

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM458079

<b>SUBMISSION TYPE:</b>	RESUBMISSION
<b>NATURE OF CONVEYANCE:</b>	MERGER
<b>EFFECTIVE DATE:</b>	04/06/2017
<b>RESUBMIT DOCUMENT ID:</b>	900431754

## CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Free To Breathe		05/30/2017	Corporation: LOUISIANA

## RECEIVING PARTY DATA

<b>Name:</b>	Lung Cancer Research Foundation
<b>Street Address:</b>	155 East 55th Street, Suite 6H
<b>City:</b>	New York
<b>State/Country:</b>	NEW YORK
<b>Postal Code:</b>	10022
<b>Entity Type:</b>	Corporation: NEW YORK

## PROPERTY NUMBERS Total: 3

Property Type	Number	Word Mark
<b>Registration Number:</b>	3429584	FREE TO BREATHE
<b>Registration Number:</b>	4636276	FREE TO BREATHE A PARTNERSHIP FOR LUNG C
<b>Registration Number:</b>	4617289	

## CORRESPONDENCE DATA

**Fax Number:** 6082529243  
*Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.*

**Phone:** 6082558891  
**Email:** mal@dewittross.com  
**Correspondent Name:** Marcia Layton  
**Address Line 1:** DeWitt Ross & Stevens S.C.  
**Address Line 2:** 2 E. Mifflin Street, Suite 600  
**Address Line 4:** Madison, WISCONSIN 53703-2865

<b>ATTORNEY DOCKET NUMBER:</b>	23331000
<b>NAME OF SUBMITTER:</b>	Marcia Layton
<b>SIGNATURE:</b>	/marcialayton/
<b>DATE SIGNED:</b>	01/16/2018

**Total Attachments: 24**

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AGREEMENT AND PLAN OF MERGER

BY AND BETWEEN

LUNG CANCER RESEARCH FOUNDATION

AND

FREE TO BREATHE

AGREEMENT AND PLAN OF MERGER (this "Agreement") dated as of the 6<sup>th</sup> day of April, 2017, by and between:

1. Lung Cancer Research Foundation ("LCRF"), a New York not-for-profit corporation formed on August 4, 2005 pursuant to the New York Not-for-Profit Corporation Law (the "N-PCL"); and

2. Free to Breathe ("FTB"), a Louisiana non-profit corporation formed on March 6, 2003 pursuant to the Louisiana Nonprofit Corporation Law (the "LA NPCL").

LCRF and FTB are sometimes referred to herein individually as a "Party" or collectively as the "Parties."

WHEREAS, the Parties deem it advisable and in their respective best interests to effect a transaction in which FTB would merge with and into LCRF (the "Merger"); and

WHEREAS, the Parties wish to make certain agreements in connection with the Merger;

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, the Parties hereby agree as follows:

**ARTICLE I**

**Background**

Section 1.1 Background. LCRF and FTB are both organizations exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and classified as public charities within the meaning of Code section 509(a). Both Parties support research and education in the field of lung cancer. The primary

benefits of consolidation are the ability to leverage size to significantly increase fundraising and to leverage scale to reduce overhead costs of operating the constituent corporations.

## ARTICLE II

### Constituent Corporations and Surviving Corporation

Section 2.1 Constituent Corporations. The constituent corporations in the Merger are LCRF and FTB. As used in this Agreement, "Constituent Corporations" will refer to each of LCRF and FTB.

Section 2.2 Surviving Corporation. The surviving corporation in the Merger will be LCRF. As used in this Agreement, "Surviving Corporation" will mean LCRF at and after the Effective Time (as hereinafter defined), as the surviving corporation in the Merger.

Section 2.3 No Members of Constituent Corporations. Neither of the Constituent Corporations has members.

Section 2.4 No Holders of Capital Contributions or Subventions. Neither of the Constituent Corporations has issued certificates evidencing capital contributions or subventions.

