

## CONVERTIBLE NOTE

THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT, OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

ThERANOS, INC.

## CONVERTIBLE PROMISSORY NOTE

\$15,000,000

December 30, 2011

FOR VALUE RECEIVED, Theranos, Inc., a Delaware corporation (the "Company") promises to pay to Safeway Inc., a Delaware corporation ("Investor"), or its registered assigns, in lawful money of the United States of America the principal sum of Fifteen Million Dollars (\$15,000,000), or such lesser amount as shall equal the outstanding principal amount hereof, together with interest from the date of this Convertible Promissory Note (this "Note") on the unpaid principal balance at a rate equal to 0.79 percent (0.79%) per annum, computed on the basis of the actual number of days elapsed and a year of 365 days. All unpaid principal, together with any then unpaid and accrued interest and other amounts payable hereunder, shall be due and payable on the Maturity Date (as defined below) in accordance with the terms hereof. This Note is issued pursuant to that certain Master Purchase Agreement by and between the Company and Investor dated September 20, 2010 (the "Master Purchase Agreement"). All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Master Purchase Agreement.

The following is a statement of the rights of Investor and the conditions to which this Note is subject, and to which Investor, by the acceptance of this Note, agrees:

### 1. Payments.

(a) Interest. Accrued interest on this Note shall be payable on the Maturity Date.

(b) The "Maturity Date" shall be the earlier of:

- i. the date of the Company's Initial Public Offering;
- ii. the effective date of a Change of Control of the Company;
- iii. thirty (30) calendar days following expiration or termination of the Master Purchase Agreement;
- iv. when, upon or after the occurrence of an Event of Default, the amounts due and payable under this Note are declared due and payable by Investor or made automatically due and payable in accordance with the terms hereof; or
- v. December 30, 2016.

(c) No Usury. This Note is hereby expressly limited so that in no event whatsoever, whether by reason of deferment or advancement of loan proceeds, acceleration of maturity of the loan evidenced hereby, or otherwise, shall the amount paid or agreed to be paid to Investor hereunder

for the loan, use, forbearance or detention of money exceed the maximum interest rate permitted by the laws of the State of California. If at any time the performance of this Note, or any provision hereof, involves a payment exceeding the limit of the price that may be validly charged for the loan, use, forbearance or detention of money under applicable law, then automatically and retroactively, ipso facto, the obligation to be performed shall be reduced to such limit, it being the specific intent of the Company and Investor that all payments under this Note are to be credited first to interest as permitted by law, but not in excess of (i) the agreed rate of interest set forth in this Note, or (ii) that permitted by law, whichever is the lesser, and the balance toward the reduction of principal. The provisions of this paragraph shall never be superseded or waived and shall control every other provision of this Note.

- (d) Voluntary Prepayment. Unless waived in writing by the Company, if the Third Inventory Payment is not made in accordance with, and subject to, the Master Purchase Agreement within thirty (30) days after the Company notifies Investor in writing that such Third Inventory Payment is due pursuant to the Master Purchase Agreement, the Company has the right to repay this Note without penalty, in whole or in part, plus any accrued and unpaid interest on the portion being prepaid, and Investor is obligated to accept full repayment of the Note within thirty (30) calendar days from the date of Company's written request.
- (e) Events of Default. The occurrence of any of the following shall constitute an "Event of Default" under this Note:
- i. Acceleration due to Bankruptcy or Insolvency Proceedings. (A) The Company shall apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, be unable, or admit in writing its inability, to pay its debts generally as they mature, make a general assignment for the benefit of itself or any of its creditors, be dissolved or liquidated, become insolvent (as such term may be defined or interpreted under any applicable statute), commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or take any action for the purpose of effecting any of the foregoing; or (B) proceedings for the appointment of a receiver, trustee, liquidator or custodian of the Company or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Company or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within thirty (30) calendar days of commencement;
  - ii. Failure to Pay. The Company shall fail to pay (A) when due any principal or interest payment on the due date hereunder or (B) any other payment required under the terms of this Note on the date due and such payment shall not have been made within thirty (30) calendar days of the Company's receipt of Investor's written notice to the Company of such failure to pay;
  - iii. Covenant. The Company fails or neglects to perform, keep or observe any other term, provision, covenant or agreement contained in this Note and as to any such default under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure such default within thirty (30) calendar days after the occurrence of such default;
  - iv. Attachments; Levies. Any material portion of the Company's assets is attached, seized, subjected to writ or distress warrant, or is levied upon, or comes into the possession of any trustee, receiver or person acting in a similar capacity and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within thirty (30) calendar days, or the Company is enjoined, restrained, or in any way

prevented by court order from continuing to conduct all or any material part of its business affairs, or a judgment or other claim becomes a lien or encumbrance upon any material portion of the Company's assets, or a notice of lien, levy or assessment is filed of record with respect to any of the Company's assets by the United States government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, and the same is not paid within thirty (30) calendar days after the Company receives notice thereof; or

v. Enforceability. This Note shall in any material respect cease to be, or the Company asserts that this Note is not, a legal, valid and binding obligation of the Company enforceable in accordance with its terms.

(f) Rights of Investor upon Default. Upon the occurrence or existence of any Event of Default (other than an Event of Default described in Section 1(c)(i)) and at any time thereafter during the continuance of such Event of Default, Investor may, by written notice to the Company, declare all outstanding Obligations payable by the Company hereunder to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived. Upon the occurrence or existence of any Event of Default described in Section 1(c)(i), immediately and without notice, all outstanding Obligations payable by the Company hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived. In addition to the foregoing remedies, upon the occurrence or existence of any Event of Default, Investor may exercise any other right power or remedy granted to it by this Note or otherwise permitted to it by law, either by suit in equity or by action at law, or both.

**2. Representations and Warranties of the Company.** The Company hereby represents and warrants to Investor as of the date of issuance as follows:

(a) Organization and Standing, Certificate of Incorporation and Bylaws. The Company is a corporation duly organized and existing under the laws of the jurisdiction of its incorporation and is in good standing under such laws. The Company has the requisite corporate power and authority to own and operate its properties and assets, and to carry on its business as presently conducted.

(b) Corporate Power. The Company has all requisite corporate power to execute, issue, sell, perform under, and deliver this Note. This Note constitutes a valid and legally binding obligation of the Company, enforceable against the Company in accordance with its terms, subject, as to enforcement of remedies, to applicable bankruptcy, insolvency, moratorium, reorganization and similar laws affecting creditors' rights generally and to general equitable principles of law.

(c) No Violation or Default. The Company is not in violation of or default on any term of its Certificate of Incorporation or Bylaws, or other charter documents, as each is in effect on the date hereof, or, to the Company's knowledge, any provision of any mortgage, indenture, contract, agreement, instrument, judgment, decree, order, rule or regulation or other restriction to which the Company is a party or by which it is bound, the breach of or default under which would have a material adverse effect on the condition, financial or otherwise, business or operations of the Company or, to the Company's knowledge, of any provision of any federal, state or other applicable statute, rule or regulation applicable to the Company a violation of which would have a material adverse effect on the condition, financial or otherwise, business or operations of the Company.

(d) No Conflicts. The execution, delivery and performance by the Company of this Note will not conflict with, or result in a breach of any of the terms of, or constitute a default under, (i) to the Company's knowledge, any provision of any federal, state or other applicable statute, rule or regulation applicable to the Company the violation of which would have a material adverse effect on the condition, financial or otherwise, business or operations of the Company, (ii) the Company's Certificate of Incorporation or Bylaws, as amended and in effect on the date hereof, or (iii) to the Company's knowledge, any provision of any mortgage, indenture, contract,

agreement, instrument, judgment, decree, order, rule or regulation or other restriction to which the Company is a party or by which it is bound, the breach of or default under which would have a material adverse effect on the condition, financial or otherwise, business or operations of the Company, or result in the creation of any mortgage, pledge, lien, encumbrance or charge upon any of the properties or assets of the Company pursuant to any such term.

(e) Capitalization; Preemptive Rights; Compliance with Securities Laws.

- i. Concurrently with the execution and delivery of this Note and immediately prior to the conversion of this Note, the Company shall deliver to the Investor a copy of the Charter and a schedule showing the capitalization of the Company as of such date, certified by the President or Chief Financial Officer of the Company as being true and correct. Such capitalization schedule shall include (A) the number of shares of each series and class of preferred stock (the "Existing Preferred Stock") that are issued and outstanding as of such date; (B) the number of shares of each series and class of Common Stock (such Common Stock together with the Existing Preferred Stock, the "Shares") that are issued and outstanding as of such date; (C) the number of Shares or other securities that the Company has reserved for issuance upon conversion of each class and series of the Shares; (D) the number of Shares or other securities reserved for issuance to employees, consultants and directors pursuant to each outstanding stock option or other equity incentive plan and the number of Shares or other securities issuable upon exercise or conversion of issued and outstanding options or other securities outstanding under each such plan; and (E) the number of Shares or other securities reserved for issuance upon exercise or conversion of outstanding warrants or other securities exercisable for or convertible into Shares or other securities.
- ii. All issued and outstanding shares of the Company's Common Stock and Existing Preferred Stock (i) have been duly authorized and validly issued and are fully paid and nonassessable and have been approved by all requisite stockholder action, and (ii) were issued in compliance with all applicable state and federal laws concerning the issuance of securities.
- iii. The shares of the Preferred Stock (as defined below), when issued and delivered in compliance with the provisions of this Note will be validly issued, fully paid and nonassessable. The reservation of shares of Common Stock for issuance upon conversion of the Preferred Stock (the "Conversion Shares") have been duly and validly reserved and, when issued in compliance with the provisions of this Note, the Charter and applicable law, will be validly issued, fully paid and nonassessable. The Preferred Stock and the Conversion Shares will be free of any liens or encumbrances, other than any liens or encumbrances created by or imposed upon the Investor; provided, however, that the Preferred Stock and the Conversion Shares are subject to restrictions on transfer under U.S. state and/or federal securities laws and as set forth herein and in the applicable rights agreement.
- iv. Except for the conversion privileges of the Existing Preferred Stock, the rights provided pursuant to the applicable rights and co-sale agreements, or as otherwise described in this Note, there are no options, warrants or other rights to purchase any of the Company's authorized and unissued capital stock

- (f) Litigation. There are no actions, suits, proceedings or investigations pending against the Company or its properties (nor has the Company received written notice of any threat thereof) before any court or governmental agency, including, without limitation, any action that questions the validity of the Master Purchase Agreement or this Note or the right of the Company to enter into them, or the right of the Company to perform its obligations contemplated thereby. The Company is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality

(g) Intellectual Property.

- i. Rights. The Company owns or possesses or can obtain on commercially reasonable terms sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses (software or otherwise), information, processes and other proprietary rights ("Intellectual Property") necessary to the business of the Company as presently conducted and as now proposed to be conducted in the Company's business plan or other written materials provided to Investor. The Company has not violated or infringed, and by operating its business as currently proposed to be conducted will not violate or infringe, any Intellectual Property of any other person or entity; provided, however, that the Company's representation in this sentence is made only to the Company's knowledge with respect to patent rights and trademark rights. The Company owns all right, title, and interest in and to each such patent and patent application. The Company has not received any communications alleging that the Company has violated or infringed on any Intellectual Property of any other person or entity.
- ii. Licenses; Other Agreements. The Company has not granted, and there are not outstanding, any options, licenses or agreements relating to the Intellectual Property, and the Company is not bound by or a party to any options, licenses or agreements with respect to the Intellectual Property of any other person or entity.
- iii. Proprietary Information and Invention Assignment. Each current and former employee and consultant of the Company has executed a confidential information and invention assignment agreement, substantially in the form delivered to counsel for Investor. No employee has excluded any inventions or intellectual property from assignment to the Company under such confidential information and invention assignment agreement. The Company is not aware that any employee or consultant of the Company is obligated under any agreement (including licenses, covenants or commitments of any nature) or subject to any judgment, decree or order of any court or administrative agency, or any other restriction that would interfere with the use of his or her best efforts to carry out his or her duties for the Company or to promote the interests of the Company or that would conflict with the Company's business as proposed to be conducted. The carrying on of the Company's business by the employees and consultants of the Company and the conduct of the Company's business as presently proposed, will not, to the Company's knowledge, conflict with or result in a material breach of the terms, conditions or provisions of, or constitute a default under, any material contract, covenant or instrument under which any of such employees or consultants or the Company is now obligated. The Company does not presently believe it is or will be necessary to utilize any inventions of any existing employees of the Company made prior to their employment by the Company. To the Company's knowledge, at no time during the conception of or reduction of any of the Company's proprietary assets to practice was any developer, inventor or other contributor thereto subject to any employment agreement or invention assignment or nondisclosure agreement or other obligation with any third party that could reasonably be expected to adversely affect the Company's rights in such proprietary assets.

(h) Interest Rate. Theranos has not issued any promissory note or other debt instrument to a retailer or other partner with an interest rate greater than 0.79% per annum.

(i) Disclosure. The Company has fully provided Investor with information that Investor has requested for deciding whether to purchase the Securities (as defined below) and all information that the Company believes is reasonably necessary to enable Investor to make such decision. Neither this Note, nor any other agreements, statements or certificates made or delivered in connection herewith or therewith contains any untrue statement of a material fact or, when taken together, omits to state a material fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, not misleading.

**3. Representations and Warranties of Investor.** Investor hereby represents and warrants to the Company with respect to the sale of this Note, and the issuance of the securities issuable upon conversion of this Note (and any shares of common stock or other securities issued upon conversion of such securities) (collectively, the "Securities") as of the date of issuance as follows:

- (a) Authorization. Investor has the full power and authority to enter into this Note and this Note constitutes a valid and legally binding obligation of Investor, enforceable against Investor in accordance with its terms, subject, as to enforcement of remedies, to applicable bankruptcy, insolvency, moratorium, reorganization and similar laws affecting creditors' rights generally and to general equitable principles of law.
- (b) Experience. Investor is experienced in investing in the securities of development stage companies such as the Company and acknowledges that investment in the Securities involves a number of significant risks. Investor is able to fend for itself, can bear the economic risk of its investment, including the full loss of its investment, and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in the Securities. Investor also represents it was not organized solely for the purpose of acquiring the Securities.
- (c) Purchase Entirely for Its Own Account. Investor is acquiring the Securities for investment for its own account and not with the view to, or for resale in connection with, any distribution thereof. Investor understands that the Securities to be purchased have not been registered under the Securities Act of 1933, as amended (the "Act"), by reason of a specific exemption from the registration provisions of the Act which depends upon, among other things, the bona fide nature of the investment intent as expressed herein.
- (d) Rule 144. Investor acknowledges that the Securities are "restricted securities" under Rule 144 promulgated under the Act inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such Securities may not be transferred or resold except as permitted under the Act and the applicable state securities laws, pursuant to registration or an exemption therefrom. Investor represents that it is aware of the provisions of Rule 144 promulgated under the Act and understands the resale limitations imposed thereby and by the Act. Investor also understands that the Company is entering into this Note in reliance upon Investor's representations and warranties contained herein, and that any federal or state exemption is contingent upon, the accuracy of Investor's representations and warranties in this Note.
- (e) No Public Market. Investor understands that no public market now exists for any of the securities issued by the Company and that there can be no assurance that a public market will ever exist for the Securities. Accordingly, Investor understands that it may be required to hold the Securities indefinitely.
- (f) Accredited Investor. Investor represents that it is an "accredited investor" within the meaning of Rule 501 of Regulation D promulgated by the Securities and Exchange Commission under the Act.

**4. Conversion.**

- (a) Optional Conversion. At any time on or following the occurrence of a Conversion Event, Investor may elect to convert the entire outstanding principal amount of this Note into fully paid and nonassessable shares of the Company's Series C-1 Preferred Stock (the "Preferred Stock") at the Conversion Price. All accrued and unpaid interest on this Note shall be paid in full in cash and not in shares of capital stock upon the occurrence of a Conversion Event.
- (b) Conversion Procedure.

- i. Conversion Pursuant to Section 4(a). Before Investor shall be entitled to convert this Note into shares of Preferred Stock, it shall surrender this Note (or a notice to the effect that the original Note has been lost, stolen or destroyed and an agreement acceptable to the Company whereby the holder agrees to indemnify the Company from any loss incurred by it in connection with this Note) and give written notice to the Company at its principal corporate office of the election to convert the same pursuant to Section 4(a). Upon such conversion of this Note, Investor hereby agrees to execute and deliver to the Company a purchase agreement and other ancillary agreements (including, without limitation, an investor rights agreement providing for customary registration, information and preemptive rights), with customary representations and warranties and transfer restrictions (including, without limitation, a 180-day lock-up agreement in connection with an Initial Public Offering). The Company shall, as soon as practicable thereafter, issue and deliver to such Investor a certificate or certificates for the number of shares of Preferred Stock to which Investor shall be entitled upon such conversion, including a check payable to Investor for any cash amounts payable as described in Section 4(b)(ii). On and after the date of conversion the Persons who have received the shares of Preferred Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares.
- ii. Fractional Shares; Interest; Effect of Conversion. No fractional shares shall be issued upon conversion of this Note. In lieu of the Company issuing any fractional shares to Investor upon the conversion of this Note, the Company shall pay to Investor an amount equal to the product obtained by multiplying the applicable Conversion Price by the fraction of a share not issued pursuant to the previous sentence. The Company shall pay to Investor any interest accrued on the amount converted and on the amount to be paid to Investor pursuant to the previous sentence in cash and not in shares of capital stock upon the conversion of this Note. Upon conversion of this Note in full and the payment of the amounts specified in this Section 4, the Company shall be forever released from all its obligations and liabilities under this Note and this Note shall be deemed of no further force or effect, whether or not the original of this Note has been delivered to the Company for cancellation.
- iii. Adjustments. Notwithstanding anything herein to the contrary, if the Company issues shares of preferred stock or other securities conferring the right to purchase shares of preferred stock of the Company or securities convertible into, or exchangeable for (with or without additional consideration), preferred stock of the Company at any time prior to the conversion of this Note, then the conversion price shall not be greater than the lowest price per share paid in such issuance. If the Company shall at any time prior to the issuance of the Preferred Stock or other shares issuable upon conversion of this Note subdivide such shares (by stock split, stock dividend or the like), or combine such shares (by reverse split or the like), the number of such shares issuable on the conversion of this Note shall be proportionately increased in the case of a subdivision or stock dividend, or proportionately decreased in the case of a combination. Appropriate adjustments shall also be made to the purchase price payable per share, but the aggregate purchase price payable for the total number of shares issuable upon conversion of this Note (as adjusted) shall remain the same.

**5. Definitions.** As used in this Note, the following capitalized terms have the following meanings:

“Conversion Event” shall mean the payment by Investor (or an affiliate of Investor) of the Third Inventory Payment (subject to Section 10 of Schedule B of the Master Purchase Agreement).

“Conversion Price” shall mean \$75.00, subject to adjustment as set forth in this Note.

“Initial Public Offering” shall mean the closing of the Company’s first firm commitment underwritten initial public offering of the Company’s Common Stock pursuant to a registration statement filed under the Securities Act.

"Investor" shall mean the Person specified in the introductory paragraph of this Note or any Person who shall at the time be the registered holder of this Note.

"Obligations" shall mean and include all loans, advances, debts, liabilities and obligations, howsoever arising, owed by the Company to Investor of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), now existing or hereafter arising under or pursuant to the terms of this Note, including, all interest, fees, charges, expenses, attorneys' fees and costs and accountants' fees and costs chargeable to and payable by the Company hereunder and thereunder, in each case, whether direct or indirect, absolute or contingent, due or to become due, and whether or not arising after the commencement of a proceeding under Title 11 of the United States Code (11 U. S. C. Section 101 et seq.), as amended from time to time (including post-petition interest) and whether or not allowed or allowable as a claim in any such proceeding.

"Person" shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.

"Securities Act" shall mean the Securities Act of 1933, as amended.

## **6. Miscellaneous.**

### **(a) Successors and Assigns; Transfer of this Note or Securities Issuable on Conversion Hereof.**

- i. Subject to the restrictions on transfer described in this Section 4(a), the rights and obligations of the Company and Investor shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.
- ii. Neither this Note nor any of the rights, interests or obligations hereunder may be assigned, in whole or in part, by Investor to any legal entity or person, other than a wholly-owned subsidiary of Investor or in connection with a Change of Control of Investor.
- iii. Neither this Note nor any of the rights, interests or obligations hereunder may be assigned, by operation of law or otherwise, in whole or in part, by the Company.

### **(b) Waiver and Amendment.** Any provision of this Note may be amended, waived or modified upon the written consent of the Company and Investor.

### **(c) Notices.** All notices, requests, demands, consents, instructions or other communications required or permitted hereunder shall be in writing and faxed, mailed or delivered to each party at the respective addresses of the parties as set forth in the signature page to this Note, or such other address as a party may specify. All such notices and communications will be deemed effectively given the earlier of (i) when delivered personally, (ii) one (1) business day after being delivered by facsimile (with receipt of appropriate confirmation), (iii) one (1) business day after being deposited with an overnight courier service of recognized standing or (iv) four (4) calendar days after being deposited in the U.S. mail, first class with postage prepaid.

### **(d) Payment.** Unless converted into the Company's equity securities pursuant to the terms hereof, payment shall be made in lawful tender of the United States.

### **(e) Governing Law; Jurisdiction.** This Note and all actions arising out of or in connection with this Note shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of law provisions of the State of California, or of any other state. For any disputes arising out of or in connection with this Note, the parties consent to the personal and exclusive jurisdiction of, and venue in, the state and federal courts within Santa Clara County, California.



- (f) Counterparts. This Note may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Note.
- (g) California Corporate Securities Law.

THE SALE OF THE SECURITIES WHICH ARE THE SUBJECT OF THIS NOTE HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO SUCH QUALIFICATION IS UNLAWFUL UNLESS THE SALE OF SECURITIES IS EXEMPT FROM SUCH QUALIFICATION. THE RIGHTS OF ALL PARTIES TO THIS NOTE ARE EXPRESSLY CONDITIONED UPON SUCH QUALIFICATION BEING OBTAINED, UNLESS THE SALE IS SO EXEMPT.

- (h) Severability. In the event that any provision of this Note becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Note shall continue in full force and effect without said provision; provided that no such severability shall be effective if it materially changes the economic benefit of this Note to any party.
- (i) Survival of Representations and Warranties. The representations and warranties of the parties contained in or made pursuant to this Note shall survive the execution and delivery of this Note.

*[remainder of page intentionally left blank]*

The Company has caused this Note to be issued as of the date first written above.

THERANOS, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Address: 3200 Hillview Avenue  
Palo Alto, CA 94304

Acknowledged and accepted by Investor:  
SAFEWAY INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Address: 5918 Stoneridge Mall Road  
Pleasanton, CA 94588

*Theranos Internal Only*

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