



## Eye M.D.s of Puget Sound

**Clark W. Deem, M.D.**

*Comprehensive Ophthalmology  
Cataract Surgery  
Pediatric/ROP/Keratoconus Eyes*

**Francis Geissler, Ph.D., M.D.**

*Comprehensive Ophthalmology  
Cataract Surgery  
Prescription IOLs  
Refractive Surgery*

**Narrows Eye Surgery Center**

*Cataract Surgery  
Ophthalmologic Surgery  
Laser Surgery*

**Narrows Optical**

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**RECEIVED**

By CERTIFICATE OF NEED PROGRAM at 11:19 am, Jan 14, 2022

January 5, 2022

Via US Mail and Email FSLCOM@doh.wa.gov

Department of Health

Certificate of Need Program

111 Israel Road SE

Tumwater, WA 98501

**CN22-29**

Re: Narrow Eye Surgery Center, PLLC  
Application for Certificate of Need

Dear Sirs:

Enclosed please find a printed and electronic version, on flash drive, of Narrows Eye Surgery Center application for conversion from a certificate of need exempt ASC to a certificate of need approved ASF. A check in the amount of \$20,427.00, to cover the cost of application review, will be mailed separately.

Please complete the attached "report of application received" and return it to our office in the envelope provided. If you have questions or require additional information, please let us know. Thank you for your consideration.

Sincerely,

[www.eyemdsputesound.com](http://www.eyemdsputesound.com)



**Ambulatory Surgical Facility (ASF)  
Ambulatory Surgery Center (ASC)  
Certificate of Need Application Packet**

**Contents:**

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**Submission Instructions:**

Provide one paper copy of the application and one electronic copy on a CD or thumb drive.

**To be accepted, the application must include:**

- A completed and signed Certificate of Need application, including the face sheet
- A check or money order for the review fee of \$20,427 payable to Department of Health.
- 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



## 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](#).

**"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 used interchangeably with "ASF" to describe a facility that provides ambulatory surgical procedures. The Centers for Medicare and Medicaid Services state that an ASC is a distinct entity that operates exclusively for the purpose of furnishing outpatient surgical services to patients.

**"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\(5\)](#)

**"Assumptions,"** as referred to in this application, means the basis for any projection you provide.

**"Invasive procedure"** as defined by licensing rules means a procedure involving puncture or incision of the skin or insertion of an instrument or foreign material into the body including, but not limited to, percutaneous aspirations, biopsies, cardiac and vascular catheterizations, endoscopies, angioplasties, and implantations. Excluded are venipuncture and intravenous therapy. [WAC 246-330-010\(20\)](#)

**“Operating room”** as defined by licensing rules means a room intended for invasive procedures. [WAC 246-330-010\(29\)](#)

**“Procedure room”** for Certificate of Need purposes has the same meaning as “operating room,” but is often used by providers in reference to rooms dedicated to specific procedure types, such as endoscopy or pain management.

**“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\(42\)](#)



## **Application Instructions**

The Certificate of Need (CN) Program will use the information in your application 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.

### **General Instructions:**

- Include a table of contents for application 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.
- Cite all data sources.
- Provide copies of articles, studies, etc. cited in the application.
- Place extensive supporting data in an appendix.
- Provide a detailed description of the basis used for all projections.
- Do not include a general inflation rate for any dollar amounts.
- Include known contract cost increases.
- Do not include a capital expenditure contingency.
- **If any of the documents provided in the application are in draft form, a draft is only acceptable 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,
  - d. includes all exhibits that are referenced in the agreement, and
  - 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 in this application. If you believe a question is not applicable to your project, provide rationale as to why it is not applicable.**

**Please answer the following questions in a manner that makes sense for your project. In some cases, a table may make more sense than a narrative. The department will follow up in screening if there are questions.**

Program staff members are available to provide technical assistance (TA) at no cost to you before submitting your application. While TA isn't required, it's highly recommended and can make any required review easier. To request a TA meeting, call 360-236-2955 or [email us at FSLCON@doh.wa.gov](mailto:FSLCON@doh.wa.gov).



## **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](#)

### **Commonly Referenced Rules for Ambulatory Surgery Projects:**

<b>WAC Reference</b>	<b>Title/Topic</b>
<a href="#">246-310-010</a>	Certificate of Need Definitions
<a href="#">246-310-160</a>	Regular Review Process
<a href="#">246-310-200</a>	Bases for findings and action on applications
<a href="#">246-310-210</a>	Determination of Need
<a href="#">246-310-220</a>	Determination of Financial Feasibility
<a href="#">246-310-230</a>	Criteria for Structure and Process of Care
<a href="#">246-310-240</a>	Determination of Cost Containment
<a href="#">246-310-270</a>	Ambulatory Surgery

### **Certificate of Need Contact Information:**

[Certificate of Need Program Web Page](#)

Phone: (360) 236-2955

Email: [FSLCON@doh.wa.gov](mailto:FSLCON@doh.wa.gov)

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

[Construction Review Services Program Web Page](#)

Phone: (360) 236-2944

Email: [CRS@doh.wa.gov](mailto:CRS@doh.wa.gov)

### **Licensing Resources:**

[Ambulatory Surgical Facilities Laws, RCW 70.230](#)

[Ambulatory Surgical Facilities Rules, WAC 246-330](#)

[Ambulatory Surgical Facilities Program Web Page](#)

### **Hospital Charity Care and Financial Data (HCCFD) Program Resources**

[HCCFD Web Page](#)

Email: [CharityCare@doh.wa.gov](mailto:CharityCare@doh.wa.gov)



## **Narrows Eye Surgery Center**

Certificate of Need Application to  
Convert an Existing Certificate of Need Exempt  
ASC to a Certificate of Need Approved ASF  
in the  
Central Pierce County Planning Area  
December, 2021

# CN22-29

Certificate of Need Application  
Ambulatory Surgical Facilities  
Ambulatory Surgery Centers

Certificate of Need applications must be submitted with a fee in accordance with Washington Administrative Code [\(WAC\) 246-310-990](#).

Application is made for a Certificate of Need in accordance with provisions in Revised Code of Washington [\(RCW\) 70.38](#) and [WAC 246-310](#), rules and regulations adopted by the Washington State Department of Health. I attest that the statements made in this application are correct to the best of my knowledge and belief.

Name, Title, and Signature of Responsible Officer:	Phone Number:  253-442-2234
Francis Geissler, PhD, MD	Email Address:  mblackwell@eyemdspugetsound.com
Dated:	
Legal Name of Applicant: Eye MDs of Puget Sound, PLLC	Number of Operating Rooms requested – include procedure rooms:  2
Address of Applicant: 4707 South 19th Street Suite 210 Tacoma, WA 98405	Estimated Capital Expenditure:  0

Identify the Planning Area for this project as defined in [WAC 246-310-270\(3\)](#):

Pierce Central Planning area

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## **Applicant Description**

Answers to the following questions will help the department fully understand the role of applicants. Your answers in this section will provide context for the reviews under Financial Feasibility ([WAC 246-310-220](#)) and Structure and Process of Care ([WAC 246-310-230](#)).

1. Provide the legal name(s) and address(es) of the applicant(s)

Note: The term “applicant” for this purpose includes any person or individual with a ten percent or greater financial interest in the partnership or corporation or other comparable legal entity. [WAC 246-310-010\(6\)](#)

Francis Geissler, PhD, MD  
Owner  
Eye MDs of Puget Sound, PLLC  
4707 South 19<sup>th</sup> Street Ste 210  
Tacoma, WA 98405

2. Identify the legal structure of the applicant (LLC, PLLC, etc.) and if known, provide the UBI number.

Eye MDs of Puget Sound, PLLC  
UBI # 602217430

3. Provide the name, title, address, telephone number, and email address of the contact person for this application.

Francis Geissler, PhD, MD  
Owner  
4707 South 19th St. #210 Tacoma, WA 98405  
253-248-2020  
mblackwell@eyemdspugetsound.com

4. Provide the name, title, address, telephone number, and email address of any other representatives authorized to speak on your behalf related to the screening of this application (if any).

Melinda Blackwell, Administrator  
4707 South 19th St. #210 Tacoma, WA 98405  
253-241-2020  
mblackwell@eyemdspugetsound.com

5. Provide an organizational chart that clearly identifies the business structure of the applicant(s) and the role of the facility in this application.

See Exhibit 2

### **Project Description**

Answers to the following questions will help the department fully understand the type of facility you are proposing as well as the type of services to be provided. Your answers in this section will provide context for the reviews under Need ([WAC 246-310-210](#)) and Structure and Process of Care ([WAC 246-310-230](#))

1. Provide the name and address of the existing facility.

Narrows Eye Surgery Center  
4707 South 19th Street LL  
Tacoma, WA 98405

2. Provide the name and address of the proposed facility. If an address is not yet assigned, provide the county parcel number and the approximate timeline for assignment of the address.

Narrows Eye Surgery Center  
4707 South 19th Street LL  
Tacoma, WA 98405

3. Provide a detailed description of the proposed project.

Throughout most of its 20 year history as a comprehensive Ophthalmology practice Eye MDs of Puget Sound has operated Narrows Eye Surgery Center, NESC, as a certificate of need exempt, CN-exempt, ASC, in the Central Pierce Planning area. During this time we have developed close working relationships with various Ophthalmic subspecialists in the region including Retina, Glaucoma, and Oculoplastics as well as ENT and Plastic Surgery specialists in the community. Previously, Eye MDs of Puget Sound has employed Oculoplastic subspecialists (Dr. Kristen Tarbet and Dr. Michael Warner). They treated patients in our clinics and performed surgery at NESC for many years. Recently we have added two additional full-time Ophthalmology subspecialist to our medical staff, Noel Castillo, MD and John Samples, MD. Dr. Castillo has fellowship training in Anterior Segment/Cornea while Dr. Samples completed fellowships in both Anterior Segment/Cornea and Glaucoma. Our long-range practice goals have always included growth and diversification of medical services available to our patients while maintaining quality care. We feel the best way to pursue these goals is to obtain Certificate of Need approval, CN-approval, of NESC and create a surgical center for intraocular (eye) surgery and facial plastic surgery. Historically over the last 10 years there has only been one CN-approved facility, Allenmore Hospital, available for outpatient Ophthalmic surgery in the entire Central Pierce Planning Area. (Personal observation, Applicant). Within the last 6 months Evergreen Eye Center obtained CN-



approval of its Tacoma facility for Ophthalmic procedures. Presently having just 2 facilities available for eye procedures in the entire planning area is not adequate especially when one considers the overall shortage of dedicated outpatient ORs currently available (see Table 2). At the time of this application people over the age of 65<sup>1</sup> represent the fastest growing segment of the population in Pierce County and it is this group which utilizes more surgical care than any other segment of the population (Table 5). Clearly this supports the need for more CN-approved ASFs. Our experience with Oculoplastics suggest that extending our surgical scope of treatment to include both ENT and Plastic Surgery makes clinical and financial sense and benefits patients. There is overlap in care provided by Oculoplastics, ENT and Plastic Surgery. Today Surgeons from all 3 of these disciplines routinely address facial trauma, congenital anomalies, benign and malignant lesions and perform aesthetic/cosmetic procedures. Based on these facts and our experience we see great benefit to patients by providing access to facial plastics procedures performed by qualified surgeons of different backgrounds. We believe a surgery center capable of supporting intraocular surgery cases and able to staff facial plastic surgery procedures to be highly desirable for Central Pierce Planning area patients.

1.Source Claritas

4. With the understanding that the review of a Certificate of Need application typically takes at least 6-9 months, provide an estimated timeline for project implementation, below:

N/A Narrows Eye Surgery Center is currently operational

Event	Anticipated Month/Year
Design Complete	N/A
Construction Commenced	N/A
Construction Completed	N/A
Facility Prepared for Survey	N/A
Project Completion	N/A

5. Identify the surgical specialties to be offered at this facility by checking the applicable boxes below. Also attach a list of typical procedures included within each category.

<input checked="" type="checkbox"/> Ear, Nose, & Throat	<input type="checkbox"/> Maxillofacial	<input type="checkbox"/> Pain Management
<input type="checkbox"/> Gastroenterology	<input checked="" type="checkbox"/> Ophthalmology	<input checked="" type="checkbox"/> Plastic Surgery
<input type="checkbox"/> General Surgery	<input type="checkbox"/> Oral Surgery	<input type="checkbox"/> Podiatry
<input type="checkbox"/> Gynecology	<input type="checkbox"/> Orthopedics	<input type="checkbox"/> Urology

☐ Other? Describe in detail: \_\_\_\_\_

6. If you checked gastroenterology, above, please clarify whether this includes the full spectrum of gastroenterological procedures, or if this represents a specific sub-specialty: N/A

☐ Endoscopy                      ☐ Bariatric Surgery                      ☐ Other: \_\_\_\_\_

7. For existing facilities, provide a discussion of existing specialties and how these would or would not change as a result of the project.

NESC currently provides ambulatory surgical services covering the specialty of Ophthalmology. We will continue to offer eye care and plan to expand surgical services to include the complimentary and closely related specialties of ENT and Plastic Surgery.

8. Identify how many operating rooms will be at this facility at project completion. Note, for certificate of need and credentialing purposes, "operating rooms" and "procedure rooms" are one and the same.

Two operating rooms

9. Identify if any of the operating rooms at this facility would be exclusively dedicated to endoscopy, cystoscopy, or pain management services. [WAC 246-310-270\(9\)](#)

None

10. Provide a general description of the types of patients to be served by the facility at project completion (e.g. age range, etc.).

Eye MDs of Puget Sound will continue to provide surgical services to patients 18 years of age and older who can be safely and effectively cared for in an ambulatory surgery facility.

11. If you submitted more than one letter of intent for this project, provide a copy of the applicable letter of intent that was submitted according to [WAC 246-310-080](#).

See Exhibit 1

12. Provide single-line drawings (approximately to scale) of the facility, both before and after project completion.

See Exhibit 3

13. Confirm that the facility will be licensed and certified by Medicare and Medicaid, which is a requirement for CN approval. If this application proposes the expansion of an existing facility, provide the existing facility's identification numbers.

License #: ASF.FS. 61002680

Medicare #: G8808497

Medicaid #: 7132640

14. Identify whether this facility will seek accreditation. If yes, identify the accrediting body.  
See Exhibit 4

15. **OPTIONAL** – The Certificate of Need program highly recommends that applicants consult with the office of Construction Review Services (CRS) early in the planning process. CRS review is required prior to construction and licensure ([WAC 246-330-500](#), [246-330-505](#), and [246-330-510](#)). Consultation with CRS can help an applicant reliably predict the scope of work required for licensure and certification. Knowing the required construction standards can help the applicant to more accurately estimate the capital expenditure associated with a project.