## ARTICLE III

### The Merger

The terms and conditions of the Merger are as follows:

Section 3.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the N-PCL, a Certificate of Merger (the "Certificate of Merger") will be prepared, executed and verified or acknowledged by each of the Constituent Corporations, and delivered to the New York Department of State, as provided in N-PCL section 904, as soon as practicable after the approvals described in Sections 6.1 and 6.2 of this Agreement have been obtained. The Merger will be effective upon the filing of the Certificate of Merger by the New York Department of State and after the filing of this Agreement with the Louisiana Department of State pursuant to the LA NPCL or such other time as the Parties may determine (the "Effective Time"). The Parties intend that the Effective Time will be on or before September 30, 2017.

Section 3.2 Effects of the Merger.

(a) At the Effective Time: (i) FTB will be merged with and into LCRF and the separate existence of FTB will cease; (ii) the Certificate of Incorporation of LCRF, as attached

hereto as Exhibit A, will be the Certificate of Incorporation of the Surviving Corporation; and (iii) the By-Laws of LCRF, as amended in the form set out in Exhibit B (the “By-laws”), will be the By-Laws of the Surviving Corporation.

(b) At and after the Effective Time, the Merger will have the effects set forth in N-PCL section 905.

(c) At and after the Effective Time, all of the property and assets of FTB will vest in LCRF and the Surviving Corporation will possess all the rights, privileges, immunities, powers and purposes of FTB and LCRF.

(d) At the Effective Time, the Surviving Corporation agrees to assume all the debts, liabilities and other obligations of FTB.

### Section 3.3 Name and Branding.

(a) Name. As of the Effective Time, the name of the Surviving Corporation will be “Lung Cancer Research Foundation.”

(b) Fundraising Events. As of the Effective Time, the grassroots fundraising events series currently conducted by FTB, with such adaptations for specific locations of events and similar adaptations made by FTB or the Surviving Corporation in the ordinary course, will be branded as “Free to Breathe” events in a manner to be determined after appropriate advice has been considered from branding consultants, provided however that such branding will appropriately describe the role of the Surviving Corporation as the beneficiary of such events.

(c) Vision. As of the Effective Time, the vision of the Surviving Corporation will be a world free of lung cancer.

(d) Mission. As of the Effective Time, the mission of the Surviving Corporation will be to improve lung cancer outcomes by funding research for the prevention, diagnosis, treatment and cure of lung cancer.

(e) Positioning Statement. As of the Effective Time, the positioning statement for the Surviving Corporation will be “the preeminent national non-profit organization focused on funding basic and clinical research to improve survival of patients with lung cancer.”

### Section 3.4 Governance.

(a) Board of Directors. The directors of the Surviving Corporation at the Effective Time will be (i) the Incumbent directors of LCRF, provided that such Incumbent directors shall not exceed 16 in number; and (ii) Joan Schiller, Sharon Munger, Peter Fry, and Lorraine Pastore. As used in this Agreement, “Incumbent” refers to individuals who hold a particular office immediately prior to the Effective Time

(b) Supermajority. For a period of one year following the Effective Time, a vote of at least 85% of the members of the Board of Directors (the "Supermajority Vote") of the Surviving Corporation will be required for the Board of Directors to take the following actions: (i) elect new members of the Board of Directors; (ii) elect new members to the Executive Committee; (iii) elect new Officers; (iv) should Nancy Sanford no longer serve as Executive Director, the hiring or firing of a new Executive Director; (v) amend the By-Laws or Certificate of Incorporation; and (vi) approve any expenditure over \$100,000 if such expenditure is a deviation from the approved annual budget.

(c) Executive Committee. As of the Effective Time, the Executive Committee of the Surviving Corporation will consist of all Incumbent members of the Executive Committee of LCRF, Joan Schiller, and Sharon Munger.

