

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
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NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL
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CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Bronchus Technologies, Inc.		12/26/2003	CORPORATION: CALIFORNIA

RECEIVING PARTY DATA	
Name:	Asthmatx, Inc.
Street Address:	1340 Space Park Way
City:	Mountain View
State/Country:	CALIFORNIA
Postal Code:	94043
Entity Type:	CORPORATION: CALIFORNIA

PROPERTY NUMBERS Total: 3		
Property Type	Number	Word Mark
Serial Number:	75863338	ALAIR
Serial Number:	78309332	ASTHMATX
Serial Number:	78325822	

CORRESPONDENCE DATA	
Fax Number:	(415)369-8930
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	415 369 7505
Email:	lperry@thelenreid.com
Correspondent Name:	E. Lynn Perry
Address Line 1:	101 Second Street
Address Line 2:	Suite 1800
Address Line 4:	San Francisco, CALIFORNIA 94105-3606

ATTORNEY DOCKET NUMBER:	ASTHMATX. 036067-1001
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NAME OF SUBMITTER:	E. Lynn Perry
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Total Attachments: 9
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CORPORATE FORMATION AGREEMENT

This Corporate Formation Agreement (this "*Agreement*") is made and entered into as of December 26, 2003 (the "*Effective Date*") by and between Asthmatx, Inc. ("*Asthmatx*"), a California corporation, and Broncus Technologies, Inc., a California corporation ("*Broncus*").

RECITALS

A. Broncus has caused Asthmatx to be incorporated and now wishes to contribute to Asthmatx cash and certain assets, agreements and obligations of Broncus relating to Broncus' Alair Asthma Treatment System business (the "*Alair Business*") in exchange for the Asthmatx Shares (as defined herein) and other consideration described herein.

B. It is contemplated that, prior to December 31, 2003, Broncus will distribute the Asthmatx Shares (as defined herein) on a pro rata basis as a dividend to its shareholders (such distribution and dividend being referred to herein as the "*Spin-off*"). Asthmatx has been provided with a copy of an Information Statement prepared by Broncus which describes the Spin-off.

C. Broncus has previously issued certain warrants to purchase shares of its Common Stock that are now outstanding and listed in Exhibit A attached hereto (the "*Broncus Warrants*"), and, after the occurrence of the Spin-off, Broncus will be required by the terms of the Broncus Warrants to provide that the Warrant holders will receive [REDACTED CONFIDENTIAL INFORMATION].

D. In consideration of Broncus' agreements herein, Asthmatx is also willing to agree to grant options to purchase shares of its Common Stock to [REDACTED CONFIDENTIAL INFORMATION].

E. The parties also desire to provide, in connection with the formation of Asthmatx, that they will enter into certain agreements between themselves as provided herein.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual agreements and covenants hereinafter set forth, Asthmatx and Broncus hereby agree as follows:

1. CONTRIBUTION AND TRANSFER OF ASSETS; ISSUANCE OF ASTHMATX SHARES.

1.1 Contribution and Transfer of Assets. Broncus hereby contributes, assigns, transfers, conveys and delivers to Asthmatx, as of the Effective Date, all of Broncus' right, title and interest in, to or under all of the assets and properties identified in the following subparagraphs of this Section 1.1 (collectively, the "*Assigned Assets*"):

(a) cash in the amount equal to [REDACTED CONFIDENTIAL INFORMATION] of the cash held by Broncus on the Effective Date (which amount Broncus and Asthmatx agree and acknowledge will take into account Broncus' payment of those accounts

payable paid on or before the Effective Date and which amount Broncus and Asthamtx estimate will be approximately [REDACTED CONFIDENTIAL INFORMATION]);

(b) the tangible personal property assets of Broncus that are identified on Schedule 1.1(b) attached hereto;

(c) the contracts and agreements that are identified on Schedule 1.1(c) attached hereto (the "*Assigned Contracts*");