If your project includes construction, please indicate if you've consulted with CRS and provide your CRS project number.

N/A. Narrows Eye Surgery Center worked closely with Mr. Steve Pennington in the office of construction review services in 2012 when the facility was moved to its current site. We have been fully operational at our present location for almost a decade.

### **Certificate of Need Review Criteria Need (WAC 246-310-210)**

#### **A. Need (WAC 246-310-210)**

[WAC 246-310-210](#) provides general criteria for an applicant to demonstrate need for healthcare facilities or services in the planning area. [WAC 246-310-270](#) provides specific criteria for ambulatory surgery applications. Documentation provided in this section must demonstrate that the proposed facility will be needed, available, and accessible to the community it proposes to serve. Some of the questions below only apply to existing facilities proposing to expand. For any questions that are not applicable to your project, explain why.

Some of the questions below require you to access facility data in the planning area. Please contact the Certificate of Need Program for any planning area definitions, facility lists, and applicable survey responses with utilization data.

1. List all surgical facilities operating in the planning area – to include hospitals, ASFs, and ASCs.

**Table 1: Surgical facilities in Central Pierce Planning Area**

Hospitals/CN-Approved ASFs	Mixed Use ORs	Outpatient ORs
<i>MultiCare Health Systems</i>		
Allenmore	8	
Mary Bridge	4	2
Tacoma General	17	
MHS Baker Day Surgery		3
MHS Gig Harbor		4
<i>Virginia Mason Franciscan Health</i>		
St Anthony	6	
St Joseph	10	
Walters Day Surgery SJMC	9	
Gig Harbor ASC SJMC		2
Evergreen Eye Center Tacoma		2
<b>Total CN approved ORs</b>	<b>54</b>	<b>13</b>
ASCs CN-Exempt	Mixed-Use ORs	Outpatient ORs
Asthetica Clinique		1
Artistic Plastic Surgery Center		1
Cedar Laser and Surgery Center		2
Narrow Eye Surgery Center		2
Harbor Plastic Surgery Center		2
Pacific Cataract and Laser Institute		2
Pacific Northwest Eye Associates		3
Sono Bello		3
Sound View ASC		1
<b>Total CN Exempt ORs</b>		<b>17</b>

\*Sources: Department of Health 2020 Survey collecting 2019 data

2. Identify which, if any, of the facilities listed above provide similar services to those proposed in this application.

Ambulatory surgery centers which provide a service mix of Ophthalmic, ENT, and Plastic surgery can be considered sufficiently similar to NESC. Procedure types by provider are not publicly available in Washington State, but a review of the Central Pierce planning area ASCs suggest that Allenmore Hospital is the only facility that currently would offer similar surgical services as outlined in this application.

3. Provide a detailed discussion outlining how the proposed project will not represent an unnecessary duplication of services.

NESC has been providing surgical services to patients for the last 17 years as a CN-exempt ASC. Over the last 10 years, in all of Pierce County, only one hospital has been equipped and capable of performing Ophthalmic procedures. (Personal observation applicant) With the exception of Allenmore Hospital no other Pierce County hospital has made the financial and personnel commitment to community surgeons and their patients to provide these services.<sup>(1)</sup> Until very recently no freestanding ASF existed in the entire county for eye care. Within the last 6 months Evergreen Eye Center has received Certificate of Need approval for their facility. Currently there are only two CN-Approved facilities in the entire Central Pierce planning area where eye surgery can be performed by community surgeons. Clearly this lack of operating room availability hinders prompt delivery of care and may force patients to travel outside of their community for surgery. Furthermore, the lack of access to ASF services may force patients to have procedures done in the more costly alternative hospital operating rooms.

(1) Kaiser Permanent, formally Group Health, has an ASF facility within the planning area but is not considered in the need calculations of this application since it is a Health Maintenance Organization (HMO) with a closed network.

4. Complete the methodology outlined in [WAC 246-310-270](#), unless your facility will be exclusively dedicated to endoscopy, cystoscopy, or pain management. If your facility will be exclusively dedicated to endoscopy, cystoscopy, or pain management, so state. If you would like a copy of the methodology template used by the department, please contact the Certificate of Need Program.

**Table 2: Need Calculation Summary Central Pierce County**

Population totals all ages <sup>1</sup>	2019	337,114
	2021	344,957
	2023	353,183
	2024	363,023
Planning Area Surgeries projected 2024 <sup>2</sup>		
	Inpatient surgeries	39,416
	Outpatient surgeries	25,201
	Total Surgeries	64,618
Planning Area Surgery Rate	178/1,000 population	
Surgery Case Mix	Inpatient	61%
	Outpatient	39%
Average minutes/case <sup>2</sup>	Inpatient	117.2
	Outpatient	67.1
OR annual capacity minutes	Inpatient	5,089,500
	Outpatient	895,050
Current OR capacity	Inpatient	54 ORs
	Outpatient	13 ORs
<b>Summary of Need Calculations</b>	<b>Shortage of outpatient ORs</b>	<b>11.6</b>

(1) Claritas

(2) Washington DOH Health Survey 2020

Based on need methodology calculations of DOH data there is a demonstrated quantitative need for more than 11 additional outpatient operating rooms in the planning area (See Table 2). Therefore, there would not be an unnecessary duplication of services. (See Exhibit 5 for need calculations) The Department of Health need model calculations for Central Pierce County planning area show a significant shortage of outpatient operating rooms. This is especially true for Ophthalmology patients. Historically there have been few options for eye surgeons in all of Pierce County. For the last 10 years only Allenmore Hospital has been equipped to perform any type of intraocular surgery on a regular basis. This includes cataract extraction, all retina procedures, glaucoma surgery and corneal transplantation. In mid-2021 Evergreen Eye received Certificate of Need approval for their 2 operating rooms facility in Tacoma. No other Pierce County Hospital has made the investment in equipment and staff to serve

eye patients. That means at present there are two options available for intraocular surgery. Not only is this woefully inadequate to meet the needs of Central Pierce Planning area population today it does not begin to address the needs of a growing population.

5. If the methodology does not demonstrate numeric need for additional operating rooms, [WAC 246-310-270\(4\)](#) gives the department flexibility. WAC 246-310- 270(4) states: “Outpatient operating rooms should ordinarily not be approved in planning areas where the total number of operating rooms available for both inpatient and outpatient surgery exceeds the area need.”

These circumstances could include but are not limited to: lack of CN approved operating rooms in a planning area, lack of providers performing widely utilized surgical types, or significant in-migration to the planning area. If there isn’t sufficient numeric need for the approval of your project, please explain why the department should give consideration to this project under [WAC 246-310-270\(4\)](#). Provide all supporting data.

N/A The need calculation supports additional ORs needed in the Central Pierce Planning area.

6. For existing facilities, provide the facility’s historical utilization for the last three fullcalendar years.

**Table 3: Historical Utilization NESC**

Surgery Type	2018	2019	2020
Ophthalmic	710	760	574

7. Provide projected surgical volumes at the proposed facility for the first three full years of operation, separated by surgical type. For existing facilities, also provide the intervening years between historical and projected. Include the basis for all assumptions used as the basis for these projections.

**Table 4: Projected Surgical Volumes NESC 2022 to 2024**

Surgery Type	2022	2023	2024
Ophthalmic <sup>(1)</sup>	1315	1380	1450
Plastic Surgery <sup>(2)</sup>	50	75	100
ENT Procedures	20	40	60

(1) Includes cataract extraction, all cornea procedures, all glaucoma and retinal surgery.

(2) All procedures involving skin incisions of the orbit, lids, nose, brow, scalp, ears, face, and neck. To include mass removal, Moh's surgery with repair, and laceration repair.

The projected surgical volume of NESC for the years 2022-2024 is based on two factors: 1) The number of surgeons utilizing NESC and 2) The annual growth rate of surgical procedures performed at NESC. Eye MDs of Puget Sound, which operates NESC, has hired two additional full time Ophthalmic Surgeons in the last quarter of 2021.. Noel Castillo, MD and John Samples, MD join Clark Deem, MD and Francis Geissler, MD and will utilize NESC for virtually all their surgical cases. Additionally, it is expected that other community Ophthalmic surgeons, ENT and Plastic surgeons will seek privileges and perform surgery at our facility as well. The annual growth rate for eye procedures is conservatively projected at 5%. We anticipate a fairly rapid increase in the rates of Plastics and ENT cases from modest beginnings starting in 2022. These projections are supported by the fact that an aging population requires more surgical care. National center for health Statistics survey results show that the surgical utilization rates for persons aged 65 yrs. and older are roughly 2.5 times greater than the average for the overall population (See Table 5).

**Table 5: ASC Utilization Rates per Age vs Population**

Age	Utilization Rate per 10,000
Total	1560.0
Under 15 yrs.	476.5
15 yrs-44 yrs.	832.41
45 yrs-64 yrs.	2297.0
Over 64 yrs.	3974.0

Source: National Health Statistics Reports, No. 102, Feb 28, 2017, Table 2: Number and percent distribution of ambulatory surgery procedures by age and sex.

The projected annual population growth rate for Central Pierce Planning area is greatest for that segment of the population aged 65 years and older, for the next several years (Source Claritas). This means more citizens will be entering the age group historically requiring increased surgical care. As a result, there will be a greater need for facilities to provide outpatient surgical treatment. The trend within the U.S. has been toward ASCs for outpatient



surgery. In 2005 60% of all outpatient surgeries were performed in hospitals and 40% in lower cost ASCs. By 2020 60% of all outpatient procedures were performed in ASCs and only 40% in hospitals (Source: Advisory Board Daily Briefing, March 5, 2019) The primary reasons for this change are economics and convenience. ASCs are cheaper for patients to use than community hospital outpatient departments and more convenient for both patients and doctors. The savings are exemplified by reviewing both the Medicare and individual patient cost of the most commonly reimbursed Medicare outpatient surgical procedure in the United States, cataract surgery. Currently cataract surgery accounts for 18.6% of all outpatient surgeries covered by Medicare.

**Table 6: Cataract Surgery National Average Cost**

ASC		Hospital Outpatient	
<b>Total Cost</b>	<b>1789.00</b>	<b>Total Cost</b>	<b>\$2829.00</b>
Professional Fee	\$750.00	Professional Fee	\$750.00
Facility Fee	\$1,039.00	Facility Fee	\$2079.00
Medicare Pays	\$1431.00	Medicare Pays	\$2263.00
<b>Patient Pays</b>	<b>\$357.00</b>	<b>Patient Pays</b>	<b>\$565.00</b>

Source: Medicare.gov website

Additionally, the greater demand and need for ASCs has been created by the current COVID 19 pandemic and the Delta/Omicron variant resurgences. The Covid outbreak forced hospital to rapidly focus and allocate resources to treating sick patients. Non-essential surgeries and other services have been largely curtailed by many hospitals in order to attend to this long running challenge. The return to “normalcy” such as providing support for elective services may be years away. This is also adding to the pressure of providing options for outpatient surgical procedures.

8. Identify any factors in the planning area that could restrict patient access to outpatient surgical services. [WAC 246-310-210\(1\) and \(2\)](#)

There are no obstacles for patients to overcome in the Central Pierce planning area for services at Narrows Eye Surgery Center. Since inception Eye MDs of Puget Sound, which operates NESC, has accepted nearly all insurance plans for clinic/surgical services. We have always offered, and will continue to offer, care to uninsured patients with discounted fees and options for payment programs.

9. In a CN-approved facility, [WAC 246-310-210\(2\)](#) requires that “all residents of the service area, including low-income persons, racial and ethnic

minorities, women, handicapped persons, and other underserved groups and the elderly are likely to have adequate access to the proposed health service or services.” Confirm your facility will meet this requirement.

NESC is committed to providing quality care and meeting the needs of the community we are members of. We pledge to provide Charity Care to those in need as outlined in our Charity Care Policy presented in Exhibit 7, at the same rate as all local hospital do. Our financial proforma provided in Exhibit 10 allocates 1.2% of revenues to be provided for charity care.

By obtaining CN approval NESC will immediately increase treatment options for patients in the Central Pierce Planning area beyond what is currently available. At present there are only two CN-approved facilities capable of providing eye surgical services in the service area. Moreover, only one of these facilities has the capacity to support plastics and ENT services and it is a hospital. Utilization of hospital outpatient surgical services is more costly to patients than utilizing ASCs. Moreover, many hospitals have greatly reduced the availability of elective surgery cases during the Covid 19 pandemic. With the recent resurgence of the Delta/Omicron variants, it is unclear how long this trend will last. Fortunately, free standing outpatient facilities are positioned to provide services on a much more predictable manner. Clearly the value of providing surgical care in an ASC, compared with hospital ORs, is widely recognized by the public and the transition to outpatient surgery centers is ongoing in the U.S.

10. Provide a copy of the following policies:

- Admissions policy-Exhibit 6
- Charity care or financial assistance policy- Exhibit 7
- Patient Rights and Responsibilities policy- Exhibit 8
- Non-discrimination policy- Exhibit 9
- Any other policies directly related to patient access to care.

**B. Financial Feasibility (WAC 246-310-220)**

Financial feasibility of a project is based on the criteria in [WAC 246-310-220](#).

1. Provide documentation that demonstrates that the immediate and long-range capital and operating costs of the project can be met. This should include but is not limited to:
  - Utilization projections. These should be consistent with the projections provided under “Need” in section A. Include the basis for all assumptions.
  - Pro Forma revenue and expense projections for at least the first three full calendar years of operation. Include the basis for all assumptions.

- Pro Forma balance sheet for the current year and at least the first three full calendar years of operation. Include the basis for all assumptions.
- For existing facilities, provide three years of historical revenue and expense statements, including the current year. Ensure these are in the same format as the pro forma projections. For incomplete years, identify whether the data is annualized.

See Exhibit 10

2. Provide the following applicable agreements/contracts:

- Management agreement
- Operating agreement
- Medical director agreement
- Development agreement
- Joint Venture agreement Note that all agreements above must be valid through at least the first three full years following completion of the project or have a clause with automatic renewals. Any agreements in draft form must include a document signed by both entities committing to execute the agreement as submitted following CN approval.

Eye MDs of Puget Sound does not have any applicable contracts or agreements in place. Francis Geissler PhD, MD is sole owner and therefore does not require listed agreements.

