

**AMENDED AND RESTATED**

**BYLAWS**

**OF**

**BRAIN AND LUNG TUMOR AND  
~~BRAIN TUMOR AND~~ AIR POLLUTION FOUNDATION**

**A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION**

**ARTICLE I — OFFICES**

**1.1 Principal Office.** The principal office of the Brain and Lung Tumor and Air Pollution Foundation, a California nonprofit public benefit corporation, is located at 21865 Copley Drive, Diamond Bar, California 91765.

**1.2 Change of Address.** The "Board" (as that term is defined in paragraph 3.1(A) hereof) hereby is granted full power and authority to change the location of the principal office of the Corporation. Any such change shall be noted by the Secretary in these Bylaws, but shall not be considered an amendment of these Bylaws.

**ARTICLE II — MEMBER**

**2.1 Number of Members.** The sole "member" of the Corporation within the meaning of Section 5056 of the California Corporations Code ("CCC") is the South Coast Air Quality Management District ("District"). The Corporation may not have more than one member.

**2.2 Eligibility for Membership.** Only the District is eligible to be a member of the Corporation.

**2.3 Transferability of Membership.** Neither the membership in the Corporation nor any rights in the membership may be transferred or assigned for value or otherwise.

**2.4 Authority of Member.** The member shall act through the Board of the District ("District Board"), and it shall have all the rights prescribed under Section 5056 of the CCC. The member shall also have exclusive authority to approve distributions made by the Corporation for any purpose other than carrying out the necessary operational functions of the Corporation. The member's authority to approve Corporation distributions specifically includes the exclusive

authority to approve a work plan to fund research activities supported by the Corporation.

**2.5 Other Persons Associated with the Corporation.** The Corporation may refer to persons or entities associated with it as “members,” even though those persons or entities are not voting members, but no such reference shall constitute any such other person or entity a “member” within the meaning of Section 5056 of the CCC.

**2.6 Nonliability of Member.** The member of the Corporation is not personally liable, solely because of the membership, for the debts, obligations, or liabilities of the Corporation.

**2.7 Meetings of Member.**

(A) Notwithstanding any other provision in these Bylaws, all meetings of the member shall be held in compliance with the requirements of the Ralph M. Brown Act as set forth in Section 54950 of the California Government Code.

(B) The member shall meet at the location within the State of California as may be designated from time to time by resolution of the District Board.

(C) The annual meeting of the member is the third meeting of the calendar year of the District Board and it may be held only at this District Board meeting. The annual meeting shall be held for the purpose of transacting proper business as may come before the meeting, including the election of Directors for the terms as are fixed in paragraph 3.2(B) of these Bylaws.

(D) Special meetings of the member may be called by Chairperson of the Board and held at the times and places within the State of California that may be ordered by resolution of the Board.

(E) Notice of all special meetings shall be given by delivering written notice to all the board members of the District Board, and to members of the media requesting notice in writing, at least twenty-four (24) hours before the time of the meeting. The notice shall specify the time and place of the special meeting and the business to be transacted or discussed, and shall be posted at least twenty-four (24) hours prior to the meeting in a location that is freely accessible to the public. The written notice may be dispensed with as to any member of the District Board, who, at or prior to the time the meeting convenes, files with the Secretary a written waiver of notice or who is actually present at the meeting when it convenes. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

(E) Whenever the member is required or permitted to take any action at a meeting, written notice of the meeting shall be given to the members of the District Board. The notice shall state the matters that the Board, at the time notice is given, intends to present for action by the member. The notice of any meeting at which Directors are to be elected shall include the names of all persons who are nominees when notice is given.

Approval by the member of any of the following proposals, other than by unanimous approval by those entitled to vote, is valid only if the notice or written waiver of notice states the general nature of the proposal or proposals:

- (i) removing a Director without cause;
- (ii) filling vacancies on the Board;
- (iii) amending the Articles of Incorporation; or
- (iv) electing to wind up and dissolve the corporation.

(F) Members of the District Board may participate in a meeting through use of conference telephone or similar communications equipment, so long as all such members participating in such meeting can hear one another, and so long as there is compliance with the Ralph M. Brown Act, and such participation in a meeting shall constitute presence in person at such meeting.

