Borrower to actually pay interest in Common Stock to such electing Holder or Other Holder or (ii) to participate in a Repurchase Offer and for Borrower to consummate such Repurchase Offer on the Repurchase Date.

f) Manner and Place of Payment. Principal and interest on this Note and other payments in connection with this Note shall be payable at the Holder's offices as designated above in lawful money of the United States of America in immediately available funds without set-off, deduction or counterclaim. Upon assignment of the interest of Holder in this Note, Borrower shall instead make its payment pursuant to the assignee's instructions upon receipt of written notice thereof. Except as set forth herein, this Note may not be prepaid without the consent of the Holder.

g) Prepayment. Except pursuant to Section 2(h) or as otherwise set forth in this Note, Borrower may not prepay any portion of the principal amount of this Note without the prior written consent of the Holder.

h) Mandatory Repurchase Offer. Within five (5) Trading Days following the Repurchase Offer Trigger Date, Borrower shall cause to be delivered to the Holder at its last address as it shall appear upon the Note Register, a notice (a "Repurchase Notice") stating that such Repurchase Offer Trigger Date has occurred and making an offer to repurchase the Note (the "Repurchase Offer") on a date (the "Repurchase Date") specified by in the Repurchase Notice, which may be no earlier than ten (10) Trading Days and no later than Twenty (20) Trading Days after the date of the Repurchase Notice, at a price in cash equal to 100% of the aggregate principal amount of the Note plus accrued and unpaid interest, if any, to, but excluding, the Repurchase Date (the "Repurchase Amount"). For a Note to be repurchased at the option of the Holder pursuant to this Section 2(h), the Holder must deliver to Borrower, prior to the close of business on the second (2nd) Trading Day immediately prior to the Repurchase Date, written notice of such election to participate (an "Option of Holder to Elect Purchase"). Following deliver by the Holder of an Option of Holder to Elect to Purchase, the Repurchase Amount shall be due and payable to the Holder in the manner set forth in Section 2(f) on the Repurchase Date. Effective upon receipt of the Repurchase Amounts by the Holder, the Note will be deemed cancelled and extinguished and all rights of the Holder hereunder will terminate. Promptly following the Repurchase Date, but in any event within ten (10) Trading Days thereafter, the Holder shall return the original of this Note to Borrower.

Section 3. Registration of Transfers and Exchanges.

a) Different Denominations. This Note is exchangeable for an equal aggregate principal amount of Notes of different authorized denominations, as requested by the Holder surrendering the same. No service charge will be payable for such registration of transfer or exchange.

b) Investment Representations. This Note has been issued subject to certain representations of the original Holder set forth in the Settlement Agreement and may be transferred or exchanged only in compliance with the Settlement Agreement and applicable federal and state securities laws and regulations.

c) Reliance on Note Register. Prior to due presentment for transfer to Borrower of this Note, Borrower and any agent of Borrower may treat the Person in whose name this Note is duly registered on the register of Notes (the "Note Register") as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Note is overdue, and neither Borrower nor any such agent shall be affected by notice to the contrary.

Section 4. Conversion.

a) Voluntary Conversion. At any time after the Original Issue Date until this Note is no longer outstanding, this Note, including interest accrued hereon, shall be convertible, in whole or in part, into shares of Common Stock at the option of the Holder, at any time and from time to time (subject to the conversion limitations set forth in Section 4(e) hereof). The Holder shall effect conversions by delivering to Borrower a Notice of Conversion, the form of which is attached hereto as Annex A (each, a "Notice of Conversion"), specifying therein the principal amount of this Note and accrued interest, if any, to be converted and the date on which such conversion shall be effected (such date, the "Conversion Date"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion is deemed delivered hereunder. To effect conversions hereunder, the Holder shall not be required to physically surrender this Note to Borrower unless the entire principal amount of this Note has been so converted, in which case the Holder shall deliver the original of this Note to Borrower no later than ten (10) Trading Days after conversion. Conversions hereunder shall have the effect of lowering the outstanding principal amount of this Note in an amount equal to the applicable conversion. The Holder and Borrower shall maintain records showing the principal amount(s) converted and the date of such conversion(s). Borrower may deliver an objection to any Notice of Conversion within one (1) Business Day of delivery of such Notice of Conversion. In the event of any dispute or discrepancy, the records of the Holder shall be controlling and determinative in the absence of manifest error. **The Holder, and any assignee by acceptance of this Note, acknowledges and agrees that, by reason of the provisions of this paragraph, following conversion of a portion of this Note, the unpaid and unconverted principal amount of this Note may be less than the amount stated on the face hereof.**

b) [Reserved].

c) Conversion Price. The conversion price for the principal and interest, if any, in connection with voluntary conversions by the Holder shall be ~~\$~~**\$0.20** per share of Common Stock, subject to adjustment herein (the “Conversion Price”).

d) Mechanics of Conversion.

i. Conversion Shares Issuable Upon Conversion of Principal Amount. The number of Conversion Shares issuable upon a conversion hereunder shall be determined by the quotient obtained by dividing (x) the outstanding principal amount of this Note to be converted plus interest, if any, elected by the Holder to be converted by (y) the Conversion Price.

ii. Delivery of Conversion Shares Upon Conversion. In connection with sales of the Conversion Shares, not later than two (2) Trading Days after each Conversion Date (the “Share Delivery Date”), Borrower shall deliver, or cause to be delivered, to the Holder the Conversion Shares by crediting the Holder's or its designee's balance account with The Depository Trust Company's Deposit / Withdrawal At Custodian system, which Conversion Shares shall be free of restrictive legends and trading restrictions representing the number of Conversion Shares being acquired upon the conversion of this Note.

iii. Failure to Deliver Conversion Shares. If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to Borrower at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event Borrower shall promptly return to the Holder any original Note delivered to Borrower and the Holder shall promptly return to Borrower the Conversion Shares issued to such Holder pursuant to the rescinded Conversion Notice.