3. Certificate of Need approved ASFs must provide charity care at levels comparable to those at the hospitals in the ASF planning area. You can access charity care statistics from the Hospital Charity Care and Financial Data (HCCFD) [website](#). Identify the amount of charity care projected to be provided at this facility, captured as a percentage of gross revenue, as well as charity care information for the planning area hospitals. The table below is for your convenience but is not required. [WAC 246-310-270\(7\)](#)

NESC pledges to provide Charity Care to the same level that local hospitals do currently. Statistics from the DOH Charity Reports show that level to be 1.2% of total patient service revenue. (See Below)

**Table 7: Charity Statistics**

<b>Charity Care Rates</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>3-yr Average</b>
<b>Puget Sound Region</b>				
% Total Patient Services Revenue	1.23%	1.44%	1.35%	1.34%
% Adjusted Patient Services Revenue	3.73%	4.32%	3.99%	4.01%
<b>Central Pierce Planning Area</b>				
% Total Patient Services Revenue	1.16%	1.35%	1.09%	1.2%
% Total Adjusted Patient Services Revenue	3.41	3.82%	3.01%	3.41%
Source: DOH Charity Reports 2017-2019				

4. Provide documentation of site control. This could include either a deed to the site or a lease agreement for the site. If a lease agreement is provided, the terms must be for at least five years following project completion. The costs identified in these documents should be consistent with the Pro Forma provided in response to question 1.

Dr. Geissler is the sole owner of Eye MDs of Puget Sound and is an equal partner in the ownership of the building in which the proposed ASF is located. To document site control copies of the North Mullen Building ownership agreement and current ASC/office lease are included.

See Exhibit 11

5. For new facilities, confirm that the zoning for your site is consistent with the project.

N/A Narrows Eye Surgery Center is currently operational.

6. Complete the table below with the estimated capital expenditure associated with this project. Capital expenditure is defined under [WAC 246-310-010\(10\)](#). If you have other line items not listed below, please include the items with a definition of the line item. Include all assumptions used as the basis the capital expenditure estimate.

Item	Cost
a. Land Purchase	\$
b. Utilities to Lot Line	\$
c. Land Improvements	\$
d. Building Purchase	\$
e. Residual Value of Replaced Facility	\$
f. Building Construction	\$
g. Fixed Equipment (not already included in the construction contract)	\$
h. Movable Equipment	\$
i. Architect and Engineering Fees	\$
j. Consulting Fees	\$
k. Site Preparation	\$
l. Supervision and Inspection of Site	\$
m. Any Costs Associated with Securing the Sources of Financing (include interim interest during construction)	\$
1. Land	\$
2. Building	\$
3. Equipment	\$
4. Other	\$
n. Washington Sales Tax	\$
<b>Total Estimated Capital Expenditure</b>	<b>\$0</b>

7. Identify the entity or entities responsible for funding the capital expenditure identified above. If more than one entity is responsible, provide breakdown of percentages and amounts for all.

There is no capital expenditure for our project. We are currently operational.

8. Please identify the amount of start-up costs expected for this project. Include any assumptions that went into determining the start-up costs. If no start-up costs are needed, explain why.

There are no start-up costs expected for this project. We are currently operational.

9. Provide a non-binding contractor's estimate for the construction costs for the project.

There are no contractors estimates for the construction on this project. We are currently operational.

10. Explain how the proposed project would or would not impact costs and charges to patients for health services. [WAC 246-310-220](#)

There are no build out fees or equipment fees associated with this project. The ASC is up and running. Surgical rates are based on fee schedules with CMS and negotiated rates with other payors are not directly impacted by project costs. Moreover, free standing ASC rates are more favorable to both the patient and payer than hospital rates. They are lower than hospital rates.

11. Provide documentation that the costs of the project, including any construction costs, will not result in an unreasonable impact on the costs and charges to patients for health services in the planning area. [WAC 246-310-220](#)

See above response in question 10

12. Provide the **projected** payer mix by gross revenue and by patients using the example table below. If "other" is a category, define what is included in "other."

<b>Payer</b>	<b>Percentage by Revenue <a href="#">WAC 246-310-220(1)</a></b>	<b>Percentage by Patient <a href="#">WAC 246-310-210(2)</a></b>
Medicare	52%	48%
Medicaid	4%	10%
Other Payers (please list in individual lines)	44%	42%
<b>Total</b>	100%	100%

13. If this project proposes CN approval of an existing facility, provide the historical payer mix by revenue and patients for the existing facility for the most recent year. The table format should be consistent with the table shown above.

<b>Payer</b>	<b>Percentage by Revenue <a href="#">WAC 246-310-220(1)</a></b>	<b>Percentage by Patient <a href="#">WAC 246-310-210(2)</a></b>
Medicare	49.6%	53%
Medicaid	3.2%	13%
Premiera	5.3%	
Regence	8.9%	
Aetna	1.2%	
United Healthcare	1%	
Blue Cross	1.1%	
Other Payers (please list in individual lines)	29.7%	34%
<b>Total</b>	<b>100%</b>	<b>100%</b>

14. Provide a listing of new equipment proposed for this project. The list should include estimated costs for the equipment. If no new equipment is required, explain.

There is currently no additional equipment required for this project.

15. Provide a letter of financial commitment or draft agreement for each source of financing (e.g., cash reserves, debt financing/loan, grant, philanthropy, etc.). [WAC 246-310-220](#).

We are currently operational and will require no financing for the project.

16. If this project will be debt financed through a financial institution, provide a repayment schedule showing interest and principal amount for each year over which the debt will be amortized. [WAC 246-310-220](#)

We are currently operational and will require no financing for the project.

17. Provide the applicant's audited financial statements covering the most recent three years. [WAC 246-310-220](#)

See Exhibit 10

### C. Structure and Process of Care ([WAC 246-310-230](#))

Projects are evaluated based on the criteria in [WAC 246-310-230](#) for staffing availability, relationships with other healthcare entities, relationships with ancillary and support services, and compliance with federal and state requirements. Some of the questions within this section have implications on financial feasibility under [WAC 246-310-220](#) and will be marked as such.

1. Identify all licensed healthcare facilities owned, operated by, or managed by the applicant. This should include all facilities in Washington State as well as out-of-state facilities and should identify the license/accreditation status of each facility.

Eye MDs of Puget Sound/Clinic  
4707 South 19<sup>th</sup> Street Ste 210  
Tacoma WA 98405

Narrows Eye Surgery Center      ASF #61002680  
4707 South 19<sup>th</sup> Street LL  
Tacoma WA 98405

Eye MDs of Puget Sound/Clinic  
2401 Bristol Court B-101  
Olympia WA 98502

2. Provide a table that shows FTEs [full time equivalents] by classification (e.g., RN, LPN, Manager, Scheduler, etc.) for the proposed facility. If the facility is currently in operation, include at least the last three full years of operation, the current year, and the first three full years of operation following project completion. There should be no gaps in years. All staff classifications should be defined.

**Table 8: Narrows Eye Surgery Center FTEs**

	2019	2020	2021	2022	2023	2024
RN Manager	1	1	1	1	1	1
RN	.4	.4	.4	1	1.5	1.5
CRNA	.4	.4	.4	1	1.5	1.5
Scrub Tech	1	1	1.2	1.2	1.5	1.5
MA	.4	.4	.4	1	1	1
<b>Total</b>	<b>3.2</b>	<b>3.2</b>	<b>3.2</b>	<b>5.2</b>	<b>6.5</b>	<b>6.5</b>



3. Provide the basis for the assumptions used to project the number and types of FTEs identified for this project.

The above FTE's, by classification, are based on Eye MDs historical staffing. With the addition of 2 surgeons' surgical volume is projected to double from 2019 values in 2022.

4. Provide the name and professional license number of the current or proposed medical director. If not already disclosed under [WAC 246-310-220\(1\)](#) above, identify if the medical director is an employee or under contract.

Francis Geissler PhD, MD  
Medical Director  
Owner  
#MD00037351

5. If the medical director is/will be an employee rather than under contract, provide the medical director's job description.

See Exhibit 12

6. Identify key staff by name, if known (e.g., nurse manager, clinical director, etc.)

Ashley Rubin, RN ASF Nurse Manager  
Melinda Blackwell, Practice Administrator

7. Provide a list of physicians who would use this surgery center, including their names, license numbers, and specialties. [WAC 246-310-230\(3\) and \(5\)](#).

Francis Geissler, PhD, MD #00037351 Ophthalmology  
Noel Castillo, MD #60847735 Ophthalmology  
John Samples, MD #00030114 Ophthalmology  
Clark Deem, MD #00012765 Ophthalmology

8. For existing facilities, provide names and professional license numbers for current credentialed staff. [WAC 246-310-230\(3\) and \(5\)](#).

Same as question #7

9. Describe your methods for staff recruitment and retention. If any barriers to staff recruitment exist in the planning area, provide a detailed description of your plan to staff this project. [WAC 246-310-230\(1\)](#)

For 20 years Eye MDs of Puget Sound, which operates NESCC, has been providing quality comprehensive Ophthalmology services in South Puget Sound. During that time, we have built a reputation for outstanding care with excellent surgical outcomes. This has helped us compete for quality nursing and support staff in our clinics and ASC. We use all forms of advertisement to attract quality employees. We believe in cross training of staff to enhance their sense of challenge and job satisfaction. Historically we have never had a problem with staffing our ASC or clinics using this approach.

10. For existing facilities, provide a listing of ancillary and support services already in place. [WAC 246-310-230\(2\)](#)

Image First  
McKesson  
Precision Lens  
Johnson and Johnson  
Bausch and Lomb  
Waste Management  
Airgas

11. For new facilities, provide a listing of ancillary and support services that will be established. [WAC 246-310-230\(2\)](#)

N/A Narrows Eye Surgery Center is currently operational.

12. Identify whether any of the existing ancillary or support agreements are expected to change as a result of this project. [WAC 246-310-230\(2\)](#)

Narrows Eye Surgery Center expects to maintain all ancillary and support agreements as they are currently arranged.

13. If the ASF is currently operating, provide a listing of healthcare facilities with which the ASF has working relationships. [WAC 246-310-230\(4\)](#)

NESC has a transfer agreement with Allenmore Hospital. (Exhibit 13)

14. Identify whether any of the existing working relationships with healthcare facilities listed above would change as a result of this project. [WAC 246-310-230\(4\)](#)

No working relationships would change as a result of this project.

15. For a new facility, provide a listing of healthcare facilities with which the ASF would establish working relationships. [WAC 246-310-230\(4\)](#)

N/A Narrows Eye Surgery Center is currently operational.

16. Provide a copy of the existing or proposed transfer agreement with a local hospital. [WAC 246-310-230\(4\)](#)

See Exhibit 13

17. Provide an explanation of how the proposed project will promote continuity in the provision of health care services in the planning area, and not result in unwanted fragmentation or services. [WAC 246-310-230\(4\)](#)

As a CN-approved ASF NESC will provide continuity of care by supplying a facility where most types of eye surgery can be performed. Currently only two CN-approved facilities exist in the Central Pierce area equipped for ophthalmic surgery. One is Allenmore Hospital. Patients and their surgeons are aware of the additional costs to patients and prefer ASFs. With the continued rise of Covid-19 Delta/Omicron variants hospital capacity across the U.S. has been taxed to almost full occupancy. The pressure on inpatient facilities has clarified the vital role of ASFs in healthcare delivery by providing an alternative site for necessary procedures.

Demands of outpatient surgery will continue to grow because of the rapidly expanding elderly population of the Central Pierce Planning area. Without further increase in supply of outpatient ASFs patients in search of eye surgical services will need to go outside of the planning area, thereby creating significant fragmentation of services in the future.

18. Provide an explanation of how the proposed project will have an appropriate relationship to the service area's existing health care system as required in [WAC 246-310-230\(4\)](#).

NESC has a transfer agreement with Allenmore Hospital. This agreement will not change with the CN approval. NESC also pledges to provide charity care at the same level as the hospitals in the Central Pierce Planning area.

19. Identify whether any facility or practitioner associated with this application has a history of the actions listed below. If so, provide evidence that the proposed or existing facility can and will be operated in a manner that ensures safe and adequate care to the public and conforms to applicable federal and state requirements. [WAC 246-310-230\(3\) and \(5\)](#)

- a. A criminal conviction which is reasonably related to the applicant's competency to exercise responsibility for the ownership or operation of a health care facility; or
- b. A revocation of a license to operate a healthcare facility; or
- c. A revocation of a license to practice as a health profession; or
- d. Decertification as a provider of services in the Medicare or Medicaid program because of failure to comply with applicable federal conditions of participation.

No practitioner associated with Eye MDs of Puget Sound or NESC has any history of criminal convictions related to ownership of, or operation of, a healthcare facility. Nor is there any history of license revocation or any other sanctions described in WAC 244 310 230 (3) and (5) involving any physician associated with this medical practice.

**D. Cost Containment ([WAC 246-310-240](#))**

Projects are evaluated based on the criteria in WAC 246-310-240 in order to identify the best available project for the planning area.

1. Identify all alternatives considered prior to submitting this project.  
See answer D2

2. Provide a comparison of the project with alternatives rejected by the applicant. Include the rationale for considering this project to be superior to the rejected alternatives. Factors to consider can include but are not limited to patient access to healthcare services, capital cost,

legal restrictions, staffing impacts, quality of care, and cost or operation efficiency.

Eye MDs of Puget Sound, which operates NESC, wishes to convert its current CN-exempt ASC in Central Pierce County to a CN approved facility with expanded certification to provide Ophthalmology, ENT and Plastic Surgery services. The decision to seek CN approval is consistent with the long-term goals of the medical practice which include growth and diversification of treatment and surgical services available to our patients. We have recently added 2 Ophthalmologists to our practice and see further physician recruitment in the future. We are confident we can create an environment for Ophthalmology, ENT and Plastic Surgery specialists not available anywhere in the planning area except Allenmore Hospital.

Prior to submitting this completed application we evaluated our options for practice growth with diversification. We identified three different paths to proceed down as listed below:

- A) Maintain our current CN exempt status and do not change. The do-nothing option.
  - B) Consider a time share or condominium arrangement with outside community surgeons.
  - C) Pursue CN-approval for NESC and attract outside surgeons to join our medical staff and utilize our established and experienced ASC.
- The do-nothing option was quickly eliminated since we have an interest in growth and diversification and helping meet the needs of the Central Pierce County Planning area.

The second option, calling for the creation of a time share, or condominium arrangement was reviewed with knowledgeable counsel and found to be too restrictive, costly and not capable of maximizing our ASC utilization. This option was also rejected.

The last option, CN approval, is the only avenue which will allow the maximization of the ASC utilization. With this status change NESC will be open to all surgeons in the community who are credentialed and privileged as a member of NESC medical staff. This ultimately will lead to improved access of care for residents of the planning area in need of surgical procedures across the additional surgical specialties we have requested in this application.