(G) The majority of members of the District Board shall constitute a quorum at any meeting for the transaction of business, except to adjourn. If, however, the attendance of any annual meeting, whether in person or proxy, is less than the majority of the voting power, the members may vote only on matters as to which notice of their general nature was given under paragraph 2.7(D) hereof.

(H) A majority of the members of the District Board present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment to another time or place shall be given, prior to the time of the adjourned meeting, to the members of the District Board who were not present at the time of adjournment.

**2.8 Required Vote of Member.** Every act or decision done or made by a majority of the members of the District Board present at a meeting duly held at which a quorum is present is an act of the member. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of any member of the District Board, if any action taken is approved by at least a majority of the District Board.

**2.9 Termination of Membership.** The membership and all rights of membership automatically terminate on the voluntary resignation of the member. Any and all rights of the member in the Corporation cease on the termination of membership. However, termination does not relieve the member from any obligation for charges incurred or services rendered.

### **ARTICLE III — DIRECTORS**

#### **3.1 Number.**

(A) The authorized number of Directors of this Corporation shall be not less than three (3) nor more than nine (nine). Collectively, the Directors shall be known as the Board of Directors (“Board”).

(B) The exact number of Directors within the range provided for under paragraph 3.1(A) hereof shall be fixed at four (4) and may from time to time, within the limits specified in these Bylaws, be changed by a resolution adopted by the member.

(C) The minimum and maximum number of Directors may be changed only by an amendment of paragraph 3.1(A) hereof.

#### **3.2 Nomination; Appointment; and Term.**

(A) The member shall appoint Directors to the Board. Vacancies on the Board shall be filled in the same manner as appointments are made.

(B) Directors are appointed for a term of two (2) years.

(C) Each appointed Director shall hold office at the pleasure of the member until the expiration of the term for which appointed or until a successor has been appointed and qualified.

**3.3 Chairperson and Vice Chairperson.** The Board shall select from among the existing Board a Chairperson and a Vice-Chairperson. The Chairperson shall preside at meetings of the Board and of the member. The Chairperson is authorized to sign all contracts, notes, conveyances and other papers, documents, and instruments in writing in the name of the Corporation. The Vice-Chairperson shall preside if the Chairperson is absent, and shall, in the absence of the Chairperson or the inability or refusal of the Chairperson to act, carry on all other duties and powers required by law or conferred by these Bylaws upon the Chairperson. The term of the Chairperson and the Vice Chairperson shall be for two years.

**3.4 Vacancies on Board.** A vacancy or vacancies on the Board shall exist on the occurrence of the following:

(A) The death or resignation of any Director;

(B) The declaration by resolution of the Board of a vacancy in the office of a Director who has been declared of unsound mind by an order of court, convicted of a felony, or found by final order of judgment of any court to have breached a duty under Article 3 of Chapter 2 of the CCC;

(C) The increase in the authorized number of Directors.

(D) Removal of a director by the member.

**3.5 Resignations of Directors.** Any Director may resign by giving written notice to the Chairperson or the Secretary of the Corporation, and such resignation shall be effective when the notice is given unless it specifies a later time for the resignation to become effective.

**3.6 Meetings of the Board.**

(A) Notwithstanding any other provision in these Bylaws, all meetings of the Board shall be held in compliance with the requirements of the Ralph M. Brown Act as set forth in Section 54950 of the California Government Code.

(B) Regular meetings of the Board shall be held at the time and place specified by resolution adopted by the Board.

(C) Notice of all regular meetings of the Board shall be given. At least seventy-two (72) hours before the regular meeting, the Board shall post an agenda which contains a brief description of each item of business to be transacted or discussed at the meeting. The agenda shall specify the time and place of the regular meeting, and shall be posted in a location that is freely accessible to the public. The agenda shall provide an opportunity for members of the public to directly address the Board on any item of interest to the public, before or during the Board's consideration of the item, that is within the subject matter jurisdiction of the Board.

(D) A special meeting of the Board may be called by either the Chairperson or a majority of the Board.