iv. Obligation Absolute. Borrower's obligations to issue and deliver the Conversion Shares upon conversion of this Note in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to Borrower or any violation or alleged violation of law by the Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of Borrower to the Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by Borrower of any such action Borrower may have against the Holder. In the event the Holder of this Note shall elect to convert any or all of the outstanding principal amount hereof, Borrower may not refuse conversion based on any claim that the Holder or anyone associated or affiliated with the Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and or enjoining conversion of all or part of this Note shall have been sought and obtained, and Borrower posts a surety bond for the benefit of the Holder in the amount of 150% of the outstanding principal amount of this Note, which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to the Holder to the extent it obtains judgment. In the absence of such injunction, Borrower shall issue Conversion Shares or, if applicable, cash, upon a properly noticed conversion. Nothing herein shall limit a Holder's right to pursue actual damages or declare an Event of Default pursuant to Section 8 hereof for Borrower's failure to deliver Conversion Shares within the period specified herein and the Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit the Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

v . Compensation for Buy-In on Failure to Timely Deliver Conversion Shares Upon Conversion. In addition to any other rights available to the Holder, if Borrower fails for any reason to deliver to the Holder such Conversion Shares by the Share Delivery Date pursuant to Section 4(d)(ii), and if after such Share Delivery Date the Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder or 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 was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In"), then Borrower shall (A) pay in cash to the Holder (in addition to any other remedies available to or elected by the Holder) the amount, if any, by which (x) the Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that the Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of the Holder, either reissue (if surrendered) this Note in a principal amount equal to the principal amount of the attempted conversion (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 if Borrower had timely complied with its delivery requirements under Section 4(d)(ii). 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 this Note with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000 under clause (A) of the immediately preceding sentence, Borrower shall be required to pay the Holder \$1,000. The Holder shall provide Borrower written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of Borrower, 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 Borrower's failure to timely deliver Conversion Shares upon conversion of this Note as required pursuant to the terms hereof.

vi . Reservation of Shares Issuable Upon Conversion. Borrower covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of this Note as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Notes), not less than 150% of the aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments and restrictions of Section 5) upon the conversion of the then outstanding principal amount of this Note and interest which has accrued and would accrue on such principal amount assuming such principal amount was not converted through the Maturity Date. Borrower covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and non-assessable.

vii . Fractional Shares. 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 purchase upon such conversion, Borrower 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.

viii. Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Note shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that, Borrower shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holder of this Note so converted and Borrower shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to Borrower the amount of such tax or shall have established to the satisfaction of Borrower that such tax has been paid. Borrower shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion.

e) Holder's Conversion Limitations. Borrower shall not effect any conversion of this Note, and a Holder shall not have the right to convert any portion of this Note, to the extent that after giving effect to the conversion set forth on the applicable Notice of Conversion, the Holder (together with the Holder's Affiliates, and any Persons acting as a group together with the Holder or any of the Holder's Affiliates) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates 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 are issuable upon (i) conversion of the remaining, unconverted principal amount of this Note beneficially owned by the Holder or any of its Affiliates and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of Borrower subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, any other Notes) beneficially owned by the Holder or any of its Affiliates. Except as set forth in the preceding sentence, for purposes of this Section 4(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this Section 4(e) applies, the determination of whether this Note is convertible (in relation to other securities owned by the Holder together with any Affiliates) and of which principal amount 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 may be converted (in relation to other securities owned by the Holder together with any Affiliates) and which principal amount of this Note is convertible, in each case subject to the Beneficial Ownership Limitation. To ensure compliance with this restriction, the Holder will be deemed to represent to Borrower each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this paragraph and Borrower shall have no obligation to verify or confirm the accuracy of such determination. 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(e), in determining the number of outstanding shares of Common Stock, the Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) Borrower's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by Borrower, or (iii) a more recent written notice by Borrower or Borrower's transfer agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, Borrower shall within one Trading Day 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 Borrower, including this Note, by the Holder or its Affiliates since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% 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 held by the Holder. The Holder may decrease the Beneficial Ownership Limitation at any time upon prior notice to Borrower, and may increase the Beneficial Ownership Limitation 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 Beneficial Ownership Limitation provisions of this Section 4(e) shall continue to apply. Any such increase will not be effective until the 61st day after such notice is delivered to Borrower. The Beneficial Ownership Limitation provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 4(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein 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.

Section 5. Certain Adjustments.

a) Stock Dividends and Stock Splits. If Borrower, at any time while this Note is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by Borrower upon conversion of the Notes or any other Permitted Indebtedness that is convertible into Common Stock), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of Borrower, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of Borrower) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 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.

b) Subsequent Equity Sales. If, at any time while this Note is outstanding, Borrower or any Subsidiary, as applicable, otherwise sells or grants any option to purchase or sells or grants any right to reprice, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or Common Stock Equivalents entitling any Person to acquire Common Stock at an effective price per share that is lower than the then Conversion Price (such lower price, the “Base Conversion Price” and such issuances, collectively, a “Dilutive Issuance”) (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive Common Stock at an effective price per share that is lower than the Conversion Price, such issuance shall be deemed to have occurred for less than the Conversion Price on such date of the Dilutive Issuance), then the Conversion Price shall be reduced to equal the Base Conversion Price, subject to adjustment for reverse and forward stock splits and the like. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued. Notwithstanding the foregoing, no adjustment will be made under this Section 5(b) in respect of an Exempt Issuance. If Borrower enters into a Variable Rate Transaction, despite the prohibition set forth in the Settlement Agreement, Borrower shall be deemed to have issued Common Stock or Common Stock Equivalents at the lowest possible conversion price at which such securities may be converted or exercised. Borrower shall notify the Holder in writing, no later than the Trading Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 5(b), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the “Dilutive Issuance Notice”). For purposes of clarification, whether or not Borrower provides a Dilutive Issuance Notice pursuant to this Section 5(b), upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Conversion Shares based upon the Base Conversion Price on or after the date of such Dilutive Issuance, regardless of whether the Holder accurately refers to the Base Conversion Price in the Notice of Conversion.

c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Sections 5(a) and (b) above, if at any time Borrower grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to 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 exercise 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, 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).

d) Pro Rata Distributions. During such time as this Note is outstanding, if Borrower shall declare or make any dividend whether or not permitted, or makes any 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 exercise of this Note (without regard to any limitations on exercise 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 participation in such Distribution (provided, however, 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).

e) Fundamental Transaction. If, at any time while this Note is outstanding, (i) Borrower, directly or indirectly, in one or more related transactions effects any merger or consolidation of Borrower with or into another Person, (ii) Borrower, 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 Borrower 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, (iv) Borrower, 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, (v) Borrower, 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 or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (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 (without regard to any limitation in Section 4(e) on the conversion of this Note), the number of shares of Common Stock of the successor or acquiring corporation or of Borrower, 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(e) 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 (1) share of Common Stock in such Fundamental Transaction, and Borrower 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. Borrower shall cause any successor entity in a Fundamental Transaction in which Borrower is not the survivor (the "Successor Entity") to assume in writing all of the obligations of Borrower under this Note and the other Settlement Documents in accordance with the provisions of this Section 5(e) pursuant to written agreements in form and substance reasonably satisfactory to the Majority in Interest (which approval shall not be unreasonably withheld, delayed or conditioned) prior to such Fundamental Transaction and shall, at the option of the holder of this Note, 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) 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 a 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 succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Note and the Settlement Agreement referring to the "Borrower" shall refer instead to the Successor Entity), and may exercise every right and power of Borrower and shall assume all of the obligations of Borrower under this Note and the other Settlement Documents with the same effect as if such Successor Entity had been named as Borrower herein.