CN approval of NESC will result in the following:

- i) Improved patient access to healthcare services in the planning area by creating an additional outpatient facility for elective surgery. Currently there is a significant shortage of CN-approved outpatient ORs available. Moreover, we will provide a venue for the specific surgical services involving Eye, ENT, and Plastic Surgery care currently only available at one community hospital in all of Central

Pierce County.

ii) NESC conversion to a CN-approved facility will not require an additional cost beside an application fee. The facility is currently up and running with a full and experience staff.

iii) Obtaining CN approval will allow NESC to expand its medical staff and therefore its surgical services offered to patients. This should reduce the replication of surgery center build outs by surgeons in the area. It should also maximize the offering of varied surgical procedures available at NESC.

iv) CN approval will also mean a greater number of similar types of surgical procedures performed at one ASC. With any surgical procedure increased frequency leads to greater efficiency by the surgeon and staff, usually measured in surgical time and room turnover. One can argue increased efficiency by staff and surgeons leads to better outcomes for patients.

v) To summarize obtaining CN approval for NESC will help improve patient access to healthcare services, likely improve the quality of surgical care, have no legal restrictions or significant capital costs to patients or ASC owners, nor affect current staff or reduce ASC operational efficiency.

1. Identify any aspects of the facility's design that lead to operational efficiency. This could include but is not limited to: LEED building, water filtration, or the methods for construction, etc. [WAC 246-310-240\(2\) and \(3\)](#).

N/A. Narrows Eye Surgery Center is built out and operational.

# Exhibit 1

## Copy of 2<sup>nd</sup> Letter of Intent



## Eye M.D.s of Puget Sound

November 12, 2021

VIA US MAIL AND CERTIFIED  
MAIL RETURN RECEIPT  
REQUESTED AND EMAIL  
fslcon@doh.wa.gov

**Washington State Department of Health**  
**Certificate of Need Program**  
P.O. Box 47852  
Tumwater, WA 98504-7852

**Re: Letter of Intent – Ambulatory Surgery Center – Tacoma, WA**

Dear Clerk:

Pursuant to WAC 246-310-080, Eye MDs of Puget Sound, PLLC, d/b/a Narrows Eye Surgery Center, submits this Letter of Intent ("LOI") proposing to operate Eye MDs of Puget Sound, PLLC d/b/a Narrows Eye Surgery Center exempt ambulatory surgery center ("ASC") located in the North Mullen Building at 4707 S 19<sup>th</sup> Street, Suite 210 Tacoma, Pierce County, Washington as a certificate of need approved ASF in Pierce County, Washington. Eye MDs of Puget Sound submits the following information required by WAC 246-310-080 in support of this LOI.

1. Description of proposed services: Eye MDs of Puget Sound proposes to continue to operate Eye MDs of Puget Sound, PLLC d/b/a Narrows Eye Surgery Center ASC as a two (2) operating room ASC providing Ophthalmic surgery, Plastic surgery, and ENT procedures.
2. Estimated cost of proposed project: There is no capital expenditure for this project. The operating rooms are fully built out and currently operating as a certificate of need exempt ASC.
3. Service Area: Eye MDs of Puget Sound is located in, and will continue to be located in, the Central Pierce planning area and will serve patients from Pierce County and the surrounding areas.

If you have any questions regarding this matter, please do not hesitate to contact our practice administrator, Melinda Blackwell at 253-442-2234.

I appreciate your assistance in this matter.

Sincerely,

**EYE M.D.S. OF PUGET SOUND, PLLC**

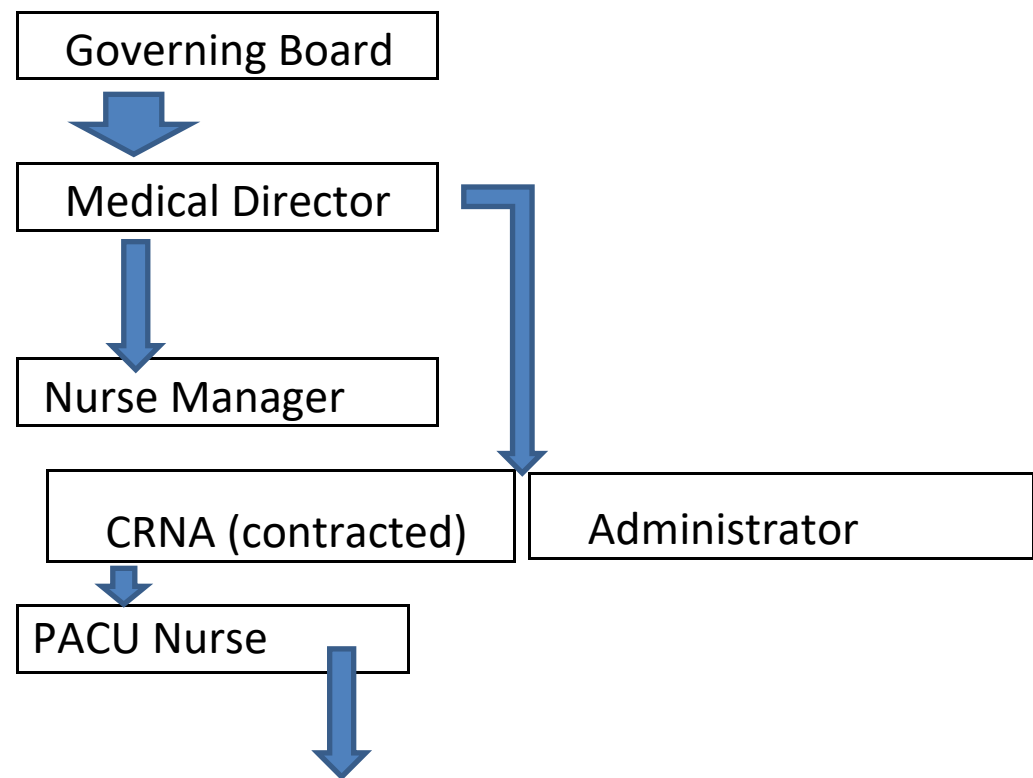
Melinda Blackwell  
Practice Administrator



# Exhibit 2

## Organizational Chart

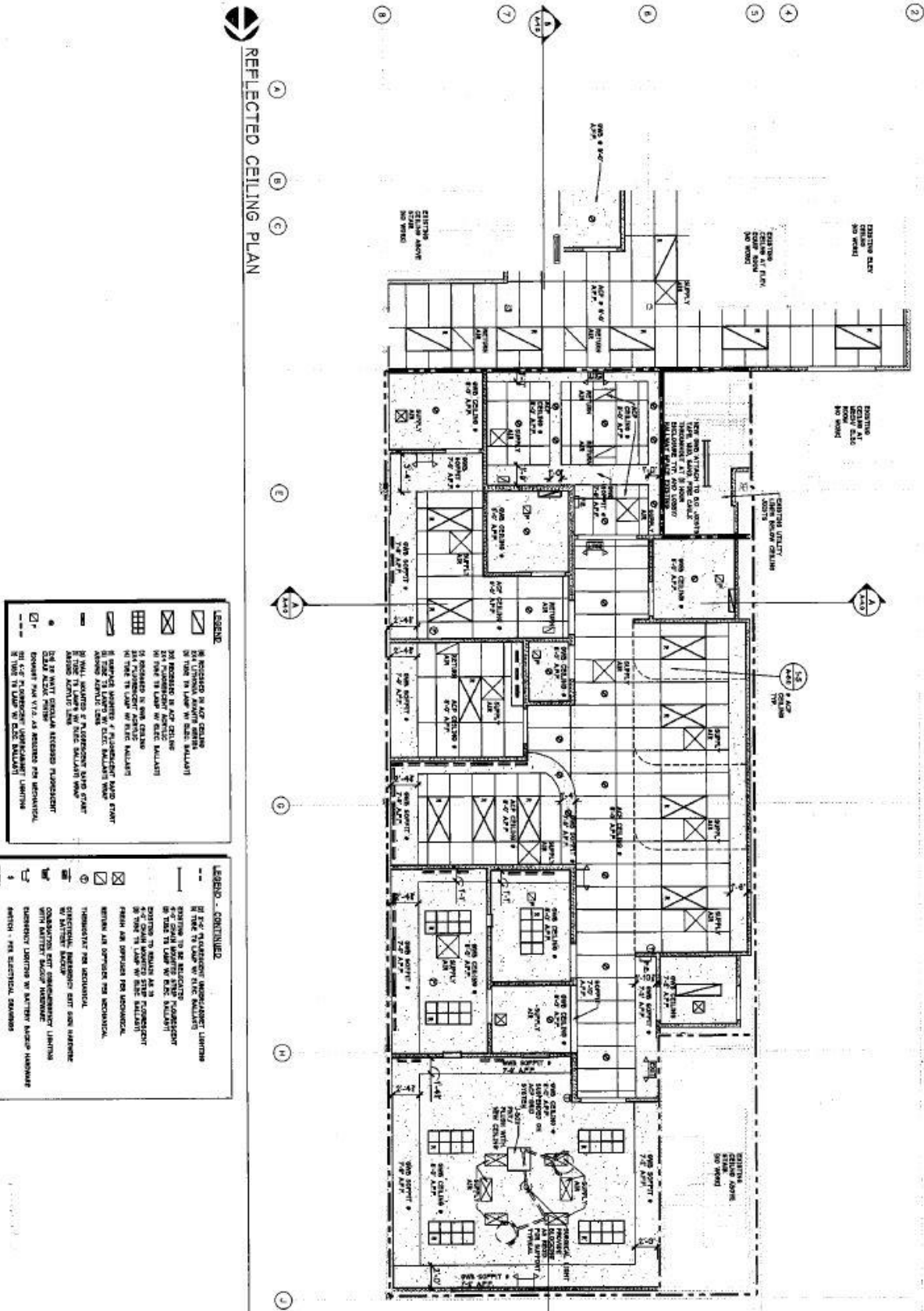
# Narrows Eye Surgery Center Organizational Chart



# Exhibit 3

## Line Drawing

# REFLECTED CEILING PLAN



# Exhibit 4

## Facility Accreditation Letter

September 8, 2021

Francis Geissler, MD  
Chief Executive Officer  
Narrows Eye Surgery Center  
4707 S 19th Street, Lower Level  
Tacoma, WA 98405-1157



Dear Dr. Geissler:

Congratulations! HFAP's Survey Review Group has reviewed the initial survey report for your Ambulatory Surgery Center and has granted Full Accreditation for 3 years. This decision was reached on September 7, 2021.

HFAP recommends the Centers for Medicare and Medicaid Services (CMS) approve deemed status for:

Narrows Eye Surgery Center  
4707 S 19th Street, Lower Level  
Tacoma, WA 98405-1157

**Program:** Ambulatory Surgery Center

**CCN#:** 50C0001234

**HFAP ID:** 439592

**Initial Survey Dates:** 08/10/2021 – 08/11/2021

**Plan(s) of Correction Received:** 09/01/2021

**Effective Date of Accreditation:** 09/01/2021 - 09/01/2024

**Condition Level Deficiencies:** ☒ None

Since you are seeking initial accreditation, the CMS Regional Office will be reviewing the survey findings as part of the Medicare certification process. The CMS Regional Office will make the final determination regarding your current Medicare participation.

We're glad you are part of the HFAP family. As a reminder, to maintain continuous accreditation, you should plan to reapply nine months prior to your expiration date.

Sincerely,

A handwritten signature in cursive script that reads "Marci Ramahi".

Marci Ramahi, CAE  
Program Director

MR/co

cc: CMS Central Office  
Region X, CMS

ACCREDITATION COMMISSION for HEALTH CARE

139 Weston Oaks Ct., Cary NC 27513 | achc.org | T (855) 937-2242 F (919) 785-3011



# Exhibit 5A

## Central Pierce Planning Area

### Survey Results

# Survey Results

Hospital/CN-Approved ASFs <sup>1</sup>			Number of ORs		Number of Surgeries		Number of Minutes		Minutes/Case	
			Out Pt	Mixed Use	Out Pt	Mixed Use	Out Pt	Mixed Use	Out Pt	Mixed Use
Multicare Health Systems										
	Allenmore		8		6,946		689,610			106
	Mary Bridge	2	4	2,427	4,839		397,891		80	82
	Tacoma General		17		7,003		1,162,981			166
	MHS Baker Day Surgery	3		1,395		138,639			99	
	MHS Gig Harbor	4		862		77,280			90	
Virginia Mason Fransican Health										
	St. Anthony		6		5,014		512,781			102
	St. Joseph <sup>3</sup>	2	19	597	13,080	49,337	1,687,624		83	129
Evergreen Eye Center Tacoma <sup>2,4</sup>										
Kaiser Permanente		5 (survey results not included in need calculations)								
ASCs CN-Exempt <sup>2</sup>										
Asthetica Clinique		1		246		12,300			50	
Artistic Plastic Surgery Center		1		243		22,000			91	
Cedar Laser and Surgery Center		2		2,436		121,800			50	
Narrows Eye Surgery Center		1		580		29,000			50	
Harbor Plastic Surgery Center		2		578		14,450			25	
Pacific Cataract and Laser Institute		2		4,577		228,850			50	
Pacific Northwest Eye Associates		3		2,832		141,600			50	
Sono Bello		3		729		81,211			111	
Soundview ASC		1		240		12,000			50	
		1. Source 2020 DOH Survey (CY 2019 Utilization) Hospital Responses								
		2. Source 2020 DOH Survey (CY 2019 Utilization) ASFs Responses								
		3. Assumed Survey Results reported incude Walter Day Surgery and Gig Harbor ASF								
		4. Question validity of data. Unable to confirm with DOH personnel prior to application submission								



# Exhibit 5B

## Need Calculation

## Numeric Need Calculation

Service Area Population: 2024 <sup>1</sup>	363,114
Surgeries @ 178/1,000 <sup>2,3</sup>	64,618

- a.i. 94,250 minutes/year/mixed-use OR
- a.ii. 68,850 minutes/year/dedicated outpatient OR
- a.iii. 13 dedicated outpatient ORs x 68,850 = 895,050 minutes dedicated OR capacity
- a.iv. 54 mixed use ORs x 94,250 minutes = 5,089,500 minutes mix
- b.i. 39,416 projected inpatient surgeries  
25,201 projected outpatient surgeries
- b.ii. Projected number of outpatient surgeries-capacity of dedicated outpatient OR's  
26,264 - 13,358 = 11,906 outpatient surgeries
- b.iii. average time of inpatient surgeries = 117.2  
average time of outpatient surgeries = 67.1 minutes
- b.iv. Inpatient surgery x average time = 4,619,555 minutes  
Remaining outpatient surgeries x average time = 798,893 minutes  
5,418,448 Total minutes
- c.i. If b.iv. Is less than a.iv. Divide (a.iv.-b.iv.) by 94,250 to determine surplus mixed use OR's.  
Not Applicable
- c.ii. if b.iv. Is greater than a.iv. divide (inpatient part of b.iv.-a.iv.) by 94,250 to determine shortage of inpatient OR's  
4,619,555  
5,089,500  
-469,945/ 94,250 **-4.9**

divide outpatient part of b.iv. by 68,850 to determine shortage of dedicated outpatient OR's

$$798,893/68,850 = 11.6$$

- 1 Service area population projection 2024 363,114 Claritas
- 2 Surgery use rate 178/1,000 population DOH survey 2020 collecting 2019 data
- 3 Surgery average time and percent inpatient/outpatient DOH survey 2020 collecting 2019 data

# Exhibit 6

## Admissions Policy

## MISSION AND VALUE STATEMENT ADMISSIONS POLICY

### MISSION:

**Narrows Eye Surgery Center** is a caring, high quality medical practice that provides Ophthalmology services with safety, competence, and integrity to help accomplish the long-term improvements desired by our patients.

