

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Thrivers LLC		09/14/2012	LIMITED LIABILITY COMPANY: DELAWARE
RECEIVING PARTY DATA			
Name:	Rising Tide Foundation		
Street Address:	Herrenacker 15		
City:	8200, Schaffhausen		
State/Country:	SWITZERLAND		
Entity Type:	NON-EXEMPT FOUNDATION: SWITZERLAND		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Serial Number:	85180233	CANCER THRIVERS	
CORRESPONDENCE DATA			
Fax Number:	3122585600		
	<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>		
Phone:	312-258-5521		
Email:	trademarks@schiffhardin.com		
Correspondent Name:	Amy Cohen Heller, Schiff Hardin LLP		
Address Line 1:	P.O. Box 06079		
Address Line 4:	Chicago, ILLINOIS 60606-0079		
ATTORNEY DOCKET NUMBER:	34494		
DOMESTIC REPRESENTATIVE			
Name:			
Address Line 1:			
Address Line 2:			

OP \$40.00 85180233

Address Line 3:

Address Line 4:

NAME OF SUBMITTER:	Amy Cohen Heller
Signature:	/Amy Cohen Heller/
Date:	10/11/2012

Total Attachments: 8

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TRADEMARK SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into the ____ day of September 2012 ("Effective Date") between Rising Tide Foundation and its affiliates, licensees, and assignees located at Herrenacker 15, 8200, Schaffhausen, Switzerland, (hereinafter referred to as "Rising Tide"), and Thrivers LLC located at P.O. Box 17232, Boulder, CO 80308 (hereinafter referred to as "Thrivers"). Rising Tide, and Thrivers LLC are hereinafter collectively referred to as "Parties"

Whereas Thrivers is using and has applied for registration of CANCER THRIVERS as a service mark whose Application Serial Number is 85180233 in the United States Patent and Trademark Office (USPTO) and has been applied for in Class 44 for the provision of information in the field of healthcare and wellness via the Internet.

Whereas Rising Tide, through its licensee CTCA is and has been using the following marks:

- CANCER FIGHTERS THRIVE logo, which mark is registered in the USPTO under Registration No. 3634323 in classes 16 and 44;
- CANCER FIGHTERS THRIVE logo, which mark is registered in the USPTO under Registration No. 3901072 in class 41;
- CANCER FIGHTERS THRIVE, which application is pending in the USPTO under Application Serial No 85435992 in classes 16, 41, 44;
- CANCER FIGHTERS logo, which mark is registered in the USPTO under Registration No. 3922780 in classes 44 and 45; and
- CANCER FIGHTERS, which mark is registered in the USPTO under Registration No. 3798764 in Classes 44 and 45

Hereinafter collectively known as ("CANCER FIGHTERS THRIVE" and "CANCER FIGHTERS") in connection with its business;

Whereas Rising Tide opposed registration of the mark CANCER THRIVERS, Application No. 85180233, which opposition is pending with the Trademark Trial and Appeal Board under Opposition No. 91202311;

Whereas all the Parties desire to settle and resolve all disputes between them and terminate, extinguish and release all claims or causes of action against all Parties relating to the subject matter of the Agreement, subject to the terms of this Agreement.

Now **THEREFORE**, in consideration of all the provisions and agreements set forth in this Agreement, the Parties agree as follows:

1. Thrivers acknowledges Rising Tide's ownership of and exclusive right to use and register its CANCER FIGHTERS THRIVE and CANCER FIGHTERS marks in connection with the goods and services covered by the respective registrations and applications, including but not limited to: printed publications namely, magazines and articles in the field of healthcare, providing on-line publications in the nature of magazines and articles in the field of healthcare and providing a website featuring information on healthcare; providing a website where users can post ratings, reviews and recommendations on cancer care treatment and related services.

2. Thrivers agrees not to oppose, petition to cancel or otherwise challenge or object to the use of, or any current registration and/ or subsequent application for registration by Rising Tide consisting of or comprising the combined terms "CANCER FIGHTERS THRIVE" or "CANCER FIGHTERS".
3. Thrivers desires to convey, transfer, assign and deliver to Rising Tide all of its right, title and interest in and to the CANCER THRIVERS mark including but not limited to any goodwill acquired with the right to recover for damages and profits for past infringements of the trademark in exchange for \$55,000.00(US) which will be paid out in half (\$27,500) upon signing of this Agreement via wire transfer to the instructions provided by counsel for Thrivers, or as is otherwise directed by counsel for Thrivers, and the remaining amount (\$27,500) shall be paid within ten (10) business days of Thrivers' counsel's written certification to counsel for Rising Tide that all usage of CANCER THRIVERS has terminated as provided for in this Agreement, such certification to be issued not later than 6 months after the Effective Date of this Agreement. The transfer and assignment shall also include the assignment of the application for CANCER THRIVERS in the form attached as Exhibit A.
4. Upon recordation of the Assignment of the CANCER THRIVERS application with the USPTO, the Parties agree that Rising Tide shall file a Notice of Withdrawal of Opposition With Consent with the Trademark Trial and Appeal Board, such withdrawal to be without prejudice. A copy of the Notice of Withdrawal will be sent to counsel for Thrivers.
5. Except as otherwise expressly provided for herein, Thrivers, on behalf of itself and its representatives, affiliates, successors, assignees, licensees, and any other person or entity acting on its behalf, shall cease within six(6) months of the Effective Date of this Agreement, all use and promotion of the CANCER THRIVERS mark and any confusingly similar tradenames and trademarks on its website <http://cancerthrivers.net/> or any other websites, as well as in advertising, publications and marketing materials or use in any other manner. Furthermore, Thrivers warrants that its future successors, assignees and licensees will abide and be bound by the terms of this Agreement and any breach of the latter would be considered a breach by Thrivers. Notwithstanding the foregoing, the parties acknowledge and agree that certain promotional materials, advertisements and content on the Internet currently utilize the CANCER THRIVERS trademark and are already in circulation such that Thrivers has no control over such items and content. Accordingly, the continued existence of such items and content (as cached web pages or otherwise) shall not be deemed continued usage of the CANCER THRIVERS trademark for purposes of this Agreement. Nothing in the foregoing shall relieve Thrivers of its obligation to cease all use of the CANCER THRIVERS trademark and, upon the expiration of the 6-month anniversary of the Effective Date, Thrivers will destroy any advertisements, publications and promotional materials bearing the CANCER THRIVERS trademark that are within Thrivers' control (other than a single archival copy of such materials).
6. Additionally Thrivers, on behalf of itself and its representatives, affiliates, successors, assignees and licensees agrees not to adopt, apply for, register or use any other trademark or tradename, containing or comprising the combined term "CANCER THRIVERS", or any variation of the mark that is confusingly similar to CANCER FIGHTERS and CANCER FIGHTERS THRIVE. For purposes of clarity, the term FIVE TO THRIVE satisfies this section and is not confusingly similar to CANCER FIGHTER and/or CANCER FIGHTERS THRIVE and Rising Tide's ~~the trademark~~.

TRADEMARK

Accordingly, Rising Tide agrees that it will not interfere with, oppose, or seek to cancel Thrivers' use of the FIVE TO THRIVE trademark and/or any applications or registrations thereof. Notwithstanding the foregoing, Rising Tide reserves its rights in the event that Thrivers uses the FIVE TO THRIVE trademark with other words, phrases or design elements which when used in combination are confusingly similar to Rising Tide's trademarks.

7. Thrivers may continue to use the <http://cancerthrivers.net/> domain name during the six (6) month phase out period as described in this Agreement, provided Thrivers does not: (i) use or allow others to use the domain name or associated websites in promotional or advertising materials other than to direct people to Thrivers' new website; (ii) host or allow others to host a website at that address that involves cancer, cancer treatment, cancer education or the like; and (iii) use or allow others to use the domain name in any manner that constitutes trademark use. Thrivers may continue to use their corporate name Thrivers LLC, as registered with the State of Delaware File No. 4893852.
8. Thrivers' represents and warrants that it owns all right, title and interest in the CANCER THRIVERS mark and Application Serial No. 85180233 and that the mark CANCER THRIVERS and Application Serial No. 85180233 have not been otherwise previously pledged, assigned or encumbered and the referenced mark and application do not infringe the rights of any person or entity. To the extent any claims, demands or liabilities arise against Rising Tide for actions relating or arising from the usage of the mark CANCER THRIVERS by Thrivers prior to the Effective Date according and through to the date of their last usage of the mark CANCER THRIVERS after the Effective Date according to the terms of this Agreement, Thrivers agrees to indemnify Rising Tide and its licensees, owners, employees and agents from such claims, demands or liabilities. Rising Tide will indemnify Thrivers and their owners, employees and agents against any claims, demands or liabilities arising from or relating to Rising Tide's usage of the CANCER THRIVERS mark after the Effective Date.
9. Subject to Thrivers' compliance with the terms of this Agreement, Rising Tide hereby releases Thrivers and its owners, employees and agents from any and all claims, demands, debts, damages and liabilities of every kind whatsoever, whether known or unknown that it ever had or may have in the future for Thrivers' past usage of the CANCER THRIVERS mark and any similar tradenames and trademarks. Subject to Rising Tide's compliance with the terms of this Agreement, Thrivers' hereby releases Rising Tide and its licensees, owners, employees and agents from any and all claims, demands, debts, damages and liabilities of every kind whatsoever, whether known or unknown, that it ever had or may have in the future for Rising Tides' usage of the CANCER FIGHTERS or CANCER FIGHTERS THRIVE marks and any similar tradenames and trademarks.
10. Thrivers agrees to cooperate with Rising Tide and to execute and deliver all papers, instruments and assignments as may be necessary to vest all right, title and interest in the CANCER THRIVERS trademark, including, without limitation, recordation of the transfer of the application at the United States Patent and Trademark Office.
11. The Parties acknowledge and agree that any breach of this Agreement may result in irreparable harm to the other Parties. Accordingly the Parties agree that if any Party breaches any section of the Agreement, the other Parties may be entitled, in addition to other remedies available to it, to an injunction to be issued by a court of competent jurisdiction.

States of America restraining the other Parties from committing or continuing any breach of this Agreement.

12. This Agreement shall be effective throughout the world.
13. It is understood and agreed that this Agreement does not constitute an admission of liability on the part of any Party. Rather the Agreement is intended to terminate any further expense or controversy about claims which could be made concerning, arising or in connection with the matters described. Furthermore, Thrivers agrees that it shall keep payment terms and the monetary settlement for the mark CANCER THRIVERS which are specified in this Agreement, confidential unless a written consent is obtained from Rising Tide prior to disclosure to any third party including but not limited to release on any publicly available medium. Such terms may only be disclosed by Thrivers if required by law, only upon timely prior notice to Rising Tide, giving it sufficient time to contest any such disclosure.
14. Each Party shall be responsible for its own expenses, including attorney's fees, incurred by them in connection with this dispute and the negotiation of this Agreement.
15. This Agreement supersedes and replaces any prior negotiations, agreements, understanding, whether written or oral concerning, arising or in connection with this subject.
16. This Agreement may only be modified by written consent by all Parties. The waiver by any Party of the breach of any opposition of this Agreement by another Party shall not operate or be construed as a waiver of any subsequent breach.
17. The rights and obligations of the Parties under this Agreement are subject to and shall be construed under the laws of the United States and the State of Illinois without regard to their choice of law principles. In the event any provision of this Agreement shall be determined to be void, unlawful or otherwise unenforceable, such provision shall be deemed severable from the remainder of this Agreement which otherwise shall continue to be in full force and effect.
18. This Agreement may be executed in counterparts and each such counterpart, taken together, shall be one and the same Agreement.
19. All notices under this Agreement will be delivered in person, sent by a recognized overnight courier service or transmitted by facsimile or emailed (followed by transmittal by recognized overnight courier) addressed as follows:

To RISING TIDE:

Rising Tide Foundation
Herrenacker 15
CH-8200, Schaffhausen, Switzerland

To THRIVERS LLC:

Thrivers, LLC
P.O. Box 17232
Boulder, CO 80308

With a copy to:

James F. Keenan, Jr.
Bernstein Shur
100 Middle Street
Portland, ME 04104

Or such addresses or numbers as a Party provides in writing to the other Parties. Notices sent by hand delivery or recognized overnight courier are effective upon receipt. Notice sent by facsimile or email are effective upon transmission, provided that the sender does not receive any indication that the facsimile or email has not been transmitted successfully.

20. The authorized representatives of the Parties acknowledge and agree that they are authorized to execute this Agreement on behalf of the Parties in the capacities listed below.
21. In the event that Rising Tide fails to pay Thrivers the amounts set forth herein when and as due, or Thrivers breaches any terms prescribed herein, (a) the aggrieved party shall have the right to bring a claim in the courts in Maine, if it is Thrivers and in Illinois, if it is Rising Tide; (b) the other party hereby consents and agrees that such courts will be the exclusive jurisdiction and venue to resolve any such dispute; and (c) the prevailing party in the litigation will be entitled to reimbursement from the other Party for its attorneys' fees and costs incurred in connection with the litigation.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement by and through their authorized representatives, all as of the day and year first written above:

THRIVERS LLC

By:


(signature)

Name:

Lisa N Afschuler

Title:

Manager

Date:

9/5/12

RISING TIDE FOUNDATION, a
Switzerland non-exempt foundation

By: 
(signature)

Name: Shaun Stephenson

Title: Chairman

Date: September 14, 2012

EXHIBIT A

TRADEMARK ASSIGNMENT

This Assignment is made by Thrivers LLC, a limited liability company of the State of Delaware with a principal office in Boulder, Colorado, ("Assignor") to Rising Tide Foundation, a non-exempt foundation of Switzerland with a principal office in Schaffhausen, Switzerland ("Assignee").

WHEREAS, Assignor has adopted and used the trademark CANCER THRIVERS (the "Mark"); and

WHEREAS Assignor owns a use-based application for CANCER THRIVERS, pending in the United States Patent and Trademark Office under Application Serial No. 85180233 (the Application"); and

WHEREAS, Assignor desires to assign its full right, title and interest in the Mark, the goodwill of the business symbolized by the Mark, and the Application to Assignee;

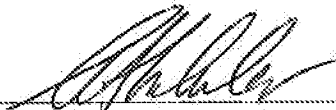
NOW, THEREFORE, for one dollar and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Assignor assigns to Assignee: all of Assignor's right, title and interest in and to the Mark and Application, including all common law rights in the Mark, together with the goodwill of the business symbolized by the Mark; any rights that arise from the Application; all causes of action, past, present and future, for infringement of the Mark or other violations of the rights assigned hereunder; and all rights it may have to seek other registrations of the Mark in all

jurisdictions throughout the world.

Assignor represents and warrants that it owns all right, title, and interest in the Mark and the Application and that the Mark and Application have not been otherwise previously pledged, assigned or encumbered and that this assignment does not infringe the rights of any person.

Upon Assignee's request, Assignor will execute any other documents that may be necessary to effect or record this Assignment.

THRIVERS, LLC

By: 

Print name: Lisa N Akchuter
Title: Manager
Date: 9/5/12

AGREED TO AND ACCEPTED:

RISING TIDE FOUNDATION

By: 

Print name: Shaun Stephenson
Title: Chairman
Date: September 19, 2012