(E) Notice of all special meetings shall be given by delivering written notice to each Director, and to members of the media requesting notice in writing, at least twenty-four (24) hours before the time of the meeting. The notice shall specify the time and place of the special meeting and the business to be transacted or discussed, and shall be posted at least twenty-four (24) hours prior to the meeting in a location that is freely accessible to the public. The written notice

may be dispensed with as to any Director who, at or prior to the time the meeting convenes, files with the Secretary a written waiver of notice or who is actually present at the meeting when it convenes. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

(F) Members of the Board may participate in a meeting through use of conference telephone or similar communications equipment, so long as all such members participating in such meeting can hear one another, and so long as there is compliance with the Ralph M. Brown Act. Participation in a meeting by this means constitutes presence in person at such meeting.

(G) A majority of the authorized number of Directors shall constitute a quorum of the Board for the transaction of business, except to adjourn.

(H) A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment to another time or place shall be given, prior to the time of the adjourned meeting, to the Directors who were not present at the time of adjournment.

### **3.7 Required Vote of Directors.**

(A) Every act or decision done or made by a majority of the Directors present at a meeting duly held at which quorum is present is the act of the Board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for such meeting.

(B) Notwithstanding paragraph 3.7(A) hereof, the following matters require the affirmative approval of a majority of the authorized number of Directors: adoption, amendment or repeal of these Bylaws; and appointment of the Chairperson.

**3.8 Compensation of Directors.** Directors shall receive no compensation for their services.

**3.9 Inspection Rights of Directors.** Every Director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Corporation during normal weekday business hours. If a Director wishes to be accompanied by an attorney during such inspection, then the inspection will be scheduled at a time when the Corporation's attorney will be present.

**3.10 Interested Persons.** Not more than forty-nine percent (49%) of the persons serving on the Board may be interested persons.

(A) As used in this paragraph 3.9~~10~~, the term “interested person” means either:

- (1) Any person currently being compensated by the Corporation for services rendered to it within the previous twelve (12) months, whether as a full- or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a Director as Director; or
- (2) Any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.

(B) The provisions of this paragraph 3.10 shall not affect the validity or enforceability of any transaction entered into by the Corporation.

**3.11 Duties and Powers of the Board.** The Board shall perform such duties as are necessary to carry out the purposes of the Corporation as stated in the Articles of Incorporation, these Bylaws, and applicable laws and shall possess only those powers necessary and required to perform such duties.

#### ARTICLE IV — OFFICERS

**4.1 Number and Titles.** The officers of the Corporation shall be a Chief Executive Officer, Secretary, Treasurer, and such other officers with such titles and such duties as shall be determined and deemed advisable by the Board.

(A) **Chief Executive Officer.** The Chief Executive Officer is the general manager of the Corporation and may also be designated as the president of the corporation. The Chief Executive Officer shall, subject to the control of the Board, have general supervision, direction, and control of the business and affairs of the Corporation and of its officers, employees, and agents, including the right to employ, discharge, and prescribe the duties and compensation of all officers, employees, and agents of the corporation, except where such matters are prescribed in the Bylaws or by the Board.

(B) **Secretary.** The Secretary shall keep or cause to be kept the minute book of the Corporation as prescribed by Article VIII hereof. The Secretary shall sign in the name of the Corporation, either alone or with one or more other officers, all documents authorized or required to be signed by the Secretary. If the Corporation has a corporate seal, the Secretary shall keep the seal at the Corporation’s principal office and shall affix the seal to documents as appropriate or desired. The Board may by resolution authorize one or more Assistant

Secretaries to perform, under the direction of the Secretary, some or all the duties of the Secretary.

(C) **Treasurer.** The Treasurer is the chief financial officer of the corporation, and, where appropriate, may be designated by the alternate title “Chief Financial Officer.” The Treasurer is responsible for the receipt, maintenance, and disbursement of all funds of the Corporation and for the safekeeping of all securities of the Corporation. The Treasurer shall keep or cause to be kept books and records of account and records of all properties of the Corporation. The Treasurer shall prepare or cause to be prepared annually, or more often if so directed by the Board or Chairperson, financial statements of the Corporation. The Board may by resolution authorize one or more Assistant Treasurers to perform, under the direction of the Treasurer, some or all the duties of the Treasurer.

#### **4.2. Appointment and Removal of Officers.**

(A) The officers shall be appointed by the Board. Other officers shall be appointed as prescribed in the resolution of the Board establishing the office.

(B) Any officer appointed by the Board may be removed from office at any time by the Board, with or without cause or prior notice.

(C) Any officer may resign at any time upon written notice to the Corporation. Such resignation is effective upon receipt of the written notice by the Corporation unless the notice prescribes a later effective date or unless the notice prescribes a condition to the effectiveness of the resignation.

(D) The same person may hold more than one appointed office; provided, however, that neither the Secretary or the Treasurer may serve concurrently as the ~~Chairperson~~**Chief Executive Officer.**

### **ARTICLE V — INDEMNIFICATION**

The Corporation may provide for the indemnification of its Directors, officers, and employees, as follows:

- (i) the Corporation may indemnify a Director, officer, or employee under the provisions of Section 5238 of the CCC, or pursuant to any contract entered into with any employee who is not an officer or Director;
- (ii) expenses incurred in defending any proceeding may be advanced by the Corporation as authorized in Section 5238 of the CCC prior to the final disposition of such proceeding, upon



receipt of an undertaking by or on behalf of the Director, officer, or employee to repay such amount unless it shall be determined ultimately that the Director, officer, or employee is entitled to be indemnified; and

- (iii) the Corporation may purchase and maintain insurance on behalf of any Director, officer, or employee of the Corporation against any liability asserted against or incurred by the Director, officer, or employee in such capacity or arising out of the Director's officer's, or employee's status as such, whether or not the Corporation would have the power to indemnify the Director, officer, or employee against such liability under the provisions of Section 5238 of the CCC, except as provided in subdivision (I) of Section 5238 of the CCC.

#### ARTICLE VI — COMMITTEES

**6.1 Committees.** Committees not having and exercising the authority of the Board in the management of the Corporation may be designated by a resolution adopted by a majority of the board members of the District Board at which a quorum is present. Except as otherwise provided in paragraph 6.2 of these Bylaws, the Chairperson shall appoint all members to any committee formed pursuant to this Article VI of these Bylaws. Committee members may be removed by the Chairperson whenever in his or her judgment such removal serves the best interest of the Corporation.

**6.2 Term of Office.** Each member of a committee shall continue as such until the annual meeting of the Board and until his or her successor is appointed, unless (i) the committee sooner shall have been terminated, (ii) such committee member sooner shall have been removed from such committee, or (iii) such committee member shall have ceased to be a member of the Corporation.

#### ARTICLE VII— FUNDING ACTIVITIES

**7.1 All research funded by the Foundation with monies provided by the District shall include an agreement with the grantee for the recovery of royalties, if any, or other payments to recover financial benefits, if any, by the Foundation from any device, product, or procedure developed by the grantee with Foundation funding.**

**7.2 Any net proceeds derived from activities of the Foundation funded by the District will be distributed to the District and used for its purposes.**

## **ARTICLE VIII - AMENDMENT**

**78.1 Amendment of Articles.** The amendment of the Articles of Incorporation is provided for by California state law and otherwise requires: (i) the approval of the member; (ii) the approval of more than a two-thirds (2/3) majority of the Board pursuant to Article VI of the Articles of Incorporation; and (iii) the filing of a certificate of amendment in the Office of the Secretary of State.

**78.2 Amendment of Bylaws.** The amendment of the Bylaws is provided for by California state law and otherwise requires the approval of the member and the Board pursuant to the Bylaws.

## **ARTICLE ~~VIII~~IX — RECORDS**

**89.1 Minute Book.** The Corporation shall keep or cause to be kept a minute book which shall contain:

(A) The record of all meetings of the Board and the member including date, place, those attending and the proceedings thereof, a copy of the notice of the meeting and when and how given, written waivers of notice of meeting, written consents to holding meeting, written approvals of minutes of meeting, and unanimous written consents to action of the Board or member without a meeting, and similarly as to meetings of committees of the Board established pursuant to the Bylaws and as to meetings or written consents of the incorporator of the Corporation prior to the appointment of the initial Directors.

(B) A copy of the Articles and all amendments thereof and a copy of all certificates filed with the Secretary of State.

(C) A copy of the Bylaws, as amended, duly certified by the Secretary.

## **89.2 Annual Report.**

(A) Financial statements shall be prepared as soon as practicable after the close of the fiscal year. The financial statements shall contain in appropriate detail the following:

- (1) The assets and liabilities, including trust funds, of the Corporation as of the end of the fiscal year.
- (2) The principal changes in assets and liabilities, including trust funds, during the fiscal year.

- (3) The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for the fiscal year.
- (4) The expenses or disbursements of the Corporation for both general and restricted purposes, during the fiscal year.

(B) Any report furnished to Directors of the Corporation which includes the financial statements prescribed by paragraph 89.2(A) shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the Corporation that such statements were prepared without audit from the books and records of the Corporation.

(C) A report including the financial statements prescribed by paragraph 8.2(A) shall be furnished annually to all Directors of the Corporation.

**89.3 Report of Transactions and Indemnification.** The Corporation shall mail to all Directors a statement of any transaction between the Corporation and one of its officers or Directors or of any indemnification paid to any officer or Director if, and to the extent, required by Section 6322 of the CCC. The statement shall be mailed within one hundred twenty (120) days after the close of the fiscal year. The statement required by this paragraph 89.2 shall describe briefly:

(A) Any covered transaction during the previous fiscal year involving more than fifty thousand dollars (\$50,000), or which was one of a number of covered transactions in which the same “interested person” had a direct or indirect material financial interest, and which transactions in the aggregate involved more than fifty thousand dollars (\$50,000).

(B) The names of the “interested persons” involved in such transactions, stating such person’s relationship to the Corporation, the nature of such person’s interest in the transaction and, where practicable, the amount of such interest; provided, that in the case of a transaction with a partnership of which such person is a partner, only the interest of the partnership need be stated.

(C) The statement shall describe briefly the amount and circumstances of any indemnification or advances aggregating more than ten thousand dollars (\$10,000) paid during the fiscal year to any officer or Director of the Corporation pursuant to Section 5238 of the CCC.

For these purposes, an “interested person” is either of the following: (i) any Director or officer of the Corporation, or its parent or subsidiary; or (ii) any holder of more than ten percent (10%) of the voting power of the Corporation, its parent or subsidiary.

**89.4 Tax Returns.** The Corporation must file an annual information return and these information returns must be maintained by the Corporation and made available for public inspection for three (3) years.

ARTICLE **IX** — GENERAL PROVISIONS

**910.1 Bonding.** All employees handling funds shall be bonded.

**910.2 Self-Dealing.** In the exercise of voting right by Directors, no Director shall vote on any issue, motion or resolution which directly or indirectly inures to his or her benefit financially, except that such Director may be counted in order to qualify a quorum and, except as the board may otherwise direct, participate in a discussion on such an issue, motion or resolution if he or she first discloses the nature of his or her interest subject to Sections 5230 through 5239, inclusive, of the CCC.

**910.3 Conflict of Interests.** The members of the Board shall be subject to and in compliance with the disclosure and disqualification requirements of the Political Reform Act, as it may apply, as set forth in Section 87100 et seq. of the California Government Code.

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting Secretary of the Brain and Lung Tumor and Air Pollution Foundation, a California nonprofit public benefit corporation; and
2. That the foregoing Amended and Restated Bylaws, comprising thirteen (13) pages, constitute the Bylaws of said corporation, as duly adopted by the Incorporator of said corporation, and as duly approved by the Board of Directors of said corporation at a meeting duly held on the ~~31st~~ 5<sup>th</sup> day of March, ~~2003~~ 2004.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said corporation this \_\_\_\_\_ day of March, ~~2003~~ 2004.

\_\_\_\_\_  
CHERY COOPER  
Secretary