### VALUES:

We act on our mission daily by:

- A. Listening carefully and respectfully to each patient to create a unique plan that meets or exceeds the improvement needs and expectations.
- B. Striving to deliver and continuously improve the most technically sophisticated, effective and highest quality surgical services in a friendly, caring environment.
- C. Striving to create and sustain an organization based on personal trustworthiness, openness and integrity where people work in teams that show mutual support, trust, and respect.
- D. Encouraging each staff member to proactively participate in continuous learning and personal development in order to improve quality, protect the patient, enrich the workplace and positively change the community.
- E. Maintaining referral networks with other high-quality professionals who share similar values so we can extend the range of our services and enhance the satisfaction of our patients.
- F. Conduct our activities in a thorough, ethical, confidential and efficient manner to fully support the smooth delivery of surgical services to our patients and to provide cash surpluses for the growth and improvement of the staff and the business.

### ADMISSIONS POLICY:

All patients over 18 years of age that can be safely treated at Narrows Eye Surgery Center will be admitted and treated with the above mission kept as the highest priority.

# Exhibit 7

## Charity Care Policy

## Charity Care Policy Narrows Eye Surgery Center

In an effort to provide care to the indigent population, NESC, allows a charity care discount of up to 100% of the total visit cost. This discount will be extended to eligible patients who meet the criteria evaluated by the Medical Director of Eye MDs of Puget Sound noted below.

In order to qualify for the charity care discount, patients must satisfy the following conditions:

1. Charity care is considered secondary to all other financial resources available to the patient including medical insurance, workers compensation, Medicare, Medicaid, other federal and military programs, third party liability situation in which another person or entity has legal responsibility to pay for the cost of medical services.
2. Patient's monthly income must be at or below 200% of the federal poverty level
3. A confidential financial statement application must be completed by the patient including most recent pay stub, current year tax return, or social security award letter, Medicaid determination notice and proof of all other income.
4. Patient has provided valid documentation to account representative and the medical director has approved the percentage discount or flat fee for the service based upon the patient's ability to pay.

Persons in family/Household	Poverty Guidelines
1	\$12,760
2	\$17,240
3	\$21,720
4	\$26,200
5	\$30,680
6	\$35,160
7	\$39,640
8	\$44,120

\*United States Department of Health and Human Services Poverty Guidelines, 2020

# Exhibit 8

## Patient Rights and Responsibilities Policy

## PATIENT RIGHTS POLICY

### POLICY:

All patients and staff shall be informed of and follow Patient Rights policies to assure considerate and appropriate care with the patients' complete understanding and cooperation.

### PROCEDURE

- A. A copy of the Patient Rights is available to the patient upon arrival at the facility. The patient signs electronically to acknowledge that they have reviewed, and they understand the facility's policy.
- B. A copy of these rights shall be posted in the patient waiting room.
- C. All staff shall be oriented to Patient Rights.
- D. All staff shall apply and follow Patient Rights.

## NOTICE OF RIGHTS AND RESPONSIBILITIES

Narrows Eye Surgery Center has adopted the following policies in regard to Patients' rights and responsibilities:

### RIGHTS

#### ***You Have the Right to:***

1. Receive care in a respectful and courteous manner and to be treated and cared for with dignity and respect. Not to be discriminated against and to receive care in a safe setting free from abuse or neglect.
2. Receive privacy concerning your medical care as well as confidentiality, privacy, security and spiritual care. Discussions and consultations of your care as well as examinations, treatments and records are confidential and will be conducted in a discreet manner.
3. Be fully informed about a treatment or procedure and the expected outcome before it is performed. Your surgeon will inform you of any unanticipated outcome as soon as he becomes aware of the situation. Refuse treatment as permitted by law.
4. Know the provisions the Surgery Center has arranged for handling emergency care and after-hours care.
5. Have all reasonable requests responded to promptly and adequately within the capacity of Narrows Eye Surgery Center.
6. Be informed by a Medical Staff member of your continuing health care requirements after discharge from the Center. You may have a designee assigned to receive this information.
7. Review your bill and receive a detailed explanation of all fees for specific services, regardless of the payment source.



8. Have your rights apply to any person with the legal responsibility to make medical care decisions for you.
9. An interpreter or use of alternative communication techniques/aids as needed.
10. Because the scope of Narrows Eye Surgery Center is limited to elective outpatient surgical procedures, it is the policy of this facility, that any life-threatening situation that arises will be immediately treated with life-sustaining measures. However, you may notify staff regarding any advance directives you have in place. That information will be passed with your medical chart in the event that you must be transferred to another facility.
11. To know that this center is privately owned and managed by a group of physicians who have been credentialed to work here.
12. Know what responsibilities you have as a patient.
13. File a grievance without fear of discrimination or reprisals. Be involved in your care and resolving problems with care decisions.

## **RESPONSIBILITIES**

### ***You Have the Responsibility to:***

14. Observe the rules and regulations of the Center for your stay and treatments. Be considerate of other patients and facility personnel.
15. Read and understand all consents you sign. Report to the staff if you do not understand the planned course of your treatment and what is expected of you.
16. Follow up on your doctor's instructions, take medications when prescribed, and ask any questions you might have concerned your health care.
17. Inform providers of your current health status and all medication you take including over-the-counter products and supplements.
18. Act responsibly in your treatment plan and comply with treatment recommendations. Failure to do so can adversely impact on the desired clinical results.
19. Indicate if you feel your privacy and/or safety is being violated.
20. Provide a responsible adult to transport you home after surgery. Have a responsible adult be accountable for you at home for the first 24 hours after surgery.
21. Pay financial obligations stated in our financial policy.
22. Respect Narrows Eye Surgery Center staff, property and equipment.
23. File a grievance if you feel your rights have been violated. Our office will investigate and report our findings within 45 days. Office of Medicare Beneficiary Ombudsman is listed below, as well as the State agency to which you can report complaints.

I have been offered a copy of this document.

---

Patient name

---

Signature

---

Date

**Narrows Eye Surgery Center**

**Owned and Operated by:**

Dr. Francis Geissler, Medical Director

Phone (253) 272-4600

Fax (253) 272-6289

**Washington Department of Health**

**HSQA Complaint Intake**

P.O. Box 47857

Olympia, WA 98504-7857

Phone (360) 236-4700

Email: [HSQACompliantIntake@doh.wa.gov](mailto:HSQACompliantIntake@doh.wa.gov)

**Office of Medicare Beneficiary Ombudsman**

<http://www.medicare.gov/claims-and-appeals/medicare-rights/get-help/Ombudsman.html>

Phone 1-800-MEDICARE (1-800-633-4227)

TTY 1-877-486-2048

Centers for Medicare & Medicaid Services

7500 Security Boulevard

Baltimore, MD 21244-1850

# Exhibit 9

## Non-Discrimination Policy

## **NON-DISCRIMINATION POLICY**

### **POLICY:**

It is the policy of the facility to employ and provide services to all persons regardless of race, creed, color, ethnic origin, nationality, sex, handicap, age, or affiliation with fraternal or religious organizations.

All services provided by the facility are available without distinction to all patients and visitors regardless of race, creed, color, ethnic origin, nationality, sex, handicap, age, or affiliation with fraternal or religious organizations.

In addition, to all persons and organizations having occasion either to refer persons for services or to do so without regard to the above stated items.

### **RESPONSIBILITY:**

The Medical Director is designated to coordinate compliance with Section 504 of the Rehabilitation Act of 1973 (non-discrimination against the handicapped).

### **PROCEDURES:**

- A. All new personnel are to be instructed to review this policy as part of their general employee orientation.
- B. An appropriate copy of this policy will be conspicuously posted on the information board in the facility waiting room.
- C. This policy shall apply to all employment opportunities, Professional Staff applications, patients, visitors, and Governing Board memberships.

# Exhibit 10

## Financial Statements

## Eye MDs of Puget Sound, PLLC

### Statement of Revenue and Expenses - Tax Basis

For the Years Ending 2018, 2019 and 2020- and Nine-Months Ending September 2021

	2018	2019	2020	Sept. 2021	See Notes
Gross Revenue	\$ 2,873,063	\$ 3,064,320	\$ 2,420,079	\$ 1,960,462	
Cost of Goods Sold	261,800	296,811	156,472	147,036	
Gross Profit	2,611,263	2,767,509	2,263,607	1,813,426	
Expense					
Wages, Taxes and Benefits	972,280	1,003,308	829,436	744,509	
Medical Expenses	215,280	207,180	172,185	107,073	
Contract Payments	363,024	257,000	19,635	243,056	1
Building & Occupancy	374,212	402,666	420,585	288,686	
Repairs and Maintenance	17,450	37,000	21,382	23,966	
Business Taxes and Licenses	73,192	83,659	59,215	38,434	
Dues and Subscriptions	30,542	28,782	23,979	23,480	
Merchant and Bank Fees	25,052	28,377	29,292	24,678	
Professional Services	26,914	39,833	34,712	28,023	
Computer and Internet Expenses	8,141	27,769	20,064	9,045	
Interest Expense	17,016	12,912	7,773	1,438	
Insurance Expenses	14,401	15,243	27,400	22,047	
Marketing Expenses	9,649	3,646	2,010	340	
Office Expenses	18,239	19,550	34,362	41,356	
Operating Expenses	13,272	13,502	4,466	4,778	
Charitable Contributions	6,200	7,500	7,500	-	
Depreciation and Amortization	24,813	83,290	24,920	55,000	
Total Expense	2,209,675	2,271,216	1,738,915	1,655,908	
Net Ordinary Income	401,588	496,293	524,692	157,517	
Other Income					
PPP Loan Forgiveness	-	-	202,414	213,234	2
Gain on Asset Sale	-	-	74,286	-	
Nonmedical Income	5,253	-	75,771	1,929	3
Total Other Income	5,253	-	352,470	215,164	
Net Income	406,841	496,293	877,162	372,681	

#### Notes

1 - Contract Payments were made to independent contractor for services, such as, CRNA and contract physicians in 2018, 2019 and 2021 however, there were minimal contract service payments in 2020.

2 - Eye MDs received PPP funding and full forgiveness in accordance with the CARES Act in 2020 and 2021

3 - Nonmedical income in 2020 resulted from Health & Human Services Stimulus payments related to COVID-19 funding

Eye MDs of Puget Sound, PLLC - ASC Division  
dba Narrows Eye Surgery Center

Statement of Revenue and Expenses - Tax Basis

For the Years Ending 2018, 2019 and 2020- and Nine-Months Ending September 2021

	2018	2019	2020	Sept. 2021	See Notes
Gross Revenue	717,930.10	780,088.64	544,245.82	413,984.54	
Cost of Goods Sold	151,126.94	176,816.29	68,467.06	50,260.00	
Gross Profit	566,803.16	603,272.35	475,778.76	363,724.54	
Expense					
Wages, Taxes and Benefits	124,131	135,568	120,779	41,656	
Medical Expenses	182,104	187,621	118,389	98,106	
Contract Payments			19,635	51,645	1
Building & Occupancy	33,487	34,524	35,907	24,314	
Repairs and Maintenance	10,242	15,730	10,235	14,986	
Business Taxes and Licenses	17,880	19,799	13,192	10,286	
Equipment Lease	-	-	-	3,648	2
Dues and Subscriptions	350	1,295	1,590	7,000	
Merchant and Bank Fees	3,439	3,736	2,607	1,983	
Professional Services	1,447	4,384	2,490	-	
Overhead Allocation	29,857	34,578	26,501	36,132	3
Total Expense	402,936	437,236	351,324	289,756	
Net Ordinary Income	163,867	166,037	124,455	73,968	

1 - Contract Payments were made to independent contractors for CRNA service payments beginning in 2020.

2 - Equipment lease began in 2021 for new Phaco machine.

3 - Overhead Allocations consists of office staff including scheduling, billing, and accounting services provided for ASC.

dba Narrows Eye Surgery Center  
Proforma Revenue and Expense Projections - Tax Basis  
For the Years Ending 2022, 2023 and 2024

	2022	2023	2024	Assumptions
Gross Revenue	\$ 1,662,000	\$ 1,794,000	\$ 1,932,000	1
Cost of Goods Sold	332,400	349,020	366,470	
Gross Profit	1,329,600	1,444,980	1,565,530	
Expense				
Wages, Taxes and Benefits	315,780	347,360	364,730	2
Medical Expenses	365,640	383,925	403,120	
Charity Care	19,945	21,530	23,185	
Contract Payments	225,000	236,250	248,065	3
Building & Occupancy	83,100	85,595	88,165	
Repairs and Maintenance	14,500	15,225	15,985	
Business Taxes and Licenses	33,240	34,905	36,650	
Equipment Lease	30,000	31,500	33,075	
Dues and Subscriptions	2,400	2,520	2,645	
Merchant and Bank Fees	11,635	12,215	12,825	
Professional Services	5,000	5,250	5,510	
Computer and Internet Expenses	2,500	2,625	2,755	
Insurance Expenses	8,000	8,400	8,820	
Marketing Expenses	4,000	4,120	4,245	
Office Expenses	9,975	10,275	10,585	
Operating Expenses	6,650	6,985	7,335	
Overhead Allocation	21,500	22,145	22,810	
Total Expense	1,158,865	1,230,825	1,290,506	
Net Ordinary Income	\$ 170,735	\$ 214,155	\$ 275,024	

1 - Gross Revenue is based on projected surgical volume in Table 4 at an average billable rate of \$1,200 per procedure

2 - Wages, Taxes and Benefits are based on ETF projections in Table 8 at pay rate ranging from \$20 to \$35 per hour

3 - Contract Payments are based on outsourced anesthesia services



Eye MDs of Puget Sound, PLLC - ASC Division  
dba Narrows Eye Surgery Center  
Proforma Balance Sheet - Tax Basis  
As of December 31, 2022, 2023 and 2024

	12/31/2022	12/31/2023	12/31/2024
ASSETS			
Current Assets			
Checking/Savings	\$ 225,735	\$ 269,655	\$ 331,074
TOTAL ASSETS	\$ 225,735	\$ 269,655	\$ 331,074
LIABILITIES & EQUITY			
Current Liabilities			
Payroll Liabilities	\$ 5,000	\$ 5,500	\$ 6,050
Total Liabilities	5,000	5,500	6,050
Equity			
Member's Equity	220,735	264,155	325,024
Total Equity	220,735	264,155	325,024
TOTAL LIABILITIES & EQUITY	\$ 225,735	\$ 269,655	\$ 331,074

Notes:

The balance sheet includes only assets of the ASC. All equipment transferred to the ASC from Eye MDs of Puget Sound is fully depreciated. Additional ASC equipment will be leased.