f) Calculations. All calculations under this Section 5 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 5, 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 any treasury shares of Borrower) issued and outstanding.

g) Notice to the Holder.

i . Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 5, Borrower shall promptly deliver to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Conversion by Holder. If (A) Borrower shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) Borrower shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) Borrower shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of Borrower shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which Borrower is a party, any sale or transfer of all or substantially all of the assets of Borrower, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) Borrower shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of Borrower, then, in each case, Borrower shall cause to be filed at each office or agency maintained for the purpose of conversion of this Note, and shall cause to be delivered to the Holder at its last address as it shall appear upon the Note Register, at least twenty (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 warrants, 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 dividend, distributions, redemption, rights or warrants 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 hereunder constitutes, or contains, material, non-public information regarding Borrower or any of the Subsidiaries, Borrower shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert this Note during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 6. [Intentionally Omitted]

Section 7. Negative Covenants. As long as any portion of this Note remains outstanding, unless the Majority in Interest shall have otherwise given prior written consent, Borrower shall not directly or indirectly:

a) other than Permitted Indebtedness, enter into, create, incur, assume, guarantee or suffer to exist any Indebtedness for borrowed money of any kind, including, but not limited to, a guarantee, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

b) other than Permitted Liens, enter into, create, incur, assume or suffer to exist any Liens of any kind, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

c) amend its charter documents, including, without limitation, its certificate of incorporation and bylaws, in any manner that materially and adversely affects any rights of the Holder; provided, however, the consent of a Majority in Interest shall not be required in connection with an increase in the authorized shares by Borrower;

d) repay, repurchase or offer to repay, repurchase or otherwise acquire any shares of its Common Stock or Common Stock Equivalents other than (i) as to the Conversion Shares or such shares of Common Stock that may be issued upon conversion of Permitted Indebtedness having terms similar to the Notes, in each case, in connection with the payment of cash in lieu of fractional shares or (ii) with respect to Common Stock Equivalents, to the extent permitted by Section 7(e) below.

e) redeem, defease, repurchase, repay or make any payments in respect of, by the payment of cash or cash equivalents (in whole or in part, whether by way of open market purchases, tender offers, private transactions or otherwise), all or any portion of any Indebtedness (other than (i) required payment or prepayment of principal, premium and interest in respect of Permitted Indebtedness and the Notes or (ii) other payments with respect to Permitted Indebtedness or the Notes, if on a pro-rata basis), whether by way of payment in respect of principal of (or premium, if any) or interest on, such Indebtedness. The foregoing restriction shall also apply to Permitted Indebtedness from and after the occurrence of an Event of Default;

f) 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, liquidation, distribution, preferential payments in connection with any securities or debt issuances, corporate rearrangement, scheme of arrangement or other similar transaction;

g) enter into any transaction with any Affiliate of Borrower which would be required to be disclosed by a company subject to the reporting requirements of Section 12(g) of the Exchange Act in any public filing with the Commission, unless such transaction is made on reasonable commercial terms and expressly approved by either (i) a majority of the disinterested directors of Borrower (even if less than a quorum otherwise required for board approval) or (ii) all of the directors; or

h) enter into any agreement with respect to any of the foregoing.

Section 8. Events of Default.

- a) “Event of Default” means, wherever used herein, any of the following events (whatever the reason for such event and whether such event 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. any default in the payment of (A) the principal amount of this Note and (B) interest, and other amounts owing to a Holder of this Note, as and when the same shall become due and payable (whether on a Conversion Date, the Repurchase Date or the Maturity Date or by acceleration or otherwise) which default, solely in the case of a default under clause (B) above, is not cured within three (3) Trading Days after Borrower has become aware of such default;
 - ii. Borrower shall fail to observe or perform any other material covenant or agreement contained in the Notes (other than a breach by Borrower of its obligations to deliver shares of Common Stock to the Holder upon conversion, which breach is addressed in clause (viii) below) which failure is not cured, if possible to cure, within the earlier to occur of (A) five (5) Trading Days after notice of such failure sent by the Holder or by any Other Holder to Borrower and (B) ten (10) Trading Days after Borrower has become aware of such failure;
 - iii. a material default or event of default (subject to any grace or cure period provided in the applicable agreement, document or instrument) shall occur under any material agreement, lease, document or instrument to which Borrower or any Subsidiary is obligated (and not covered by clause (vi) below), which would reasonably be expected to have a Material Adverse Effect;
 - iv. any material representation or warranty made in this Note, any other Settlement Document or any other report, financial statement or certificate made or delivered to the Holder or any Other Holder shall be untrue or incorrect in any material respect as of the date when made or deemed made;
 - v. Borrower or any Subsidiary shall be subject to a Bankruptcy Event;
 - vi. Borrower or any Subsidiary shall default on any of its obligations under any mortgage, credit agreement or other facility, indenture agreement, factoring agreement or other instrument under which there may be issued, or by which there may be secured or evidenced, any Indebtedness for borrowed money or money due under any long term leasing or factoring arrangement that (a) involves an obligation greater than \$50,000, whether such Indebtedness now exists or shall hereafter be created, and (b) results in such Indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable;
 - vii. Borrower shall be a party to any Change of Control Transaction or Fundamental Transaction or disposition of all or in excess of 30% of its assets in one transaction or a series of related transactions (whether or not such sale would constitute a Change of Control Transaction);
 - viii. Borrower shall fail for any reason to deliver Conversion Shares to a Holder prior to the fifth (5th) Trading Day after a Conversion Date pursuant to Section 4(d) or Borrower shall provide at any time notice to the Holder, including by way of public announcement, of Borrower’s intention to not honor requests for conversions of any Notes in accordance with the terms hereof;

ix. Borrower shall fail to observe or perform any material covenant or agreement set forth in any other Settlement Document, which breach is not cured within any allowed cure period;

x. any monetary judgment, writ or similar final process shall be entered or filed against Borrower, or any of its respective property or other assets for more than \$50,000, and such judgment, writ or similar final process shall remain unvacated, unbonded, unstayed, unsettled, unsatisfied, or unpaid for a period of ninety (90) calendar days;

xi. any dissolution, liquidation or winding up by Borrower, of a substantial portion of its business;

xii. cessation of operations by Borrower;