(d) Officers. The officers of the Surviving Corporation at the Effective Time will be the following:

- (i) Chair: Pippa Gerard
- (ii) Chair of the Scientific Advisory Board: Jim Dougherty
- (iii) Chair of the Scientific Steering Committee: Joan Schiller
- (iv) Vice Chairs: Kimberly Kravis, Laure Sudreau and Mary Ann Tighe
- (v) Secretary: Sharon Munger
- (vi) Treasurer: Aaron Tighe
- (vii) Executive Director: Nancy Sanford

(e) Scientific Advisory Board. At the Effective Time, the Scientific Advisory Board of the Surviving Corporation will consist of those Incumbent members of the LCRF and FTB Scientific Advisory Boards who wish to continue to serve.

### Section 3.5 Staffing

(a) General. Staffing and personnel strategy will take advantage of expertise where it exists and streamline costs where opportunities emerge.

(b) FTB. Prior to the Effective Time, FTB will consider resizing and/or elimination of FTB offices and staff to ensure FTB is operating with a break-even operating budget. Such staffing shall be consistent with and to the extent necessary for the Surviving Corporation to be able to execute the programs outlined in this Agreement, including but not limited to those programs specified in Section 3.3(b).

(c) Authority. Except as otherwise specified in this Agreement, at and after the Effective Time, the Executive Director of LCRF will have oversight and final decision authority regarding staff size, assignments, and roles.

(d) Key Personnel. The Parties agree that from the Effective Time and until the earlier of (i) the date that is one year after the Effective Time and (ii) January 31, 2019, Incumbent LCRF and FTB employees may only be terminated (i) for Good Cause or (ii) by Supermajority Vote. Notwithstanding the foregoing, the Executive Director will have

discretionary authority in determining the titles, roles, and responsibilities, including the managerial and reporting structure, for all personnel of the Surviving Corporation. For purposes of this paragraph, “Good Cause” will mean: (u) fraud, embezzlement, or theft; (v) willful misconduct damaging to LCRF, its reputation, mission, services, or donors; (w) intentional violation of any law or regulation; (x) any unauthorized disclosure of any confidential information of LCRF; (y) continued failure to perform duties owed to LCRF; or (z) being charged with a felony or a misdemeanor involving moral turpitude.

(e) Benefits. The benefits programs of the Constituent Corporations will be combined in a manner that preserves existing benefits or better for continuing staff members.

### Section 3.6 Other Terms.

(a) Use of Funds. Subject to support of the FTB grassroots events series pursuant to Section 3.3(b) at a level agreed to by the Board of Directors of the Surviving Corporation and any donor-imposed restrictions to use funds for patient advocacy, patient education or other activities, after the Effective Time, the Surviving Corporation’s primary programmatic focus will be to support lung cancer research.

(b) Offices. After the Effective Time, the Surviving Corporation will continue to maintain its headquarters in New York City but will maintain an office in Wisconsin until at least the earlier of (i) the date that is one year after the consummation of the Transaction and (ii) January 31, 2019 for oversight of the fundraising events series pursuant to Section 3.3(b) and possible patient focused awareness programs.

## ARTICLE IV

### Representations and Warranties of FTB

FTB represents and warrants to LCRF as follows:

Section 4.1 Authority of FTB. FTB is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Louisiana and has the full legal right and power and has taken all necessary corporate and other action to enter into, execute and deliver this Agreement and, subject to obtaining the consents contemplated by this Agreement, to perform fully its obligations hereunder.

Section 4.2 No Breach, No Liens. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the performance of this Agreement by FTB will not (i) conflict with or result in any breach or material violation of any of the terms of or constitute a material default under (A) Certificate of Incorporation or By-Laws of FTB, (B) any law, statute, ordinance, rule, regulation, order, code, judgment, injunction, writ, decree, concession, permit, license, grant or other governmental authorization or approval (“Legal Requirement”) applicable to FTB, or (C) any material contract or other agreement or arrangement to which FTB is a party or by or to which FTB, its assets or its properties are bound or subject, or (ii) result in the creation of any lien, claim, encumbrance, restriction, charge or

security interest ("Lien") on any assets or properties of FTB. Set forth in Exhibit C hereto is a list of each agreement that requires FTB to obtain approval, consent or authorization from the other parties thereto in order to properly transfer or assign such contract to LCRF.

Section 4.3 Restrictions, Endowments and Grants.