(d) the patents and patent applications specifically listed on Schedule 1.1(d) attached hereto, all worldwide rights to the inventions described therein, and all rights to enforce such patents (and any patents that may be issued on any such patent applications) and all causes of action and rights of recovery for past infringement of such patents, patent applications and inventions described therein (collectively, the "*Assigned Patent Rights*");

(e) the trademarks and trademark registrations that are identified on Schedule 1.1(e) attached hereto, and all applications therefor, trade names and rights in trade dress and packaging associated therewith (collectively, the "*Assigned Trademark Rights*");

(f) the intangible assets, technologies, properties and rights of Broncus that are associated exclusively with the Alair Asthma Treatment System (including the Alair Controller Software, the Alair Product Specification, training materials related to the Alair Program, publications regarding the Alair procedure and all trade dress/design features for the Alair System), including all patent rights associated therewith, copyrights, copyright registrations and applications therefor, trade secrets, know-how and other intellectual property rights recognized by the law of any applicable jurisdiction (collectively, "*Intellectual Property Rights*") therein and thereto, all rights to enforce such Intellectual Property Rights, and all causes of action and rights of recovery for past infringement of such Intellectual Property Rights; and

(g) the books and records of Broncus which relate to the assets described in clauses (a) through (f) above and do not relate to the Excluded Assets (provided that Broncus shall be entitled to retain a copy of such books and records).

Notwithstanding the foregoing, the Assigned Assets shall not in any event include any of the assets, properties and rights owned or held by Broncus that are not expressly identified in the preceding subparagraphs of this Section 1.1 (collectively, the "*Excluded Assets*"), such as, by way of illustration and not limitation, assets, properties, agreements, contracts, technologies and Intellectual Property Rights associated with Broncus' Exhale emphysema treatment system and not expressly defined as Assigned Assets herein.

1.2 Issuance of Asthamtx Shares and Grant of Asthamtx Options.
[REDACTED CONFIDENTIAL INFORMATION]

2. ASSUMPTION OF OBLIGATIONS AND LIABILITIES.

2.1 Certain Defined Terms. As used herein, the following terms shall have the following meanings:

(a) "*Alair*" means the Alair Asthma Treatment System which was originally developed by Broncus and which has been contributed and assigned by Broncus to Asthmatx pursuant to this Agreement.

(b) "*Alair Business*" shall have the meaning given to that term in Recital A of this Agreement and includes, without limitation, the business of developing, testing, marketing, selling and otherwise commercially exploiting Alair and any associated services.

(c) "*Exhale*" means Broncus' Exhale Airway Bypass System, which is used to treat emphysema in humans and which is owned and retained by Broncus.

(d) "*Exhale Business*" means Broncus' business of developing, testing, marketing, selling and otherwise commercially exploiting Exhale and any associated services.

(e) "*Liabilities*" means, collectively, any and all liabilities, losses, claims, debts, duties, obligations (including but not limited to contractual obligations), expenses, claims, deficiencies or guaranties of any type, whether accrued, absolute, contingent, matured, unmatured or otherwise.

(f) "*Loss*" means, collectively, all Liabilities, loss, damages, expense, cost, fines, fees, penalties, obligations or injuries, including without limitation those resulting from any and all claims, actions, suits, demands, assessments, investigations, judgments, awards, arbitrations or other proceedings, together with reasonable costs and expenses including the reasonable attorneys' fees and other legal costs and expenses relating thereto.