xiii. the failure by Borrower or any material Subsidiary to maintain any material intellectual property rights, personal, real property, equipment, leases or other assets which are necessary to conduct its business (whether now or in the future) and such breach is not cured with twenty (20) days after written notice to Borrower from the Holder;

xiv. the Conversion Shares are no longer listed, quoted or are otherwise delisted from the then principal Trading Market;

xv. a Commission or judicial stop trade order or suspension from Borrower's then principal Trading Market;

xvi. the restatement after the date hereof of any financial statements filed by Borrower with the Commission for any date or period from the Original Issue Date and until this Note is no longer outstanding, if the result of such restatement would, by comparison to the unrestated financial statements, have constituted a Material Adverse Effect. For the avoidance of doubt, any restatement related to new accounting pronouncements shall not constitute a default under this Section;

xvii. Borrower effectuates a reverse split of its Common Stock without five (5) days prior written notice to the Holder;

xiii. the occurrence of an Event of Default under any Other Note; or

xix. any material provision of any Settlement Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against Borrower, or the validity or enforceability thereof shall be contested by Borrower, or a proceeding shall be commenced by Borrower or any governmental authority having jurisdiction over Borrower or Holder, seeking to establish the invalidity or unenforceability thereof, or Borrower shall deny in writing that it has any liability or obligation purported to be created under any Settlement Document.

In the event more than one grace, cure or notice period is applicable to an Event of Default, then the shortest grace, cure or notice period shall be applicable thereto.

b) Remedies Upon Event of Default, Fundamental Transaction and Change of Control Transaction If any Event of Default or a Fundamental Transaction or a Change of Control Transaction occurs, the outstanding principal amount of this Note, and other amounts owing in respect thereof through the date of acceleration, shall become immediately due and payable in cash at the Mandatory Default Amount, at the Holder's election, except that upon an Event of Default pursuant to Section 8(a)(v), Borrower shall immediately pay the Mandatory Default Amount to the Holder without the requirement for any notice or demand or other action by the Holder or any other Person; provided that the Holder may, in its sole discretion, waive such right to receive payment upon an Event of Default pursuant to Section 8(a)(v), in whole or in part, and any such waiver shall not affect any other rights of the Holder hereunder, including any other rights in respect of such Event of Default, any right to conversion, and any right to payment of the Mandatory Default Amount or any other amount, as applicable. Commencing on the Maturity Date and also five (5) days after the occurrence of any Event of Default interest on this Note shall accrue at an interest rate equal to the lesser of 18% per annum or the maximum rate permitted under applicable law. Upon the payment in full of the Mandatory Default Amount, the Holder shall promptly surrender this Note to or as directed by Borrower. In connection with such acceleration described herein, the Holder need not provide, and Borrower hereby waives, any presentment, demand, protest or other notice of any kind, and the 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 acceleration may be rescinded and annulled by Holder at any time prior to payment hereunder and the Holder shall have all rights as a holder of the Note until such time, if any, as the Holder receives full payment pursuant to this Section 8(b). No such rescission or annulment shall affect any subsequent Event of Default or impair any right consequent thereon.

Section 9. Miscellaneous.

a) Notices. All notices, demands, requests, consents, approvals, and other communications required or permitted hereunder shall be in writing and, unless otherwise specified herein, shall be (i) personally served, (ii) deposited in the mail, registered or certified, return receipt requested, postage prepaid, (iii) delivered by reputable air courier service with charges prepaid, or (iv) transmitted by hand delivery, telegram, facsimile, or electronic mail, addressed as set forth below or to such other address as such party shall have specified most recently by written notice. Any notice or other communication required or permitted to be given hereunder shall be deemed effective (a) upon hand delivery or delivery by facsimile, with accurate confirmation generated by the transmitting facsimile machine, at the address or number designated below (if delivered on a business day during normal business hours where such notice is to be received), or the first business day following such delivery (if delivered other than on a business day during normal business hours where such notice is to be received), or (b) upon receipt, when sent by electronic mail (provided confirmation of transmission is electronically generated and kept on file by the sending party), or (c) on the second business day following the date of mailing by express courier service, fully prepaid, addressed to such address, or upon actual receipt of such mailing, whichever shall first occur. The addresses for such communications shall be: (i) if to Borrower, to: GT Biopharma, Inc., 9350 Wilshire Blvd, Suite 203, Beverly Hills, CA 90212, Attn: Chief Executive Officer (with copies emailed to sww@gtbiopharma.com; ajc@gtbiopharma.com), with a copy to (which shall not constitute notice): Perrie Weiner at perrie.weiner@bakermckenzie.com, and (ii) if to the Holder, to: the address and email indicated on the front page of this Note.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Note shall alter or impair the obligation of Borrower, which is absolute and unconditional, to pay (A) the principal amount of this Note and (B) interest, and other amounts owing to a Holder of this Note, at the time, place, and rate, and in the coin or currency, herein prescribed. This Note is a direct debt obligation of Borrower. This Note ranks pari passu with all other Notes now or hereafter issued under the terms set forth herein.

c) Lost or Mutilated Note. If this Note shall be mutilated, lost, stolen or destroyed, Borrower shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated Note, or in lieu of or in substitution for a lost, stolen or destroyed Note, a new Note for the principal amount of this Note so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such Note, and of the ownership hereof, reasonably satisfactory to Borrower.

d) 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 conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Settlement Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Settlement Documents), 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 such New York Courts, or such New York Courts are improper or 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 applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Note or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Note, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorney's fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding. **This Note shall be deemed an unconditional obligation of Borrower for the payment of money and, without limitation to any other remedies of Holder, may be enforced against Borrower by summary proceeding pursuant to New York Civil Procedure Law and Rules Section 3213 or any similar rule or statute in the jurisdiction where enforcement is sought. For purposes of such rule or statute, any other document or agreement to which Holder and Borrower are parties or which Borrower delivered to Holder, which may be convenient or necessary to determine Holder's rights hereunder or Borrower's obligations to Holder are deemed a part of this Note, whether or not such other document or agreement was delivered together herewith or was executed apart from this Note.**

e) Waiver. Any waiver by Borrower or the Holder of a breach of any provision of this Note shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Note. The failure of Borrower or the Holder to insist upon strict adherence to any term of this Note on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Note on any other occasion. Any waiver by Borrower or the Holder must be in writing.

f) Severability. If any provision of this Note is invalid, illegal or unenforceable, the balance of this Note shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances.

g) Usury. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law. Borrower covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive Borrower from paying all or any portion of the principal of or interest on this Note as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Note, and Borrower (to the extent it may lawfully do so) hereby expressly waives all benefits or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Holder, but will suffer and permit the execution of every such as though no such law has been enacted.

h) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

i) Headings. The headings contained herein are for convenience only, do not constitute a part of this Note and shall not be deemed to limit or affect any of the provisions hereof.

j) Amendment. This Note may be amended and any provisions hereof may be waived by written consent of Borrower and the Majority in Interest.

k) Facsimile Signature. In the event that Borrower's signature is delivered by facsimile transmission, PDF, electronic signature or other similar electronic means, such signature shall create a valid and binding obligation of Borrower with the same force and effect as if such signature page were an original thereof.