Member's equity assumes an initial cash contribution of \$50,000 and profits are distributed in the following year to members based on cash availability.

# Exhibit 11

## Site Control Documents

**LEASE AGREEMENT**  
(Multi-Tenant Triple Net (NNN) Lease)

THIS LEASE AGREEMENT (the "Lease") is entered into and effective as of February 7, 2012 (date), between North Mullen LLC ("Landlord"), and Francis Geissler, an Individual dba Eye MD's of Puget Sound PLLC ("Tenant"). Landlord and Tenant agree as follows:

**1. LEASE SUMMARY.**

- a. **Leased Premises.** The leased commercial real estate i) consists of an agreed area of 7,100 sf in #210 and 2,500 sf in basement rentable square feet and is outlined on the <sup>(1)</sup>floor plan attached as Exhibit A (the "Premises"); ii) is located on the land legally described on attached Exhibit B; and iii) is commonly known as The North Mullen Building, 4707 South 19th Street Suite #210, Tacoma WA 98405 (suite number and address). The Premises do not include, and Landlord reserves, the exterior walls and roof of the building in which the Premises are located (the "Building"), the land beneath the Building, the pipes and ducts, conduits, wires, fixtures, and equipment above the suspended ceiling; and the structural elements of the Building. The Building, the land upon which it is situated, all other improvements located on such land, and all common areas appurtenant to the Building are referred to as the "Property." The Building and all other buildings on the Property as of the date of this Lease consist of an agreed area of 18,758 square feet rentable square feet.
- b. **Lease Commencement Date.** The term of this Lease shall be for a period of 120 months and shall commence on September 1, 2012 or such earlier or later date as provided in Section 3 (the "Commencement Date").
- c. **Lease Termination Date.** The term of this Lease shall terminate at midnight on August 31, 2022 or such earlier or later date as provided in Section 3 (the "Termination Date"). Tenant shall have no right or option to extend this Lease, unless otherwise set forth in a rider attached to this Lease (e.g., Option to Extend Rider, CBA Form OR).
- d. **Base Rent.** The base monthly rent shall be (check one): ☐ \$ \_\_\_\_\_, or ☒ according to the Rent Rider attached hereto ("Base Rent"). Rent shall be payable at Landlord's address shown in Section 1(h) below, or such other place designated in writing by Landlord.
- e. **Prepaid Rent.** Upon execution of this Lease, Tenant shall deliver to Landlord the sum of \$ NA as prepaid rent, to be applied to the Rent due for months \_\_\_\_\_ through \_\_\_\_\_ of the Lease.
- f. **Security Deposit.** Upon execution of this Lease, Tenant shall deliver to Landlord the sum of \$ 16,175.00 to be held as a security deposit pursuant to Section 5 below. The security deposit shall be in the form of (check one): ☒ cash, or ☐ letter of credit according to the Letter of Credit Rider (CBA Form LCR) attached hereto.
- g. **Permitted Use.** The Premises shall be used only for purposes of eye examinations, eye surgeries, the sale of eye equipment and related uses, and the office space associated thereof.

and for no other purpose without the prior written consent of Landlord (the "Permitted Use").

**LEASE AGREEMENT**  
(Multi-Tenant Triple Net (NNN) Lease)  
(Continued)

**h. Notice and Payment Addresses.**

Landlord: North Mullen LLC c/o Neil Walter Company  
P.O. Box 2181  
Tacoma WA 98401-2181  
Fax No.: (253) 779-8401  
Email: chaner@neilwalter.com  
  
Tenant: Francis Geissler, Individual dba Eye MD's of Puget Sound PLLC  
4707 So. 19th Street, #210  
Tacoma WA 98405  
Fax No.: (253) 752-8800  
Email: eyedoc@w-link.net

- i. **Tenant's Pro Rata Share.** Landlord and Tenant agree that Tenant's Pro Rata Share is 37.85%,  
(4) based on the ratio of the agreed rentable area of the Premises to the agreed rentable area of the Building  
and all other buildings on the Property as of the date of this Lease. Any adjustment to the Premises' or  
Building's rentable floor area measurements will be reflected in an adjustment to Tenant's Base Rent or  
Pro Rata Share.

**2. PREMISES.**

- a. **Lease of Premises.** Landlord leases to Tenant, and Tenant leases from Landlord, the Premises upon the terms specified in this Lease.
- b. **Acceptance of Premises.** Except as specified elsewhere in this Lease, Landlord makes no representations or warranties to Tenant regarding the Premises, including the structural condition of the Premises or the condition of all mechanical, electrical, and other systems on the Premises. Except for any tenant improvements to be completed by Landlord as described on attached Exhibit C (the "Landlord's Work"), Tenant shall be responsible for performing any work necessary to bring the Premises into a condition satisfactory to Tenant. By signing this Lease, Tenant acknowledges that it has had an adequate opportunity to investigate the Premises; acknowledges responsibility for making any corrections, alterations and repairs to the Premises (other than the Landlord's Work); and acknowledges that the time needed to complete any such items shall not delay the Commencement Date.
- c. **Tenant Improvements.** Attached Exhibit C sets forth all Landlord's Work, if any, and all tenant improvements to be completed by Tenant (the "Tenant's Work"), if any, that will be performed on the Premises. Responsibility for design, payment and performance of all such work shall be as set forth on attached Exhibit C. If Tenant fails to notify Landlord of any defects in the Landlord's Work within thirty (30) days of delivery of possession to Tenant, Tenant shall be deemed to have accepted the Premises in their then condition. If Tenant discovers any major defects in the Landlord's Work during this 30-day period that would prevent Tenant from using the Premises for the Permitted Use, Tenant shall notify Landlord and the Commencement Date shall be delayed until after Landlord has notified Tenant that Landlord has corrected the major defects and Tenant has had five (5) days to inspect and approve the Premises. The Commencement Date shall not be delayed if Tenant's inspection reveals minor defects in the Landlord's Work that will not prevent Tenant from using the Premises for the Permitted Use. Tenant shall prepare a punch list of all minor defects in Landlord's Work and provide the punch list to Landlord, which Landlord shall promptly correct.

**LEASE AGREEMENT**  
(Multi-Tenant Triple Net (NNN) Lease)  
(Continued)

3. **TERM.** The term of this Lease shall commence on the Commencement Date specified in Section 1, or on such earlier or later date as may be specified by notice delivered by Landlord to Tenant advising Tenant that the Premises are ready for possession and specifying the Commencement Date, which shall not be less than \_\_\_\_\_ days (thirty (30) days if not filled in) following the date of such notice.
- a. **Early Possession.** If Landlord permits Tenant to possess and occupy the Premises prior to the Commencement Date specified in Section 1, then such early occupancy shall not advance the Commencement Date or the Termination Date set forth in Section 1, but otherwise all terms and conditions of this Lease shall nevertheless apply during the period of early occupancy before the Commencement Date.
- b. **Delayed Possession.** Landlord shall act diligently to make the Premises available to Tenant; provided, however, neither Landlord nor any agent or employee of Landlord shall be liable for any damage or loss due to Landlord's inability or failure to deliver possession of the Premises to Tenant as provided in this Lease. If possession is delayed, the Commencement Date set forth in Section 1 shall also be delayed. In addition, the Termination Date set forth in Section 1 shall be modified so that the length of the Lease term remains the same. If Landlord does not deliver possession of the Premises to Tenant within \_\_\_\_\_ days (sixty (60) days if not filled in) after the Commencement Date specified in Section 1, Tenant may elect to cancel this Lease by giving written notice to Landlord within ten (10) days after such time period ends. If Tenant gives such notice of cancellation, the Lease shall be cancelled, all prepaid rent and security deposits shall be refunded to Tenant, and neither Landlord nor Tenant shall have any further obligations to the other. The first "Lease year" shall commence on the Commencement Date and shall end on the date which is twelve (12) months from the end of the month in which the Commencement Date occurs. Each successive Lease year during the initial term and any extension terms shall be twelve (12) months, commencing on the first day following the end of the preceding Lease year. To the extent that the tenant improvements are not completed in time for the Tenant to occupy or take possession of the Premises on the Commencement Date due to the failure of Tenant to fulfill any of its obligations under this Lease, the Lease shall nevertheless commence on the Commencement Date set forth in Section 1.
4. **RENT.**
- a. **Payment of Rent.** Tenant shall pay Landlord without notice, demand, deduction or offset, in lawful money of the United States, the monthly Base Rent stated in Section 1 in advance on or before the first day of each month during the Lease term beginning on (check one): ☒ the Commencement Date, or ☐ \_\_\_\_\_ (if no date specified, then on the Commencement Date), and shall also pay any other additional payments due to Landlord ("Additional Rent"), including Operating Costs (collectively the "Rent") when required under this Lease. Payments for any partial month at the beginning or end of the Lease shall be prorated. All payments due to Landlord under this Lease, including late fees and interest, shall also constitute Additional Rent, and upon failure of Tenant to pay any such costs, charges or expenses, Landlord shall have the same rights and remedies as otherwise provided in this Lease for the failure of Tenant to pay rent.
- b. **Triple Net Lease.** This Lease is what is commonly called a "Net, Net, Net" or "triple-net" Lease, which means that, except as otherwise expressly provided herein, Landlord shall receive all Base Rent free and clear of any and all other impositions, taxes, liens, charges or expenses of any nature whatsoever in connection with the ownership and operation of the Premises. In addition to Base Rent, Tenant shall pay to the parties respectively entitled thereto, or satisfy directly, all Additional Rent and other impositions, insurance premiums, repair and maintenance charges, and any other charges, costs, obligations, liabilities, requirements, and expenses, including without limitation the Operating Costs described in Section 8, which arise with regard to the Premises or may be contemplated under any other provision of the Lease during its term, except for costs and expenses expressly made the obligation of Landlord in this Lease.



**LEASE AGREEMENT**  
**(Multi-Tenant Triple Net (NNN) Lease)**  
**(Continued)**

- c. **Late Charges; Default Interest.** If any sums payable by Tenant to Landlord under this Lease are not received within five (5) business days after their due date, Tenant shall pay Landlord an amount equal to the greater of \$100 or five percent (5%) of the delinquent amount for the cost of collecting and handling such late payment in addition to the amount due and as Additional Rent. All delinquent sums payable by Tenant to Landlord and not paid within five (5) business days after their due date shall, at Landlord's option, bear interest at the rate of fifteen percent (15%) per annum, or the highest rate of interest allowable by law, whichever is less (the "Default Rate"). Interest on all delinquent amounts shall be calculated from the original due date to the date of payment.
- d. **Less Than Full Payment.** Landlord's acceptance of less than the full amount of any payment due from Tenant shall not be deemed an accord and satisfaction or compromise of such payment unless Landlord specifically consents in writing to payment of such lesser sum as an accord and satisfaction or compromise of the amount which Landlord claims. Any portion that remains to be paid by Tenant shall be subject to the late charges and default interest provisions of this Section 4.
5. **SECURITY DEPOSIT.** Upon execution of this Lease, Tenant shall deliver to Landlord the security deposit specified in Section 1 above. Landlord's obligations with respect to the security deposit are those of a debtor and not of a trustee, and Landlord may commingle the security deposit with its other funds. If Tenant breaches any covenant or condition of this Lease, including but not limited to the payment of Rent, Landlord may apply all or any part of the security deposit to the payment of any sum in default and any damage suffered by Landlord as a result of Tenant's breach. Tenant acknowledges, however, that the security deposit shall not be considered as a measure of Tenant's damages in case of default by Tenant, and any payment to Landlord from the security deposit shall not be construed as a payment of liquidated damages for Tenant's default. If Landlord applies the security deposit as contemplated by this Section, Tenant shall, within five (5) days after written demand therefore by Landlord, deposit with Landlord the amount so applied. If Tenant complies with all of the covenants and conditions of this Lease throughout the Lease term, the security deposit shall be repaid to Tenant without interest within thirty (30) days after the surrender of the Premises by Tenant in the condition required hereunder by Section 13 of this Lease.
6. **USES.** The Premises shall be used only for the Permitted Use specified in Section 1 above, and for no other business or purpose without the prior written consent of Landlord. No act shall be done on or around the Premises that is unlawful or that will increase the existing rate of insurance on the Premises, the Building, or the Property, or cause the cancellation of any insurance on the Premises, the Building, or the Property. Tenant shall not commit or allow to be committed any waste upon the Premises, or any public or private nuisance. Tenant shall not do or permit anything to be done on the Premises, the Building, or the Property which will obstruct or interfere with the rights of other tenants or occupants of the Property, or their employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees or to injure or annoy such persons.
7. **COMPLIANCE WITH LAWS.** Tenant shall not cause or permit the Premises to be used in any way which violates any law, ordinance, or governmental regulation or order. Landlord represents to Tenant that, as of the Commencement Date, to Landlord's knowledge, but without duty of investigation, and with the exception of any Tenant's Work, the Premises comply with all applicable laws, rules, regulations, or orders, including without limitation, the Americans With Disabilities Act, if applicable, and Landlord shall be responsible to promptly cure at its sole cost any noncompliance which existed on the Commencement Date. Tenant shall be responsible for complying with all laws applicable to the Premises as a result of the Permitted Use, and Tenant shall be responsible for making any changes or alterations as may be required by law, rule, regulation, or order for Tenant's Permitted Use at its sole cost and expense. Otherwise, if changes or alterations are required by law, rule, regulation, or order unrelated to the Permitted Use, Landlord shall make changes and alterations at its expense.



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**8. OPERATING COSTS.**

- a. **Definition.** As used herein, "Operating Costs" shall mean all costs of operating, maintaining and repairing the Premises, the Building, and the Property, determined in accordance with generally accepted accounting principles, and including without limitation the following: all taxes and assessments (including, but not limited to, real and personal property taxes and assessments, local improvement district assessments and other special purpose assessments, and taxes on rent or gross receipts); insurance premiums paid by Landlord and (to the extent used) deductibles for insurance applicable to the Property; water, sewer and all other utility charges (other than utilities separately metered and paid directly by Tenant or other tenants); janitorial and all other cleaning services; refuse and trash removal; supplies, materials, tools, and equipment used in the operation, repair, and maintenance of the Property; refurbishing and repainting; carpet replacement; to the extent serving areas other than just the Premises, heating, ventilation and air conditioning ("HVAC") service and repair and replacement of HVAC when necessary; elevator service and repair and replacement of elevators when necessary; pest control; lighting systems, fire detection and security services; landscape maintenance; management (fees and/or personnel costs); parking lot, road, sidewalk and driveway patching, resurfacing and maintenance; snow and ice removal; repair, maintenance, and, where reasonably required, replacement of signage; amortization of capital improvements as Landlord may in the future install to comply with governmental regulations and rules or undertaken in good faith with a reasonable expectation of reducing operating costs (the useful life of which shall be a reasonable period of time as determined by Landlord); costs of legal services (except those incurred directly relating to a particular occupant of the Building); and accounting services, labor, supplies, materials and tools. Landlord and Tenant agree that if the Building is not ninety percent (90%) occupied during any calendar year (including the Base Year, if applicable), on a monthly average, then those portions of the Operating Costs that are driven by occupancy rates, as reasonably determined by Landlord, shall be increased to reflect the Operating Costs of the Building as though it were ninety percent (90%) occupied and Tenant's Pro Rata Share of Operating Costs shall be based upon Operating Costs as so adjusted. Operating Costs shall not include: Landlord's income tax or general corporate overhead; depreciation on the Building or equipment therein; loan payments; real estate broker's commissions; capital improvements to or major repairs of the Building shell (i.e., the Building structure, exterior walls, roof, and structural floors and foundations), except as described above; or any costs regarding the operation, maintenance and repair of the Premises, the Building, or the Property paid directly by Tenant or other tenants in the Building, or otherwise reimbursed to Landlord. If Tenant is renting a pad separate from any other structures on the Property for which Landlord separately furnishes the services described in this paragraph, then the term "Operating Costs" shall not include those costs of operating, repairing, and maintaining the enclosed mall which can be separately allocated to the tenants of the other structures. Operating Costs which cannot be separately allocated to the tenants of other structures may include but are not limited to: insurance premiums; taxes and assessments; management (fees and/or personnel costs); exterior lighting; parking lot, road, sidewalk and driveway patching, resurfacing and maintenance; snow and ice removal; and costs of legal services and accounting services.
- b. **Type of Payment.** Options one and two below address the manner in which Operating Costs are paid under this Lease. To select the pure triple net option, check option 1. To select the base year option, check option 2.
- ☒ **OPTION ONE: TRIPLE NET.** As additional Rent, Tenant shall pay to Landlord on the first of each month with payment of Tenant's base Rent one-twelfth of Tenant's Pro Rata Share of Operating Costs.

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☐ **OPTION TWO: BASE YEAR.** The Base Rent paid by Tenant under this Lease includes Tenant's Pro Rata Share of Operating Costs for the calendar year in which the Commencement Date occurs (the "Base Year"). As additional Rent, Tenant shall pay to Landlord on the first day of each month commencing on the first day of the first year after the Commencement Date, with Tenant's payment of Base Rent, one-twelfth of the amount, if any, by which Tenant's Pro Rata Share of Operating Costs exceeds Tenant's annualized Pro Rata Share of Operating Costs for the Base Year.

- c. **Method of Payment.** Tenant shall pay to Landlord Operating Costs pursuant to the following procedure:
- (i) Landlord shall provide to Tenant, at or before the Commencement Date, a good faith estimate of annual Operating Costs for the calendar year in which the Commencement Date occurs. Landlord shall also provide to Tenant, as soon as possible following the first day of each succeeding calendar year, a good faith estimate of Tenant's annual Pro Rata Share of Operating Costs for the then-current year.
  - (ii) Each estimate of Tenant's annual Pro Rata Share of Operating Costs determined by Landlord, as described above, shall be divided into twelve (12) equal monthly installments. If Tenant pays Operating Costs under Option One, Tenant shall pay to Landlord such monthly installment of Operating Costs with each monthly payment of Base Rent. If Tenant pays Operating Costs under Option Two, Tenant shall pay to Landlord with each monthly payment of Base Rent the amount, if any, by which such monthly installments of Operating Costs exceed one twelfth of Tenant's annualized Pro Rata Share of Operating Costs for the Base Year. In the event the estimated amount of Tenant's Pro Rata Share of Operating Costs has not yet been determined for any calendar year, Tenant shall pay the monthly installment in the estimated amount determined for the preceding calendar year until the estimate for the current calendar year has been provided to Tenant. When the estimate for the current calendar year is received, Tenant shall then pay any shortfall or receive a credit for any surplus for the preceding months of the current calendar year and shall, thereafter, make the monthly installment payments in accordance with the current estimate.
  - (iii) As soon as reasonably possible following the end of each calendar year of the Lease term, Landlord shall determine and provide to Tenant a statement (the "Operating Costs Statement") setting forth the amount of Operating Costs actually incurred and the amount of Tenant's Pro Rata Share of Operating Costs actually payable by Tenant with respect to such calendar year. In the event the amount of Tenant's Pro Rata Share of Operating Costs exceeds the sum of the monthly installments actually paid by Tenant for such calendar year, Tenant shall pay to Landlord the difference within thirty (30) days following receipt of the Operating Costs Statement. In the event the sum of the monthly installments actually paid by Tenant for such calendar year exceeds the amount of Tenant's Pro Rata Share of Operating Costs actually due and owing, the difference shall be applied as a credit to Tenant's future Pro Rata Share of Operating Costs payable by Tenant pursuant to this Section, or if the term has expired, the excess shall be refunded to Tenant within thirty (30) days after delivery of such Operating Costs Statement.
  - (iv) Should Tenant dispute any amount shown on the Operating Costs Statement, Tenant may audit Landlord's books and records for the calendar year covered by such Operating Costs Statement upon written notice to Landlord given within ninety (90) days after Tenant's receipt of such Operating Costs Statement. If Tenant fail to provide notice of dispute within such ninety (90) day period, the Operating Costs Statement shall be final and conclusive. Any audit conducted by Tenant shall be completed within sixty (60) days after Tenant's request therefor. In the event the amount of Tenant's Pro Rata Share of Operating Costs exceeds the sum of the monthly installments actually paid by Tenant for such





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calendar year, Tenant shall pay to Landlord the difference within thirty (30) days following completion of the audit. In the event the sum of the monthly installments actually paid by Tenant for such calendar year exceeds the amount of Tenant's Pro Rata Share of Operating Costs actually due and owing, the difference shall be applied as a credit to Tenant's future Pro Rata Share of Operating Costs payable by Tenant pursuant to this Section, or if the term has expired, the excess shall be refunded to Tenant within thirty (30) days after completion of the audit. Landlord and Tenant shall cooperate as may be reasonably necessary in order to facilitate the timely completion of any audit. Nothing in this section shall in any manner modify Tenant's obligations to make payments as and when provided under this Lease.

9. **UTILITIES AND SERVICES.** Landlord shall provide the Premises the following services, the cost of which shall be included in the Operating Costs, to the extent not separately metered to the Premises: water and electricity for the Premises seven (7) days per week, twenty-four (24) hours per day, and HVAC from 8:00 a.m. to 5:00 p.m. Monday through Friday; ~~and~~ from 8:00 a.m. to 5:00 p.m. on Saturday, ~~and~~ from 8:00 a.m. to 5:00 p.m. on Sunday. Landlord shall provide janitorial service to the Premises and Building five (5) nights each week, exclusive of holidays, the cost of which shall also be included in Operating Costs. HVAC services will also be provided by Landlord to the Premises during additional hours on reasonable notice to Landlord, at Tenant's sole cost and expense, at an hourly rate reasonably established by Landlord from time to time and payable by Tenant, as and when billed, as Additional Rent. Notwithstanding the foregoing, if Tenant's use of the Premises incurs utility service charges which are above those usual and customary for the Permitted Use, Landlord reserves the right to require Tenant to pay a reasonable additional charge for such usage. Landlord shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption, or failure of utilities due to any cause whatsoever, and Rent shall not abate as a result thereof.

Tenant shall furnish all other utilities (including, but not limited to, telephone, Internet, and cable service if available) and other services which Tenant requires with respect to the Premises, and shall pay, at Tenant's sole expense, the cost of all utilities separately metered to the Premises, and of all other utilities and other services which Tenant requires with respect to the Premises, except those to be provided by Landlord and included in Operating Expenses as described above.

10. **TAXES.** Tenant shall pay all taxes, assessments, liens and license fees ("Taxes") levied, assessed or imposed by any authority having the direct or indirect power to tax or assess any such liens, related to or required by Tenant's use of the Premises as well as all Taxes on Tenant's personal property located on the Premises. Landlord shall pay all taxes and assessments with respect to the Property, including any taxes resulting from a reassessment of the Building or the Property due to a change of ownership or otherwise, all of which shall be included in Operating Costs and subject to partial reimbursement by Tenant as set forth in Section 8.

11. **COMMON AREAS.**

- a. **Definition.** The term "Common Areas" means all areas, facilities and building systems that are provided and designated from time to time by Landlord for the general non-exclusive use and convenience of Tenant with other tenants and which are not leased or held for the exclusive use of a particular tenant. To the extent that such areas and facilities exist within the Property, Common Areas include hallways, entryways, stairs, elevators, driveways, walkways, terraces, docks, loading areas, restrooms, trash facilities, parking areas and garages, roadways, pedestrian sidewalks, landscaped areas, security areas, lobby or mail areas, common heating, ventilating and air conditioning systems, common electrical service, equipment and facilities, and common mechanical systems, equipment and facilities. Tenant shall comply



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with reasonable rules and regulations concerning the use of the Common Areas adopted by Landlord from time to time. Without advance notice to Tenant and without any liability to Tenant, Landlord may change the size, use, or nature of any Common Areas, erect improvements on the Common Areas or convert any portion of the Common Areas to the exclusive use of Landlord or selected tenants, so long as Tenant is not thereby deprived of the substantial benefit of the Premises. Landlord reserves the use of exterior walls and the roof, and the right to install, maintain, use, repair and replace pipes, ducts, conduits, and wires leading through the Premises in areas which will not materially interfere with Tenant's use thereof.

- b. **Use of the Common Areas.** Tenant shall have the non-exclusive right, in common with such other tenants to whom Landlord has granted or may grant such rights, to use the Common Areas. Tenant shall abide by rules and regulations adopted by Landlord from time to time and shall use its best efforts to cause its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees to comply with those rules and regulations, and not interfere with the use of Common Areas by others.
- c. **Maintenance of Common Areas.** Landlord shall maintain the Common Areas in good order, condition and repair. This maintenance cost shall be an Operating Cost chargeable to Tenant pursuant to Section 8. In performing such maintenance, Landlord shall use reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises.

12. **ALTERATIONS.** Tenant may make alterations, additions or improvements to the Premises, including any Tenant Work identified on attached Exhibit C (the "Alterations"), only with the prior written consent of Landlord, which, with respect to Alterations not affecting the structural components of the Premises or utility systems therein, shall not be unreasonably withheld, conditioned, or delayed. Landlord shall have thirty (30) days in which to respond to Tenant's request for any Alterations so long as such request includes the name of Tenant's contractors and reasonably detailed plans and specifications therefor. The term "Alterations" shall not include the installation of shelves, movable partitions, Tenant's equipment, and trade fixtures that may be performed without damaging existing improvements or the structural integrity of the Premises, the Building, or the Property, and Landlord's consent shall not be required for Tenant's installation or removal of those items. Tenant shall perform all work at Tenant's expense and in compliance with all applicable laws and shall complete all Alterations in accordance with plans and specifications approved by Landlord, using contractors approved by Landlord, and in a manner so as not to unreasonably interfere with other tenants. Tenant shall pay, when due, or furnish a bond for payment (as set forth in Section 20) all claims for labor or materials furnished to or for Tenant at or for use in the Premises, which claims are or may be secured by any mechanics' or materialmen's liens against the Premises or the Property or any interest therein. Tenant shall remove all Alterations at the end of the Lease term unless Landlord conditioned its consent upon Tenant leaving a specified Alteration at the Premises, in which case Tenant shall not remove such Alteration, and it shall become Landlord's property. Tenant shall immediately repair any damage to the Premises caused by removal of Alterations.

13. **REPAIRS AND MAINTENANCE; SURRENDER.** Tenant shall, at its sole expense, maintain the entire Premises in good condition and promptly make all non-structural repairs and replacements necessary to keep the Premises safe and in good condition, including all HVAC components and other utilities and systems to the extent exclusively serving the Premises. Landlord shall maintain and repair the Building structure, foundation, subfloor, exterior walls, roof structure and surface, and HVAC components and other utilities and systems serving more than just the Premises, and the Common Areas, the costs of which shall be included as an Operating Cost. Tenant shall not damage any demising wall or disturb the structural integrity of the Premises, the Building, or the Property and shall promptly repair any damage or injury done to any such demising walls or structural elements caused by Tenant or its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees. Notwithstanding anything in this Section to the contrary,

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Tenant shall not be responsible for any repairs to the Premises made necessary by the negligence or willful misconduct of Landlord or its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees therein. If Tenant fails to perform Tenant's obligations under this Section, Landlord may at Landlord's option enter upon the Premises after ten (10) days' prior notice to Tenant and put the same in good order, condition and repair and the cost thereof together with interest thereon at the default rate set forth in Section 4 shall be due and payable as additional rent to Landlord together with Tenant's next instalment of Base Rent. Upon expiration of the Lease term, whether by lapse of time or otherwise, Tenant shall promptly and peacefully surrender the Premises, together with all keys, to Landlord in as good condition as when received by Tenant from Landlord or as thereafter improved, reasonable wear and tear and insured casualty excepted.

**14. ACCESS AND RIGHT OF ENTRY.** After twenty-four (24) hours' notice from Landlord (except in cases of emergency, when no notice shall be required), Tenant shall permit Landlord and its agents, employees and contractors to enter the Premises at all reasonable times to make repairs, inspections, alterations or improvements, provided that Landlord shall use reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises. This Section shall not impose any repair or other obligation upon Landlord not expressly stated elsewhere in this Lease. After reasonable notice to Tenant, Landlord shall have the right to enter the Premises for the purpose of (a) showing the Premises to prospective purchasers or lenders at any time, and to prospective tenants within one hundred eighty (180) days prior to the expiration or sooner termination of the Lease term; and (b) posting "for lease" signs within one hundred eighty (180) days prior to the expiration or sooner termination of the Lease term.

