

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

---

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

February 13, 2017

Date of Report (Date of earliest event reported)

**Windtree Therapeutics, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation)

**000-26422**

(Commission File Number)

**94-3171943**

(IRS Employer Identification Number)

**2600 Kelly Road, Suite 100**

**Warrington, Pennsylvania 18976**

(Address of principal executive offices)

**(215) 488-9300**

(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-

**Item 1.01**     **Entry into a Material Definitive Agreement.**

Effective February 13, 2017, Windtree Therapeutics, Inc. (the “**Company**”) entered into a Securities Purchase Agreement (the “**SPA**”) and a Registration Rights Agreement (“**Registration Rights Agreement**”) with select institutional investors (“**Investors**”), whereby the Company agreed to issue and sell to the Investors an aggregate of 7,049 Series A Convertible Preferred Stock units (the “**Units**”) at a price per Unit of \$1,495, for an aggregate purchase price of approximately \$10.5 million (the “**Offering**”). Each Unit consists of: (i) one share of Series A Convertible Preferred Stock, par value \$0.001 per share, of the Company (“**Preferred Shares**”); and (ii) 1,000 Series A-1 Warrants (“**Warrants**”) to purchase one share of Common Stock (“**Warrant Shares**”) at an exercise price equal to \$1.37 (the “**Exercise Price**”). Each Preferred Share may be converted at the holder's option at any time into 1,000 shares (the “**Conversion Shares**”) of common stock, par value \$0.001 per share, of the Company (“**Common Stock**”) at \$1.37 per share (the “**Conversion Price**”). The Warrants may be exercised beginning six months after the date of issuance and through the seventh anniversary of the date of issuance. The Preferred Shares and the Warrants may not be converted or exercised to the extent that the holder thereof would, following such exercise or conversion, beneficially own more than 9.99% (or other lesser percent as designated by each holder) of the Company’s outstanding shares of Common Stock. The Preferred Shares and Warrants also contain customary provisions that adjust the Conversion Price or Exercise Price and the number of shares of common stock into which the Preferred Shares and Warrants are convertible or exercisable in the event of a corporate transaction. In addition to the Offering, the SPA also provides that, until February 13, 2018, the Investors shall be entitled to participate in the Company’s subsequent bona fide capital raising transactions.

The Company conducted the Offering pursuant to Rule 506(b) and Section 4(2) of the Securities Act of 1933. The closing for the purchase of the Units occurred on Wednesday, February 15, 2017. The Offering was made to select investors directly without an underwriter or broker. The Company received approximately \$10.5 million net proceeds from this Offering, including extinguishment of approximately \$1.6M of future cash payments related to ongoing device development activities, after deducting the estimated offering expenses of approximately \$70,000.

The Company expects to use the net proceeds from the Offering primarily to complete the ongoing phase 2b clinical trial for AEROSURF<sup>®</sup> (lucinactant for inhalation) in premature infants 28 to 32 week gestational age, and an ongoing AEROSURF phase 2a clinical program in premature infants 26 to 28 week gestational age, and fund the Company’s activities through the announcement of the resulting phase 2b data. The Company expects to complete the phase 2b program and announce results mid-year 2017. Pending application of the net proceeds, the Company expects to invest the proceeds in short-term, interest-bearing instruments or other investment-grade securities.

Pursuant to the Registration Rights Agreement, the Company has agreed to file within 50 days of the closing date a resale registration statement with the Securities and Exchange Commission (the “**Commission**”) to register for subsequent resale the Conversion Shares and the Warrant Shares.

Except as may be required under Delaware corporate law, the Preferred Shares do not have voting rights. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company or a Deemed Liquidation Event (as defined in the Designation of Preferences, Rights and Limitations of Series A Convertible Preferred Stock (“**Designations**”)), the holders of Preferred Shares then outstanding shall be entitled to be paid out of the assets available for distribution to stockholders (i) before any payment is made to the holder of Common Stock, an amount per Preferred Share equal to \$1,495 (the “**Liquidation Value**”), and after payment of any other preferential amounts payable to holders of other outstanding classes of preferred stock, (ii) out of the remaining assets of the Company available for distribution to its stockholders, the holders of the Preferred Shares and Common Stock and any other capital stock of the Corporation entitled to share in such distribution, pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock in accordance with their terms; provided that if the aggregate amount which the holders of Preferred Shares are entitled to receive exceeds an amount per share equal to three times (3x) the Liquidation Value, then the holders of Preferred Shares shall be entitled to receive, if greater, the amount such holder would have received if all Preferred Shares had been converted into Common Stock immediately prior to such distribution.

The Company may cause the Preferred Shares to be mandatorily converted if after the first anniversary of the original issue date, the market value per share of the Common Stock equals or exceeds \$4.11 for at least 20 consecutive trading days. Such mandatory conversion shall be subject to the beneficial ownership limitation described above.

The description of the terms and conditions of the SPA and the Registration Rights Agreement and the rights and obligations of the Company and the Investors in connection therewith are qualified by reference in their entirety to the definitive terms and conditions of the SPA and the Registration Rights Agreement, forms of which are attached hereto as Exhibit 10.1 and Exhibit 10.2 hereto. In addition, the description of the rights and preferences of the Preferred Shares herein is qualified in its entirety by the text of the Designations, which is filed as Exhibit 3.1 hereto, and description of the Warrants herein is qualified in its entirety by the text of the Warrant, which is filed as Exhibit 4.1 hereto.

The foregoing description of the transaction does not purport to be complete and is qualified in its entirety by reference to the agreements filed as exhibits to this report and incorporated herein by reference. The SPA and the Registration Rights Agreement are being filed in order to provide investors and the Company's stockholders with information regarding their terms and in accordance with applicable rules and regulations of the Commission. Pursuant to each of the SPA and Registration Rights Agreement, each of the Company and the Investors made customary representations, warranties and covenants and agreed to indemnify each other for certain losses arising out of breaches of such representations, warranties, covenants and other specified matters. The representations, warranties and covenants were made by the parties to and solely for the benefit of each other and any expressly intended third party beneficiaries in the context of all of the terms and conditions of the agreements and in the context of the specific relationship between the parties. Accordingly, investors and stockholders should not rely on the representations, warranties and covenants. Furthermore, investors and stockholders should not rely on the representations, warranties and covenants as characterizations of the actual state of facts or continuing intentions of the parties, since they were only made as of the date of the agreements. Information concerning the subject matter of such representations, warranties and covenants may change after the date of the agreements, which subsequent information may or may not be fully reflected in the Company's reports or other filings with the Commission.

**Item 3.02 Unregistered Sales of Equity Securities.**

The information in Item 1.01 above relating to the Offering is incorporated into this Item 3.02.

**Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

The information in Item 1.01 above relating to the Designations is incorporated into this Item 5.03. On February 14, 2017, the Company filed a Certificate of Designations with the Secretary of State of the State of Delaware, establishing the rights, preferences, privileges, qualifications, restrictions and limitations relating to the Series A Convertible Preferred Stock. The Designations became effective with the Secretary of State of the State of Delaware at 12:01 a.m. on February 15, 2017. A copy of the Designations is included as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

- 3.1 Certificate of Designations, filed with the Delaware Secretary of State on February 14, 2017 and effective on February 15, 2017.
- 4.1 Warrant dated February 13, 2017.
- 10.1 Securities Purchase Agreement, dated as of February 13, 2017.
- 10.2 Registration Rights Agreement, dated as of February 13, 2017.
- 99.1 Press Release dated February 15, 2017.

Cautionary Note Regarding Forward-looking Statements:

To the extent that statements in this Current Report on Form 8-K are not strictly historical, including statements as to business strategy, outlook, objectives, future milestones, plans, intentions, goals, future financial conditions, future collaboration agreements, the success of the Company's product development or otherwise as to future events, such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The forward-looking statements contained in this Current Report are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Such risks and others are further described in the Company's filings with the Securities and Exchange Commission including the most recent reports on Forms 10-K, 10-Q and 8-K, and any amendments thereto.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**Windtree Therapeutics, Inc.**

By: /s/ Craig Fraser  
Craig Fraser  
President and Chief Executive Officer

Date: February 15, 2017

**WINDTREE THERAPEUTICS, INC.**  
**CERTIFICATE OF DESIGNATION OF PREFERENCES,**  
**RIGHTS AND LIMITATIONS**  
**OF**  
**SERIES A CONVERTIBLE PREFERRED STOCK**

PURSUANT TO SECTION 151 OF THE  
DELAWARE GENERAL CORPORATION LAW

The undersigned, John A. Tattory, does hereby certify that:

1. He is the Senior Vice President and Chief Financial Officer of Windtree Therapeutics, Inc., a Delaware corporation (the "Corporation").
2. The Corporation is authorized to issue 5,000,000 shares of preferred stock, none of which have been issued.
3. The following resolutions were duly adopted by the board of directors of the Corporation (the "Board of Directors"):

WHEREAS, the certificate of incorporation of the Corporation provides for a class of its authorized stock known as preferred stock, consisting of 5,000,000 shares, \$0.001 par value per share, issuable from time to time in one or more series;

WHEREAS, the Board of Directors is authorized to fix the dividend rights, dividend rate, voting rights, conversion rights, rights and terms of redemption and liquidation preferences of any wholly unissued series of preferred stock and the number of shares constituting any series and the designation thereof, of any of them; and

WHEREAS, it is the desire of the Board of Directors, pursuant to its authority as aforesaid, to fix the rights, preferences, restrictions and other matters relating to a series of the preferred stock, which shall consist of 7,049 shares of the preferred stock which the Corporation has the authority to issue, as follows:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors does hereby provide for the issuance of a series of preferred stock for cash or exchange of other securities, rights or property and does hereby fix and determine the rights, preferences, restrictions and other matters relating to such series of preferred stock as follows:

## TERMS OF PREFERRED STOCK

**Section 1. Definitions.** For the purposes hereof, the following terms shall have the following meanings:

“**Affiliate**” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

“**Beneficial Ownership Limitation**” shall have the meaning set forth in Section 6(e).

“**Business Day**” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“**Corporation**” means Windtree Therapeutics, Inc. a corporation organized under the laws of Delaware.

“**Closing**” means the closing of the purchase and sale of the Securities pursuant to Section 2.1 of the Purchase Agreement.

“**Closing Date**” means closing date of the purchase and sale of the Preferred Stock and Warrants pursuant to the Purchase Agreement.

“**Commission**” means the United States Securities and Exchange Commission.

“**Common Stock**” means the Corporation’s common stock, par value \$0.0001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

“**Common Stock Equivalents**” means any securities of the Corporation or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“**Conversion Date**” shall mean an Optional Conversion Date or Mandatory Conversion Date, as applicable.

“**Conversion Price**” shall have the meaning set forth in Section 6(c).

“**Conversion Shares**” means, collectively, the shares of Common Stock issuable upon conversion of the shares of Preferred Stock in accordance with the terms hereof.

“**Deemed Liquidation Event**” means any of the following events, unless the holders of at least a majority of the outstanding shares of the Preferred Stock elect otherwise by written notice sent to the Corporation at least five (5) days prior to the effective date of any such event:

(a) a merger or consolidation in which the Corporation is a constituent party, except any such merger or consolidation involving the Corporation in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

“Delaware Courts” shall have the meaning set forth in Section 8(d).

“Effective Date” means the date that the Registration Statement filed by the Corporation pursuant to the Registration Rights Agreement is first declared effective by the Commission.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Holder” shall have the meaning given such term in Section 2.

“Mandatory Conversion Date” shall have the meaning set forth in Section 6(b).

“Notice of Conversion” shall have the meaning set forth in Section 6(a).

“Optional Conversion Date” shall have the meaning set forth in Section 6(a).

“Original Issue Date” means the date of the first issuance of any shares of the Preferred Stock regardless of the number of transfers of any particular shares of Preferred Stock.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Preferred Stock” shall have the meaning set forth in Section 2.

“Principal Market” means the securities exchange or securities quotation service where the Common Stock is principally listed or quoted for trading.

“Purchase Agreement” means the Securities Purchase Agreement, dated February 13, 2017, among the Corporation and the original Holders, as amended, modified or supplemented from time to time in accordance with its terms.

“Registration Rights Agreement” means the Registration Rights Agreement, dated as of the date of the Purchase Agreement, among the Corporation and the original Holders.

“Registration Statement” means the registration statement meeting the requirements set forth in the Registration Rights Agreement and covering the resale of the Conversion Shares and Warrant Shares as provided for in the Registration Rights Agreement.

“Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“Securities” means the Preferred Stock, the Conversion Shares, the Warrants, and the Warrant Shares.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Share Delivery Date” shall have the meaning set forth in Section 6(d).

“Stated Value” shall have the meaning set forth in Section 2, as the same may be increased pursuant to Section 3.

“Transfer Agent” means Continental Stock Transfer & Trust Company, the current transfer agent of the Corporation with a mailing address of 17 Battery Place, New York, NY 10004, and any successor transfer agent of the Corporation.

“Warrants” mean the Common Stock purchase warrants issued by the Corporation pursuant to the Purchase Agreement.

“Warrant Shares” means the shares of Common Stock issuable upon exercise of the Warrants.

Section 2. Designation, Amount and Par Value. The series of preferred stock shall be designated as its Series A Convertible Preferred Stock (the “Preferred Stock”) and the number of shares so designated shall be 7,049 (which shall not be subject to increase without the written consent of a majority of the holders of the Preferred Stock (each, a “Holder” and collectively, the “Holders”). Each share of Preferred Stock shall have a par value of \$0.001 per share and a stated value equal to \$1,370 subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Preferred Stock (the “Stated Value”). In accordance with Section 158 of the Delaware General Corporation Law and the resolution of the Board of Directors of the Corporation, dated January 25, 2017, shares of Preferred Stock shall be issued in un-certificated, book-entry form, and upon issuance, the ownership (and subsequent transfers) of the Preferred Stock shall be recorded on the books and records of the Corporation.

Section 3. Dividends. Holders shall be entitled to receive, and the Corporation shall pay, dividends on shares of Preferred Stock equal (on an as-if-converted-to-Common-Stock basis) to and in the same form as dividends (other than dividends in the form of Common Stock) actually paid on shares of the Common Stock when, as and if such dividends (other than dividends in the form of Common Stock) are paid on shares of the Common Stock. Other than as set forth in the previous sentence, no other dividends shall be paid on shares of Preferred Stock; and the Corporation shall pay no dividends (other than dividends in the form of Common Stock) on shares of the Common Stock unless it simultaneously complies with the previous sentence.

Section 4. Voting Rights. Except as otherwise provided herein or as otherwise required by law, the Preferred Stock shall have no voting rights. However, as long as any shares of Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of the Holders of a majority of the then outstanding shares of the Preferred Stock, (a) alter or change adversely the powers, preferences or rights given to the Preferred Stock or alter or amend this Certificate of Designation, (b) authorize or create any class of stock ranking as to dividends, redemption or distribution of assets upon a liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, that is senior to the Preferred Stock, (c) amend its certificate of incorporation or other charter documents in any manner that adversely affects any rights of the Holders, (d) increase the number of authorized shares of Preferred Stock, or (e) enter into any agreement with respect to any of the foregoing.



Section 5. Liquidation and Deemed Liquidation Event.

a) Preferential Payments to Holders of Series A Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the holders of shares of Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders (i) before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to \$1,495.00 (the "Liquidation Value") and, (ii) after the payment of all preferential amounts required to be paid to the holders of all shares of outstanding classes of preferred stock, the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of the shares of the Preferred Stock, Common Stock and any other capital stock of the Corporation entitled to share in such distribution, pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock pursuant to the terms of the Certificate of Incorporation immediately prior to such dissolution, liquidation, winding up of the Corporation or Deemed Liquidation Event, provided, however, that if the aggregate amount which the holders of the outstanding Preferred Stock are entitled to receive pursuant to this Section 5(a)(i) and (ii) exceeds an amount per share equal to three times (3x) the Liquidation Value (the "Maximum Participation Amount"), then each holder of Preferred Stock shall be entitled to receive upon such liquidation, dissolution or winding up of the Corporation, or Deemed Liquidation Event the greater of (1) the Maximum Participation Amount and (2) the amount such holder would have received if all shares of the Preferred Stock had been converted into Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event. The amount per share which a holder of a share of the Preferred Stock is entitled to receive under Section 5(a) is hereinafter referred to as the "Liquidation Amount." For the avoidance of doubt, all holders of Preferred Stock and Common Stock would receive the same form of consideration. If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of the Preferred Stock the full amount to which they shall be entitled under this Section 5(a), the holders of shares of the Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(b) Effecting a Deemed Liquidation Event. The Corporation shall not have the power to effect a Deemed Liquidation Event pursuant to a merger or consolidation unless the agreement or plan of merger or consolidation for such transaction (the "Merger Agreement") provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Section 5(a). In the event of a Deemed Liquidation Event referred to in clause (b) of its definition, if the Corporation does not effect a dissolution of the Corporation under the Delaware General Corporation Law within 90 days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Series A Preferred Stock no later than the 90th day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (ii) to require the redemption of such shares of Preferred Stock, and (ii) if the holders of at least a majority of the then outstanding shares of Preferred Stock so request in a written instrument delivered to the Corporation not later than 120 days after such Deemed Liquidation Event, the Corporation shall initiate a voluntary dissolution and winding up of the Corporation in accordance with Section 5(a).

(c) Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors of the Corporation.

(d) Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to a merger or consolidation, if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the "Additional Consideration"), then (i) the portion of such consideration that is not Additional Consideration (such portion, the "Initial Consideration") shall be allocated among the holders of capital stock of the Corporation in accordance with Section 5(a) as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event and (ii) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Section 5(a) after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Section 5(d), consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Initial Consideration.

Section 6. Conversion.

a) Conversions at Option of Holder. Each share of Preferred Stock shall be convertible, at any time and from time to time from and after the Original Issue Date at the option of the Holder thereof, into that number of shares of Common Stock (subject to the limitations set forth in Section 6(e)) determined by dividing the Stated Value of such share of Preferred Stock by the Conversion Price. Holders shall effect conversions by providing the Corporation with the form of optional conversion notice attached hereto as Annex A (a "Notice of Optional Conversion"). Each Notice of Optional Conversion shall specify the number of shares of Preferred Stock to be converted, the number of shares of Preferred Stock owned prior to the conversion at issue, the number of shares of Preferred Stock owned subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers by facsimile such Notice of Conversion to the Corporation (such date, the "Optional Conversion Date"). If no Optional Conversion Date is specified in a Notice of Conversion, the Optional Conversion Date shall be the date that such Notice of Conversion to the Corporation is deemed delivered hereunder. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. Shares of Preferred Stock converted into Common Stock or redeemed in accordance with the terms hereof shall be canceled and shall not be reissued.

b) Mandatory Conversion. If the closing price of the Common Stock, as listed or quoted on the Principal Market, is equal to or greater than \$4.11 for at least 20 consecutive trading days on or after the first anniversary of the Original Issue Date, then the Corporation, at its option, may cause the Preferred Stock to be converted in whole, or in part, on a pro rata basis among the holders of the Preferred Stock, into shares of Common Stock (subject to the limitations set forth in Section 6(e)) by sending a notice of mandatory conversion a form of which is attached hereto as Annex B (a "Notice of Mandatory Conversion") to each Holder of Preferred Stock stating (i) that the condition for mandatory conversion pursuant to this Section 6(b) has been met, (ii) the number of shares of Preferred Stock to be converted, (iii) the number of shares of Preferred Stock owned prior to the mandatory conversion at issue, (iv) the number of shares of Preferred Stock owned subsequent to the mandatory conversion at issue, and (v) the date on which such conversion is to be effected, which date may be no earlier than five (5) Business Days and no later than twenty (20) Business Days following the date the Corporation delivers the Notice of Mandatory Conversion (the "Mandatory Conversion Date").

c) Conversion Price. The conversion price for the Preferred Stock shall equal \$1.37, subject to adjustment herein (the "Conversion Price"). The number of shares of Common Stock that each share of Preferred Stock shall be convertible into is equal to the Stated Value divided by the Conversion Price.

d) Mechanics of Conversion

i. Mechanics of Conversion - Delivery of Shares. Not later than three (3) Business Days after each Conversion Date (the "Share Delivery Date"), the Corporation shall deliver, or cause to be delivered, to the converting Holder the Conversion Shares which, if converted at a time when there is an effective registration statement to cover the issuance or resale of the Conversion Shares underlying the Preferred Stock or Rule 144 is available for resale of such Conversion Shares without volume and manner of sale limitations, such certificate shall be issued free of all legends, provided that, in the case of legend-free issuance in reliance on Rule 144, the Holder provides a representation letter in the form and substance reasonably acceptable to the Corporation that such Conversion Shares may be issued without a restrictive legend. The Corporation shall use its best efforts to deliver any Conversion Shares required to be delivered by the Corporation under this Section 6 electronically through the Depository Trust Company or another established clearing corporation performing similar functions.

ii. Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Preferred Stock and payment of dividends on the Preferred Stock, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Preferred Stock), not less than such aggregate number of shares of the Common Stock as shall (subject to the terms and conditions set forth in the Purchase Agreement) be issuable (taking into account the adjustments and restrictions of Section 7) upon the conversion of the then outstanding shares of Preferred Stock and payment of dividends hereunder. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable and, if the Registration Statement is then effective under the Securities Act, shall be registered for public resale in accordance with such Registration Statement (subject to such Holder's compliance with its obligations under the Registration Rights Agreement).

iii. Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Preferred Stock. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Corporation shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share.

iv. Transfer Taxes and Expenses. The issuance of Conversion Shares upon conversion of Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Preferred Stock and the Corporation shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion.

e) Beneficial Ownership Limitation. The Corporation shall not effect any conversion of the Preferred Stock, and a Holder shall not have the right to convert any portion of the Preferred Stock, to the extent that, after giving effect to the conversion set forth on the applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates (such Persons, "Attribution Parties")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below) after giving effect to such exercise, or immediately prior to giving effect to such exercise. For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon conversion of the Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Stated Value of Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of unexercised or unconverted portion of any other Common Stock Equivalents of the Corporation that are subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Warrants) beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this Section 6(e) applies, the determination of whether the Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder's determination of whether the shares of Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and how many shares of the Preferred Stock are convertible, in each case subject to the Beneficial Ownership Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Corporation each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this paragraph and the Corporation shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Corporation's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Corporation or (iii) a more recent written notice by the Corporation or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Corporation shall within two Business Days confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined by the Holder after giving effect to the conversion or exercise of securities of the Corporation, including the Preferred Stock, by such Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" initially shall be such percent of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of the Preferred Stock held by the Holder, as set forth next to the name of each Buyer (as defined in the Purchase Agreement) on Schedule I of the Purchase Agreement. A Holder, upon notice to the Corporation, may decrease or thereafter increase the Beneficial Ownership Limitation provided in this Section 6(e) applicable to such Holder's Preferred Stock, provided that the Beneficial Ownership Limitation in no event may exceed 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon conversion of this Preferred Stock held by such Holder and this Section 6(e) shall continue to apply. Any such change in the Beneficial Ownership Limitation will not be effective until the 61<sup>st</sup> day after such notice is delivered to the Corporation and shall only apply to such Holder and no other Holder. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 6(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of Preferred Stock.

#### Section 7. Certain Adjustments.

a) Stock Dividends and Stock Splits. If the Corporation, at any time while this Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, this Preferred Stock), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Pro Rata Distributions. During such time as this Preferred Stock is outstanding, if the Corporation declares or makes any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a “**Distribution**”), at any time after the issuance of this Preferred Stock, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete Conversion of this Preferred Stock (without regard to any limitations on Conversion hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(c) Purchase Rights. In addition to any adjustments pursuant to Section 7(b) above, if at any time the Company grants, issues or sells any options, convertible securities or rights to purchase stock, warrants, securities or other property of the Company pro rata to the record holders of any class of shares of Common Stock (the “**Purchase Rights**”), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights, provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation.

d) Calculations. All calculations under this Section 7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

e) Notice to the Holders.

i. Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Corporation shall promptly deliver to each Holder by facsimile or e-mail a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Conversion by Holder. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of this Preferred Stock, and shall cause to be delivered by facsimile or email to each Holder at its last facsimile number or email address as it shall appear upon the stock books of the Corporation, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Corporation or any of the Subsidiaries, the Corporation shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert the Stated Value of this Preferred Stock (or any part hereof) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 8.            Miscellaneous.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at the address set forth above **Attention:** John A. Tattory, Senior Vice President and Chief Financial Officer, email address: JTattory@windtreetworks.com, or such other email address or mailing address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 8. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number or address of such Holder appearing on the books of the Corporation, or if no such facsimile number or address appears on the books of the Corporation, at the principal place of business of such Holder, as set forth in the Purchase Agreement. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Business Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth in this Section on a day that is not a Business Day or later than 5:30 p.m. (New York City time) on any Business Day, (iii) the second Business Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designation shall alter or impair the obligation of the Corporation, which is absolute and unconditional, to pay liquidated damages, accrued dividends and accrued interest, as applicable, on the shares of Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

c) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by the Purchase Agreement (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the State of Delaware (the "Delaware Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the Delaware Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of the Purchase Agreement), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such Delaware Courts, or such Delaware Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designation and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designation or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

d) Waiver. Any waiver by the Corporation or a Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Corporation or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation on any other occasion. Any waiver by the Corporation or a Holder must be in writing.

e) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

f) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

g) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

h) Status of Converted or Redeemed Preferred Stock. Shares of Preferred Stock may only be issued pursuant to the Purchase Agreement. If any shares of Preferred Stock shall be converted, redeemed or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series A Convertible Preferred Stock.

RESOLVED, FURTHER, that the Chairman, the President and Chief Executive Officer or any senior vice-president, and the secretary or any assistant secretary of the Corporation be and they hereby are authorized and directed to prepare and file this Certificate of Designation of Preferences, Rights and Limitations in accordance with the foregoing resolutions and the provisions of Delaware law.

4. The foregoing resolutions shall become effective on February 15, 2017 at 12:01a.m. Eastern Time.

IN WITNESS WHEREOF, the undersigned have executed this Certificate this 14th day of February 2017.

/s/ John A. Tattory

Name: John A. Tattory

Title: Senior Vice President and Chief Financial Officer



ANNEX A

NOTICE OF OPTIONAL CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series A Convertible Preferred Stock indicated below into shares of common stock, par value \$0.0001 per share (the "Common Stock"), of Windtree Therapeutics, Inc., a Delaware corporation (the "Corporation"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and representation letters as may be required by the Corporation in accordance with the Purchase Agreement. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: \_\_\_\_\_

Number of shares of Preferred Stock owned prior to Conversion: \_\_\_\_\_

Number of shares of Preferred Stock to be Converted: \_\_\_\_\_

Stated Value of shares of Preferred Stock to be Converted: \_\_\_\_\_

Number of shares of Common Stock to be Issued: \_\_\_\_\_

Applicable Conversion Price: \_\_\_\_\_

Number of shares of Preferred Stock subsequent to Conversion: \_\_\_\_\_

Address for Delivery: \_\_\_\_\_

or

DWAC Instructions:

Broker no: \_\_\_\_\_

Account no: \_\_\_\_\_

[HOLDER]

By: \_\_\_\_\_  
Name:  
Title:

ANNEX B

NOTICE OF MANDATORY CONVERSION

FORM OF NOTICE OF MANDATORY CONVERSION

To [Holder of Series A Convertible Preferred Stock]:

We are pleased to announce that on each of the 20 trading days from [MONTH] [DATE], [YEAR] through [MONTH] [DATE], [YEAR], the closing price of common stock ("Common Stock") of Windtree Therapeutics, Inc. (the "Company") was equal to or exceeded \$[----]. As a result, pursuant to Section [6(b)] of the Certificate of Designation of the Series A Preferred Stock of the Company, (the "Certificate of Designation"), the Company has the right to cause all of the outstanding shares of Series A Convertible Preferred Stock (the "Preferred Stock") to automatically convert into shares of Common Stock, subject to the beneficial ownership limitation provision (the "Beneficial Ownership Limitation") set forth in Section 6(e) of the Certificate of Designation.

The Company hereby provides notice to the holders of the Series A Preferred Stock that, on [MONTH] [DATE], [YEAR] (the "Mandatory Conversion Date"), the Company will exercise its right under Section [6(b)] of the Certificate of Designation (the "Mandatory Conversion").

Each share of Preferred Stock is convertible into [NUMBER] shares of Common Stock, which is obtained by dividing the Stated Value (as defined in the Certificate of Designation) by the Conversion Price (as defined in the Certificate of Designation), which is [---].

On the Mandatory Conversion Date, [NUMBER] of shares of Preferred Stock that you own will automatically convert into Common Stock, and [NUMBER] shares of Common Stock will be issued to you in book-entry form. If there are any shares of Preferred Stock that are not converted automatically on the Mandatory Conversion Date as a result of the Beneficial Ownership Limitation, such shares of Preferred Stock will be automatically converted into Common Stock, subject to the Beneficial Ownership Limitation, on a continuous basis on the last business day of each month until all such shares of Preferred Stock has been converted.

Shares of Preferred Stock owned by you prior to the Mandatory Conversion Date: \_\_\_\_\_

Shares of Preferred Stock owned by you to be converted on Mandatory Conversion Date: \_\_\_\_\_

Shares of Common Stock to be issued to you pursuant to the Mandatory Conversion: \_\_\_\_\_

Shares of Preferred Stock owned by you immediately following the Mandatory Conversion: \_\_\_\_\_

All questions regarding the conversion should be directed to [Contact Person and information].

Very truly yours,

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED HEREBY NOR THE SECURITIES INTO WHICH THE SECURITIES REPRESENTED HEREBY ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES REPRESENTED HEREBY AND THE SECURITIES INTO WHICH THE SECURITIES REPRESENTED HEREBY ARE EXERCISABLE MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED EXCEPT PURSUANT TO (A) AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) PURSUANT TO AN AVAILABLE EXEMPTION IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES REPRESENTED HEREBY AND THE SECURITIES INTO WHICH THE SECURITIES REPRESENTED HEREBY ARE EXERCISABLE MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY SUCH SECURITIES.

WINDTREE THERAPEUTICS, INC.

SERIES A-1 WARRANT TO PURCHASE COMMON STOCK

Series A-1 Warrant No.:

Number of Shares of Common Stock:

Date of Issuance: February 15, 2017 (“**Issuance Date**”)

Windtree Therapeutics, Inc., a Delaware corporation (the “**Company**”), hereby certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, \_\_\_\_\_, the registered holder hereof or its permitted assigns (the “**Holder**”), is entitled, subject to the terms set forth below, to purchase from the Company, at the Exercise Price (as defined below) then in effect, upon surrender of this Series A-1 Warrant to Purchase Common Stock (including any Series A-1 Warrants to Purchase Common Stock issued in exchange, transfer or replacement hereof, the “**Warrant**”), at any time or times from the date that is six (6) months after the Issuance Date (the “**Exercisability Date**”), but not after 11:59 p.m., New York time, on the Expiration Date (as defined below), \_\_\_\_\_ ( \_\_\_\_\_ ) fully paid and nonassessable shares of Common Stock (as defined below) (the “**Warrant Shares**”). Except as otherwise defined herein, capitalized terms in this Warrant shall have the meanings set forth in Section 15.

1. EXERCISE OF WARRANT.

- (a) Mechanics of Exercise. Subject to the terms and conditions hereof, this Warrant may be exercised by the Holder on any day on or after the Exercisability Date, in whole or in part, by (i) delivery of a written notice, in the form attached hereto as Exhibit A (the “**Exercise Notice**”), of the Holder’s election to exercise this Warrant to the Company and Continental Stock Transfer & Trust Company (the “**Warrant Agent**” and “**Transfer Agent**”) and (ii) if applicable, delivery of this Warrant to the Warrant Agent for cancellation. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Warrant Agent until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case the Holder shall surrender this Warrant to the Warrant Agent for cancellation within three (3) Trading Days of the date the final Exercise Notice is delivered to the Warrant Agent. Execution and delivery of an Exercise Notice with respect to a partial Exercise shall have the same effect as cancellation of the original Warrant and issuance of a new Warrant evidencing the right to purchase the remaining number of Warrant Shares. The Exercise Notice shall indicate if the Holder has elected a Cashless Exercise (as defined below) pursuant to Section 1(d) of this Warrant. Within three (3) Business Days following the Exercise, Holder shall deliver payment to the Company of an amount equal to the applicable Exercise Price multiplied by the number of Warrant Shares as to which this Warrant is being exercised (the “**Aggregate Exercise Price**”) in cash or by wire transfer of immediately available funds, unless such Holder has elected a Cashless Exercise pursuant to Section 1(d). On or before the third (3rd) Business Day following the date on which the Warrant has been duly Exercised (the “**Share Delivery Date**”), the Company or the Warrant Agent shall (X) provided that the Company’s transfer agent (the “**Transfer Agent**”) is participating in The Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer Program, upon the request of the Holder and provided the Holder causes its prime broker to initiate a Deposit Withdrawal At Custodian (“**DWAC**”) deposit, credit such aggregate number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the Holder’s or its designee’s balance account with DTC through its DWAC system, or (Y) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or upon a cash Exercise at a time when a registration statement covering the issuance of Warrant Shares is not effective, issue and dispatch by overnight courier to the address as specified in the Exercise Notice, a certificate, registered in the Company’s share register in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder is entitled pursuant to such Exercise, provided that, unless such Holder has elected a Cashless Exercise pursuant to Section 1(d), the Company shall not be obligated to deliver shares of Common Stock hereunder unless the Company has received the Aggregate Exercise Price by the Share Delivery Date. Upon Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been Exercised, irrespective of the date such Warrant Shares are credited to the Holder’s DTC account or the date of delivery of the certificates evidencing such Warrant Shares, as the case may be. If this Warrant is submitted in connection with any exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then the Company shall as soon as practicable and in no event later than five Business Days after any exercise and at its own expense, issue a new Warrant (in accordance with Section 7(d)) representing the right to purchase the number of Warrant Shares purchasable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant is exercised. No fractional shares of Common Stock are to be issued upon the exercise of this Warrant, but rather the number of shares of Common Stock to be issued shall be rounded down to the nearest whole number. The Company shall pay any and all taxes which may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or Warrants in a name other than that of the Holder or an affiliate thereof. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

- (b) Exercise Price. For purposes of this Warrant, “**Exercise Price**” means \$1.37 per Warrant Share, subject to adjustment as provided herein.
- (c) Company’s Failure to Timely Deliver Securities. If the Company shall fail for any reason or for no reason to issue to the Holder within three (3) Business Days of Exercise in compliance with the terms of this Section 1, a certificate for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock on the Company’s share register or to credit the Holder’s balance account with DTC for such number of shares of Common Stock to which the Holder is entitled, as applicable, upon the Holder’s exercise of this Warrant, then (i) the Holder shall be entitled, but not required, to rescind the previously submitted Notice of Exercise and the Company shall return all consideration paid by Holder for such shares upon such rescission and (ii) if on or after the end of such three (3) Business Day period the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of shares of Common Stock issuable upon such exercise that the Holder anticipated receiving from the Company (a “**Buy-In**”), then the Company shall, within three (3) Business Days after the Holder’s request, (1) pay cash to the Holder in the amount by which (x) the Holder’s total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased in the Buy-In, exceeds (y) the amount obtained by multiplying (A) the number of Warrant Shares that the Company has failed to deliver in connection with the exercise, by (B) the price at which the sell order giving rise to the Buy-In was executed; and (2) at the option of the Holder, either (xx) deliver to the Holder the number of Warrant Shares that would have been issued had the Company timely complied with the Exercise Notice and its delivery obligations hereunder, or (yy) provided the conditions for cashless exercise set forth in Section 1(d) are satisfied, notify the Company that the Warrant should be exercised pursuant to a Cashless Exercise (as defined in Section 1(d)), or (zz) reinstate that portion of the Warrant and equivalent number of Warrant Shares that the Company failed to deliver (prior to receipt by the Holder of the Exercise Shares). Notwithstanding anything herein to the contrary, the Company shall not be required to make any cash payments to the Holder in lieu of issuance of the Warrant Shares.

- (d) Cashless Exercise. In the event that a registration statement covering the issuance of Warrant Shares is not effective, the Holder may, at its option, exercise this Warrant in whole or in part and, in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Aggregate Exercise Price, elect instead to receive upon such exercise the “Net Number” of shares of Common Stock determined according to the following formula (a “Cashless Exercise”):

$$\text{Net Number} = \frac{(A \times B) - (A \times C)}{B}$$

For purposes of the foregoing formula:

A = the total number of shares with respect to which this Warrant is then being exercised.

B = the arithmetic average of the Closing Sale Prices of the shares of Common Stock for the five (5) consecutive Trading Days ending on the Trading Day immediately preceding the date of the Exercise Notice.

C = the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

The Company shall notify the Holder at any time prior to the Expiration Date that a registration statement covering the issuance of Warrant Shares is not effective. For sake of clarity, in the event that neither a registration statement nor an exemption from registration is available, there is no circumstance that requires the Company to effect a net cash settlement of the Warrant.

- (e) Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall issue to the Holder the number of Warrant Shares that are not disputed in accordance with the delivery obligations set forth in this Warrant.
- (f) Beneficial Ownership. The Company shall not effect any exercise of the Warrant, and a Holder shall not have the right to exercise any portion of the Warrant, to the extent that, such Holder (together with such Holder’s Affiliates, and any Persons acting as a group together with such Holder or any of such Holder’s Affiliates (such Persons, “Attribution Parties”)) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below) after giving effect to such exercise, or immediately prior to giving effect to such exercise. For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of the Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) exercise of the remaining, unexercised portion of this Warrant beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of unexercised or unconverted portion of any other Common Stock Equivalents of the Company that are subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Warrants) beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 1(f), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this Section 1(f) applies, the determination of whether the Warrant is exercisable (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and number of shares of Common Stock issuable upon such exercise (or partial exercise) shall be in the sole discretion of such Holder, and the submission of a Notice of Exercise shall be deemed to be such Holder’s determination of whether the Warrant may be exercised (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and number of shares of Common Stock issuable upon exercise (or partial exercise), in each case subject to the Beneficial Ownership Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Company each time it delivers a Notice of Exercise that such Notice of Exercise has not violated the restrictions set forth in this paragraph and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 1(f), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company’s most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company or (iii) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Business Days confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined by the Holder after giving effect to the conversion or exercise of securities of the Company, including the Warrant, by such Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The “Beneficial Ownership Limitation” initially shall be such percent of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of the Warrant held by the applicable Holder, as set forth next to the name of each Buyer (as defined in the Purchase Agreement) on Schedule I of the Purchase Agreement. A Holder, upon notice to the Company, may decrease or thereafter increase the Beneficial Ownership Limitation provided in this Section 1(f) applicable to such Holder’s Warrant, provided that the Beneficial Ownership Limitation in no event may exceed 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of the Warrant held by such Holder and this Section 1(f) shall continue to apply. Any such change in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company and shall only apply to such Holder and no other Holder. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 1(f) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of the Warrant.

2. ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES. The Exercise Price and the number of Warrant Shares shall be adjusted from time to time as follows:

- (a) Adjustment upon Subdivision or Combination of Common Stock. If the Company at any time on or after the Issuance Date subdivides (by any stock split, stock dividend, recapitalization, reorganization, scheme, arrangement or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision will be proportionately reduced and the number of Warrant Shares will be proportionately increased. If the Company at any time on or after the Issuance Date combines (by any stock split, stock dividend, recapitalization, reorganization, scheme, arrangement or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination will be proportionately increased and the number of Warrant Shares will be proportionately decreased. Any adjustment under this Section 2(a) shall become effective at the close of business on the date the subdivision or combination becomes effective.
- (b) Other Events. If any event occurs of the type contemplated by the provisions of Section 2(a) but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features to the holders of the Company's equity securities), then the Company's Board of Directors will make an appropriate adjustment in the Exercise Price and the number of Warrant Shares and provide that the record date for stockholders entitled to participate in such event shall be the effective date for such adjustment so as to protect the rights of the Holder; provided that no such adjustment pursuant to this Section 2(b) will increase the Exercise Price or decrease the number of Warrant Shares as otherwise determined pursuant to this Section 2.

3. RIGHTS UPON DISTRIBUTION OF ASSETS. If the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction), then, in each such case, the Holder, as the holder of this Warrant, shall be entitled to receive such dividends paid and distributions of any kind made to the holders of Common Stock of the Company to the same extent as if the Holder had Exercised this Warrant into Common Stock (without regard to any limitations on exercise herein or elsewhere and without regard to whether or not a sufficient number of shares are authorized and reserved to effect any such exercise and issuance) and had held such shares of Common Stock on the record date for such dividends and distributions. Payments under the preceding sentence shall be made concurrently with the dividend or distribution to the holders of Common Stock, except that, to the extent that the Holder's right to participate in any such distributions would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to such distribution to such extent, and such distribution to such extent shall be held in abeyance for the Holder until such time, if ever, as the distribution to such extent thereto would not result in the Holder exceeding the Beneficial Ownership Limitation.

#### 4. PURCHASE RIGHTS; FUNDAMENTAL TRANSACTIONS.

- (a) Purchase Rights. In addition to any adjustments pursuant to Section 2 above, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property of the Company pro rata to the record holders of any class of shares of Common Stock (the “**Purchase Rights**”), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights, provided, however, to the extent that the Holder’s right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation.
- (b) Fundamental Transactions. Upon the occurrence of any Fundamental Transaction, any Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the “Company” shall refer instead to any Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of the Fundamental Transaction, any Successor Entity shall deliver to the Holder confirmation that there shall be issued upon exercise of this Warrant at any time after the consummation of the Fundamental Transaction, in lieu of the shares of the Common Stock (or other securities, cash, assets or other property purchasable upon the exercise of the Warrant prior to such Fundamental Transaction), such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights), if any, that the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had this Warrant been exercised immediately prior to such Fundamental Transaction, as adjusted in accordance with the provisions of this Warrant. In addition to and not in substitution for any other rights hereunder, prior to the consummation of any Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a “**Corporate Event**”), the Company shall make appropriate provision to insure that the Holder will thereafter have the right to receive upon an exercise of this Warrant but, in any event, prior to the Expiration Date, in lieu of the shares of the Common Stock (or other securities, cash, assets or other property) purchasable upon the exercise of the Warrant prior to such Fundamental Transaction, such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights) which the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had the Warrant been exercised immediately prior to such Fundamental Transaction. The Company shall not enter into or be a party to a Fundamental Transaction unless provision is made with respect to the Holder’s right under this Section 4(b) in a form and substance reasonably satisfactory to the Holder. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The provisions of this Section shall apply similarly and equally to successive Fundamental Transactions and Corporate Events and shall be applied without regard to any limitations on the exercise of this Warrant. The Holder may waive its rights under this Section 4(b) with respect to any particular Fundamental Transaction.

5. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Amended and Restated Certificate of Incorporation, Amended and Restated Bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all the provisions of this Warrant. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, and (ii) shall, so long as this Warrant is outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the exercise of this Warrant, 100% of the number of shares of Common Stock issuable upon exercise of this Warrant then outstanding (without regard to any limitations on exercise).

6. WARRANT HOLDER NOT DEEMED A STOCKHOLDER. Except as otherwise specifically provided herein, the Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

7. REISSUANCE OF WARRANTS.

- (a) Registration of Warrant. The Company or its Transfer Agent shall register this Warrant, upon the records to be maintained by the Company or its Transfer Agent for that purpose (the "**Warrant Register**"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary. The Company or its Transfer Agent shall also register any transfer, exchange, reissuance or cancellation of any portion of this Warrant in the Warrant Register.
- (b) Transfer of Warrant. If this Warrant is to be transferred in accordance with Section 14, the Holder shall surrender this Warrant to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 7(d)), registered as the Holder may request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 7(d)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred.
- (c) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form or the provision of reasonable security by the Holder to the Company and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 7(d)) representing the right to purchase the Warrant Shares then underlying this Warrant.
- (d) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, together with all applicable transfer taxes, for a new Warrant or Warrants (in accordance with Section 7(d)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender; provided, however, that no Warrants for fractional shares of Common Stock shall be given.
- (e) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 7(a) or Section 7(c), the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date and (iv) shall have the same rights and conditions as this Warrant.



8. NOTICES. Whenever notice is required to be given to either party under this Warrant, unless otherwise provided herein, such notice shall be given in accordance with information provided by the Holder to the Company, or by the Company to the Holder, as applicable, in writing. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Warrant, including in reasonable detail a description of such action and the reason therefor.
9. AMENDMENT AND WAIVER. This Warrant is one of a series of Series A-1 Warrants to Purchase Common Stock of the Company issued on the Issuance Date (collectively, the “**Series A-1 Warrants**”). The provisions of this Warrant may be amended or modified or the provisions hereof waived with the written consent of the Company and the Holder.
10. GOVERNING LAW. This Warrant shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Warrant shall be governed by, the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware.
11. CONSTRUCTION; HEADINGS. This Warrant shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant.
12. DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall submit the disputed determinations or arithmetic calculations via facsimile within two (2) Business Days of receipt of the Exercise Notice giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation of the Exercise Price or the Warrant Shares within three (3) Business Days of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within two (2) Business Days submit via facsimile (a) the disputed determination of the Exercise Price to an independent, reputable investment bank selected by the Company and approved by the Holder or (b) the disputed arithmetic calculation of the Warrant Shares to the Company’s independent, outside accountant. The Company shall cause at its expense the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than ten (10) Business Days from the time it receives the disputed determinations or calculations. Such investment bank’s or accountant’s determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error. The expenses of the investment bank and accountant will be borne by the Company.
13. REMEDIES, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue actual damages for any failure by the Company to comply with the terms of this Warrant.
14. TRANSFER. Subject to the transfer restrictions set forth herein, this Warrant may be offered for sale, sold, transferred or assigned without the consent of the Company.

15. CERTAIN DEFINITIONS. For purposes of this Warrant, the following terms shall have the following meanings:

- (a) **“Bloomberg”** means Bloomberg Financial Markets.
- (b) **“Business Day”** means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.
- (c) **“Closing Sale Price”** means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price, as the case may be, then the last bid price or the last trade price, respectively, of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the “pink sheets” by OTC Markets Group Inc. If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price, as the case may be, of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.
- (d) **“Common Stock”** means (i) the Company’s shares of Common Stock, par value \$0.001 per share, and (ii) any share capital into which such Common Stock shall have been changed or any share capital resulting from a reclassification of such Common Stock.
- (e) **“Common Stock Equivalents”** means any securities of the Company which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.
- (f) **“Convertible Securities”** means any stock or securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for shares of Common Stock.
- (g) **“Eligible Market”** means The New York Stock Exchange, Inc., The NYSE MKT LLC, The NASDAQ Global Select Market, The NASDAQ Global Market or The NASDAQ Capital Market.
- (h) **“Expiration Date”** means the seventh anniversary of the Issuance Date or, if such date falls on a day other than a Business Day or on which trading does not take place on the Principal Market (a **“Holiday”**), the next date that is not a Holiday.
- (i) **“Fundamental Transaction”** means that (A) the Company shall, directly or indirectly, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Person, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company to another Person, or (iii) allow another Person to make a purchase, tender or exchange offer that is accepted by the holders of more than the 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), or (iv) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock purchase agreement or other business combination), or (v) reorganize, recapitalize or reclassify the Common Stock, or (B) any “person” or “group” (as these terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act) is or shall become the “beneficial owner” (within the meaning of Rule 13d-3 under the Exchange Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock.

- (j) **“Options”** means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.
- (k) **“Parent Entity”** of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.
- (l) **“Person”** means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.
- (m) **“Principal Market”** means the securities exchange or securities quotation service where the Common Stock is principally listed or quoted for trading.
- (n) **“Successor Entity”** means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.
- (o) **“Trading Day”** means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded; provided that “Trading Day” shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time).

**[Signature Page Follows]**

IN WITNESS WHEREOF, the Company has caused this Series A-1 Warrant to Purchase Common Stock to be duly executed as of the Issuance Date set out above.

**WINDTREE THERAPEUTICS, INC.**

By: \_\_\_\_\_

Name:

Title:

EXHIBIT A

EXERCISE NOTICE TO BE EXECUTED BY THE REGISTERED HOLDER  
TO EXERCISE THIS SERIES A-1 WARRANT TO PURCHASE COMMON STOCK

To: CONTINENTAL STOCK TRANSFER & TRUST COMPANY

17 Battery Place, 8th Floor  
New York NY 10004  
By Email: [---]  
Tel: [---]

The undersigned holder hereby exercises the right to purchase \_\_\_\_\_ of the shares of Common Stock (“Warrant Shares”) of WINDTREE THERAPEUTICS, INC., a Delaware corporation (the “Company”), evidenced by the attached Series A-1 Warrant to Purchase Common Stock (the “Warrant”). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Form of Exercise Price. The Holder intends that payment of the Exercise Price shall be made as:

a “Cash Exercise” with respect to \_\_\_\_\_ Warrant Shares; and/or

a “Cashless Exercise” with respect to \_\_\_\_\_ Warrant Shares

2. Payment of Exercise Price. In the event that this is a Cash Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the holder shall pay the Aggregate Exercise Price in the sum of \$ \_\_\_\_\_ to the Company in accordance with the terms of the Warrant.

3. Delivery of Warrant Shares. The Company shall deliver the Warrant Shares to the holder in accordance with the terms of the Warrant.

4. Representations and Warranties. By its delivery of this Exercise Notice, the undersigned represents and warrants to the Company that in giving effect to the exercise evidenced hereby the Holder will not beneficially own in excess of the number of shares of Common Stock (determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended) permitted to be owned under Section 1(f) of this Warrant to which this notice relates.

Date: \_\_\_\_\_,  
Name of Registered Holder:

By: \_\_\_\_\_  
Name:  
Title:

Facsimile Number for notices: \_\_\_\_\_  
Address for delivery (if applicable): \_\_\_\_\_  
Holder, or Holder's designee's account information with DTC through its DWAC system (if applicable): \_\_\_\_\_

ACKNOWLEDGMENT

The Company hereby acknowledges this Exercise Notice.

WINDTREE THERAPEUTICS, INC.

By: \_\_\_\_\_  
Name:  
Title:

## SECURITIES PURCHASE AGREEMENT

**SECURITIES PURCHASE AGREEMENT** (the "**Agreement**"), dated as of February 13, 2017, by and among Windtree Therapeutics, Inc., a Delaware corporation, with headquarters located at 2600 Kelly Road, Suite 100, Warrington, PA 18976 (the "**Company**") and the persons listed on Schedule I attached hereto (each, a "**Buyer**" and, collectively, the "**Buyers**").

**WHEREAS:**

A. The Company and the Buyers are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the "**1933 Act**"), and Rule 506 of Regulation D ("**Regulation D**") as promulgated by the United States Securities and Exchange Commission (the "**SEC**") under the 1933 Act;

B. Each Buyer wishes to purchase, and the Company wishes to sell to such Buyer, upon the terms and conditions stated in this Agreement, that certain number of units (each, a "**Unit**" and, collectively, the "**Units**") set forth next to such Buyer's name on Schedule I attached hereto, each Unit consisting of: (i) one share of Series A Convertible Preferred Stock, par value \$0.001 per share, of the Company (each, a "**Preferred Share**" and, collectively, the "**Preferred Shares**") and (ii) 1,000 Series A-1 Warrants, in substantially the form attached hereto as Exhibit A (each, a "**Warrant**" and, collectively, the "**Warrants**"), to acquire one share of common stock, par value \$0.001 per share, of the Company (the "**Common Stock**") (as exercised, each, a "**Warrant Share**" and, collectively, the "**Warrant Shares**");

C. Contemporaneously with the execution and delivery of this Agreement, the Company is filing a Certificate of Designation of the Series A Convertible Preferred Stock (the "**Certificate of Designation**"), substantially in the form attached hereto as Exhibit B, with the Secretary of State of the State of Delaware;

D. Contemporaneously with the execution and delivery of this Agreement, the parties hereto are executing and delivering a Registration Rights Agreement, substantially in the form attached hereto as Exhibit C (the "**Registration Rights Agreement**"), pursuant to which the Company has agreed to provide certain registration rights with respect to the Warrant Shares and the Common Stock issuable upon conversion of the Preferred Shares (the "**Conversion Shares**") under the 1933 Act and the rules and regulations promulgated thereunder, and applicable state securities laws; and

E. The Units, Preferred Shares, Conversion Shares, Warrants and Warrant Shares are referred to herein, collectively, as the "**Securities**".

**NOW, THEREFORE**, the Company and the Buyers hereby agree as follows:

1. PURCHASE AND SALE OF UNITS

(a) Purchase of Units. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7 below, the Company shall issue and sell to the Buyers, and the Buyers agree to purchase from the Company, severally, but not jointly, on one or more Closing Date(s) (as defined below), the number of Units set forth on Schedule I.

---

(b) Purchase Price. The purchase price for the Units shall be \$1,495 per Unit and the aggregate purchase price for the number of Units to be purchased by each Buyer shall be as set forth on Schedule I (the "**Purchase Price**").

(c) Closing Date. The date and time of the Closing(s) (each a "**Closing Date**") shall be such date and time as is agreed to by the Company and the Buyers. The Company and the Buyers may agree to multiple Closing Dates.

(d) Form of Payment. On the Closing Date applicable to each Buyer, (i) such Buyer shall pay its respective Purchase Price to the Company for the Units to be issued and sold to such Buyer at the Closing, by wire transfer of immediately available funds in accordance with the Company's written wire instructions (or, if applicable, in lieu of cash, Units may be delivered in consideration of certain development services provided), and (ii) the Company shall instruct its transfer agent to record in the Company's books and records, the number of Preferred Shares and Warrants issued and sold to such Buyer at the Closing.

## 2. BUYER REPRESENTATIONS, WARRANTIES AND COVENANTS.

Each Buyer represents and warrants to the Company for itself and for no other Buyer that as of the date hereof and as of the Closing Date applicable to such Buyer (unless as of a specified date therein):

(a) Organization and Qualification. Such Buyer is a natural person, or an entity duly organized and validly existing in good standing under the laws of the jurisdiction in which it is organized and has the requisite corporate, partnership, limited liability company or similar power and authorization to enter into and perform its obligations under this Agreement, the Registration Rights Agreement, the Warrants, the Certificate of Designation and each of the other agreements entered into by the parties hereto in connection with the transactions contemplated by this Agreement (collectively, the "**Transaction Documents**").

(b) No Public Sale or Distribution. Such Buyer is (i) acquiring the Units, (ii) upon conversion of the Preferred Shares will acquire the Conversion Shares and (iii) upon exercise of the Warrants will acquire the Warrant Shares issuable upon exercise thereof, in the ordinary course of business for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the 1933 Act and such Buyer does not have a present arrangement to effect any distribution of the Securities to or through any person or entity; provided, however, that by making the representations herein, such Buyer does not agree to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption under the 1933 Act.

(c) Accredited Investor Status. Such Buyer is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D. Such Buyer hereby represents that (i) such Buyer was contacted regarding the sale of the Securities by the Company (or an authorized agent or representative thereof) with whom such Buyer had a prior substantial pre-existing relationship and (ii) no Securities were offered or sold to it by means of any form of general solicitation or general advertising, and in connection therewith, such Buyer did not: (X) receive or review any advertisement, article, notice or other communication published in a newspaper or magazine or similar media or broadcast over television or radio whether closed circuit, or generally available; or (Y) attend any seminar meeting or industry investor conference whose attendees were invited by any general solicitation or general advertising. Such Buyer is not itself a "broker" or a "dealer" as defined in the Securities Exchange Act of 1934, as amended (the "**1934 Act**") and is not an "affiliate" of the Company as defined in Rule 405 promulgated under the 1933 Act.

(d) Reliance on Exemptions. Such Buyer understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and such Buyer's compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of such Buyer to acquire the Securities.

(e) Information. Such Buyer and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Securities which have been requested by such Buyer. Such Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company. Such Buyer understands that its investment in the Securities involves a high degree of risk and is able to afford a complete loss of such investment. Such Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities.

(f) No Governmental Review. Such Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(g) Transfer or Resale. Such Buyer understands that except as provided in the Registration Rights Agreement: (i) the Securities have not been and are not being registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder or (B) such Buyer shall have delivered to the Company a representation letter, in a form reasonably acceptable to the Company, to the effect that such Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, such as pursuant to Rule 144 promulgated under the 1933 Act, as amended, (or a successor rule thereto) ("**Rule 144**"); (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the Person (which for purposes of this Agreement means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof) through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC thereunder; and (iii) neither the Company nor any other Person is under any obligation to register the Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder. Notwithstanding the foregoing, the Securities may be pledged in connection with a bona fide margin account or other loan secured by the Securities and such pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Buyer effecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document, including, without limitation, this Section 2(g); provided, that in order to make any sale, transfer or assignment of Securities, such Buyer and its pledgee makes such disposition in accordance with or pursuant to a registration statement or an exemption under the 1933 Act.



(h) Legends. Such Buyer understands that the Preferred Shares and the Warrants shall bear any legend as required by the "blue sky" laws of any state and a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED HEREBY NOR THE SECURITIES INTO WHICH THE SECURITIES REPRESENTED HEREBY ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES REPRESENTED HEREBY AND THE SECURITIES INTO WHICH THE SECURITIES REPRESENTED HEREBY ARE EXERCISABLE MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED EXCEPT PURSUANT TO (A) AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) PURSUANT TO AN AVAILABLE EXEMPTION IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES REPRESENTED HEREBY AND THE SECURITIES INTO WHICH THE SECURITIES REPRESENTED HEREBY ARE EXERCISABLE MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY SUCH SECURITIES.

(i) Validity; Enforcement. This Agreement and the Registration Rights Agreement have been duly and validly authorized, executed and delivered on behalf of such Buyer and shall constitute the legal, valid and binding obligations of such Buyer enforceable against such Buyer in accordance with their respective terms, except as rights to indemnity and contribution may be limited by state or federal securities laws or the public policy underlying such laws, except as such enforceability may be limited by general principles of equity, including as to limitations on the enforcement of the remedy of specific performance and other equitable remedies (regardless of whether such enforceability is considered in a proceeding in equity or at law), or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' and contracting parties' rights and remedies. The persons signing on behalf of such Buyer hereby warrant and represent that they have the authority to execute and deliver this Agreement on behalf of such Buyer.

(j) No Conflicts. The execution, delivery and performance by such Buyer of this Agreement and the Registration Rights Agreement and the consummation by such Buyer of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of such Buyer or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Buyer is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Buyer, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Buyer to perform its obligations hereunder.

(k) State of Organization. The information relating to such Buyer's state of organization and the address of its principal place of business, or if such Buyer is a natural person, the address of its primary residence, as set forth on Schedule I, is correct and complete.

(l) Illegal Transactions. Such Buyer has not, directly or indirectly, and no Person acting on behalf of or pursuant to any understanding with such Buyer, has engaged in any transactions in the securities of the Company (including, without limitation, any Short Sales (as defined below) involving any of the Company's securities) since the time that such Buyer was first contacted by the Company regarding the investment in the Company contemplated by this Agreement. Such Buyer covenants that neither it nor any Person acting on its behalf or pursuant to any understanding with such Buyer will engage, directly or indirectly, in any transactions in the securities of the Company (including Short Sales) prior to the time the transactions contemplated by this Agreement are publicly disclosed. "**Short Sales**" include, without limitation, all "short sales" as defined in Rule 200 promulgated under Regulation SHO under the 1934 Act and all types of direct and indirect stock pledges, forward sale contracts, options, puts, calls, short sales, swaps, derivatives and similar arrangements (including on a total return basis), and sales and other transactions through non-U.S. broker-dealers or foreign regulated brokers.

(m) No Brokers. Such Buyer represents and warrants that it has not "engaged," "consented to" or "authorized" any broker, finder or intermediary to act on its behalf, directly or indirectly, as a broker, finder or intermediary in connection with the transactions contemplated by this Agreement. Such Buyer agrees to indemnify and hold harmless the Company from and against all fees, commissions or other payments owing to any such person or firm acting on behalf of such Buyer.

(n) Reliance on Representations. Such Buyer acknowledges that the Company and its counsel are entitled to rely on the representations and warranties made herein and otherwise requested by the Company for use in preparation of the Registration Statement to be filed by the Company pursuant to Registration Rights Agreement. All such information shall be true, correct and complete as of the date of this Agreement, the Closing Date applicable for such Buyer and the filing date for any such Registration Statement. Such Buyer will notify the Company of any change in any such information until such time as the Company is no longer required to keep the Registration Statement effective.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to each Buyer as of the date hereof and as of the Closing Date applicable to each Buyer (unless as of a specified date therein) that:

(a) Organization and Qualification. Each of the Company and its "**Subsidiaries**" (which for purposes of this Agreement means any entity (i) in which the Company, directly or indirectly, owns capital stock or holds an equity or similar interest and (ii) which has operations and material assets) are corporations duly organized and validly existing in good standing under the laws of the jurisdiction in which they are incorporated, and have the requisite corporate power and authorization to own their properties and to carry on their business as now being conducted. Each of the Company and its Subsidiaries is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not have a Material Adverse Effect. The Company has no Subsidiaries other than its presently inactive subsidiary, Discovery Laboratories, Inc., formerly known as Acute Therapeutics, Inc. Unless the context otherwise requires, all references to the "Company" in this Agreement include Windtree Therapeutics, Inc. and its Subsidiary, Discovery Laboratories, Inc. As used in this Agreement, "**Material Adverse Effect**" means any material adverse effect on the business, properties, assets, operations, results of operations, condition (financial or otherwise) or prospects of the Company, taken as a whole, or on the transactions contemplated hereby and by the other Transaction Documents or by the agreements and instruments to be entered into in connection herewith or therewith, or on the authority or ability of the Company to perform its obligations under the Transaction Documents; provided, however, that changes relating to (i) the economy in general, (ii) the Company's industry in general, (iii) the Company's working capital and liquidity or (iv) the listing of the Common Stock on the Nasdaq Stock Market ("**NASDAQ**") shall not in itself be deemed to arise to a Material Adverse Effect.

(b) Authorization; Enforcement; Validity. The Company has the requisite corporate power and authority to enter into and perform its obligations under the Transaction Documents and to issue the Securities in accordance with the terms thereof. The execution and delivery of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated thereby, including, without limitation, the issuance of the Preferred Shares and the Warrants and the reservation for issuance and the issuance of the Conversion Shares and Warrant Shares issuable upon conversion of the Preferred Shares or the exercise of the Warrants, as applicable, have been duly authorized by the Company's Board of Directors and no further consent or authorization is required by the Company, its Board of Directors or its stockholders. This Agreement and the other Transaction Documents have been duly executed and delivered by the Company, and constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as rights to indemnity and contribution may be limited by state or federal securities laws or the public policy underlying such laws, except as such enforceability may be limited by general principles of equity, including as to limitations on the enforcement of the remedy of specific performance and other equitable remedies (regardless of whether such enforceability is considered in a proceeding in equity or at law), or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' and contracting parties' rights and remedies.

(c) Issuance of Securities. The Preferred Shares and the Warrants are duly authorized and, upon issuance in accordance with the terms hereof and receipt by the Company of the Purchase Price therefor, shall be validly issued and free from all taxes, liens and charges (other than arising under federal or state securities or "blue sky" laws and regulations) with respect to the issue thereof and the Preferred Shares shall be fully paid and nonassessable. As of the Closing Date, the Company shall have duly authorized and reserved for issuance a number of shares of Common Stock which equals the number of Conversion Shares plus Warrant Shares. The Company shall, so long as any of the Preferred Shares or Warrants are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued capital stock, solely for the purpose of effecting the conversion of Preferred Shares and the exercise of the Warrants, 100% of the number of shares of Common Stock issuable upon conversion of the Preferred Shares and exercise of the Warrants (subject to reduction from time to time for Common Stock issued upon conversion of Preferred Shares or exercise of the Warrants). A form of an instruction letter to the Company's Common Stock transfer agent instructing the transfer agent to reserve 100% of the number of shares of Common Stock issuable upon conversion of the Preferred Shares and exercise of the Warrants is attached hereto as Exhibit D. Upon conversion of the Preferred Shares in accordance with the Certificate of Designation, or upon exercise in accordance with the Warrants, the Conversion Shares and/or the Warrant Shares, as applicable, will be validly issued, fully paid and nonassessable and free from all taxes, liens and charges with respect to the issue thereof (other than arising under federal or state securities or "blue sky" laws and regulations), with the holders being entitled to all rights accorded to a holder of Common Stock. Subject to the accuracy of the representations and warranties of Buyer contained in Section 2 of this Agreement, issuance by the Company of the Securities contemplated by this Agreement are exempt from the registration requirements of the 1933 Act.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated thereby (including, without limitation, the issuance of the Preferred Shares and Warrants and reservation for issuance and issuance of the Conversion Shares and Warrant Shares) will not (i) result in a violation of the Amended and Restated Certificate of Incorporation (the "**Certificate of Incorporation**") or Amended and Restated Bylaws (the "**Bylaws**") of the Company or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any material agreement, indenture or instrument to which the Company is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations and the rules and regulations of the securities exchange or securities quotation service where the Common Stock is principally listed or quoted for trading (the "**Principal Market**") applicable to the Company or by which any property or asset of the Company is bound or affected, except in the case of clauses (i) through (iii), above, for such matters which, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(e) Consents. Except for (i) the filing of the Certificate of Designation with the Delaware Secretary of State, (ii) the filing of a Notice of Additional Listing with NASDAQ (which the Company will file with NASDAQ no later than the first Closing Date), (iii) registration of the Conversion Shares and the Warrant Shares issuable upon exercise of the Warrants under the 1933 Act pursuant to the Registration Rights Agreement, (iv) such consents, notifications, approvals, authorizations, registrations or qualifications as may be required under the 1934 Act and applicable state securities or "blue sky" laws in connection with the purchase of the Securities by Buyer, the Company is not required to obtain any consent, authorization or order of, or make any filing or registration with, any court, governmental agency or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its obligations under or contemplated by the Transaction Documents, in each case in accordance with the terms thereof. The Company is unaware of any facts or circumstances that might prevent the Company from obtaining or effecting any of the registration, application or filings pursuant to the preceding sentence.

(f) Acknowledgment Regarding Buyer's Purchase of Securities. The Company acknowledges and agrees that the Buyer is acting solely in the capacity of arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby and that, except to the extent set forth in Schedule I, the Buyer is not (i) an officer or director of the Company, (ii) an "affiliate" of the Company (as defined in Rule 144) or (iii) to the Knowledge of the Company (defined below), a "beneficial owner" of more than 10% of the Common Stock (as defined for purposes of Rule 13d-3 of the 1934 Act). The Company further acknowledges that, except to the extent set forth in Schedule I, the Buyer is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby, and any advice given by the Buyer or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Buyer's purchase of the Securities. The Company further represents to the Buyer that the Company's decision to enter into the Transaction Documents has been based solely on the independent evaluation by the Company and its representatives. For the purposes of this Agreement, the term "Knowledge of the Company" shall mean the knowledge, after due inquiry, of the President and Chief Executive Officer, the Senior Vice President and Chief Financial Officer, the Senior Vice President and General Counsel, the Senior Vice President and Chief Development Officer and any other Senior Vice President or person holding comparable positions in the Company.

(g) No General Solicitation. Neither the Company, nor any of its affiliates, nor, to the Knowledge of the Company, any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities.

(h) No Integrated Offering. None of the Company or any of its affiliates, and any Person acting on their behalf has taken any action to sell, offer for sale or solicit offers to buy any securities of the Company which would require registration of any of the Securities under Section 5 of the 1933 Act, unless such offer, issuance or sale was or shall be within the exemptions of Section 4 of the 1933 Act. The Company has offered securities for sale only to "accredited investors" within the meaning of Rule 501 under the 1933 Act. None of the Company, its affiliates and any Person acting on their behalf will take any action or steps that would require registration of any of the Securities under the 1933 Act or cause the offering of the Securities to be integrated with other offerings, for purposes of the 1933 Act or the requirements of the Principal Market.

(i) SEC Documents; Financial Statements. During the two years prior to the date hereof, the Company has timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the 1934 Act (all of the foregoing filed prior to the date hereof or prior to the first Closing Date, and all exhibits included therein and financial statements and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "**SEC Documents**"). As of their respective dates, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Company's Subsidiary is not required to file any reports or other documents with the SEC. As of their respective dates, the financial statements of the Company included in the SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. Such financial statements have been prepared in accordance with United States generally accepted accounting principles, consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments). With respect to the transactions contemplated by this Agreement, none of the information referred to in Section 2(e) of this Agreement provided by or on behalf of the Company to the Buyer which is not included in the SEC Documents contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstance under which they are or were made, not misleading.

(j) Absence of Certain Changes. Except as disclosed in the SEC Documents and Schedule 3(j), since September 30, 2016, there has been no material adverse change and no material adverse development in the business, properties, operations, condition (financial or otherwise), results of operations or prospects of the Company. Except as disclosed in the SEC Documents and Schedule 3(j), since September 30, 2016, the Company has not (i) declared or paid any dividends, (ii) sold any assets, individually or in the aggregate, in excess of \$1,000,000 outside of the ordinary course of business or (iii) had capital expenditures, individually or in the aggregate, in excess of \$1,000,000. The Company has not taken any steps to seek protection pursuant to any bankruptcy law nor does the Company have any knowledge or reason to believe that its creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact which would reasonably lead a creditor to do so.

(k) No Undisclosed Events, Liabilities, Developments or Circumstances. Except for the transactions contemplated by this Agreement, no material event, liability, development or circumstance has occurred or exists with respect to the Company or its business, properties, prospects, operations or financial condition, that would be required to be disclosed by the Company under applicable securities laws on a registration statement on Form S-1 filed with the SEC relating to an issuance and sale by the Company of its Common Stock and which has not been publicly announced.

(l) Conduct of Business; Regulatory Permits. The Company is not in violation of any term of or in default under the Certificate of Incorporation or Bylaws. Except as disclosed in the SEC Documents and Schedule 3(l), to the Knowledge of the Company, the Company is not in violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company, and the Company will not conduct its business in violation of any of the foregoing, except for possible violations which would not, individually or in the aggregate, have a Material Adverse Effect. Since January 1, 2016, (i) the Common Stock has been designated for quotation or listed on the Principal Market, (ii) trading in the Common Stock has not been suspended by the SEC or the Principal Market and (iii) except as disclosed in Schedule 3(l), the Company has received no communication, written or oral, from the SEC or the Principal Market regarding the violation of a rule or the suspension or delisting of the Common Stock from the Principal Market. The Company possesses all certificates, authorizations and permits issued by the appropriate federal, state or foreign regulatory authorities necessary to conduct its business, except where the failure to possess such certificates, authorizations or permits would not have, individually or in the aggregate, a Material Adverse Effect, and, to the Knowledge of the Company, the Company has not received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit.

(m) Foreign Corrupt Practices. To the Knowledge of the Company, neither the Company, nor any director, officer, agent, employee or other Person acting on behalf of the Company has, in the course of its actions for, or on behalf of, the Company knowingly and intentionally (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

(n) Sarbanes-Oxley Act. The Company is in compliance with all applicable provisions of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and all applicable rules and regulations promulgated by the SEC thereunder that are effective as of the date hereof, except where such noncompliance would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(o) Transactions With Affiliates. Except as set forth in the SEC Documents, none of the officers, directors or employees of the Company is presently a party to any transaction with the Company that would be required to be disclosed in the SEC Documents under Item 404 of Regulation S-K under the 1933 Act.

(p) Equity Capitalization. The Company's equity capitalization, on a fully diluted basis, as of September 30, 2016 is set forth on Schedule 3(p). All outstanding shares set forth therein have been validly issued and are fully paid and nonassessable. Except as disclosed in Schedule 3(p) or as described in or contemplated by the SEC Documents: (i) none of the Company's capital stock is subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by the Company; (ii) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of the Company, or contracts, commitments, understandings or arrangements by which the Company is or may become bound to issue additional capital stock of the Company or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of the Company; (iii) except for Indebtedness of the Company incurred in the ordinary course of business of the Company, which in the aggregate would not reasonably be expected to have a Material Adverse Effect, there are no outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing material Indebtedness of the Company or by which the Company is or may become bound; (iv) except for financing statements related to Indebtedness of the Company described in the SEC Documents, there are no financing statements securing obligations in any material amounts, either singly or in the aggregate, filed in connection with the Company; (v) there are no outstanding securities or instruments of the Company which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company is or may become bound to redeem a security of the Company; (vi) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities; (vii) the Company does not have any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement; and (viii) the Company has no material liabilities or obligations required to be disclosed in the SEC Documents but not so disclosed in the SEC Documents, other than those incurred in the ordinary course of the Company's business and which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(q) Absence of Litigation. Except as described in the SEC Documents, there are no actions, suits, proceedings, inquiries or investigations before or by the Principal Market, any court, public board, government agency, self-regulatory organization or body pending or, to the Knowledge of the Company, threatened against or affecting the Company, the Common Stock or any of the Company's officers or directors, whether of a civil or criminal nature or otherwise, which, individually or in the aggregate, might reasonably be expected to have a Material Adverse Effect.

(r) Insurance. The Company is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company believes to be prudent and customary in the businesses in which the Company is engaged. The Company has not received any notice or obtained any Knowledge of circumstances indicating that it will not be able to renew its existing insurance coverage (modified to the extent deemed prudent and customary by the management of the Company) as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that is commercially reasonable and not reasonably likely to result in a Material Adverse Effect.

(s) Employee Relations. The Company believes that its relations with its employees are good. No executive officer of the Company (as defined in Rule 501(f) of the 1933 Act) has notified the Company that such officer intends to leave the Company or otherwise terminate such officer's employment with the Company. No executive officer of the Company, to the Knowledge of the Company, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any restrictive covenant to which the Company and such executive are parties, and, to the Knowledge of the Company, the continued employment of each such executive officer does not subject the Company to any liability with respect to any of the foregoing matters. The Company is in compliance with all federal, state, local and foreign laws and regulations respecting employment and employment practices, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.



(t) Title. Except as described in or contemplated by the SEC Documents, the Company has good and marketable title to all personal property owned by it which is material to its business, in each case free and clear of all liens, encumbrances and defects except such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company. Any real property and facilities held under lease by the Company are held under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company. The Company owns no real property.

(u) Intellectual Property Rights. The Company owns or licenses all the proprietary rights ("**Intellectual Property Rights**") which are necessary for the business of the Company as now conducted, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect. Except for any infringement, claim, action, proceeding, or other circumstance that would not reasonably be expected to have a Material Adverse Effect, the Company does not have any Knowledge of (i) any infringement by the Company of Intellectual Property Rights of others, (ii) there is no claim, action or proceeding being made, brought or threatened against the Company regarding its Intellectual Property Rights, (iii) any facts or circumstances which might give rise to any of the foregoing infringements or claims, actions or proceedings. The Company has taken commercially reasonable measures to protect the secrecy, confidentiality and value of all of its Intellectual Property Rights.

(v) Environmental Laws. To the Knowledge of the Company, the Company (i) is in compliance with any and all Environmental Laws (as hereinafter defined), (ii) has received all permits, licenses or other approvals required of it under applicable Environmental Laws to conduct its business and (iii) is in compliance with all terms and conditions of any such permit, license or approval where, in each of the foregoing clauses (i), (ii) and (iii), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. The term "**Environmental Laws**" means all federal, state or local laws relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "**Hazardous Materials**") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder.

(w) Tax Status. The Company (i) has made or timely filed all federal and material state income and other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and (iii) has set aside on its books provision reasonably adequate for the payment of any taxes payable for periods subsequent to the periods to which such returns, reports or declarations apply. To the Knowledge of the Company, there are no unpaid taxes in any material amount claimed to be due and payable by the taxing authority of any jurisdiction and no factual basis for any such claim.

(x) Internal Accounting and Disclosure Controls. The Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles (GAAP) and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any difference. The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-14 under the 1934 Act) that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act (i) is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC, and (ii) is accumulated and communicated to the Company's management, including its principal executive officer or officers and its principal financial officer or officers, as appropriate, to allow timely decisions regarding required disclosure.

(y) Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between the Company and an unconsolidated or other off balance sheet entity that is required to be disclosed by the Company in its 1934 Act filings and is not so disclosed and that would be reasonably likely to have a Material Adverse Effect.

(z) Transfer Taxes. On the Closing Date, all stock transfer or other taxes (other than income or similar taxes) which are required to be paid in connection with the sale and transfer of the Securities to be sold to the Buyer hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with.

(aa) Disclosure. The Company confirms that, with the exception of the transactions contemplated by this Agreement, neither it nor, to the Knowledge of the Company, any other Person acting on its behalf has provided the Buyer or its agents or counsel with any information that constitutes material, nonpublic information. The Company understands and confirms that the Buyer will rely on the foregoing representations in effecting transactions in securities of the Company. All disclosure provided by the Company to the Buyer regarding the Company, its business and the transactions contemplated hereby, including the Schedules to this Agreement, furnished by or on behalf of the Company are true and correct and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. To the Knowledge of the Company, no event or circumstance has occurred or information exists with respect to the Company or any Subsidiary or either of its or their respective business, properties, operations or financial conditions, which, under applicable law, rule or regulation, requires public disclosure or announcement by the Company but which has not been so publicly announced or disclosed (assuming for this purpose that the Company's reports filed under the 1934 Act are being incorporated into an effective registration statement filed by the Company under the 1933 Act). The Company acknowledges and agrees that the Buyer does not make and has not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in the Transaction Documents.

(bb) No Implied Representations. All of the Company's representations and warranties are contained in this Agreement, and no other representations or warranties by the Company shall be implied.

4. COVENANTS.

(a) Commercially Reasonable Efforts. Each party shall use its commercially reasonable efforts timely to satisfy each of the covenants and the conditions to be satisfied by it as provided in Sections 5, 6 and 7 of this Agreement.

(b) Form D and Blue Sky. The Company agrees to file a Form D with respect to the Securities as required under Regulation D. The Company, on or before the first Closing Date, shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for or to qualify the Securities for sale to the Buyer pursuant to this Agreement under applicable securities or "Blue Sky" laws of the states of the United States (or to obtain an exemption from such qualification). The Company shall make all filings and reports relating to the offer and sale of the Securities required under applicable securities or "Blue Sky" laws of the states of the United States only in such jurisdictions as Buyer shall reasonably request following the Closing Date applicable to such Buyer.

(c) Reporting Status. Until the date which is the later of the date on which (i) the Investor (as defined in the Registration Rights Agreement) shall have sold all the Conversion Shares and Warrant Shares and the Preferred Shares and Warrants are no longer outstanding or (ii) the Company is no longer obligated under the Registration Rights Agreement to maintain the registration statement filed thereunder (the "**Reporting Period**"), the Company shall timely file all reports required to be filed with the SEC pursuant to the 1934 Act, and the Company shall not terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would otherwise permit such termination.

(d) Financial Information. At an Investor's written request, the Company agrees to send the following to any requesting Investor during the Reporting Period, within two (2) Business Days after such written request, unless it is filed with the SEC and available to the public through the SEC's EDGAR system: (i) a copy of its Annual Reports on Form 10-K, its Quarterly Reports on Form 10-Q, any Current Reports on Form 8-K and any registration statements (other than on Form S-8) or amendments filed pursuant to the 1933 Act, and (ii) copies of any notices and other information made available or given to the stockholders of the Company generally. As used herein, "**Business Day**" means any day other than Saturday, Sunday or other day on which the Primary Market or commercial banks in The City of New York are authorized or required by law to remain closed.

(e) Listing. The Company shall use commercially reasonable efforts to maintain the Common Stock's listing on NASDAQ. If after using commercially reasonable efforts the Company is unable to maintain such listing on NASDAQ, the Company shall use commercially reasonable efforts to provide that the Common Stock is quoted for trading on the over-the-counter market.

(f) Disclosure of Transactions and Other Material Information. The Company shall, on or before 8:30 a.m., New York City Time, no later than the first Business Day after the first Closing Date, issue a press release (the "**Press Release**") disclosing the material terms of the transactions contemplated hereby. The Company shall provide the Buyer an advance copy of the Press Release and agrees to consider comments that the Buyer may provide but shall nevertheless be entitled to make such disclosure as it deems appropriate to meet its disclosure obligations under the 1934 Act. On or before 8:30 a.m., New York City Time, no later than the third Business Day following the first Closing Date, the Company shall file a Current Report on Form 8-K describing the terms of the transactions contemplated by the Transaction Documents in the form required by the 1934 Act (the "**8-K Filing**"). From and after the issuance of the Press Release, the Company shall ensure that the Buyer shall not be in possession of any material, nonpublic information received from the Company or any of its respective officers, directors, employees or agents, that is not disclosed in the Press Release. The Company shall not, and shall cause each of its officers, directors, employees and agents not to, provide the Buyer with any material, nonpublic information regarding the Company from and after the filing of the Press Release without the express written consent of the Buyer pursuant to a Confidentiality and Nondisclosure Agreement.

(g) Conduct of Business. The Company shall use commercially reasonable efforts to conduct its business to avoid violations of any law, ordinance or regulation of any governmental entity, except where such violations would not, either individually or in the aggregate, be reasonably expected to result in a Material Adverse Effect.

(h) Reservation of Shares. The Company shall maintain a reserve from its duly authorized shares of Common Stock for issuance pursuant to the Transaction Documents in such amount as may then be required to fulfill its obligations in full under the Transaction Documents (the "**Required Minimum**"). If, on any date, the number of authorized but unissued (and otherwise unreserved) shares of Common Stock is less than the Required Minimum (minus the number of shares of Common Stock previously issued pursuant to the Transaction Documents), then the Board of Directors shall use commercially reasonable efforts to amend the Company's certificate or articles of incorporation to increase the number of authorized but unissued shares of Common Stock to at least the Required Minimum at such time (minus the number of shares of Common Stock previously issued pursuant to the Transaction Documents), as soon as possible and in any event not later than the 120th day after such date; provided that the Company will not be required at any time to authorize a number of shares of Common Stock greater than the maximum remaining number of shares of Common Stock that could possibly be issued after such time pursuant to the Transaction Documents.

5. TRANSFER RESTRICTIONS; TRANSFER AGENT INSTRUCTIONS.

(a) Transfer Restrictions. If (i) all or any Preferred Shares are converted at a time when there is an effective registration statement to cover the issuance or resale of the Conversion Shares underlying the Preferred Shares or Rule 144 is available for resale of such Conversion Shares underlying the Preferred Shares without volume or manner of sale restrictions, the Conversion Shares underlying the Preferred Shares issued pursuant to any such conversion shall be issued free of all legends, provided that, in the case of legend-free issuance in reliance on Rule 144, the Holder provides a representation letter in the form and substance reasonably acceptable to the Company that such Conversion Shares may be issued without a restrictive legend, and (ii) all or any portion of a Warrant is exercised at a time when there is an effective registration statement to cover the issuance or resale of the Warrant Shares or if the Warrant is exercised via cashless exercise and the applicable non-affiliate holding period under Rule 144 has been met, the Warrant Shares issued pursuant to any such exercise shall be issued free of all legends, provided that, in the case of legend-free issuance in reliance on Rule 144, the Holder provides a representation letter in the form and substance reasonably acceptable to the Company that such Warrant Shares may be issued without a restrictive legend.

(b) Breach. The Company acknowledges that a breach by it of its obligations under this Section 5 will cause irreparable harm to the Buyer. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 5 will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 5, that the Buyer shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required.

6. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL.

The obligation of the Company hereunder to issue and sell the Units to a Buyer at the Closing is subject to the satisfaction by such Buyer, at or before the first Closing Date, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing such Buyer with prior written notice thereof:

(a) Such Buyer shall have executed each of the Transaction Documents to which it is a party and delivered the same to the Company.

(b) Such Buyer shall have delivered to the Company the Purchase Price for the Units being purchased by such Buyer on the Closing Date applicable to such Buyer by wire transfer of immediately available funds pursuant to the wire instructions provided by the Company (or, if applicable, in lieu of cash, Units may be delivered in consideration of certain development services provided).

(c) The representations and warranties of such Buyer shall be true and correct in all material respects as of the date when made and as of the Closing Date applicable to such Buyer as though made at that time (except for representations and warranties that speak as of a specific date), and such Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Buyer at or prior to the Closing Date applicable to such Buyer.

7. CONDITIONS TO A BUYER'S OBLIGATION TO PURCHASE.

The obligation of a Buyer to purchase the Units on the Closing Date applicable to such Buyer is subject to the satisfaction by such Buyer, at or before the Closing Date applicable to such Buyer, of each of the following conditions, provided that these conditions are for such Buyer's sole benefit and may be waived by such Buyer at any time in its sole discretion by providing the Company with prior written notice thereof:

(a) The Company shall have executed and delivered to such Buyer (i) each of the Transaction Documents and (ii) the Preferred Shares (in such amounts as such Buyer shall request) and the related Warrants (in such amounts as such Buyer shall request) being purchased by such Buyer on the Closing Date applicable to such Buyer pursuant to this Agreement.

(b) The Company shall have filed the Certificate of Designation with the Delaware Secretary of State, and such Certificate of Designation shall have been effective.

(c) The Company shall have entered into Securities Purchase Agreements for an aggregate investment of at least \$10,000,000.

(d) The representations and warranties of the Company shall be true and correct as of the date when made and as of the applicable Closing Date as though made at that time (except for representations and warranties that speak as of a specific date) and the Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Company at or prior to the applicable Closing Date.

(e) The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Units.

(f) The Company shall have delivered to such Buyer such other documents relating to the transactions contemplated by this Agreement as such Buyer or its counsel may reasonably request.

8. TERMINATION. In the event that on a Closing Date the Company or the Buyer has failed to satisfy the conditions set forth in Sections 6 and 7 above (and the nonbreaching party has failed to waive such unsatisfied condition(s)), the nonbreaching party shall have the option to terminate this Agreement with respect to such breaching party without liability of any party to any other party.

9. MISCELLANEOUS.

(a) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the State of Delaware for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

(b) Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party; provided that a facsimile signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile signature.

(c) Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(d) Severability. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction.

(e) Entire Agreement; Amendments. This Agreement supersedes all other prior oral or written agreements between the Buyer, the Company, their affiliates and Persons acting on their behalf with respect to the matters discussed herein, and this Agreement and the instruments referenced herein contain the entire understanding of the parties with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, neither the Company nor the Buyer makes any representation, warranty, covenant or undertaking with respect to such matters. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the Buyer. No provision hereof may be waived other than by an instrument in writing signed by the party against whom enforcement is sought. No such amendment shall be effective to the extent that it applies to less than all of the holders of the Common Shares then outstanding.

(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile or email (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one Business Day after deposit with an overnight courier service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to the Company:

Windtree Therapeutics, Inc.  
2600 Kelly Road, Suite 100  
Warrington, PA 18976  
Telephone: (215) 488-9300  
Facsimile: (215) 488-9557  
Attention: Legal Department  
Email: MTempleton@Windtreetwork.com  
Attention: Finance Department  
Email: JTattory@Windtreetwork.com

with a copy to (which shall not constitute notice):

Dentons US LLP  
1221 Avenue of the Americas  
New York, NY 10020-1089  
Telephone: (212) 398-5787  
Facsimile: (212) 768-6800  
Attention: Ira L. Kotel  
Email: ira.kotel@dentons.com

If to the Buyer:

[As set forth on Schedule I]

or to such other address and/or facsimile number and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine containing the time, date, recipient facsimile number and an image of the first page of such transmission or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

(h) No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(i) Survival. Unless this Agreement is terminated under Section 8, the representations and warranties of the Company and the Buyer contained in Sections 2 and 3, the agreements and covenants set forth in Sections 4, 5 and 9 shall survive the Closing and the delivery and exercise of Securities, as applicable.



(j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) Indemnification. In consideration of the Buyer's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless the Buyer, any affiliate of Buyer and each of their respective partners, members, officers, directors, employees and investors and any of the foregoing Persons' accounting and legal representatives retained in connection with the transactions contemplated by this Agreement (collectively, the "**Indemnitees**") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or relating to (a) any misrepresentation or breach of any representation or warranty made by the Company in the Transaction Documents or any other certificate, instrument or document contemplated thereby, or (b) any breach of any covenant, agreement or obligation of the Company contained in the Transaction Documents or any certificate, instrument or document contemplated thereby. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. Except as otherwise set forth herein, the mechanics and procedures with respect to the rights and obligations under this Section 9(k) shall be the same as those set forth in Section 6 of the Registration Rights Agreement.

(l) Participation in Future Financing.

(i) During the period ending on the first anniversary of this Agreement, upon any issuance by the Company of Common Stock, Common Stock equivalents, or a combination thereof for cash consideration in a bona fide capital raising transaction (a "Subsequent Financing"), each Buyer shall have the right to participate in the Subsequent Financing to maintain the same Beneficial Ownership Percentage (as defined below) immediately after the Subsequent Financing that such Buyer had immediately prior to the Subsequent Financing. This participation right entitles the Buyer to participate in the Subsequent Financing on the same terms, conditions and price provided for in the Subsequent Financing. The Company shall use commercially reasonable efforts to structure such Subsequent Financing to accommodate investments from Buyers who may wish to remain within the Beneficial Ownership Limitation as defined in the Preferred Stock Designation of Preferences, Rights and Limitations and the Warrants (i.e., by offering common stock equivalents to Buyers that would not cause such Buyers to exceed their Beneficial Ownership Limitation).

(ii) At least six (6) trading days prior to the closing of the Subsequent Financing, the Company shall deliver to each Buyer a written notice of its intention to effect the Subsequent Financing ("Pre-Notice"), which Pre-Notice shall ask each Buyer if it wants to review the details of such financing (such additional notice, a "Subsequent Financing Notice"). Upon the request of a Buyer, the Company shall promptly, but no later than one (1) trading day after such request, deliver a Subsequent Financing Notice to such Buyer. The Subsequent Financing Notice shall describe in reasonable detail the proposed terms of such Subsequent Financing, the amount of proceeds intended to be raised thereunder and the Person or Persons through or with whom such Subsequent Financing is proposed to be effected and shall include a term sheet or similar document relating thereto as an attachment.

(iii) Any Buyer desiring to participate in such Subsequent Financing must provide written notice to the Company by not later than 5:30 p.m. (New York City time) on the fifth (5th) trading day after all Buyers have received the Pre-Notice that such Buyer is willing to participate in the Subsequent Financing, the amount of such Buyer's participation, and representing and warranting that such Buyer has such funds ready, willing, and available for investment on the terms set forth in the Subsequent Financing Notice. If the Company receives no such notice from a Buyer as of such fifth (5th) trading day, such Buyer shall be deemed to have notified the Company that it does not elect to participate. At any time on or after 5:30 p.m. (New York City time) on the fifth (5th) trading day after all of the Buyers have received the Pre-Notice, the Company may effect the Subsequent Financing on the terms and with the Person(s) set forth in the Subsequent Financing Notice.

(iv) To the extent one or more Buyers decline all or part of their participation right under this Section 9(l), then the Company shall offer the securities purchasable under such declined participation right (the "Refused Securities"), to each Buyer that elected to participate in the Subsequent Financing to the maximum amount originally allocated to such Buyer (each such Buyer, referred to as an "Eligible Buyer" and such offer of the Refused Securities, referred to as the "Subsequent Financing Re-allocation"). Each Eligible Buyer shall be entitled to participate in the Subsequent Financing Re-allocation on a pro rata basis based on such Eligible Buyer's participation (expressed as a percent) in the original offering provided under this Agreement. The Company shall effect the Subsequent Financing Re-allocation, if any, by providing a notice (the "Re-allocation Notice") to each Eligible Buyer not later than one (1) trading day prior to closing of the Subsequent Financing, and such notice shall set forth the number of Refused Securities offered to such Eligible Buyer. Any Eligible Buyer desiring to purchase any Refused Securities offered to them under the Subsequent Financing Re-allocation must provide written notice to the Company by not later than 10:00 a.m. on next trading day after the Company provides the Re-allocation Notice to the Eligible Buyers. If the Company does not receive a written notice from an Eligible Buyer by such time, such Eligible Buyer shall be deemed to have notified the Company that it does not elect to participate in the Subsequent Financing Re-allocation.

(v) For the avoidance of doubt and notwithstanding the foregoing, this Section 9(l) shall not apply in respect of (1) any transactions pursuant to that certain At-The-Market Equity Offering Sales Agreement dated as of February 11, 2013, as amended from time to time, between the Company and Stifel, Nicolaus & Company, Incorporated, (2) the issuance of shares of Common Stock, options to acquire shares of Common Stock or other awards granted pursuant to the Company's benefit plans, as such plans may be amended, (3) the issuance of shares of Common Stock upon the exercise of any such options or other awards, (4) the issuance of shares of Common Stock pursuant to any options, warrants or convertible instrument outstanding as of the date of this Agreement, or the issuance in a Subsequent Financing of any shares of convertible preferred stock and warrants to purchase Common Stock pursuant to a stock purchase agreement in an amount of up to \$2 million, (5) the issuance of up to 1 million shares of Common Stock to consultants or other service providers of the Company in consideration for services rendered, or (6) the issuance of Common Stock or Common Stock equivalents, including convertible instruments (and issuance of Common Stock pursuant to the terms of such convertible instrument) in connection with strategic alliances involving the Company and other entities, including, without limitation, joint venture, co-marketing, co-development or other collaboration arrangements.

(vi) For the purposes of this Section 9(l), Beneficial Ownership Percentage of each Buyer shall be calculated on a partially diluted basis, without regard to any beneficial ownership limitation provisions applicable to the Buyer, by dividing the sum of (1) the number of shares of Common Stock held by such Buyer, plus (2) the number of shares of Common Stock issuable upon conversion of all shares of convertible preferred stock of the Company held by such Buyer, and plus (3) the number of shares of Common Stock issuable upon exercise of warrants held by such Buyer with respect to the exercise price of which has been fully paid, by the sum of (A) the number of shares of common stock outstanding, plus (B) the number of shares of Common Stock issuable upon conversion of all shares of convertible preferred stock of the Company, plus (C) the number of shares of Common Stock issuable upon exercise of warrants the exercise price of which has been fully paid.

(m) No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

(n) Remedies. The Buyer shall have all rights and remedies set forth in the Transaction Documents and all rights and remedies which such holders have under any law. Any Person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law.

**[Signature Page Follows]**

**IN WITNESS WHEREOF**, the Buyer and the Company have caused their respective signature pages to this Securities Purchase Agreement to be duly executed as of the date first written above.

**COMPANY:**  
**WINDTREE THERAPEUTICS, INC.**

By: /s/ Craig Fraser  
Name: Craig Fraser  
Title: President and Chief Executive Officer

**BUYER:**  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

---

**EXHIBITS**

- Exhibit A Form of Warrant
  - Exhibit B Form of Series A Preferred Stock Certificate of Designation
  - Exhibit C Form of Registration Rights Agreement
  - Exhibit D Form of Transfer Agent Instruction Letter re Share Reservation
-

EXHIBIT A

FORM OF WARRANT

---

EXHIBIT B

FORM OF SERIES A PREFERRED STOCK CERTIFICATE OF DESIGNATION

---

EXHIBIT C

FORM OF REGISTRATION RIGHTS AGREEMENT

---



EXHIBIT D

FORM OF TRANSFER AGENT INSTRUCTION LETTER RE SHARE RESERVATION

---

## SCHEDULES

Schedule I – For each Buyer, such Buyer’s name and address (including for corporate entities, the principal place of business, or if Buyer is a natural person, the address of Buyer’s primary residence), including facsimile and email address, state of organization, individual Beneficial Ownership Limitation, any position that the Buyer holds with the Company.

Schedule 3(j) - Absence of Certain Changes

Schedule 3(l) - Communication from the SEC or the Principal Market, suspension or delisting

Schedule 3(p) - Equity Capitalization

---

SCHEDULE I

BUYERS

<u>Buyer</u>	<u>Principal Place of Business/Primary Residence</u>	<u>Telephone/Facsimile</u>	<u>Email Address</u>	<u>State of Organization</u>	<u>Number of Units</u>	<u>Number of Preferred shares</u>	<u>Conversion Shares</u>	<u>Number of Warrants</u>	<u>Price per Unit</u>	<u>Aggregate Purchase Price</u>	<u>Beneficial Ownership Limitation</u>	<u>Position Buyer holds with the Company</u>	<u>Tax ID or SSN</u>
--------------	--	----------------------------	----------------------	------------------------------	------------------------	-----------------------------------	--------------------------	---------------------------	-----------------------	---------------------------------	--	--	----------------------

---

Schedule 3(j)

Absence of Certain Changes

None

---

Schedule 3(l)

Communication from the SEC or the Principal Market, suspension or delisting

Correspondence re: potential Nasdaq delisting

On May 19, 2016, Windtree Therapeutics, Inc. (the "Company") received a notification letter from the Listing Qualifications Department of The NASDAQ Stock Market ("Nasdaq") notifying the Company that it is no longer in compliance with the minimum stockholders' equity requirement for continued listing on the Nasdaq Capital Market. Nasdaq Listing Rule 5550(b)(1) requires listed companies to maintain stockholders' equity of at least \$2,500,000. In the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2016, the Company reported stockholders' equity of (\$4,977,000), which is below the minimum stockholders' equity required for continued listing pursuant to Nasdaq Listing Rule 5550(b)(1). Further, as of May 19, 2016, the Company had not met the alternative compliance standards under Nasdaq Listing Rule 5550(b) of (i) a market value of listed securities of at least \$35,000,000, or (ii) net income of \$500,000 from continuing operations.

The Company submitted its plan to regain compliance with the Nasdaq Listing Rule on July 5, 2016 and, on July 12, 2016, the Staff notified the Company that it has determined to grant the Company an extension until November 15, 2016 to evidence compliance with the Minimum Stockholders' Equity Rule. Under the terms of the extension, the Company was required to regain compliance with the Minimum Stockholders' Equity Rule no later than November 15, 2016. The Company failed to regain compliance on or before November 15, 2016.

On November 16, 2016, the Company received a written notice from the Listing Qualifications Department of Nasdaq notifying the Company that it had not met the terms of the extension and as a result, the Company's common stock was subject to delisting from Nasdaq. The Company requested a hearing before a Hearings Panel (the "Panel") pursuant to the procedures set forth in Nasdaq Listing Rule 5800 Series, which automatically stayed the delisting of the Company's common stock pending the issuance of the Panel's decision.

The Company submitted to Nasdaq its plan to regain compliance and various other documents and appeared before the Panel on January 12, 2017.

On January 18, 2017, the Company was notified by Nasdaq that the Panel had determined to allow the Company's listing on Nasdaq to continue until May 15, 2017. During the extension, the Company is required to provide the Panel interim reports of its progress toward regaining compliance. The Panel will evaluate each of the Company's reports and may delist the Company if it fails to demonstrate a reasonable likelihood of regaining compliance on or before May 15, 2017. Should the Company fail to demonstrate full compliance with the minimum \$2.5 million stockholders' equity requirement by May 15, 2017, the Panel will issue a final delist determination and the Company will be suspended from trading on Nasdaq.

---

## Schedule 3(p)

<b>Equity Capitalization</b>	
	<b>September 30, 2016</b>
in thousands of shares	
Common Stock Outstanding	8,476
Prefunded Warrants	2,857
Other Warrants	5,399
Options and Restricted Stock Units	1,159
<b>Fully Diluted Equity Capitalization</b>	<b>17,891</b>

**REGISTRATION RIGHTS AGREEMENT**

**REGISTRATION RIGHTS AGREEMENT** (this "**Agreement**"), dated as of February 13, 2017, by and among Windtree Therapeutics, Inc., a Delaware corporation, with headquarters located at 2600 Kelly Road, Suite 100, Warrington, PA 18976 (the "**Company**"), and the persons listed on Schedule I attached hereto, (each a "**Buyer**" and collectively the "**Buyers**").

**WHEREAS:**

A. In connection with the Securities Purchase Agreement by and among the parties hereto of even date herewith (the "**Securities Purchase Agreement**"), the Company has agreed, upon the terms and subject to the conditions set forth in the Securities Purchase Agreement, to issue and sell to the Buyers 7,049 units (each, a "**Unit**" and, collectively, the "**Units**") each Unit consisting of: (i) one share of Series A Convertible Preferred Stock, par value \$0.001 per share, of the Company (each, a "**Preferred Share**" and, collectively, the "**Preferred Shares**") and (ii) 1,000 Series A-1 Warrants, in substantially the form attached as Exhibit A to the Securities Purchase Agreement (each, a "**Warrant**" and, collectively, the "**Warrants**"), to acquire one share of common stock, par value \$0.001 per share, of the Company (the "**Common Stock**") (as exercised, each, a "**Warrant Share**" and, collectively, the "**Warrant Shares**"); and

B. To induce the Buyers to execute and deliver the Securities Purchase Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the "**1933 Act**"), and applicable state securities laws;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Buyers hereby agree as follows:

1. Definitions.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Securities Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

- a. "**Business Day**" means any day other than Saturday, Sunday or any other day on which commercial banks in the City of New York are authorized or required by law to remain closed.
  - b. "**Closing Date**" means the initial Closing Date set forth in the Securities Purchase Agreement.
  - c. "**Conversion Shares**" means the Common Stock issuable upon conversion of the Preferred Shares.
  - d. "**Effective Date**" means the date the Registration Statement has been declared effective by the SEC.
-

e. "**Effectiveness Deadline**" means the earliest of the date (i) in the event that the Registration Statement is not subject to review by the SEC, eighty (80) calendar days after the Closing Date, and (ii) in the event that the Registration Statement is subject to review by the SEC, one-hundred and ten (110) calendar days after the Closing Date; provided, however, that in the event the Company is notified by the SEC that the Registration Statement will not be reviewed or is no longer subject to further review and comments, the Effectiveness Deadline as to such Registration Statement shall be the fifth calendar day following the date on which the Company is so notified if such date precedes the dates otherwise required above, provided, further, if such Effectiveness Deadline falls on a day that is not a Business Day, then the Effectiveness Deadline shall be the next succeeding Business Day.

f. "**Filing Deadline**" means the date that is fifty (50) calendar days after the Closing Date.

g. "**Investor**" means the Buyer or any transferee or assignee thereof to whom a Buyer assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9 and any transferee or assignee thereof to whom a transferee or assignee assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9.

h. "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof.

i. "**register**," "**registered**," and "**registration**" refer to a registration effected by preparing and filing one or more Registration Statements (as defined below) in compliance with the 1933 Act and pursuant to Rule 415 and the declaration or ordering of effectiveness of such Registration Statement(s) by the SEC.

j. "**Registrable Securities**" means (i) the Conversion Shares issued or issuable upon the conversion of the Preferred Shares, (ii) the Warrant Shares issued or issuable upon exercise of the Warrants, and (iii) any shares of capital stock of the Company issued or issuable with respect to the Preferred Shares, the Conversion Shares, the Warrant Shares and the Warrants as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise, without regard to any limitations on the conversion of the Preferred Shares or exercises of the Warrant.

k. "**Registration Statement**" means a registration statement required to be filed pursuant to Section 2(a), which shall initially seek to register for resale 100% of the Registrable Securities.

l. "**Required Holders**" means the holders of at least a majority of the Registrable Securities.

m. "**Rule 415**" means Rule 415 promulgated under the 1933 Act or any successor rule providing for offering securities on a continuous or delayed basis.

n. "**SEC**" means the United States Securities and Exchange Commission.



2. Registration.

a. Mandatory Registration. The Company shall prepare, and, as soon as practicable but in no event later than the Filing Deadline, file with the SEC the Registration Statement on Form S-1 or S-3 covering the resale of the Registrable Securities. The Company shall have sole discretion in choosing whether to file the Registration Statement on Form S-1 or S-3. The Registration Statement shall contain the "Selling Stockholder" and "Plan of Distribution" sections, an initial draft of which shall be prepared by the Company, and provided to the Investors for review and comment at least three (3) Business Days prior to the filing of the Registration Statement. The Company shall use commercially reasonable efforts to have the Registration Statement declared effective by the SEC promptly after the Company is notified in writing by the SEC that it has no comments (or no further comments) on the Registration Statement, but in no event later than the Effectiveness Deadline. By 9:30 am on the Business Day following the Effective Date, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to such Registration Statement.

b. Exclusivity of Registrable Securities. In no event shall the Company include any securities other than Registrable Securities on any Registration Statement without the prior written consent of the Required Holders.

c. Sufficient Number of Shares Registered. In the event that at any time the number of shares registered under a Registration Statement filed pursuant to Section 2(a) is insufficient to cover all of the Registrable Securities required to be covered by such Registration Statement, the Company shall within 12 calendar months from the effective date of such Registration Statement, file a new Registration Statement so as to cover the balance of the Registrable Securities. The Company shall use commercially reasonable efforts to cause such new Registration Statement to become effective as soon as practicable following the filing thereof.

d. Registration and Related Defaults. Should an Event (as defined below) occur, then upon the occurrence of such Event, and on every monthly anniversary thereof until the applicable Event is cured, as partial relief for the damages suffered therefrom by the Buyer (which remedy shall not be exclusive of any other remedies available under this Agreement, at law or in equity), the Company shall pay to the Buyer an amount in cash, as liquidated damages and not as a penalty, equal to 1.0% (the "**Percentage**") of the aggregate purchase price paid by the Buyer for the Securities. The payments to which the Buyer shall be entitled pursuant to this Section 2(e) are referred to herein as "**Event Payments.**" In the event the Company fails to make Event Payments in a timely manner, such Event Payments shall bear interest at the rate of 1.0% per month until paid in full. In no event shall the aggregate Event Payments required to be paid hereunder exceed 3% of the aggregate purchase price payable for the Registrable Securities. For such purposes, each of the following shall constitute an "**Event:**"

- (i) the Registration Statement is not declared effective on or prior to the Effectiveness Deadline; or

(ii) the Company fails to have available a sufficient number of authorized but unissued and otherwise unreserved shares of Common Stock available to issue Conversion Shares upon the conversion of the Preferred Shares or the Warrant Shares upon any exercise of the Warrant

3. Related Obligations.

At such time as the Company is obligated to file a Registration Statement with the SEC pursuant to Section 2(a), 2(c) or 2(d), the Company will use commercially reasonable efforts to effect the registration of the Registrable Securities in accordance with the intended method of disposition thereof and, pursuant thereto, the Company shall have the following obligations:

a. The Company shall submit to the SEC, within two (2) Business Days after the Company learns that no review of a particular Registration Statement will be made by the staff of the SEC or that the staff has no further comments on a particular Registration Statement, as the case may be, a request for acceleration of effectiveness of such Registration Statement to a time and date not later than two (2) Business Days after the submission of such request. The Company shall keep each Registration Statement effective pursuant to Rule 415 at all times until the earlier of (i) the date as of which the Investors that are not affiliated with the Company may sell all of their Registrable Securities covered by such Registration Statement without volume or manner-of-sale restrictions and without current public information pursuant to Rule 144 (or any successor thereto) promulgated under the 1933 Act (assuming Cashless Exercise of the Warrants) or (ii) the date on which the Investors shall have sold all of the Registrable Securities covered by such Registration Statement (the "**Registration Period**"). The Company shall ensure that each Registration Statement (including any amendments or supplements thereto and prospectuses contained therein) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein (in the case of prospectuses, in the light of the circumstances in which they were made) not misleading.

b. The Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to a Registration Statement and the prospectus used in connection with such Registration Statement, which prospectus is to be filed pursuant to Rule 424 promulgated under the 1933 Act, as may be necessary to keep such Registration Statement effective at all times during the Registration Period, and, during such period, comply with the provisions of the 1933 Act with respect to the disposition of all Registrable Securities of the Company covered by such Registration Statement until such time as all of such Registrable Securities shall have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement. In the case of amendments and supplements to a Registration Statement which are required to be filed pursuant to this Agreement (including pursuant to this Section 3(b)) by reason of the Company filing a report on Form 10-Q, Form 10-K, or any analogous report under the Securities Exchange Act of 1934, as amended (the "**1934 Act**"), the Company shall have incorporated such report by reference into such Registration Statement, if applicable, or shall file such amendments or supplements with the SEC on the same day on which the 1934 Act report is filed which created the requirement for the Company to amend or supplement such Registration Statement.

c. The Company shall permit the Investor to review and comment upon the "Selling Stockholders" and "Plan of Distribution" sections of the Registration Statement or any related Prospectus or amendment or supplement thereto as proposed to be filed; (i) in the case of a Registration Statement, not less than three (3) Business Days prior to its filing with the SEC and (ii) in the case of any amendments and supplements to a Registration Statement (except for reports or other filings made pursuant to the 1934 Act), within a reasonable number of days prior to their filing with the SEC; provided that, the failure of any Investor or its counsel to respond to such proposed documents within two business days after receipt thereof shall be deemed approval of same; and provided, further, that no such review and comment shall inhibit the Company from filing the Registration Statement or otherwise from complying with its obligations under this Agreement or under the 1933 Act or 1934 Act. The Company shall furnish to the Buyer, without charge, upon the Buyer's request (i) electronic copies of any correspondence from the SEC or the staff of the SEC to the Company or its representatives relating to the "Selling Stockholders" and "Plan of Distribution" sections of the Registration Statement and (ii) electronic copies of the Registration Statement, any amendment(s) thereto, and prospectuses as may be required by the 1933 Act and such other documents as the Buyer may reasonably request.

d. The Company shall furnish to each Investor, without charge and upon such Investor's request, such electronic copies of the Registration Statement, any amendment(s) thereto, and prospectuses as may be required by the 1933 Act and such other documents as such Investor may reasonably request from time to time in order to facilitate the disposition of the Registrable Securities owned by such Investor.

e. The Company shall use its commercially reasonable efforts to (i) register and qualify, unless an exemption from registration and qualification applies, the resale by Investors of the Registrable Securities covered by a Registration Statement under such jurisdictions within the United States as any Holder reasonably requests in writing, (ii) prepare and file in those jurisdictions, such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(e), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction. The Company shall promptly notify each Investor who holds Registrable Securities of the receipt by the Company of any notification with respect to the suspension of the registration or qualification of any of the Registrable Securities for sale under the securities or "blue sky" laws of any jurisdiction in the United States or its receipt of notice of the initiation or threatening of any proceeding for such purpose.

f. The Company shall notify each Investor in writing of the happening of any event, as promptly as practicable after becoming aware of such event, as a result of which the prospectus included in a Registration Statement, as then in effect, includes an untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided that in no event shall such notice contain any material, nonpublic information), and, subject to Section 3(n), promptly prepare a supplement or amendment to such Registration Statement to correct such untrue statement or omission. The Company shall also promptly notify each Investor in writing (i) when a prospectus or any prospectus supplement or post-effective amendment has been filed, and when a Registration Statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to each Investor by facsimile or by electronic mail on the same day of such effectiveness or by overnight mail), (ii) of any request by the SEC for amendments or supplements to a Registration Statement or related prospectus or related information, and (iii) of the Company's reasonable determination that a post-effective amendment to a Registration Statement would be appropriate.

g. The Company shall use its commercially reasonable efforts to prevent the issuance of any stop order or other suspension of effectiveness of a Registration Statement, or the suspension of the qualification of any of the Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension at the earliest possible moment and to notify each Investor who holds Registrable Securities being sold of the issuance of such order and the resolution thereof or its receipt of notice of the initiation or threat of any proceeding for such purpose.

h. The Company shall hold in confidence and not make any disclosure of information concerning an Investor provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other final, non-appealable order from a court or governmental body of competent jurisdiction or (iv) such information has been made generally available to the public other than by disclosure in violation of this Agreement. If the Company becomes legally compelled (by subpoena, civil or criminal investigative demand or similar process) to make any disclosure that is prohibited or otherwise constrained by this Agreement, the Company shall give prompt written notice to such Investor and allow such Investor, at the Investor's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

i. The Company shall use its commercially reasonable efforts either to (i) cause all of the Registrable Securities covered by a Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange, or (ii) secure designation and quotation of all of the Registrable Securities covered by a Registration Statement on the over-the-counter market, provided however, that the Company has no obligation under this Section (i) following the occurrence of (A) if the Company is involved in a "Rule 13e-3 transaction" as defined in Rule 13e-3 under the Exchange Act, or (B) a merger or consolidation of the Company or a sale of more than one-half of the assets of the Company in one or a series of related transactions. The Company shall pay all fees and expenses in connection with satisfying its obligation under this Section 3(i).

j. The Company shall cooperate with the Investors who hold Registrable Securities being offered and, to the extent applicable, facilitate the timely preparation and delivery of certificates (bearing any applicable restrictive legend) representing the Registrable Securities to be offered pursuant to a Registration Statement and enable such certificates to be in such denominations or amounts, as the case may be, as the Investors may reasonably request and registered in such names as the Investors may request.

k. The Company shall use commercially reasonable efforts to comply with all applicable rules and regulations of the SEC in connection with any registration hereunder.

l. If requested by an Investor, the Company shall (i) as soon as practicable incorporate in a prospectus supplement or post-effective amendment such information as an Investor reasonably requests to be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being offered or sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering; (ii) as soon as practicable make all required filings of such prospectus supplement or post-effective amendment after being notified of the matters to be incorporated in such prospectus supplement or post-effective amendment; and (iii) as soon as practicable, supplement or make amendments to any Registration Statement if reasonably requested by an Investor holding any Registrable Securities.

m. Within two (2) Business Days after a Registration Statement which covers Registrable Securities is ordered effective by the SEC, the Company shall deliver, and shall cause legal counsel for the Company to deliver, to the transfer agent for such Registrable Securities (with copies to the Investors whose Registrable Securities are included in such Registration Statement) confirmation that such Registration Statement has been declared effective by the SEC.

n. Notwithstanding anything to the contrary herein, at any time after the Effective Date, the Company may delay the disclosure of material, non-public information concerning the Company the disclosure of which at the time is not, in the good faith opinion of the Board of Directors of the Company and its counsel, in the best interest of the Company and, in the opinion of counsel to the Company, otherwise required (a "**Grace Period**"); provided, that the Company shall promptly (i) notify the Investors in writing of the existence of material, non-public information giving rise to a Grace Period (provided that in each notice the Company will not disclose the content of such material, non-public information to the Investors) and the date on which the Grace Period will begin, and (ii) notify the Investors in writing of the date on which the Grace Period ends; and, provided further, that no Grace Period shall exceed twenty (20) consecutive days or an aggregate of sixty (60) days during any three hundred sixty five (365) day period (an "**Allowable Grace Period**"). For purposes of determining the length of a Grace Period above, the Grace Period shall begin on and include the date the Investors receive the notice referred to in clause (i) and shall end on and include the later of the date the Investors receive the notice referred to in clause (ii) and the date referred to in such notice. The provisions of Section 3(g) hereof shall not be applicable during the period of any Allowable Grace Period. Upon expiration of the Grace Period, the Company shall again be bound by the first sentence of Section 3(f) with respect to the information giving rise thereto unless such material, non-public information is no longer applicable. Notwithstanding anything to the contrary, the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of an Investor in accordance with the terms of the Securities Purchase Agreement in connection with any sale of Registrable Securities with respect to which an Investor has entered into a contract for sale, and delivered a copy of the prospectus included as part of the applicable Registration Statement (unless an exemption from such prospectus delivery requirement exists), prior to the Investor's receipt of the notice of a Grace Period and for which the Investor has not yet settled.

4. Obligations of the Investors.

a. At least five (5) Business Days prior to the first anticipated filing date of a Registration Statement, the Company shall notify each Investor in writing by sending a Selling Stockholder Questionnaire, which shall promptly be completed by each Investor such that it shall contain the information the Company requires from each such Investor who holds Registrable Securities included in such Registration Statement. It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Registrable Securities of a particular Investor that such Investor shall furnish to the Company an accurate, completed Selling Stockholder Questionnaire regarding itself.

b. Each Investor, by such Investor's acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of any Registration Statement hereunder, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from such Registration Statement.

c. Each Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(g) or the first sentence of 3(f), such Investor will immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement(s) covering such Registrable Securities until such Investor's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(g) or the first sentence of 3(f) or receipt of notice that no supplement or amendment is required. Notwithstanding anything to the contrary, the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of an Investor in accordance with the terms of the Securities Purchase Agreement in connection with any sale of Registrable Securities with respect to which an Investor has entered into a contract for sale prior to the Investor's receipt of a notice from the Company of the happening of any event of the kind described in Section 3(g) or the first sentence of 3(f) and for which the Investor has not yet settled.

d. Each Investor covenants and agrees that it will comply with the prospectus delivery requirements of the 1933 Act as applicable to it or an exemption therefrom in connection with sales of Registrable Securities pursuant to the Registration Statement.

5. Expenses of Registration.

All reasonable expenses, other than underwriting discounts and commissions incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees, and fees and disbursements of counsel for the Company, shall be paid by the Company.

6. Indemnification.

In the event any Registrable Securities are included in a Registration Statement under this Agreement:

a. To the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend each Investor, the directors, officers, members, partners, employees, agents, representatives of, and each Person, if any, who controls any Investor within the meaning of the 1933 Act or the 1934 Act (each, an "**Indemnified Person**"), against any losses, claims, damages, liabilities, judgments, fines, penalties, charges, costs, reasonable attorneys' fees, amounts paid in settlement or expenses, joint or several, (collectively, "**Claims**") incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened, whether or not an indemnified party is or may be a party thereto ("**Indemnified Damages**"), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other "blue sky" laws of any jurisdiction in which Registrable Securities are offered ("**Blue Sky Filing**"), or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus if used prior to the effective date of such Registration Statement, or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in the light of the circumstances under which the statements therein were made, not misleading, (iii) any violation or alleged violation by the Company of the 1933 Act, the 1934 Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to a Registration Statement or (iv) any violation of this Agreement (the matters in the foregoing clauses (i) through (iv) being, collectively, "**Violations**"). Subject to Section 6(c), the Company shall reimburse the Indemnified Persons, promptly as such expenses are incurred and are due and payable, for any legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (i) shall not apply to a Claim by an Indemnified Person arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by any Indemnified Person for or on behalf of the Investor expressly for use in connection with the preparation of the Registration Statement or any such amendment thereof or supplement thereto, if such prospectus was timely made available by the Company pursuant to Section 3(d) and (ii) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9.

b. In connection with any Registration Statement in which an Investor is participating, each such Investor agrees to severally and not jointly indemnify, hold harmless and defend, to the same extent and in the same manner as is set forth in Section 6(a), the Company, each of its directors, each of its officers who signs the Registration Statement and each Person, if any, who controls the Company within the meaning of the 1933 Act or the 1934 Act (each, an "**Indemnified Party**"), against any Claim or Indemnified Damages to which any of them may become subject, under the 1933 Act, the 1934 Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation, in each case to the extent, and only to the extent, that such Violation occurs in reliance upon and in conformity with written information furnished to the Company by such Investor expressly for use in connection with such Registration Statement; and, subject to Section 6(c), such Investor will reimburse any legal or other expenses reasonably incurred by an Indemnified Party in connection with investigating or defending any such Claim; provided, however, that the indemnity agreement contained in this Section 6(b) and the agreement with respect to contribution contained in Section 7 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of such Investor, which consent shall not be unreasonably withheld or delayed; provided, further, however, that the Investor shall be liable under this Section 6(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to such Investor as a result of the sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9.

c. Promptly after receipt by an Indemnified Person or Indemnified Party under this Section 6 of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving a Claim, such Indemnified Person or Indemnified Party shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person or the Indemnified Party, as the case may be; provided, however, that an Indemnified Person or Indemnified Party shall have the right to retain its own counsel with the fees and expenses of not more than one counsel for such Indemnified Person or Indemnified Party to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the indemnifying party, the representation by such counsel of the Indemnified Person or Indemnified Party and the indemnifying party would be inappropriate due to actual or potential differing interests between such Indemnified Person or Indemnified Party and any other party represented by such counsel in such proceeding. In the case of an Indemnified Person, legal counsel referred to in the immediately preceding sentence shall be selected by the Investors holding at least a majority in interest of the Registrable Securities included in the Registration Statement to which the Claim relates. The Indemnified Party or Indemnified Person shall cooperate fully with the indemnifying party in connection with any negotiation or defense of any such action or Claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnified Party or Indemnified Person which relates to such action or Claim. The indemnifying party shall keep the Indemnified Party or Indemnified Person reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent; provided, however, that the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnified Party or Indemnified Person, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party or Indemnified Person of a release from all liability in respect to such Claim or litigation, and such settlement shall not include any admission as to fault on the part of the Indemnified Party. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnified Party or Indemnified Person with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party under this Section 6, except to the extent that the indemnifying party is prejudiced in its ability to defend such action.



d. The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Damages are incurred.

e. The indemnity agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnified Party or Indemnified Person against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

7. Contribution.

To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; provided, however, that: (i) no Person involved in the sale of Registrable Securities, which Person is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) in connection with such sale, shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (ii) contribution by any seller of Registrable Securities shall be limited in amount to the net amount of proceeds received by such seller from the sale of such Registrable Securities pursuant to such Registration Statement.

8. Reports Under the 1934 Act.

With a view to making available to the Investors the benefits of Rule 144 promulgated under the 1933 Act or any other similar rule or regulation of the SEC that may at any time permit the Investors to sell securities of the Company to the public without registration ("**Rule 144**"), the Company agrees to:

- a. make and keep public information available, as those terms are understood and defined in Rule 144;

b. file with the SEC in a timely manner all reports and other documents required of the Company under the 1933 Act and the 1934 Act so long as the Company remains subject to such requirements and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

c. furnish to each Investor so long as such Investor owns Registrable Securities, promptly upon request, (i) a written statement by the Company, if true, that it has complied with the reporting requirements of Rule 144, the 1933 Act and the 1934 Act, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company and (iii) such other information as may be reasonably requested to permit the Investors to sell such securities pursuant to Rule 144 without registration.

9. Assignment of Registration Rights.

The rights under this Agreement shall be automatically assignable by the Investors to any transferee of all or any portion of such Investor's Registrable Securities if: (i) the Investor agrees in writing with the transferee or assignee to assign such rights and a copy of such agreement is furnished to the Company within a reasonable time after such assignment; (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (a) the name and address of such transferee or assignee and (b) the securities with respect to which such registration rights are being transferred or assigned; (iii) immediately following such transfer or assignment the further disposition of such securities by the transferee or assignee is restricted under the 1933 Act or applicable state securities laws; (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein; and (v) such transfer shall have been made in accordance with the applicable requirements of the Securities Purchase Agreement.

10. Amendment of Registration Rights.

The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the same shall be in writing and signed by the Company and the Holders of a majority or more of the then outstanding Registrable Securities, provided that, if any amendment, modification or waiver disproportionately and adversely impacts a Holder (or group of Holders), the consent of such disproportionately impacted Holder (or group of Holders) shall be required. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration also is offered to all of the parties to this Agreement.

11. Miscellaneous.

a. A Person is deemed to be a holder of Registrable Securities whenever such Person owns or is deemed to own of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from the record owner of such Registrable Securities.

b. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one (1) Business Day after deposit with a nationally recognized overnight delivery service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to the Company:

Windtree Therapeutics, Inc.  
2600 Kelly Road, Suite 100  
Warrington, PA 18976  
Telephone: (215) 488-9300  
Facsimile: (215) 488-9301  
Attention: Legal Department

with a copy to:

Dentons US LLP  
1221 Avenue of the Americas  
New York, NY 10020-1089  
Telephone: (212) 398-5787  
Facsimile: (212) 768-6800  
Attention: Ira L. Kotel

If to Buyer:

[As set forth on Schedule I hereto]

or to such other address and/or facsimile number and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine containing the time, date, recipient facsimile number and an image of the first page of such transmission or (C) provided by a courier or overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

c. Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

d. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in State of Delaware, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

e. This Agreement, the other Transaction Documents (as defined in the Securities Purchase Agreement) and the instruments referenced herein and therein constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, the other Transaction Documents and the instruments referenced herein and therein supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

f. Subject to the requirements of Section 9, this Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of each of the parties hereto.

g. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

h. This Agreement may be executed in identical counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by facsimile transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

i. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

j. All consents and other determinations required to be made by the Investors pursuant to this Agreement shall be made, unless otherwise specified in this Agreement, by the Required Holders.

k. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against any party.

l. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

m. The obligations of each Investor hereunder are several and not joint with the obligations of any other Investor, and no provision of this Agreement is intended to confer any obligations on any Investor vis-à-vis any other Investor. Nothing contained herein, and no action taken by any Investor pursuant hereto, shall be deemed to constitute the Investors as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Investors are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated herein.

**[Signature Page Follows]**

**IN WITNESS WHEREOF**, the Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

**COMPANY:**  
**WINDTREE THERAPEUTICS, INC.**

By: /s/ Craig Fraser  
Name: Craig Fraser  
Title: President and Chief Executive Officer

**BUYER:**  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

---

Schedule I

<u>Buyer</u>	<u>Principal Place of Business/Primary Residence</u>	<u>Telephone/ Facsimile</u>	<u>Email Address</u>
--------------	--	---------------------------------	----------------------



## Windtree Therapeutics Completes \$10.5 Million Private Offering

*Company Now Adequately Funded Through AEROSURF® Phase 2b Data in Mid-2017*

**WARRINGTON, PA - February 15, 2017 - Windtree Therapeutics, Inc. (Nasdaq: WINT)**, a biotechnology company focused on developing aerosolized KL4 surfactant therapies for respiratory diseases, today announced that it has completed a \$10.5 million private placement of convertible preferred stock units and now expects that it has sufficient capital to fund its operations through the AEROSURF® phase 2b clinical trial data release in mid-2017.

Windtree has received gross proceeds of approximately \$10.5 million (including approximately \$1.6 million in non-cash consideration in the form of a reduction in future payments of current development services expenses) from the sale of 7,049 Series A Convertible Preferred Stock Units at a purchase price per unit of \$1,495. Each unit consists of one share of Series A Convertible Preferred Stock, which is convertible into 1,000 shares of the Company's common stock, and 1,000 Series A-1 seven-year warrants to purchase one share of the Company's common stock at an exercise price of \$1.37.

In connection with the closing, Windtree has entered into a Registration Rights Agreement with the buyers of the units to provide for registration of the shares of common stock issuable upon conversion of the Preferred Stock and exercise of warrants. The Company agreed to use commercially reasonable efforts to file a registration statement with the Securities and Exchange Commission within 50 calendar days following the closing date of the private placement, and to cause such registration statement to be declared effective by the Securities and Exchange Commission within periods designated in the Registration Rights Agreement.

Both existing and new investors participated in this financing. In addition, certain officers and directors of the Company participated in the private placement and purchased an aggregate of 67 Series A Convertible Preferred Stock Units.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy these securities, nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such jurisdiction.

The securities sold in the private placement have not been registered under the Securities Act of 1933, as amended, or state securities laws and may not be offered or sold in the United States absent registration with the Securities and Exchange Commission or an applicable exemption from such registration requirements. The securities were offered only to accredited investors.

Terms of the private placement can be found in a Form 8-K to be filed with the Securities and Exchange Commission.

### **About Windtree Therapeutics**

Windtree Therapeutics, Inc. is a clinical-stage biotechnology company focused on developing novel surfactant therapies for respiratory diseases and other potential applications. Windtree's proprietary technology platform includes a synthetic, peptide-containing surfactant (KL4 surfactant) that is structurally similar to endogenous pulmonary surfactant and novel drug-delivery technologies being developed to enable noninvasive administration of aerosolized KL4 surfactant. Windtree is focused initially on improving the management of respiratory distress syndrome (RDS) in premature infants and believes that its proprietary technology may make it possible, over time, to develop a pipeline of KL4 surfactant product candidates to address a variety of respiratory diseases for which there are few or no approved therapies.

For more information, please visit the Company's website at [www.windtreetx.com](http://www.windtreetx.com).

### **Forward-Looking Statements**

*To the extent that statements in this press release are not strictly historical, all such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Examples of such risks and uncertainties, including those related to projections of future cash balances and anticipated cash outflows, risks related to Windtree's securities offering and its development activities and programs, are described in Windtree's filings with the Securities and Exchange Commission including the most recent reports on Forms 10-K, 10-Q and 8-K, and any amendments thereto.*

### **Contact Information:**

John Tattory  
Senior Vice President and Chief Financial Officer  
215.488.9418  
[jtattory@windtreetx.com](mailto:jtattory@windtreetx.com)