(Signature Pages Follow)

IN WITNESS WHEREOF, Borrower has caused this Note to be signed in its name by an authorized officer as of the Original Issue Date set out above.

GT BIOPHARMA, INC.

By:
Name: Steven Weldon
Title: Chief Financial Officer

[Signature Page—Settlement Note]

ANNEX A

NOTICE OF CONVERSION

The undersigned hereby elects to convert principal under the Convertible Note Due _____ of GT Biopharma, Inc., a Delaware corporation (the "Borrower"), into shares of common stock (the "Common Stock"), of Borrower according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as reasonably requested by Borrower in accordance therewith. No fee will be charged to the holder for any conversion, except for such transfer taxes, if any.

By the delivery of this Notice of Conversion the undersigned represents and warrants to Borrower that its ownership of the Common Stock does not exceed the amounts specified under Section 4 of this Note, as determined in accordance with Section 13(d) of the Exchange Act.

The undersigned agrees to comply with the prospectus delivery requirements under the applicable securities laws in connection with any transfer of the aforesaid shares of Common Stock.

Conversion calculations:

Date to Effect Conversion: _____

Principal Amount of Note to be Converted: \$ _____

Accrued Interest to be Converted, if any: \$ _____

Conversion Price: \$ _____

Number of shares of Common Stock to be issued: _____

Signature: _____

Name: _____

DWAC Instructions: _____

Broker No: _____

Account No: _____

SCHEDULE A (PERMITTED INDEBTEDNESS)

1. Indebtedness incurred with respect to the \$15,294,365.74 aggregate principal amount of convertible notes and 10% senior convertible debentures outstanding on the Original Issue Date (including additional Indebtedness constituting default amounts with respect to such convertible note and debentures).
2. Indebtedness incurred with respect the lease agreement, dated October 1, 2018, between the Company and Sheffield Properties of Illinois, Inc. relating to the Company's principal officers in Westlake Village, California.
3. Indebtedness incurred with respect to the financing agreement, dated November 8, 2010, with Gemini Pharmaceuticals, Inc. relating to a purchase order line of credit facility.

[FORM OF SETTLEMENT WARRANT]

GT BIOPHARMA, INC.

PRE-FUNDED WARRANT TO PURCHASE COMMON STOCK

Warrant No.:

Number of Shares of Common Stock: _____

Date of Issuance: June 19, 2020 ("Issuance Date")

GT Biopharma, Inc., a Delaware corporation (the "**Company**"), hereby certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, [EMPERY FUND], the registered holder hereof or its permitted assigns (the "**Holder**"), is entitled, subject to the terms set forth below, to purchase from the Company, at the Exercise Price (as defined below) then in effect, at any time or times on or after the Issuance Date, but not after 11:59 p.m., New York time, on the Expiration Date, (as defined below), _____ (_____) fully paid non-assessable shares of Common Stock, subject to adjustment as provided herein (the "**Warrant Shares**"). Except as otherwise defined herein, capitalized terms in this Pre-Funded Warrant to Purchase Common Stock (including any Pre-Funded Warrants to Purchase Common Stock issued in exchange, transfer or replacement hereof, this "**Warrant**"), shall have the meanings set forth in Section 17. This Warrant is one of the Pre-Funded Warrants to purchase Common Stock (the "**Settlement Warrants**") issued pursuant to Section 1(b) of that certain Settlement Agreement, dated as of June 19, 2020 (the "**Settlement Date**"), by and among the Company and the investors and other parties referred to therein (the "**Settlement Agreement**"). Capitalized terms used herein and not otherwise defined shall have the definitions ascribed to such terms in the Settlement Agreement.

1. EXERCISE OF WARRANT.

(a) Mechanics of Exercise. Subject to the terms and conditions hereof (including, without limitation, the limitations set forth in Section 1(f)), this Warrant may be exercised by the Holder at any time or times on or after the Issuance Date, in whole or in part, by delivery of a written notice, in the form attached hereto as Exhibit A (the "**Exercise Notice**"), of the Holder's election to exercise this Warrant. No ink-original Exercise Notice shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Exercise Notice be required. The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder. Execution and delivery of the Exercise Notice with respect to less than all of the Warrant Shares shall have the same effect as cancellation of the original Warrant and issuance of a new Warrant evidencing the right to purchase the remaining number of Warrant Shares. On or before the first (1st) Trading Day following the date on which the Holder has delivered an Exercise Notice, the Company shall transmit by electronic mail or facsimile an acknowledgment of confirmation of receipt of the Exercise Notice to the Holder and the Company's transfer agent (the "**Transfer Agent**"). On or before the earlier of (i) second (2nd) Trading Day and (ii) the number of Trading Days comprising the Standard Settlement Period, in each case, following the date on which the Holder has delivered the Exercise Notice (a "**Share Delivery Date**"), the Company shall (X) provided that the Transfer Agent is participating in The Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program, credit such aggregate number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the Holder's or its designee's balance account with DTC through its Deposit / Withdrawal At Custodian system, or (Y) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and dispatch by overnight courier to the address as specified in the Exercise Notice, a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise. The Company shall be responsible for all fees and expenses of the Transfer Agent and all fees and expenses with respect to the issuance of Warrant Shares via DTC, if any, including without limitation for same day processing. Upon delivery of the Exercise Notice, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date such Warrant Shares are credited to the Holder's DTC account or the date of delivery of the certificates evidencing such Warrant Shares, as the case may be. If this Warrant is submitted in connection with any exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then the Company shall as soon as practicable and in no event later than five (5) Trading Days after any exercise and at its own expense, issue a new Warrant (in accordance with Section 7(d)) representing the right to purchase the number of Warrant Shares issuable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant is exercised. No fractional Warrant Shares are to be issued upon the exercise of this Warrant, but rather the number of Warrant Shares to be issued shall be rounded up to the nearest whole number. The Company shall pay any and all taxes which may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant. The Company's obligations to issue and deliver Warrant Shares in accordance with the terms and subject to the conditions hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination.

¹ Insert number of Warrant Shares set forth opposite the Holder's name in column (6) of Schedule I attached to the Settlement Agreement.