(a) Except as set forth in Exhibit D hereto, FTB has not received nor is the beneficiary of any grant, bequest or endowment that imposes any restriction, limitation, time period or conditions of any kind whatsoever (collectively, "Restrictions") upon FTB or its use of any assets.

(b) FTB has not breached or otherwise failed to comply in any material respect with any material Restrictions imposed upon it under any agreement to perform programs or services or any grant, bequest or endowment.

Section 4.4 Litigation. There are no material actions, suits, claims, investigations or litigation, judicial or administrative or arbitration proceedings pending or, to the knowledge of FTB, threatened in writing against or by or involving FTB or its assets, operations or properties or any of its directors, officers or employees whether at law or in equity or before or by any governmental authority.

Section 4.5 Tax-Exempt Status. The Internal Revenue Service has determined that FTB is exempt from federal income taxation under Code section 501(c)(3) and such determination is still in effect. The Internal Revenue Service has classified FTB as an organization that is not a private foundation under Code Section 509(a) because it is an organization described in Code sections 509(a)(1) and 170(b)(1)(A)(vi), and such classification is still in effect. FTB is not aware of any material changes in its sources of support that would reasonably be expected to impact its classification under Code section 509(a).

Section 4.6 Governmental Filings. FTB has filed all federal, state, county and local reports, registrations, statements, income tax or information returns and other similar forms required to be filed, including, but not limited to, financial reports required to be filed with the Internal Revenue Service, the New York State Attorney General and the New York State Department of State, and such filings are complete and correct in all material respects.

Section 4.7 Financial Condition.

(a) Financial Statements. FTB has furnished LCRF with copies of FTB's unaudited financial statements for FTB's fiscal year ended December 31, 2016 (the "Financial Statements"). The Financial Statements (i) are consistent with the books and records of FTB, which have been maintained in accordance with good business practice; (ii) have been prepared in conformity with U.S. generally accepted accounting principles ("U.S. GAAP"); and (iii) are true and correct in all material respects, and fairly present the financial position of FTB as well as the results of FTB's operations for the periods indicated therein.



(b) No Indebtedness or Other Obligations. Except as reflected or provided for in the Financial Statements or as disclosed in writing to LCRF, (i) FTB has no additional indebtedness outstanding; (ii) FTB has not made any investments in, advances to or guaranties of the obligations of, any person or entity; and (iii) FTB has no liabilities or obligations of any kind, whether accrued, absolute, contingent or otherwise that could reasonably be expected to have a material adverse effect on the activities, property, operations, condition (financial or otherwise), or prospects of FTB (a "Material Adverse Effect").

(c) Material Change. Since the completion of the Financial Statements and except as disclosed in writing to LCRF, FTB has not:

(i) Mortgaged, pledged, or subjected to lien, charge, security interest or to any other encumbrance, any of its assets or properties, except for a fair consideration or in the ordinary course of business;

(ii) Sold, assigned, transferred, leased or otherwise disposed of any of its assets or properties, or acquired any assets or properties, except for a fair consideration or in the ordinary course of business;

(iii) Incurred, created, assumed or permitted to exist any debt or liabilities; or

(iv) Suffered or reasonably expects to suffer any Material Adverse Effect; and there has been no occurrence, circumstance, or combination thereof, whether arising prior to, or after the close of the period addressed by the Financial Statements, which could reasonably be expected to result in any such Material Adverse Effect before, on or after the Effective Time.

## ARTICLE V

### Representations and Warranties of LCRF

LCRF represents and warrants to FTB as follows:

Section 5.1 Authority of LCRF. LCRF is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State of New York and has the full legal right and power and has taken all necessary corporate and other action to enter into, execute and deliver this Agreement and, subject to obtaining the consents contemplated by this Agreement, to perform fully its obligations hereunder.

Section 5.2 No Breach, No Liens. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the performance of this Agreement by LCRF will not (i) conflict with or result in any breach or material violation of any of the terms of or constitute a material default under (A) the Restated Certificate of Incorporation or the By-Laws, (B) any Legal Requirement applicable to LCRF, or (C) any material contract or other agreement or arrangement to which LCRF is a party or by or to which

LCRF, its assets or properties are bound or subject, or (ii) result in the creation of any Lien on any assets or properties of LCRF.

Section 5.3 Restrictions, Endowments and Grants.

(a) Except as set forth in Exhibit E hereto, LCRF has not received nor is the beneficiary of any grant, bequest or endowment that imposes any Restrictions upon LCRF or its use of any assets.

(b) LCRF has not breached or otherwise failed to comply in any material respect with any material Restrictions imposed upon it under any agreement to perform programs or services or any grant, bequest or endowment.

Section 5.4 Litigation. There are no material actions, suits, claims, investigations or litigation, judicial or administrative or arbitration proceedings pending or, to the knowledge of LCRF, threatened in writing against or by or involving LCRF or its assets, operations or properties or any of its directors, officers or employees whether at law or in equity or before or by any governmental authority.

Section 5.5 Tax-Exempt Status. The Internal Revenue Service has determined that LCRF is exempt from federal income taxation under Code section 501(c)(3) and such determination is still in effect. The Internal Revenue Service has classified LCRF as an organization that is not a private foundation under Code section 509(a) because it is an organization described in Code sections 509(a)(1) and 170(b)(1)(A)(vi), and such classification is still in effect. LCRF is not aware of any material changes in its sources of support that would reasonably be expected to impact its classification under Code section 509(a). The execution, delivery, and performance by LCRF of this Agreement and the Merger contemplated hereunder will not adversely affect LCRF's tax-exempt status.

Section 5.6 Governmental Filings. LCRF has filed all federal, state, county and local reports, registrations, statements, income tax or information returns and other similar forms required to be filed, including, but not limited to, financial reports required to be filed with the Internal Revenue Service, the New York State Attorney General and the New York Secretary of State, and such filings are complete and correct in all material respects.

## ARTICLE VI

### Agreements, Conditions to Merger

Section 6.1 Obtaining Approvals to Merge.

(a) Each of FTB and LCRF has presented and obtained the approval of its Board of Directors of this Agreement, as required by Section 902(a) of the N-PCL and the LA

NPCL. Because each of FTB and LCRF are not-for-profit corporations without members, the approval of members required by N-PCL section 903(a) is deemed to have been obtained.

(b) LCRF, with the assistance of FTB, will prepare and file with the Attorney General's Office of the State of New York (the "Attorney General") an application (the "Merger Application") pursuant to N-PCL sections 907 and 907-B requesting the Attorney General's approval of this Agreement and authorization to file the Certificate of Merger with the New York Department of State in accordance with N-PCL section 904 (the "Approval"), such Merger Application to be filed in draft form preliminarily for review by the Attorney General. Each of the Parties agrees to use all reasonable efforts to obtain approval of the Merger Application from the Attorney General. Each Party agrees to fully and fairly advise the Attorney General of all facts considered relevant by the Parties and their counsel in connection with the Attorney General's review of the Merger Application.

(c) After the Effective Time, the Parties agree to prepare and file any requisite filings with the Internal Revenue Service in connection with the Merger, including a final annual information return for FTB and the disclosure of the Merger in the annual information return of the Surviving Corporation.

#### Section 6.2 Legal Conditions to Merger.

(a) Each of the Parties agrees to use all reasonable efforts to: (i) take, or cause to be taken, all actions necessary to comply promptly with all legal requirements which may be imposed on a Party with respect to the Merger and to consummate the Merger; and (ii) obtain (and cooperate with each other in obtaining) any consent, authorization, order or approval of, notice to, or any certification or exemption by, any governmental body or any other person that is required to be obtained or made by such Party in connection with the Merger and the other transactions contemplated by this Agreement.

(b) The obligation of the Parties to consummate the Merger will be subject to the following conditions, any or all of which may be waived by mutual agreement of the Parties:

(i) The Board of Directors of each Party has approved this Agreement, in accordance with Section 6.1(a) hereof.

(ii) The Parties have received all of the governmental approvals required by Section 6.1(b) hereof.

(iii) Each Party has demonstrated to the reasonable satisfaction of the other Party that it (A) has reserved at least \$300,000 (minus pre-Merger expenses incurred related to the Merger up to a maximum of \$25,000 and, for FTB, including pledged amounts payable upon consummation of the Merger (as of the execution of this Agreement, \$100,000)) to consummate the Merger and to combine the operations and activities of the Parties, (B) projects

a surplus or break-even result in its revised operating budget for the 2017 fiscal year, and (C) has no outstanding indebtedness (other than customary trade indebtedness and any amount to be contributed for FTB's employee matching program). FTB agrees that it will not accrue any expenses payable after December 31, 2017 and not reflected in the 2017 operating budget described in clause (B) above without the prior consent of LCRF in each instance.

Section 6.3 Conditions for LCRF. The obligation of LCRF to consummate the Merger shall be subject to the following conditions, the imposition of which is solely for the benefit of LCRF and any or all of which may be expressly waived by LCRF in its sole discretion:

(i) Covenants and Other Obligations of FTB. FTB shall have performed and complied in all material respects with all covenants and obligations required by this Agreement to be performed by it on or prior to the Effective Time; and

(ii) Representations and Warranties of FTB. The representations and warranties of FTB set forth in Article IV that are not qualified as to materiality shall be true and correct in all material respects and the representations and warranties that are qualified as to materiality shall be true and correct, in each case, as of the date of the application for the Approval and as of the Effective Time.

Section 6.4 Conditions for FTB. The obligation of FTB to consummate the Merger shall be subject to the following conditions, the imposition of which is solely for the benefit of FTB and any or all of which may be expressly waived by FTB in its sole discretion:

(i) Covenants and Other Obligations of LCRF. LCRF shall have performed and complied in all material respects with all covenants and obligations required by this Agreement to be performed by it on or prior to the Effective Time; and

(ii) Representations and Warranties of LCRF. The representations and warranties of LCRF set forth in Article V that are not qualified as to materiality shall be true and correct in all material respects and the representations and warranties that are qualified as to materiality shall be true and correct, in each case, as of the date of the application for the Approval and as of the Effective Time.

Section 6.5 Filings of Certificate of Merger. Following the filing of the Certificate of Merger with the New York Department of State, LCRF will file a copy of the Certificate of Merger, certified as filed with the New York Department of State, with the Attorney General's Office of the State of New York. Pursuant to N-PCL section 904(b), LCRF will also file a copy of the Certificate of Merger, certified as filed with the New York Department of State, with the office of the County Clerk of New York County.

Section 6.6 Additional Agreements. In case at any time after the Effective Time any further action is necessary or desirable to carry out the purposes of this Agreement or to vest the Surviving Corporation with the full title to all properties, assets, rights, approvals,

immunities, licenses and franchises of FTB, the appropriate directors or officers of each Party will take all such necessary action.

## ARTICLE VII

### Miscellaneous

Section 7.1 Expenses. Each Constituent Corporation will pay its respective expenses of effecting the provisions of this Agreement and of accomplishing the Merger, provided, however, that the Surviving Corporation will pay all filing fees related to the Merger.

Section 7.2 Notices. Any notice, request, demand or other communication permitted or required to be given pursuant to this Agreement will be in writing and shall be deemed given when delivered personally, or by facsimile or electronic mail or when mailed or delivered by next-day air courier as specified below:

If to LCRF:

155 East 55th Street, Suite 6H  
New York, NY 10022

If to FTB:

1 Point Place, Suite 200  
Madison, WI 53719

Any Party from time to time may designate, by written notice to the other Party, any other address or person to which notices or communications should be sent.

Section 7.3 Survival. The representations, warranties, covenants and agreements made in this Agreement shall terminate at the Effective Time, provided, however, that this Section 7.3 shall not limit any representation, warranty, covenant or agreement made in this Agreement which by its terms contemplates performance after the Effective Time.

Section 7.4 No Assignment. This Agreement is not assignable.

Section 7.5 Further Assurance. The Parties will execute and deliver or cause to be executed and delivered such further instruments as may be required from time to time to carry out or confirm the intent and purposes of this Agreement.

Section 7.6 Amendments. This Agreement may only be amended by a writing signed by authorized officials of both Parties.

Section 7.7 No Waiver. No waiver by any Party of any provision of this Agreement in any instance will be effective unless set forth in a signed writing, and no such waiver will constitute a waiver by such person in any other instance of such provision or any other provision of this Agreement. The intention of the Parties is that any waiver will not require the approval of the Supreme Court or any notice to any party in interest.

Section 7.8 Counterparts. This Agreement may be executed in counterparts and all counterparts so executed will for all purposes constitute one agreement, binding on the Parties.

Section 7.9 Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State of New York.

Section 7.10 Benefit. Except as otherwise provided herein, this Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their successors and permitted assigns.

Section 7.11 Termination. At any time prior to the filing of the Certificate of Merger with the New York Department of State, this Agreement may be abandoned either: (i) by mutual consent of the Parties; (ii) by either Party, if the Merger has not been consummated by December 31, 2017 due to the other Party's failure to satisfy a closing condition; or (iii) by the Board of Directors of either of the Constituent Corporations, if the Board, in its sole discretion, determines that to proceed with the Merger would adversely affect the respective Constituent Corporation. Any such termination will be deemed to constitute an abandonment for purposes of N-PCL section 903(b). The filing of the Certificate of Merger with the New York Department of State will conclusively establish that no action to terminate this Agreement has been taken by the Board of Directors of either Party.

Section 7.12 Exhibits. Exhibits attached to this Agreement are incorporated herein and will be part of this Agreement for all purposes.

Section 7.13 Effect of Headings. The subject headings of the Articles and Sections of this Agreement are included for purposes of convenience only and will not affect the construction or interpretation of this Agreement.

Section 7.14 Entire Agreement. This Agreement sets forth the entire understanding of the Parties hereto with respect to its subject matter and supersedes all prior contracts, agreements, arrangements, communications, discussions, representations and warranties, whether oral or written, between the Parties with regard to the subject matter of this Agreement.

*[Remainder of Page Intentionally Left Blank; Signature Page Follows.]*

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Agreement as of the day and year first written above.

**LUNG CANCER RESEARCH FOUNDATION**

By: *Pippa G. Gerard*  
Pippa G. Gerard, Chair and President

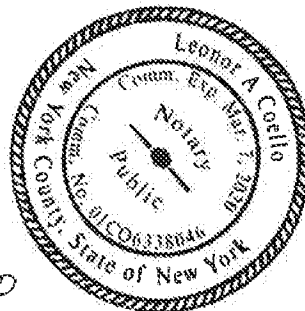
State of New York }

County of N.Y. }

Signed before me this 4th of April, 2017

*Steven Collo*  
Notary Public

My commission expires: March 7th 2020



FREE TO BREATHE

By: Joan Schiller, MD  
Joan Schiller, MD, President

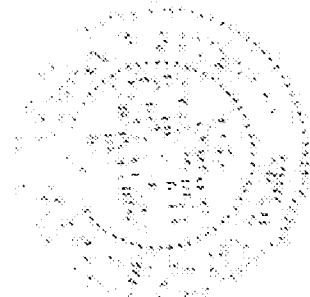
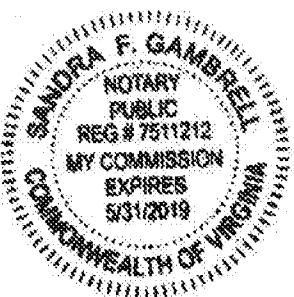
State of Virginia }

County of Stafford }

Signed before me this 30<sup>th</sup> of March 2017

Sandra F. Gambrell  
Notary Public

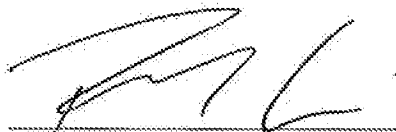
My commission expires: 5/31/2019




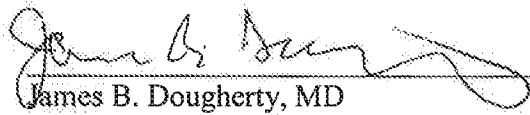


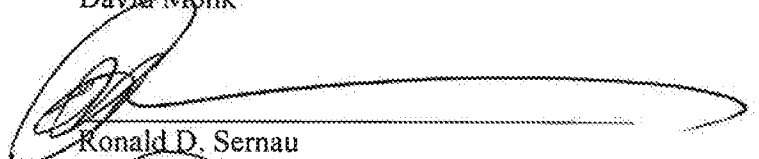
IN WITNESS WHEREOF, the undersigned, being all of the members of the Board of Directors of each Party, have executed this Agreement as of the day and year first written above.

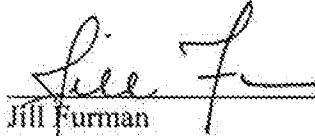
**DIRECTORS, LUNG CANCER RESEARCH  
FOUNDATION**


  
Raymond E. Chalme


  
David Monk

  
James B. Dougherty, MD

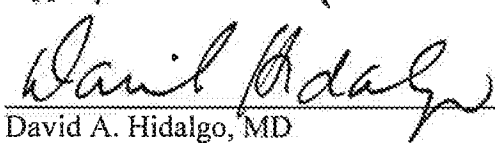
  
Ronald D. Sernau

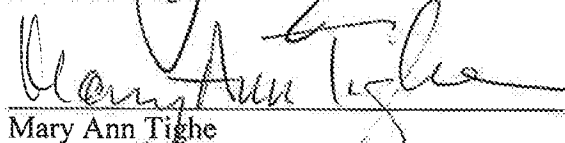
  
Jill Furman

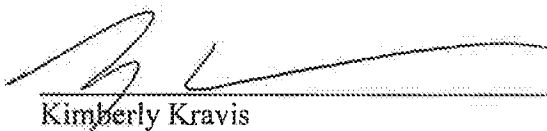
  
Brendon M. Stiles, MD

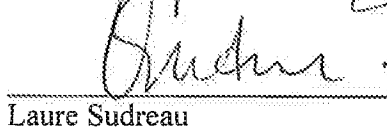
  
Pippa G. Gerard

  
Aaron M. Tighe

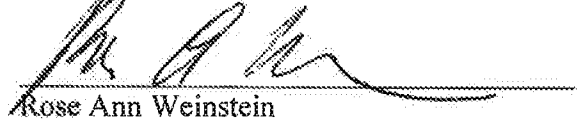
  
David A. Hidalgo, MD

  
Mary Ann Tighe

  
Kimberly Kravis

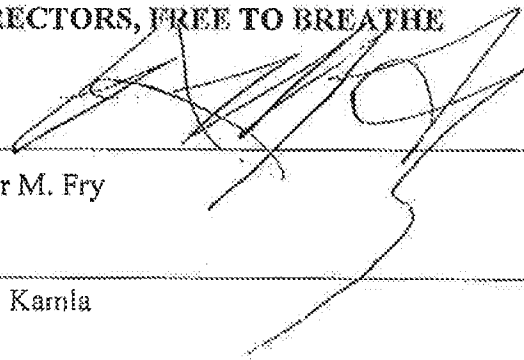
  
Laure Sudreau

  
Amalia Dayan Lindemann

  
Rose Ann Weinstein

  
Alan G. Mnuchin

**DIRECTORS, FREE TO BREATHE**



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Peter M. Fry

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Jean Kamla

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Willie Mount

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Sharon M. Munger

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Lorraine C. Pastore

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Joan H. Schiller

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Jill M. Siegfried

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David R. Spigel

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Antoinette J. Wozniak

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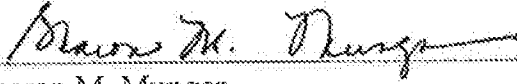
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*Antoinette J. Wozniak*  
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