2.2 Assumption of Liabilities by Asthmatx. [REDACTED
CONFIDENTIAL INFORMATION]

2.3 Indemnification Agreement. [REDACTED CONFIDENTIAL
INFORMATION]

3. **FURTHER ASSURANCES.** The parties agree to execute such further documents and instruments and to take such further actions as may be reasonably necessary to carry out the purposes and intent of this Agreement. Broncus further agrees, promptly upon request of Asthmatx, or any of its successors or assigns, to, at Asthmatx's expense, to execute, deliver and/or assist in the filing of (i) recordable patent assignments for each patent or patent application included in the Assigned Patent Rights, (ii) recordable trademark assignments for each trademark, trademark application or similar right included in the Assigned Trademark Rights, and (iii) any power of attorney, assignment, application for copyright, patent or other intellectual property right protection, or any other papers which may be necessary or desirable to fully secure to Asthmatx, its successors and assigns, all right, title and interest in and to each of the Assigned Assets. In addition, Broncus agrees never to assert any claims, rights or moral rights in or to any of the Assigned Assets, except such rights, if any, as Broncus may hold under a separate written agreement executed by Broncus and Asthmatx.

4. **REPRESENTATIONS AND WARRANTIES OF BRONCUS.** Broncus represents and warrants to Asthmatx that, as of the Effective Date:

4.1 Corporate Organization. Broncus is a corporation duly organized, validly existing and in good standing under the laws of the State of California, and has the corporate power and authority to enter into and perform its obligations under this Agreement.

4.2 Authority. The execution, delivery and performance of this Agreement, and the performance by Broncus of the transactions contemplated hereby, have been duly and validly approved and authorized by all necessary action of Broncus' Board of Directors. This Agreement is the valid and binding obligation of Broncus, enforceable in accordance with its terms, except as to the effect, if any, of (i) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

4.3 No Conflict. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will conflict with or violate any provision of the Articles of Incorporation or Bylaws of Broncus.

4.4 Securities Law Matters. Broncus is not acquiring the Asthmatx Shares with a view to, or for sale in connection with, any unlawful distribution of the Asthmatx Shares within the meaning of the Securities Act of 1933, as amended (the "*Securities Act*"). Broncus has a preexisting business relationship with Asthmatx and/or certain of its officers and/or directors of a nature and duration sufficient to make Broncus aware of the character, business acumen and general business and financial circumstances of Asthmatx and/or such officers and directors. By reason of Broncus' business and financial experience, Broncus is capable of evaluating the merits and risks of this investment, has the ability to protect Broncus' own interests in this transaction and is financially capable of bearing a total loss of this investment.

4.5 Assigned Assets. To Broncus' knowledge, (a) Broncus owns, and can grant exclusive right, title and interest in and to, each of the Assigned Assets, (b) none of the Assigned Assets are presently subject to any dispute, claim, prior license or other agreement, assignment or rights of any third party, or any other rights that might interfere with Asthmatx's use, or exercise of ownership of, any Assigned Assets, nor is Broncus aware of any claims by any third party to any rights of any kind in or to any of the Assigned Assets, and (c) none of the Assigned Assets are subject to any lien, pledge, mortgage, security interest or other encumbrance of any sort (other than such Liabilities as are assumed by Asthmatx pursuant to Section 2 of this Agreement and other than any lien that would have no material affect on Asthmatx's ability to use or transfer an Assigned Asset).

5. ACKNOWLEDGMENT AND AGREEMENT BY BRONCUS AND ASTHMTAX REGARDING SPIN-OFF. Broncus and Asthmatx acknowledge and agree that (i) the Asthmatx Shares are not being registered with the Securities and Exchange Commission under the Securities Act or being qualified under the California Corporate Securities Law of 1968, as amended, or other applicable state securities laws, but instead are being issued under exemptions from the registration and qualification requirements of such securities laws which impose certain restrictions on the subsequent sale, transfer or other disposition the Asthmatx Shares by Broncus and Broncus' shareholders, and (ii) the stock certificates representing the Asthmatx Shares will bear restrictive legends as set forth in Section 0 to enable Asthmatx to enforce the

aforementioned transfer restrictions and such transfer restrictions will be noted in Asthmatx's stock transfer books. Broncus and Asthmatx further acknowledge and agree that the aforementioned transfer restrictions will apply to the Asthmatx Shares (and will continue to apply to the Asthmatx Shares in the hands of Broncus' shareholders who receive them in the Spin-off)..