(b) Exercise Price. For purposes of this Warrant, "**Exercise Price**" means **\$0.20**, subject to adjustment as provided herein. The aggregate Exercise Price of this Warrant was deemed to be pre-funded to the Company on a cashless basis in conjunction with the Holder's exchange the Original Notes and Original Warrants for the Settlement Securities pursuant to the Settlement Agreement (and other terms therein) and, consequently no additional consideration shall be required to be paid by the Holder to any Person to effect any exercise of this Warrant. The Holder shall not be entitled to the return or refund of all, or any portion, of such pre-paid aggregate Exercise Price under any circumstance or for any reason whatsoever, including in the event this Warrant shall not have been exercised prior to the Expiration Date.

(c) Company's Failure to Timely Deliver Securities. If the Company shall fail for any reason or for no reason to issue to the Holder on or prior to the applicable Share Delivery Date either (I) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, a certificate for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock on the Company's share register or (II) if the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, to credit the Holder's balance account with DTC, for such number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise of this Warrant by crediting such aggregate number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the Holder's or its designee's balance account with DTC through its Deposit / Withdrawal At Custodian system (an "**Exercise Failure**"), then, in addition to all other remedies available to the Holder, (X) the Company shall pay in cash to the Holder on each day after the applicable Share Delivery Date and during such Exercise Failure an amount equal to 1.5% of the product of (A) the sum of the number of shares of Common Stock not issued to the Holder on or prior to the Share Delivery Date and to which the Holder is entitled, and (B) any trading price of the Common Stock selected by the Holder in writing as in effect at any time during the period beginning on the date of the applicable exercise and ending on the applicable Share Delivery Date, and (Y) the Holder, upon written notice to the Company, may void its Exercise Notice with respect to, and retain or have returned, as the case may be, any portion of this Warrant that has not been exercised pursuant to such Exercise Notice; provided that the voiding of an Exercise Notice shall not affect the Company's obligations to make any payments which have accrued prior to the date of such notice pursuant to this Section 1(c) or otherwise. In addition to the foregoing, if on or prior to the applicable Share Delivery Date, and if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, the Company shall fail to issue and deliver a certificate to the Holder and register such shares of Common Stock on the Company's share register or, if the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, credit the Holder's balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise hereunder or pursuant to the Company's obligation pursuant to clause (ii) below, and if on or after such Trading Day the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of shares of Common Stock issuable upon such exercise that the Holder anticipated receiving from the Company (a "**Buy-In**"), then the Company shall, within three (3) Trading Days after the Holder's request and in the Holder's discretion, either (i) pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (the "**Buy-In Price**"), at which point the Company's obligation to deliver such certificate (and to issue such shares of Common Stock) or credit such Holder's balance account with DTC for such shares of Common Stock shall terminate, or (ii) promptly honor its obligation to deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit such Holder's balance account with DTC, as applicable, and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock, times (B) any trading price of the Common Stock selected by the Holder in writing as in effect at any time during the period beginning on the date of the applicable exercise and ending on the applicable Share Delivery Date. Nothing shall limit the 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 certificates representing shares of Common Stock (or to electronically deliver such shares of Common Stock) upon the exercise of this Warrant as required pursuant to the terms hereof.

(d) Holding Period of Warrant Shares. For purposes of Rule 144(d) promulgated under the 1933 Act, as in effect on the date hereof, the Company hereby acknowledges and agrees that the Warrant Shares issued in an exercise of this Warrant shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the date the Original Warrants and Original Notes (each as defined in the Settlement Agreement) were originally issued pursuant to that certain Securities Purchase Agreement dated as of January 22, 2018 by and among the Company and the investors listed on the signature pages attached thereto.

(e) Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed and resolve such dispute in accordance with Section 12.

(f) Beneficial Ownership. Notwithstanding anything to the contrary contained herein, the Company shall not effect the exercise of any portion of this Warrant, and the Holder shall not have the right to exercise any portion of this Warrant, pursuant to the terms and conditions of this Warrant and any such exercise shall be null and void and treated as if never made, to the extent that after giving effect to such exercise, the Holder together with the other Attribution Parties collectively would beneficially own in excess of 4.99% (the "**Maximum Percentage**") of the number of shares of Common Stock outstanding immediately after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) exercise of the remaining, unexercised portion of this Warrant beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants, including the other Settlement Warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 1(f). For purposes of this Section 1(f), beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the "**1934 Act**"). For purposes of determining the number of outstanding shares of Common Stock the Holder may acquire upon the exercise of this Warrant without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the Securities and Exchange Commission (the "**SEC**"), as the case may be, (y) a more recent public announcement by the Company or (3) any other written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives an Exercise Notice from the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Exercise Notice would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 1(f), to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of Warrant Shares to be purchased pursuant to such Exercise Notice (the number of shares by which such purchase is reduced, the "**Reduction Shares**"). For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Trading Day confirm orally and in writing or by electronic mail 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 Warrant, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon exercise of this Warrant results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Settlement Warrants that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Warrant in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to exercise this Warrant pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 1(f) to the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 1(f) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Warrant.

(g) Insufficient Authorized Shares. If at any time while this Warrant remains outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon exercise of this Warrant at least a number of shares of Common Stock equal to the number of shares of Common Stock as shall from time to time be necessary to effect the exercise of all of this Warrant then outstanding (the "**Required Reserve Amount**" and the failure to have such sufficient number of authorized and unreserved shares of Common Stock, an "**Authorized Share Failure**"), then the Company shall immediately take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for this Warrant then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the stockholders that they approve such proposal. Notwithstanding the foregoing, if any such time of an Authorized Share Failure, the Company is able to obtain the written consent of a majority of the shares of its issued and outstanding Common Stock to approve the increase in the number of authorized shares of Common Stock, the Company may satisfy this obligation by obtaining such consent and submitting for filing with the SEC an Information Statement on Schedule 14C. In the event that upon any exercise of this Warrant, the Company does not have sufficient authorized shares to deliver in satisfaction of such exercise, then unless the Holder elects to void such attempted exercise, the Holder may require the Company to pay to the Holder within three (3) Trading Days of the applicable exercise, cash in an amount equal to the product of the product of (A) the sum of the number of shares of Common Stock not issued to the Holder on or prior to the Share Delivery Date and to which the Holder is entitled, and (B) any trading price of the Common Stock selected by the Holder in writing as in effect at any time during the period beginning on the date of the applicable exercise and ending on the date that the Company makes the applicable cash payment.

2. ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES. The Exercise Price and the number of Warrant Shares shall be adjusted from time to time as follows:

(h) Adjustment Upon Subdivision or Combination of Shares of Common Stock. If the Company at any time on or after the Settlement Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision will be proportionately reduced and the number of Warrant Shares will be proportionately increased such that the aggregate Exercise Price of this Warrant that was pre-funded to the Company shall remain unchanged. If the Company at any time on or after the Settlement Date combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination will be proportionately increased and the number of Warrant Shares will be proportionately decreased such that aggregate Exercise Price of this Warrant that was pre-funded to the Company shall remain unchanged.. Any adjustment under this Section 2(a) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(i) [Reserved].

3. **RIGHTS UPON DISTRIBUTION OF ASSETS.** If the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to any or all 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, options, evidence of indebtedness or any other assets 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 Warrant, 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 exercise of this Warrant (without regard to any limitations or restrictions on exercise of this Warrant, including without limitation, the Maximum Percentage) 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 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 and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to such extent (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Distribution (and beneficial ownership) to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time or times as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such Distribution (and any Distributions declared or made on such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation).

4. **PURCHASE RIGHTS: FUNDAMENTAL TRANSACTIONS.**

(j) **Purchase Rights.** If at any time on or after the Settlement Date and on or prior to the Expiration Date the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class 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 exercise of this Warrant (without regard to any limitations or restrictions on exercise of this Warrant, including without limitation, the Maximum Percentage) 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 Common Stock are to be determined for the grant, issuance 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 and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Purchase Right to such extent (and shall not be entitled to beneficial ownership of such Common Stock as a result of such Purchase Right (and beneficial ownership) to such extent) and such Purchase Right to such extent shall be held in abeyance for the benefit of the Holder until such time or times as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such right (and any Purchase Right granted, issued or sold on such initial Purchase Right or on any subsequent Purchase Right to be held similarly in abeyance) to the same extent as if there had been no such limitation).

(k) Fundamental Transaction. The Company shall not enter into or be party to a Fundamental Transaction unless the Successor Entity assumes in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Section 4(b), including agreements to deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant, including, without limitation, which is exercisable for a corresponding number of shares of capital stock equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the Exercise 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 adjustments to the number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction). Upon the consummation of each Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for the Company (so that from and after the date of the applicable Fundamental Transaction, the provisions of this Warrant and the Settlement Agreement referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of each Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon the exercise of this Warrant prior to the applicable Fundamental Transaction, such shares of common stock (or its equivalent) of the Successor Entity (including its Parent Entity) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant), as adjusted in accordance with the provisions of this Warrant. Notwithstanding the foregoing, and without limiting Section 1(f) hereof, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 4(b) to permit the Fundamental Transaction without the assumption of this Warrant. In addition to and not in substitution for any other rights hereunder, prior to the consummation of each Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a "**Corporate Event**"), the Company shall make appropriate provision to insure that the Holder will thereafter have the right to receive upon an exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction but prior to the Expiration Date, in lieu of the shares of the Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon the exercise of the Warrant prior to such Fundamental Transaction, such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights) (collectively, the "**Corporate Event Consideration**") which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant). The provision made pursuant to the preceding sentence shall be in a form and substance reasonably satisfactory to the Holder. The provisions of this Section 4(b) shall apply similarly and equally to successive Fundamental Transactions and Corporate Events.

5. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation or Bylaws, or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all of the provisions of this Warrant and take all action as may be required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price of this Warrant, (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of Common Stock upon the exercise of this Warrant, and (iii) shall, so long as any of the Settlement Warrants are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the exercise of the Settlement Warrants, the number of shares of Common Stock as shall from time to time be necessary to effect the exercise of the Settlement Warrants then outstanding (without regard to any limitations on exercise).

6. WARRANT HOLDER NOT DEEMED A STOCKHOLDER. Except as otherwise specifically provided herein, the Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of capital stock of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this Section 6, the Company shall provide the Holder with copies of the same notices and other information given to the stockholders of the Company generally, contemporaneously with the giving thereof to the stockholders.

7. REISSUANCE OF WARRANTS.

(1) Transfer of Warrant. If this Warrant is to be transferred, the Holder shall surrender this Warrant to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 7(d)), registered as the Holder may request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 7(d)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred.

(m) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 7(d)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(n) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Warrant or Warrants (in accordance with Section 7(d)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender; provided, however, that no Settlement Warrants for fractional Warrant Shares shall be given.

(o) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 7(a) or Section 7(c), the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date, and (iv) shall have the same rights and conditions as this Warrant.

8. NOTICES. Whenever notice is required to be given under this Warrant, unless otherwise provided herein, such notice shall be given in accordance with Section 20 of the Settlement Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Warrant, including in reasonable detail a description of such action and the reason therefor. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) immediately upon any adjustment of the Exercise Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the shares of Common Stock, (B) with respect to any grants, issuances or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of shares of Common Stock or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation; provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder. It is expressly understood and agreed that the time of exercise specified by the Holder in each Exercise Notice shall be definitive and may not be disputed or challenged by the Company.

9. AMENDMENT AND WAIVER. Any provision of this Warrant may be changed or amended with the prior written consent of the Holder and the Company, and any provision of this Warrant may be waived with the prior written consent of the Holder. In addition, the affirmative vote of the Required Holders at a meeting duly called for such purpose or the written consent without a meeting of the Required Holders shall be required for any change or amendment or waiver of any provision of all Settlement Warrants. Any change or amendment by the Company and the Required Holders, and any waiver by the Required Holders, shall be binding on all holders of Settlement Warrants (including the Holder of this Warrant). The Company hereby covenants and agrees that if, and whenever on or after the date hereof, the Company amends or modifies any term of any of the Settlement Warrants held by any Person (each document amending such terms, an "**Amendment Document**"), then (i) the Company shall provide notice thereof to the Holder immediately following the occurrence thereof and (ii) the terms and conditions of this Warrant shall be, without any further action by the Holder or the Company, automatically amended and modified in an economically and legally equivalent manner such that the Holder shall receive the benefit of such amended or modified terms and/or conditions (as the case may be) set forth in such Amendment Document, provided that upon written notice to the Company at any time the Holder may elect not to accept the benefit of any such amended or modified term or condition, in which event the term or condition contained in this Warrant shall apply to the Holder as it was in effect immediately prior to such amendment or modification as if such amendment or modification never occurred with respect to the Holder. The provisions of the foregoing sentence shall apply similarly and equally to each Amendment Document.

10. GOVERNING LAW; JURISDICTION; JURY TRIAL. This Warrant shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Warrant shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company 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 brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. The Company 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 to such party at the address set forth in Section 20 of the Settlement Agreement 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 manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holder. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS WARRANT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

11. CONSTRUCTION; HEADINGS. This Warrant shall be deemed to be jointly drafted by the Company and all of the initial holders of the Settlement Warrants and shall not be construed against any Person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant.

12. DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall submit the disputed determinations or arithmetic calculations via facsimile or electronic mail within one (1) Business Day of receipt of the Exercise Notice giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation of the Exercise Price or the Warrant Shares within one (1) Business Day of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within one (1) Business Day submit via facsimile or electronic mail (a) the disputed determination of the Exercise Price to an independent, reputable investment bank selected by the Holder and approved by the Company, such approval not to be unreasonably withheld, conditioned or delayed or (b) the disputed arithmetic calculation of the Warrant Shares to an independent, outside accountant, selected by the Holder and approved by the Company, such approval not to be unreasonably withheld, conditioned or delayed. The Company shall cause at its expense the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error.

13. REMEDIES, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant and the other Settlement Documents (as defined in the Settlement Agreement), at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue actual damages for any failure by the Company to comply with the terms of this Warrant. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holder of this Warrant shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

14. TRANSFER. This Warrant and the Warrant Shares may be offered for sale, sold, transferred, pledged or assigned without the consent of the Company.

15. SEVERABILITY. If any provision of this Warrant is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Warrant so long as this Warrant as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

16. **DISCLOSURE.** Upon receipt or delivery by the Company of any notice in accordance with the terms of this Warrant, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Company or its subsidiaries, the Company shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, nonpublic information relating to the Company or its subsidiaries, the Company so shall indicate to such Holder contemporaneously with delivery of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Company or its subsidiaries.

17. **CERTAIN DEFINITIONS.** For purposes of this Warrant, the following terms shall have the following meanings:

(p) "**1933 Act**" means the Securities Act of 1933, as amended.

(q) "**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(r) "**Attribution Parties**" means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Issuance Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Company's Common Stock would or could be aggregated with the Holder's and the other Attribution Parties for purposes of Section 13(d) of the 1934 Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

(s) "**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 an Eligible Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Eligible 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 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 in the 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 (c) 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 Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

(t) "**Bloomberg**" means Bloomberg Financial Markets.

(u) "**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.

(v) "**Closing Bid Price**" and "**Closing Sale Price**" means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price, as the case may be, then the last bid price or the last trade price, respectively, of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported on the Pink Open Market (formerly Pink OTC Markets Inc.). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price, as the case may be, of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section 12. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or other similar transaction during the applicable calculation period.

(w) "**Common Stock**" means (i) the Company's shares of Common Stock, par value \$0.001 per share, and (ii) any capital stock into which such Common Stock shall have been changed or any capital stock resulting from a reclassification of such Common Stock.

(x) "**Convertible Securities**" means any stock or securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for shares of Common Stock.

(y) "**Eligible Market**" means the Principal Market, the NYSE American, the Nasdaq Global Market, the Nasdaq Global Select Market, the Nasdaq Capital Market, the OTC QX or The New York Stock Exchange, Inc.

(z) "**Expiration Date**" means the date sixty (60) months after the Issuance Date or, if such date falls on a day other than a Business Day or on which trading does not take place on the Principal Market (a "**Holiday**"), the next day that is not a Holiday.

(aa) "**Fundamental Transaction**" means (A) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (iv) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby such Subject Entities, individually or in the aggregate, acquire, either (x) at least 50% of the outstanding shares of Common Stock, (y) at least 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding; or (z) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (v) reorganize, recapitalize or reclassify its Common Stock, (B) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the "beneficial owner" (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock not held by all such Subject Entities as of the Settlement Date calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other stockholders of the Company to surrender their shares of Common Stock without approval of the stockholders of the Company or (C) directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, the issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

(bb) "**Group**" means a "group" as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder.

(cc) "**Options**" means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(dd) "**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person, including such entity whose common capital or equivalent equity security is quoted or listed on an Eligible Market (or, if so elected by the Required Holders, any other market, exchange or quotation system), or, if there is more than one such Person or such entity, the Person or such entity designated by the Required Holders or in the absence of such designation, such Person or entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(ee) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

(ff) "**Principal Market**" means the OTC QB.

(gg) "**Required Holders**" means the holders of the Settlement Warrants representing at least a majority of the shares of Common Stock underlying the Settlement Warrants then outstanding and shall include Empery Asset Management, LP so long as Empery Asset Management, LP or any of its Affiliates holds any Settlement Warrants.

(hh) "**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 applicable Exercise Notice.

(ii) "**Subject Entity**" means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

(jj) "**Successor Entity**" means one or more Person or Persons (or, if so elected by the Required Holders, the Company or Parent Entity) formed by, resulting from or surviving any Fundamental Transaction, or one or more Person or Persons (or, if so elected by the Required Holders, the Company or the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(kk) "**Trading Day**" means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock on such day, then on the principal securities exchange or securities market on which the Common Stock is then traded.

(l) "**Weighted Average Price**" means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market during the period beginning at 9:30:00 a.m., New York time (or such other time as the Principal Market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as the Principal Market publicly announces is the official close of trading), as reported by Bloomberg through its "Volume at Price" function or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:00 a.m., New York time (or such other time as such market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as such market publicly announces is the official close of trading), as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest Closing Bid Price and the lowest closing ask price of any of the market makers for such security as reported on the Pink Open Market (formerly Pink OTC Markets Inc.). If the Weighted Average Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Weighted Average Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section 12 with the term "Weighted Average Price" being substituted for the term "Exercise Price." All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or other similar transaction during the applicable calculation period.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Pre-Funded Warrant to Purchase Common Stock to be duly executed as of the Issuance Date set out above.

GT BIOPHARMA, INC.

Name: By: _____
Steven Weldon
Title: Chief Financial Officer

[Signature Page—Settlement Warrant]

EXHIBIT A

**EXERCISE NOTICE
TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS
PRE-FUNDED WARRANT TO PURCHASE COMMON STOCK**

GT BIOPHARMA, INC.

The undersigned holder hereby exercises the right to purchase _____ of the shares of Common Stock ("**Warrant Shares**") of GT Biopharma, Inc., a Delaware corporation (the "**Company**"), evidenced by the attached Pre-Funded Warrant to Purchase Common Stock (the "**Warrant**").

The Company shall deliver to the holder _____ Warrant Shares in accordance with the terms of the Warrant.

Date: _____, _____

Name of Registered Holder

By:

Name:

Title:

ACKNOWLEDGMENT

The Company hereby acknowledges this Exercise Notice and hereby directs Computershare Trust Company, N.A. to issue the above indicated number of shares of Common Stock.

GT BIOPHARMA, INC.

By: _____
Name:
Title: