

Direct Imaging PC

Determination of Reviewability Submission

Date December 8, 2021

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## Ambulatory Surgery Center/Facility Certificate of Need Determination of Reviewability Packet

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### Submission Instructions:

- One electronic copy of your application, including any applicable attachments – no paper copy is required.
- A check or money order for the review fee of \$1,925 payable to Department of Health.

Include copy of the signed cover sheet with the fee if you submit the application and fee separately. This allows us to connect your application to your fee. We also strongly encourage sending payment with a tracking number.

Mail or deliver the application and review fee to:

#### Mailing Address:

Department of Health  
 Certificate of Need Program  
 P O Box 47852  
 Olympia, Washington 98504-7852

#### Other Than By Mail:

Department of Health  
 Certificate of Need Program  
 111 Israel Road SE  
 Tumwater, Washington 98501

### Contact Us:

Certificate of Need Program Office 360-236-2955 or [FSLCON@doh.wa.gov](mailto:FSLCON@doh.wa.gov).

## Definitions

The Certificate of Need (CN) Program will use the information you provide to determine if your project meets the applicable review criteria. These criteria are included in state law and rules. Revised Code of Washington ([RCW 70.38](#)) and Washington Administrative Code ([WAC 246-310](#)).

**“Primary purpose”** is defined as the majority of income or patient visits for the site,\* inclusive of all clinical services provided at the site, are derived from the specialty or multi-specialty surgical services. [Department of Health website, frequently asked questions](#), informed by the licensing rules definition for ambulatory surgical facility.

\*The site subject to a determination of reviewability is limited to a specific, physical address where an entity under single ownership provides or will provide specialty or multispecialty surgical services. A site whose “primary purpose” is specialty or multispecialty surgical services is required to obtain a certificate of need.

**“Ambulatory surgical facility”** or **“ASF”** means any free-standing entity, including an ambulatory surgery center that operates primarily for the purpose of performing surgical procedures to treat patients not requiring hospitalization. This term does not include a facility in the offices of private physicians or dentists, whether for individual or group practice, if the privilege of using the facility is not extended to physicians or dentists outside the individual or group practice. [WAC 246-310-010\(5\)](#)

**“Ambulatory surgical center”** or **“ASC”** is also a term for a facility that provides ambulatory surgical procedures. The Centers for Medicare and Medicaid use this term for billing purposes. CN review is not required for an ambulatory surgical center unless it also fits the definition of an ambulatory surgical facility in [WAC 246-310-010\(5\)](#).

**“Ambulatory surgical facility”** or **“ASF”** as defined by licensing rules, and relied on by the CN Program for consistency, means any distinct entity that operates for the primary purpose of providing specialty or multispecialty outpatient surgical services in which patients are admitted to and discharged from the facility within twenty-four hours and do not require inpatient hospitalization, whether or not the facility is certified under Title XVIII of the federal Social Security Act. An ambulatory surgical facility includes one or more surgical suites that are adjacent to and within the same building as, but not in, the office of a practitioner in an individual or group practice, if the primary purpose of the one or more surgical suites is to provide specialty or multispecialty outpatient surgical services, irrespective of the types of anesthesia administered in the one or more surgical suites. An ambulatory surgical facility that is adjacent to and within the same building as the office of a practitioner in an individual or group practice may include a surgical suite that shares a reception area, restroom, waiting room, or wall with the office of the practitioner in an individual or group practice. [WAC 246-330-010\(5\)](#)

**“Change of ownership”** as defined by licensing rules, and relied on by the CN Program, is defined as (a) A sole proprietor who transfers all or part of the ambulatory surgical facility's ownership to another person or persons; (b) The addition, removal, or

substitution of a person as a general, managing, or controlling partner in an ambulatory surgical facility owned by a partnership where the tax identification number of that ownership changes; or (c) A corporation that transfers all or part of the corporate stock which represents the ambulatory surgical facility's ownership to another person where the tax identification number of that ownership changes. WAC 246-330-010(8)

**“Person”** means an individual, a trust or estate, a partnership, any public or private corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district. WAC 246-310-010(42)

# Instructions

## General Instructions:

- Include a table of contents for sections and appendices/exhibits
- Number **all** pages consecutively
- **Do not** bind or 3-hole punch the application.
- Make the narrative information complete and to the point.
- If any sections are not large enough to contain your response, please attach additional pages as necessary. Ensure that any attached pages are clearly labeled with the applicable question or section.
  
- If any of the documents provided in the form are in draft format, a draft is acceptable only if it includes the following elements:
  - a. identifies all entities associated with the agreement,
  - b. outlines all roles and responsibilities of all entities,
  - c. identifies all costs associated with the agreement, and
  - d. includes all exhibits that are referenced in the agreement.
  - e. any agreements in draft form must include a document signed by both entities committing to execute the agreement as submitted following CN approval.

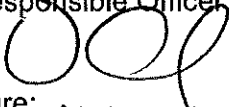
**Do not skip any questions. If you believe a question is not applicable to your project, provide rationale as to why it is not applicable.**

**Certificate of Need  
 Determination of Reviewability  
 Ambulatory Surgical Facility and Ambulatory Surgery Center  
 (Do not use this form for any other type of ASC/F project)**

Certificate of Need submissions must include a fee in accordance with Washington Administrative Code (WAC) 246-310-990.

The Department of Health (department) will use this form to determine whether my ambulatory surgical center or facility requires a Certificate of Need under state law and rules. Criteria and consideration used to make the required determinations are Revised Code of Washington (RCW) 70.38 and Washington Administrative Code (WAC) 246-310. I certify that the statements in the submissions are correct to the best of my knowledge and belief. I understand that any misrepresentation, misleading statements, evasion, or suppression of material fact in this application may be used to take actions identified in WAC 246-310-500.

My signature authorizes the department to verify any responses provided. The department will use such information as appropriate to further program purposes. The department may disclose this information when requested by a third party to the extent allowed by law.

Owner/Operator Name of the surgical facility as it appears on the UBI/Master Business License <i>Direct Imaging PC</i>	
Clinical Practice UBI #: <i>604621908</i> Surgery Center UBI #: <i>604621908</i>	Federal Tax ID (FEIN) # <i>85-1199669</i>
Mailing Address <i>6101 Summitview Ave #200 Yakima WA 98908</i>	Surgery Center Address <i>6101 Summitview Ave #200 Yakima WA 98908</i>
Website Address: <i>www.directimagingyakima.com</i>	
Phone number (10-digit): <i>FAX (509) 902 8857 (509) 902 8855</i>	Email Address: <i>dave@directimagingyakima.com</i>
Name and Title of Responsible Officer (Print): <i>Dave Shelton Atteberry MD</i>	Signature of Responsible Officer:  Date of Signature: <i>12/8/21</i>
Identify the purpose of your request:	
<input type="checkbox"/> New Facility	<input checked="" type="checkbox"/> Facility Expansion – Operating Room Increase
<input type="checkbox"/> Change of Ownership	<input checked="" type="checkbox"/> Facility Expansion – Service Increase
<input type="checkbox"/> Facility Relocation	<input type="checkbox"/> Other (please provide a letter describing)

## Existing Facility Status

Complete for all applications concerning existing facilities

- The CN Program previously determined the facility was not subject to CN Review (if yes, attach DOR letter)

Yes DOR 21-021 No

- If this request is for a change in ownership provide the following information:

Current facility's name	
Current facility's address	
Current facility's license number	ASF.FS.
Current facility's Certificate of Need status	Exempt DOR# _____
	Approved CN# _____
Anticipated change of ownership month and year	

- If this request is for the relocation of an existing facility, provide the following information:

Current facility's address	
Anticipated relocation month and year	

## Facility Information

- Although you are not required to apply for an ASF license before a CN determination is issued, have you or do you intend to, apply for a license?\*

Yes, intend to apply No  
 Yes here is the facility's license #ASF.FS. 61187358

\*Your answer to this question will allow the CN program to effectively coordinate the licensure process with other DOH offices.

- 

Number of existing operating and procedure rooms:	1
Number of new operating and procedure rooms:	1
Total:	2

For Certificate of Need purposes operating and procedure rooms are one in the same.

## Clinical and Surgical Services

- Check all surgical procedures currently performed in the facility.

Ear, Nose, & Throat	Gynecology	Oral Surgery
Plastic Surgery	X Gastroenterology	Maxillo facial
Orthopedics	Podiatry	General Surgery
Ophthalmology	X Pain Management	Urology

X Other (describe) Neurosurgery

This is a new facility, no surgical procedures are currently performed

Check all new surgical procedures proposed to be performed in the facility

- |                                       |                   |                 |
|---------------------------------------|-------------------|-----------------|
| Ear, Nose, & Throat                   | Gynecology        | Oral Surgery    |
| Plastic Surgery                       | ×Gastroenterology | Maxillo facial  |
| Orthopedics                           | Podiatry          | General Surgery |
| Ophthalmology                         | ×Pain Management  | Urology         |
| ×Other (describe) <i>Neurosurgery</i> |                   |                 |

### Primary Purpose of the Facility

- The Certificate of Need Program must understand how a facility operates in order to determine the facility's primary purpose. Typically, governance documents can aid the department in this understanding. These could be in the form of operating agreements, shareholder agreements, or corporate governing documents. Provide any documentation that could aid in this understanding.
- A facility that receives more than 50% of their income or 50% of their visits from surgeries is subject to CN requirements. In order to determine if your project is subject to CN review, please provide the current (existing facility) and proposed (new facility) percentages of income and visits for clinical and surgical services. Include all assumptions used to determine the percentages provided.

This site's revenue	Most recent full year of operation	Projected first full year of operation after the proposed changes
	Year: <u>2021</u>	Year: <u>2022</u>
Total revenue for clinical services	1,000,000	2,500,000
Total revenue for surgical services	0	1,125,000
<b>Total revenue</b>	<b>1,000,000</b>	<b>3,625,000</b>

This site's patient visits	Most recent full year of operation	Projected first full year of operation after the proposed changes
	Year: <u>2021</u>	Year: <u>2022</u>
Total clinical patient visits	3482	6000
Total surgical patient visits	0	1250
<b>Total patient visits</b>	<b>3482</b>	<b>7250</b>



## **Certificate of Need Program Revised Code of Washington (RCW) and Washington Administrative Code (WAC)**

Certificate of Need Program laws [RCW 70.38](#)

Certificate of Need Program rules [WAC 246-310](#)

<b>References</b>	<b>Title/Topic</b>
<a href="#">246-310-010</a>	Certificate of Need Program —Definitions
<a href="#">246-310-270</a>	Certificate of Need Program —Ambulatory Surgery
<a href="#">Interpretive Statement CN 01-18</a>	Certificate of Need Program – Interpretation of WAC 246-310-010(5), Definition of Ambulatory Surgical Facility

### **Licensing Resources:**

[Ambulatory Surgical Facilities Laws, RCW 70.230](#)  
[Ambulatory Surgical Facilities Rules, WAC 246-330](#)  
[Ambulatory Surgical Facilities Program Web Page](#)

### **Construction Review Services Resources:**

[Construction Review Services Program Web Page](#)  
Phone: (360) 236-2944  
Email: [CRS@doh.wa.gov](mailto:CRS@doh.wa.gov)

Revenue estimates:

Surgical services for the site will represent approximately 45% of the total revenue for the site.

Clinical revenue currently for 2021 is around \$1,000,000 this is coming from imaging services and clinic revenues from patient care. This is with our facility half closed down for construction and during a pandemic. We are imaging about 450 patients a month now. Assuming average revenue per imaging \$375/patient. This patient care and imaging revenue should grow to around \$2,500,000 in 2022.

Based on surgical volumes of 20 patients a week for GI procedures and 2 surgeries a week for neurosurgery and approximately 5 pain patients a month for stimulators. Working approximately 46 weeks per year. Will give us around 1250 patients annually. With average revenue \$900/case equals a revenue of \$1,125,000.

This will bring the centers revenue \$3,625,000 annually, with surgery representing 45% of that revenue.

By patient volume surgical patients will make up 17% of the patients.



Dave Atteberry MD Msc.

UNITED STATES OF AMERICA

The State of



Washington

Secretary of State

I, KIM WYMAN, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

ARTICLES OF INCORPORATION

to

DIRECT IMAGING P.C.

A WA PROFESSIONAL SERVICE CORPORATION, effective on the date indicated below.

Effective Date: 05/27/2020

UBI Number: 604 621 908



Given under my hand and the Seal of the State of Washington at Olympia, the State Capital

Handwritten signature of Kim Wyman in cursive script.

Kim Wyman, Secretary of State

Date Issued: 05/27/2020



Filed  
Secretary of State  
State of Washington  
Date Filed: 05/27/2020  
Effective Date: 05/27/2020  
UBI #: 604 621 908

# ARTICLES OF INCORPORATION

## UBI NUMBER

UBI Number:  
604 621 908

## BUSINESS NAME

Business Name  
DIRECT IMAGING P.C.

## PURPOSE OF CORPORATION

THIS IS A PROFESSIONAL SERVICES CORPORATION PROVIDING MEDICAL CARE TO CLIENTS.

## REGISTERED AGENT

Registered Agent Name	Street Address	Mailing Address
DIRECT IMAGING PC	6101 SUMMITVIEW AVE STE 200, YAKIMA, WA, 98908-3028, UNITED STATES	7604 GRAYSTONE CT, YAKIMA, WA, 98908-4512, UNITED STATES

## REGISTERED AGENT CONSENT

Customer provided Registered Agent consent? - Yes

## DURATION

Duration:  
PERPETUAL

## EFFECTIVE DATE

Effective Date:  
05/27/2020

## INCORPORATOR

Title	Incorporator Type	Entity Name	First Name	Last Name	Address

INCORPORATOR ENTITY DAVE ATTEBERRY MD DAVE ATTEBERRY 7604 GRAYSTONE CT, YAKIMA, WA, 98908-4512, UNITED STATES PC

**CORPORATE SHARES – NEW FORMATION**

Number of Authorized Shares:

100

Class of Shares:

Common Stock: Yes Preferred Stock : No

**OTHER PROVISIONS**

N/A

**RETURN ADDRESS FOR THIS FILING**

Attention:

DAVE ATTEBERRY

Email:

ATTEDS@GMAIL.COM

Address:

7604 GRAYSTONE CT, YAKIMA, WA, 98908-4512, UNITED STATES

**UPLOAD ADDITIONAL DOCUMENTS**

Name

Document Type

No Value Found.

**UPLOADED DOCUMENTS**

Document Type

Source

Created By

Created Date

No Value Found.

**EMAIL OPT-IN**

I hereby opt into receiving all notifications from the Secretary of State for this entity via email only. I acknowledge that I will no longer receive paper notifications.

**AUTHORIZED PERSON - STAFF CONSOLE**

Document is signed.

Person Type:

ENTITY

First Name:

DAVE

Last Name:

ATTEBERRY

Entity Name:

DIRECT IMAGING P.C.

Title:

**FOUNDER**

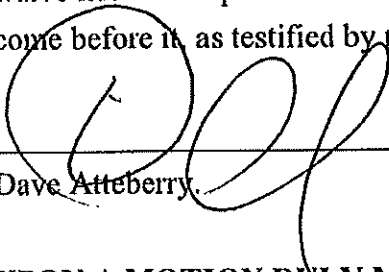
**MINUTES OF SHAREHOLDER'S MEETING**

**MINUTES OF A MEETING OF THE SOLE SHAREHOLDER** (the "Shareholder") of Direct Imaging PC (the "Corporation") held at 7604 Graystone Ct on 7th day of June, 2020.

The following Shareholder was present, constituting the sole member of the Corporation: Dave Atteberry.

The sole Shareholder of the Corporation being present, formal notice calling the meeting was dispensed with, and the meeting declared to be regularly called.

The following memorandum was then read and ordered to be inserted in these minutes: "I, the sole Shareholder of the Corporation consent to this meeting being held at the above time and place and do waive notice and publication of this meeting and consent to the transaction of such business as may have come before it, as testified by my signature below.

  
\_\_\_\_\_  
Dave Atteberry.

**UPON A MOTION DULY MADE**, seconded and unanimously carried, Dave Atteberry acted as Chairperson of the meeting and Dave Atteberry as Secretary of the meeting.

The Chairperson presented to the meeting and the following resolutions were offered, seconded and unanimously adopted.

**BACKGROUND:**

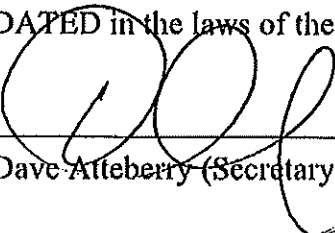
1. The Corporation is a corporation organized and operating in accordance with the laws of the State of Washington.
2. The Shareholder desires to make certain resolutions.

**IT WAS RESOLVED THAT:**

1. I hereby authorize the corporations banking to be done with Wheatland Bank.

2. I further authorize Crystal Atteberry to be a signer on the bank account(s) and she has the full authority to act as my proxy in any business to be handled by the company.
  
3. There being no further business to come before the meeting, the meeting was adjourned.

DATED in the laws of the State of Washington, this 7th day of June, 2020.



\_\_\_\_\_  
Dave Atteberry (Secretary)



**PROFESSIONAL SERVICE CORPORATION OPERATING AGREEMENT**  
**of**  
**Direct Imaging PC**

**This Professional Service Corporation Agreement (the "Agreement") made and entered into this 7th day of June, 2020 (the "Execution Date"),**

**BY:**

Dave Atteberry MD of 7604 Graystone Ct Yakima WA 98908

(the "Member").

**BACKGROUND:**

- A. The Member wishes to be the sole member of a Professional Service Corporation
- B. The terms and conditions of this Agreement will govern the Member within the professional service corporation.

**IN CONSIDERATION OF** and as a condition of the Member entering into this Agreement and other valuable consideration, the receipt and sufficiency of which is acknowledged, the Member agrees as follows:

**Formation**

- 1. By this Agreement, the Member forms a Professional Service Corporation (the "Company") in accordance with the laws of the State of Washington. The rights and obligations of the Member will be as stated in the Washington Professional Service Corporation Act (the "Act") except as otherwise provided in this agreement.

**Name**

- 2. The name of the Company will be Direct Imaging PC.

**Sole Member**

- 3. While the Company consists only of one Member, any reference in this Agreement to two or more Members and that requires the majority consent or unanimous consent of Members, or that requires a certain percentage vote of Members, should be interpreted as only requiring the consent or vote of the sole Member.

**Purpose**

4. Medical Services.

**Term**

5. The Company will continue until terminated as provided in this Agreement or may dissolve under conditions provided in the Act.

**Place of Business**

6. The Principal Office of the Company will be located at 6101 Summitview Ave #200 Yakima WA 98908 or such other place as the Members may from time to time designate.

**Capital Contributions**

7. The following table shows the Initial Contributions of the Member. The Member agrees to make the Initial Contributions to the Company in full, according to the following terms:

<b>Member</b>	<b>Contribution Description</b>	<b>Value of Contribution</b>
Dave Atteberry MD	He is the founder and operator of the clinic. He owns all of the equipment as well as a share of the building. He set up the corporation and is its only member. He financed its operations personally through his other corporation Dave Atteberry MD PC.	\$7,000,000.00

**Allocation of Profits/Losses**

8. Subject to the other provisions of this Agreement, the Net Profits or Losses, for accounting purposes, will accrue to and be borne by the sole Member:

Dave Atteberry MD of 7604 Graystone Ct Yakima WA 98908.

9. No Member will have priority over any other Member for the distribution of Net Profits or Losses.

#### **Nature of Interest**

10. A Member's Interest in the Company will be considered personal property.

#### **Withdrawal of Contribution**

11. No Member will withdraw any portion of their Capital Contribution without the unanimous consent of the other Members.

#### **Liability for Contribution**

12. A Member's obligation to make their required Capital Contribution can only be compromised or released with the consent of all remaining Members or as otherwise provided in this Agreement. If a Member does not make the Capital Contribution when it is due, he is obligated at the option of any remaining Members to contribute cash equal to the agreed value of the Capital Contribution. This option is in addition to and not in lieu of any others rights, including the right to specific performance that the Company may have against the Member.

#### **Additional Contributions**

13. Capital Contributions may be amended from time to time, according to the business needs of the Company. However, if additional capital is determined to be required and an individual Member is unwilling or unable to meet the additional contribution requirement within a reasonable period, the remaining Members may contribute in proportion to their existing Capital Contributions to resolve the amount in default. In such case, the allocation of Net Profits or Losses and the distribution of assets on dissociation or dissolution will be adjusted accordingly.
14. Any advance of money to the Company by any Member in excess of the amounts provided for in this Agreement or subsequently agreed to, will be deemed a debt due from the Company rather than an increase in the Capital Contribution of the Member. This liability will be repaid with interest at such rates and times to be determined by a majority of the Members. This liability will

not entitle the lending Member to any increased share of the Company's profits nor to a greater voting power. Repayment of such debts will have priority over any other payments to Members.

**Capital Accounts**

15. An individual capital account (the "Capital Account") will be maintained for each Member and their Initial Contributions will be credited to this account. Any Additional Contributions made by any Member will be credited to that Member's individual Capital Account.

**Interest on Capital**

16. No borrowing charge or loan interest will be due or payable to any Member on their agreed Capital Contribution inclusive of any agreed Additional Contributions.

**Management**

17. Management of this Company is vested in the Members.

**Authority to Bind Company**

18. Any Member has the authority to bind the Company in contract.

**Duty of Loyalty**

19. While a person is a Member of the Company, and for a period of at least two years after that person ceases to be a Member, that person will not carry on, or participate in, a similar business to the business of the Company within any market regions that were established or contemplated by the Company before or during that person's tenure as Member.

**Duty to Devote Time**

20. Each Member will devote such time and attention to the business of the Company as the majority of the Members will from time to time reasonably determine for the conduct of the Company's business.

**Member Meetings**

21. A meeting may be called by any Member providing that reasonable notice has been given to the other Members.

22. Regular meetings of the Members will be held only as required.

**Voting**

23. Each Member will be entitled to cast votes on any matter based upon the proportion of that Member's Capital Contributions in the Company.

**Admission of New Members**

24. A new Member may only be admitted to the Company with a unanimous vote of the existing Members.

25. The new Member agrees to be bound by all the covenants, terms, and conditions of this Agreement, inclusive of all current and future amendments. Further, a new Member will execute such documents as are needed to affect the admission of the new Member. Any new Member will receive such business interest in the Company as determined by a unanimous decision of the other Members.

**Voluntary Withdrawal of a Member**

26. No Member may voluntarily withdraw from the Company for a period of six months from the execution date of this Agreement. Any such unauthorized withdrawal prior to the expiration of this period will be considered a wrongful dissociation and a breach of this Agreement. In the event of any such wrongful dissociation, the withdrawing Member will be liable to the remaining Members for any damages incurred by the remaining Members including but not limited to the loss of future earnings. After the expiration of this period, any Member will have the right to voluntarily withdraw from the Company. Written notice of intention to withdraw must be served upon the remaining Members at least one year prior to withdrawal.

27. The voluntary withdrawal of a Member will have no effect upon the continuance of the Company.

28. It remains incumbent on the withdrawing Member to exercise this dissociation in good faith and to minimize any present or future harm done to the remaining Members as a result of the withdrawal.

**Involuntary Withdrawal of a Member**

29. Events leading to the involuntary withdrawal of a Member from the Company will include but not be limited to: death of a Member; Member mental incapacity; Member disability preventing

reasonable participation in the Company; Member incompetence; breach of fiduciary duties by a Member; criminal conviction of a Member; Operation of Law against a Member or a legal judgment against a Member that can reasonably be expected to bring the business or societal reputation of the Company into disrepute. Expulsion of a Member can also occur on application by the Company or another Member, where it has been judicially determined that the Member: has engaged in wrongful conduct that adversely and materially affected the Company's business; has willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or to the other Members; or has engaged in conduct relating to the Company's business that makes it not reasonably practicable to carry on the business with the Member.

30. The involuntary withdrawal of a Member will have no effect upon the continuance of the Company.

**Dissociation of a Member**

31. Where the Company consists of two or more Members, in the event of either a voluntary or involuntary withdrawal of a Member, if the remaining Members elect to purchase the interest of the withdrawing Member, the remaining Members will serve written notice of such election, including the purchase price and method and schedule of payment for the withdrawing Member's Interests, upon the withdrawing Member, their executor, administrator, trustee, committee or analogous fiduciary within a reasonable period after acquiring knowledge of the change in circumstance to the affected Member. The purchase amount of any buyout of a Member's Interests will be determined as set out in the Valuation of Interest section of this Agreement.
32. Valuation and distribution will be determined as described in the Valuation of Interest section of this Agreement.
33. The remaining Members retain the right to seek damages from a dissociated Member where the dissociation resulted from a malicious or criminal act by the dissociated Member or where the dissociated Member had breached their fiduciary duty to the Company or was in breach of this Agreement or had acted in a way that could reasonably be foreseen to bring harm or damage to the Company or to the reputation of the Company.
34. A dissociated Member will only have liability for Company obligations that were incurred during their time as a Member. On dissociation of a Member, the Company will prepare, file, serve, and publish all notices required by law to protect the dissociated Member from liability for future Company obligations.

35. Where the remaining Members have purchased the interest of a dissociated Member, the purchase amount will be paid in full, but without interest, within 90 days of the date of withdrawal. The Company will retain exclusive rights to use of the trade name and firm name and all related brand and model names of the Company.

**Right of First Purchase**

36. Where the Company consists of two or more Members, in the event that a Member's Interest in the Company is or will be sold, due to any reason, the remaining Members will have a right of first purchase of that Member's Interest. The value of that interest in the Company will be the lower of the value set out in the Valuation of Interest section of this Agreement and any third party offer that the Member wishes to accept.

**Assignment of Interest**

37. A Member's financial interest in the Company can only be assigned to another Member and cannot be assigned to a third party except with the unanimous consent of the remaining Members.
38. In the event that a Member's interest in the company is transferred or assigned as the result of a court order or Operation of Law, the trustee in bankruptcy or other person acquiring that Member's Interests in the Company will only acquire that Member's economic rights and interests and will not acquire any other rights of that Member or be admitted as a Member of the Company or have the right to exercise any management or voting interests.

**Valuation of Interest**

39. A Member's financial interest in the Company will be in proportion to their Capital Contributions, inclusive of any Additional Capital Contributions.
40. In the absence of a written agreement setting a value, the value of the Company will be based on the fair market value appraisal of all Company assets (less liabilities) determined in accordance with generally accepted accounting principles (GAAP). This appraisal will be conducted by an independent accounting firm agreed to by all Members. An appraiser will be appointed within a reasonable period of the date of withdrawal or dissolution. The results of the appraisal will be binding on all Members. The intent of this section is to ensure the survival of the Company despite the withdrawal of any individual Member.

41. No allowance will be made for goodwill, trade name, patents or other intangible assets, except where those assets have been reflected on the Company books immediately prior to valuation.

**Dissolution**

42. The Company may be dissolved by a unanimous vote of the Members. The Company will also be dissolved on the occurrence of events specified in the Act.

43. Upon Dissolution of the Company and liquidation of Company property, and after payment of all selling costs and expenses, the liquidator will distribute the Company assets to the following groups according to the following order of priority:

- a. in satisfaction of liabilities to creditors except Company obligations to current Members;
- b. in satisfaction of Company debt obligations to current Members; and then
- c. to the Members based on Member financial interest, as set out in the Valuation of Interest section of this Agreement.

**Records**

44. The Company will at all times maintain accurate records of the following:

- a. Information regarding the status of the business and the financial condition of the Company.
- b. A copy of the Company federal, state, and local income taxes for each year, promptly after becoming available.
- c. Name and last known business, residential, or mailing address of each Member, as well as the date that person became a Member.
- d. A copy of this Agreement and any articles or certificate of formation, as well as all amendments, together with any executed copies of any written powers of attorney pursuant to which this Agreement, articles or certificate, and any amendments have been executed.



e. The cash, property, and services contributed to the Company by each Member, along with a description and value, and any contributions that have been agreed to be made in the future.

45. Each Member has the right to demand, within a reasonable period of time, a copy of any of the above documents for any purpose reasonably related to their interest as a Member of the Company, at their expense.

**Books of Account**

46. Accurate and complete books of account of the transactions of the Company will be kept in accordance with generally accepted accounting principles (GAAP) and at all reasonable times will be available and open to inspection and examination by any Member. The books and records of the Company will reflect all the Company's transactions and will be appropriate and adequate for the business conducted by the Company.

**Banking and Company Funds**

47. The funds of the Company will be placed in such investments and banking accounts as will be designated by the Members. All withdrawals from these accounts will be made by the duly authorized agent or agents of the Company as appointed by unanimous consent of the Members. Company funds will be held in the name of the Company and will not be commingled with those of any other person or entity.

**Audit**

48. Any of the Members will have the right to request an audit of the Company books. The cost of the audit will be borne by the Company. The audit will be performed by an accounting firm acceptable to all the Members. Not more than one (1) audit will be required by any or all of the Members for any fiscal year.

**Fiscal Year End**

49. The fiscal year end of the Company is the 31st day of December.

**Tax Treatment**

50. This Company is intended to be treated as a corporation, for the purposes of Federal and State Income Tax.

**Annual Report**

51. As soon as practicable after the close of each fiscal year, the Company will furnish to each Member an annual report showing a full and complete account of the condition of the Company including all information as will be necessary for the preparation of each Member's income or other tax returns. This report will consist of at least:
- a. A copy of the Company's federal income tax returns for that fiscal year.
  - b. Income statement.
  - c. Balance sheet.
  - d. Cash flow statement.
  - e. A breakdown of the profit and loss attributable to each Member.

**Goodwill**

52. The goodwill of the Company will be assessed at an amount to be determined by appraisal using generally accepted accounting principles (GAAP).

**Governing Law**

53. The Members submit to the jurisdiction of the courts of the State of Washington for the enforcement of this Agreement or any arbitration award or decision arising from this Agreement.

**Force Majeure**

54. A Member will be free of liability to the Company where the Member is prevented from executing their obligations under this Agreement in whole or in part due to force majeure, such as earthquake, typhoon, flood, fire, and war or any other unforeseen and uncontrollable event where the Member has communicated the circumstance of the event to any and all other Members and where the Member has taken any and all appropriate action to satisfy his duties and obligations to the Company and to mitigate the effects of the event.

**Forbidden Acts**

55. No Member may do any act in contravention of this Agreement.

56. No Member may permit, intentionally or unintentionally, the assignment of express, implied or apparent authority to a third party that is not a Member of the Company.
57. No Member may do any act that would make it impossible to carry on the ordinary business of the Company.
58. No Member will have the right or authority to bind or obligate the Company to any extent with regard to any matter outside the intended purpose of the Company.
59. No Member may confess a judgment against the Company.
60. Any violation of the above forbidden acts will be deemed an Involuntary Withdrawal and may be treated accordingly by the remaining Members.

**Indemnification**

61. All Members will be indemnified and held harmless by the Company from and against any and all claims of any nature, whatsoever, arising out of a Member's participation in Company affairs. A Member will not be entitled to indemnification under this section for liability arising out of gross negligence or willful misconduct of the Member or the breach by the Member of any provisions of this Agreement.

**Liability**

62. A Member or any employee will not be liable to the Company or to any other Member for any mistake or error in judgment or for any act or omission believed in good faith to be within the scope of authority conferred or implied by this Agreement or the Company. The Member or employee will be liable only for any and all acts and omissions involving intentional wrongdoing.

**Liability Insurance**

63. The Company may acquire insurance on behalf of any Member, employee, agent or other person engaged in the business interest of the Company against any liability asserted against them or incurred by them while acting in good faith on behalf of the Company.

**Life Insurance**

64. The Company will have the right to acquire life insurance on the lives of any or all of the Members, whenever it is deemed necessary by the Company. Each Member will cooperate fully with the Company in obtaining any such policies of life insurance.

**Actions Requiring Unanimous Consent**

65. The following actions will require the unanimous consent of all Members:

- a. Endangering the ownership or possession of Company property including selling, transferring or loaning any Company property or using any Company property as collateral for a loan.

**Amendment of this Agreement**

66. No amendment or modification of this Agreement will be valid or effective unless in writing and signed by all Members.

**Title to Company Property**

67. Title to all Company property will remain in the name of the Company. No Member or group of Members will have any ownership interest in Company property in whole or in part.

**Miscellaneous**

68. Time is of the essence in this Agreement.

69. This Agreement may be executed in counterparts.

70. Headings are inserted for the convenience of the Members only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender include the feminine gender and vice versa. Words in a neutral gender include the masculine gender and the feminine gender and vice versa.

71. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, it is the Members' intent that such provision be reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable and the remainder of the provisions of this Agreement will in no way be affected, impaired or invalidated as a result.

72. This Agreement contains the entire agreement between the Members. All negotiations and understandings have been included in this Agreement. Statements or representations that may have been made by any Member during the negotiation stages of this Agreement, may in some way be inconsistent with this final written Agreement. All such statements have no force or effect in respect to this Agreement. Only the written terms of this Agreement will bind the Members.
73. This Agreement and the terms and conditions contained in this Agreement apply to and are binding upon each Member's successors, assigns, executors, administrators, beneficiaries, and representatives.
74. Any notices or delivery required here will be deemed completed when hand-delivered, delivered by agent, or seven (7) days after being placed in the post, postage prepaid, to the Members at the addresses contained in this Agreement or as the Members may later designate in writing.
75. All of the rights, remedies and benefits provided by this Agreement will be cumulative and will not be exclusive of any other such rights, remedies and benefits allowed by law.

**Definitions**

76. For the purpose of this Agreement, the following terms are defined as follows:
- a. "Additional Contribution" means Capital Contributions, other than Initial Contributions, made by Members to the Company.
  - b. "Capital Contribution" means the total amount of cash, property, or services contributed to the Company by any one Member.
  - c. "Distributions" means a payment of Company profits to the Members.
  - d. "Initial Contribution" means the initial Capital Contributions made by any Member to acquire an interest in the Company.
  - e. "Member's Interests" means the Member's collective rights, including but not limited to, the Member's right to share in profits, Member's right to a share of Company assets on dissolution of the Company, Member's voting rights, and Member's rights to participate in the management of the Company.

- f. "Net Profits or Losses" means the net profits or losses of the Company as determined by generally accepted accounting principles (GAAP).
- g. "Operation of Law" means rights or duties that are cast upon a party by the law, without any act or agreement on the part of the individual, including, but not limited to, an assignment for the benefit of creditors, a divorce, or a bankruptcy.
- h. "Principal Office" means the office whether inside or outside the State of Washington where the executive or management of the Company maintain their primary office.
- i. "Voting Members" means the Members who belong to a membership class that has voting power. Where there is only one class of Members, then those Members constitute the Voting Members.

**IN WITNESS WHEREOF** the Member has duly affixed their signature under hand and seal on this 7th day of June, 2020.



Dave Atteberry MD (Member)