6. **RESTRICTIVE LEGENDS AND STOP-TRANSFER ORDERS.**

[REDACTED CONFIDENTIAL INFORMATION]

7. **CERTAIN AGREEMENTS.**

7.1 License and Manufacturing Agreements. [REDACTED
CONFIDENTIAL INFORMATION]

8. **GENERAL PROVISIONS.**

8.1 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California, without giving effect to that body of laws pertaining to conflict of laws.

8.2 Further Assurances. The parties agree to execute such further documents and instruments and to take such further actions as may be reasonably necessary to carry out the purposes and intent of this Agreement.

8.3 Counterparts; Facsimile Signatures. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, and all of which together shall constitute one and the same agreement. This Agreement may be executed and delivered by facsimile and upon such delivery the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party.

8.4 Severability. If any provision of this Agreement is determined by any court or arbitrator of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such provision will be enforced to the maximum extent possible given the intent of the parties hereto. If such clause or provision cannot be so enforced, then such provision shall be stricken from this Agreement and the remainder of this Agreement shall be enforced as if such invalid, illegal or unenforceable clause or provision had (to the extent not enforceable) never been contained in this Agreement.

8.5 Notices. Any and all notices required or permitted to be given to a party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed to provide such party sufficient notice under this Agreement on the earliest of the following: (i) at the time of personal delivery, if delivery is in person; (ii) one (1) business day after deposit with an express overnight courier for United States deliveries, or two (2) business days after such deposit for deliveries outside of the United States, with proof of delivery from the courier requested; or (iii) three (3) business days after deposit in the United States mail by certified mail (return receipt requested) for United States deliveries. All notices for delivery outside the United

States will be sent by express courier. All notices not delivered personally will be sent with postage and/or other charges prepaid and properly addressed to the party to be notified at the address set forth on the signature page to this Agreement (or at such other address as the party to be notified may have designated to the other party by one of the indicated means of notice herein).

8.6 Amendment and Waivers. This Agreement may not be altered or amended except by an instrument in writing executed by Broncus and Asthmatx. No rights of a party under this Agreement may be waived, except by an instrument in writing executed by such party. No waiver of any terms, provision or condition of or failure to exercise or delay in exercising any rights or remedies under this Agreement, in any one or more instances shall be deemed to be, or construed as, a further or continuing waiver of any such term, provision, condition, right or remedy or as a waiver of any other term, provision or condition of this Agreement.

8.7 Entire Agreement. This Agreement and the documents referred to herein and exhibits hereto constitute the entire agreement and understanding of the parties with respect to the subject matter of this Agreement, and supersede all prior understandings and agreements, whether oral or written, between or among the parties hereto with respect to the specific subject matter hereof.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this CORPORATE FORMATION AGREEMENT as of the Effective Date set forth in the first paragraph hereof.

ASTHMATX, INC.

By:


Glen French, President

Address: 1340 Space Park Way
Mountain View, CA 94043

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TRADEMARK
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IN WITNESS WHEREOF, the parties hereto have executed this **CORPORATE FORMATION AGREEMENT** as of the Effective Date set forth in the first paragraph hereof.

BRONCUS TECHNOLOGIES, INC.

By: _____

Cary Cole, President

Address: 1400 North Shoreline Blvd, Suite A8
Mountain View, CA 94043

Schedule 1.1(e)

Assigned Trademark Rights

Mark	Country	App. Number	App. Date	Reg. Number	Reg. Date	Status
ALAIR	Canada	1,061,603	6/2/2000			Pending
ALAIR	European Union	1,687,680	6/2/2000	1,687,680	7/18/2001	Registered
ALAIR	United States	75/863,338	12/3/1999			Pending
ASTHMATX	United States	78/309,332	10/3/03			Pending
The Asthmatx Logo	United States	78/325,822	11/10/03			Pending