**15. SIGNAGE.** Tenant shall obtain Landlord's written consent as to size, location, materials, method of attachment, and appearance, before installing any signs upon the Premises. Tenant shall install any approved signage at Tenant's sole expense and in compliance with all applicable laws. Tenant shall not damage or deface the Premises in installing or removing signage and shall repair any injury or damage to the Premises caused by such installation or removal.<sup>(6)</sup>

**16. DESTRUCTION OR CONDEMNATION.**

a. **Damage and Repair.** If the Premises or the portion of the Building or the Property necessary for Tenant's occupancy are partially damaged but not rendered untenable, by fire or other insured casualty, then Landlord shall diligently restore the Premises and the portion of the Property necessary for Tenant's occupancy to the extent required below and this Lease shall not terminate. Tenant may, however, terminate the Lease if Landlord is unable to restore the Premises within six (6) months of the casualty event by giving twenty (20) days written notice of termination.

The Premises or the portion of the Building or the Property necessary for Tenant's occupancy shall not be deemed untenable if twenty-five percent (25%) or less of each of those areas are damaged. If insurance proceeds are not available or are not sufficient to pay the entire cost of restoring the Premises, or if Landlord's lender does not permit all or any part of the insurance proceeds to be applied toward restoration, then Landlord may elect to terminate this Lease and keep the insurance proceeds, by notifying Tenant within sixty (60) days of the date of such casualty.

If the Premises, the portion of the Building or the Property necessary for Tenant's occupancy, or fifty percent (50%) or more of the rentable area of the Property are entirely destroyed, or partially damaged and rendered untenable, by fire or other casualty, Landlord may, at its option: (a) terminate this Lease as provided herein, or (b) restore the Premises and the portion of the Property necessary for Tenant's occupancy to their previous condition to the extent required below; provided, however, if such casualty event occurs during the last six (6) months of the Lease term (after considering any option to extend the

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term timely exercised by Tenant) then either Tenant or Landlord may elect to terminate the Lease. If, within sixty (60) days after receipt by Landlord from Tenant of written notice that Tenant deems the Premises or the portion of the Property necessary for Tenant's occupancy untenable, Landlord fails to notify Tenant of its election to restore those areas, or if Landlord is unable to restore those areas within six (6) months of the date of the casualty event, then Tenant may elect to terminate the Lease upon twenty (20) days' notice to Landlord unless Landlord, within such twenty (20) day period, notifies Tenant that it will in fact restore the Premises or actually completes such restoration work to the extent required below, as applicable.

If Landlord restores the Premises or the Property under this Section, Landlord shall proceed with reasonable diligence to complete the work, and the Rent shall be abated in the same proportion as the untenable portion of the Premises bears to the whole Premises, provided that there shall be a Rent abatement only if the damage or destruction of the Premises or the Property did not result from, or was not contributed to directly or indirectly by the act, fault or neglect of Tenant, or Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees. No damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance directly, incidentally or consequentially arising from any repair or restoration of any portion of the Premises or the Property. Landlord shall have no obligation to carry insurance of any kind for the protection of Tenant; any alterations or improvements paid for by Tenant; any Tenant's Work identified in Exhibit C (regardless of who may have completed them); Tenant's furniture; or on any fixtures, equipment, improvements or appurtenances of Tenant under this Lease, and Landlord's restoration obligations hereunder shall not include any obligation to repair any damage thereto or replace the same.

- b. **Condemnation.** If the Premises, the portion of the Building or the Property necessary for Tenant's occupancy, or 50% or more of the rentable area of the Property are made untenable by eminent domain, or conveyed under a threat of condemnation, this Lease shall terminate at the option of either Landlord or Tenant as of the earlier of the date title vests in the condemning authority or the condemning authority first has possession of the Premises or the portion of the Property taken by the condemning authority. All Rents and other payments shall be paid to that date.

If the condemning authority takes a portion of the Premises or of the Building or the Property necessary for Tenant's occupancy that does not render them untenable, then this Lease shall continue in full force and effect and the Rent shall be equitably reduced based on the proportion by which the floor area of any structures is reduced. The reduction in Rent shall be effective on the earlier of the date the condemning authority first has possession of such portion or title vests in the condemning authority. The Premises or the portion of the Building or the Property necessary for Tenant's occupancy shall not be deemed untenable if twenty-five percent (25%) or less of each of those areas are condemned. Landlord shall be entitled to the entire award from the condemning authority attributable to the value of the Premises or the Building or the Property and Tenant shall make no claim for the value of its leasehold. Tenant shall be permitted to make a separate claim against the condemning authority for moving expenses if Tenant may terminate the Lease under this Section, provided that in no event shall Tenant's claim reduce Landlord's award.

**17. INSURANCE.**

- a. **Tenant's Liability Insurance.** During the Lease term, Tenant shall pay for and maintain commercial general liability insurance with broad form property damage and contractual liability endorsements. This policy shall name Landlord, its property manager (if any), and other parties designated by Landlord as additional insureds using an endorsement form acceptable to Landlord, and shall insure Tenant's activities



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and those of Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees with respect to the Premises against loss, damage or liability for personal injury or bodily injury (including death) or loss or damage to property with a combined single limit of not less than \$2,000,000, and a deductible of not more than \$10,000. Tenant's insurance will be primary and noncontributory with any liability insurance carried by Landlord. Landlord may also require Tenant to obtain and maintain business income coverage for at least six (6) months, business auto liability coverage, and, if applicable to Tenant's Permitted Use, liquor liability insurance and/or warehouseman's coverage.

- b. **Tenant's Property Insurance.** During the Lease term, Tenant shall pay for and maintain special form clauses of loss coverage property insurance (with coverage for earthquake if required by Landlord's lender and, if the Premises are situated in a flood plain, flood damage) for all of Tenant's personal property, fixtures and equipment in the amount of their full replacement value, with a deductible of not more than \$10,000.
- c. **Miscellaneous.** Tenant's insurance required under this Section shall be with companies rated A-/VII or better in Best's Insurance Guide, and which are admitted in the State in which the Premises are located. No insurance policy shall be cancelled or reduced in coverage and each such policy shall provide that it is not subject to cancellation or a reduction in coverage except after thirty (30) days prior written notice to Landlord. Tenant shall deliver to Landlord upon commencement of the Lease and from time to time thereafter, copies of the insurance policies or evidence of insurance and copies of endorsements required by this Section. In no event shall the limits of such policies be considered as limiting the liability of Tenant under this Lease. If Tenant fails to acquire or maintain any insurance or provide any policy or evidence of insurance required by this Section, and such failure continues for three (3) days after notice from Landlord, Landlord may, but shall not be required to, obtain such insurance for Landlord's benefit and Tenant shall reimburse Landlord for the costs of such insurance upon demand. Such amounts shall be Additional Rent payable by Tenant hereunder and in the event of non-payment thereof, Landlord shall have the same rights and remedies with respect to such non-payment as it has with respect to any other non-payment of Rent hereunder.
- d. **Landlord's Insurance.** Landlord shall carry special form clauses of loss coverage property insurance of the Building shell and core in the amount of their full replacement value, liability insurance with respect to the Common Areas, and such other insurance of such types and amounts as Landlord, in its discretion, shall deem reasonably appropriate. The cost of any such insurance shall be included in the Operating Costs, and if such insurance is provided by a "blanket policy" insuring other parties or locations in addition to the Building, then only the portion of the premiums allocable to the Building and Property shall be included in the Operating Costs.
- e. **Waiver of Subrogation.** Landlord and Tenant hereby release each other and any other tenant, their agents or employees, from responsibility for, and waive their entire claim of recovery for any loss or damage arising from any cause covered by property insurance required to be carried or otherwise carried by each of them. Each party shall provide notice to the property insurance carrier or carriers of this mutual waiver of subrogation, and shall cause its respective property insurance carriers to waive all rights of subrogation against the other. This waiver shall not apply to the extent of the deductible amounts to any such property policies or to the extent of liabilities exceeding the limits of such policies.

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**18. INDEMNIFICATION.**

- a. **Indemnification by Tenant.** Tenant shall defend, indemnify, and hold Landlord and its property manager (if any) harmless against all liabilities, damages, costs, and expenses, including attorneys' fees, for personal injury, bodily injury (including death) or property damage arising from any negligent or wrongful act or omission of Tenant or Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees on or around the Premises or the Property, or arising from any breach of this Lease by Tenant. Tenant shall use legal counsel reasonably acceptable to Landlord in defense of any action within Tenant's defense obligation.
- b. **Indemnification by Landlord.** Landlord shall defend, indemnify and hold Tenant harmless against all liabilities, damages, costs, and expenses, including attorneys' fees, for personal injury, bodily injury (including death) or property damage arising from any negligent or wrongful act or omission of Landlord or Landlord's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees on or around the Premises or the Property, or arising from any breach of this Lease by Landlord. Landlord shall use legal counsel reasonably acceptable to Tenant in defense of any action within Landlord's defense obligation.
- c. **Waiver of Immunity.** Landlord and Tenant each specifically and expressly waive any immunity that each may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. Neither party's indemnity obligations under this Lease shall be limited by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under the Worker Compensation Acts, Disability Benefit Acts or other employee benefit acts.
- d. **Exemption of Landlord from Liability.** Except to the extent of claims arising out of Landlord's gross negligence or intentional misconduct, Landlord shall not be liable for injury to Tenant's business or assets or any loss of income therefrom or for damage to any property of Tenant or of its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, or any other person in or about the Premises or the Property.
- e. **Survival.** The provisions of this Section 18 shall survive expiration or termination of this Lease.

- 19. ASSIGNMENT AND SUBLETTING.** Tenant shall not assign, sublet, mortgage, encumber or otherwise transfer any interest in this Lease (collectively referred to as a "Transfer") or any part of the Premises, without first obtaining Landlord's written consent, which shall not be unreasonably withheld, conditioned, or delayed. No Transfer shall relieve Tenant of any liability under this Lease notwithstanding Landlord's consent to such Transfer. Consent to any Transfer shall not operate as a waiver of the necessity for Landlord's consent to any subsequent Transfer. In connection with each request for consent to a Transfer, Tenant shall pay the reasonable cost of processing same, including attorneys' fees, upon demand of Landlord, up to a maximum of \$1,250.

If Tenant is a partnership, limited liability company, corporation, or other entity, any transfer of this Lease by merger, consolidation, redemption or liquidation, or any change in the ownership of, or power to vote, which singularly or collectively represents a majority of the beneficial interest in Tenant, shall constitute a Transfer under this Section.

As a condition to Landlord's approval, if given, any potential assignee or sublessee otherwise approved by Landlord shall assume all obligations of Tenant under this Lease and shall be jointly and severally liable with Tenant and any guarantor, if required, for the payment of Rent and performance of all terms of this Lease. In connection with any Transfer, Tenant shall provide Landlord with copies of all assignments, subleases and assumption agreement or documents.



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(Multi-Tenant Triple Net (NNN) Lease)  
(Continued)

**20. LIENS.** Tenant shall not subject the Landlord's assets to any liens or claims of lien. Tenant shall keep the Premises free from any liens created by or through Tenant. Tenant shall indemnify and hold Landlord harmless from liability for any such liens including, without limitation, liens arising from any Alterations. If a lien is filed against the Premises by any person claiming by, through or under Tenant, Tenant shall, within ten (10) days after Landlord's demand, at Tenant's expense, either remove the lien or furnish to Landlord a bond in form and amount and issued by a surety satisfactory to Landlord, indemnifying Landlord and the Premises against all liabilities, costs and expenses, including attorneys' fees, which Landlord could reasonably incur as a result of such lien.

**21. DEFAULT.** The following occurrences shall each constitute a default by Tenant (an "Event of Default"):

- a. **Failure To Pay.** Failure by Tenant to pay any sum, including Rent, due under this Lease following five (5) days' notice from Landlord of the failure to pay.
- b. **Vacation/Abandonment.** Vacation by Tenant of the Premises (defined as an absence for at least fifteen (15) consecutive days without prior notice to Landlord), or abandonment by Tenant of the Premises (defined as an absence of five (5) days or more while Tenant is in breach of some other term of this Lease). Tenant's vacation or abandonment of the Premises shall not be subject to any notice or right to cure.
- c. **Insolvency.** Tenant's insolvency or bankruptcy (whether voluntary or involuntary); or appointment of a receiver, assignee or other liquidating officer for Tenant's business; provided, however, that in the event of any involuntary bankruptcy or other insolvency proceeding, the existence of such proceeding shall constitute an Event of Default only if such proceeding is not dismissed or vacated within sixty (60) days after its institution or commencement.
- d. **Levy or Execution.** The taking of Tenant's interest in this Lease or the Premises, or any part thereof, by execution or other process of law directed against Tenant, or attachment of Tenant's interest in this Lease by any creditor of Tenant, if such attachment is not discharged within fifteen (15) days after being levied.
- e. **Other Non-Monetary Defaults.** The breach by Tenant of any agreement, term or covenant of this Lease other than one requiring the payment of money and not otherwise enumerated in this Section or elsewhere in this Lease, which breach continues for a period of thirty (30) days after notice by Landlord to Tenant of the breach.
- f. **Failure to Take Possession.** Failure by Tenant to take possession of the Premises on the Commencement Date or failure by Tenant to commence any Tenant Improvement in a timely fashion.

Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event less than thirty (30) days after notice by Tenant to Landlord. If Landlord fails to cure any such default within the allotted time, Tenant's sole remedy shall be to seek actual money damages (but not consequential or punitive damages) for loss arising from Landlord's failure to discharge its obligations under this Lease. Nothing herein contained shall relieve Landlord from its duty to perform any of its obligations to the standard prescribed in this Lease.

Any notice periods granted herein shall be deemed to run concurrently with and not in addition to any default notice periods required by law.



**LEASE AGREEMENT**  
(Multi-Tenant Triple Net (NNN) Lease)  
(Continued)

**22. REMEDIES.** Landlord shall have the following remedies upon an Event of Default. Landlord's rights and remedies under this Lease shall be cumulative, and none shall exclude any other right or remedy allowed by law.

- a. **Termination of Lease.** Landlord may terminate Tenant's interest under the Lease, but no act by Landlord other than notice of termination from Landlord to Tenant shall terminate this Lease. The Lease shall terminate on the date specified in the notice of termination. Upon termination of this Lease, Tenant will remain liable to Landlord for damages in an amount equal to the Rent and other sums that would have been owing by Tenant under this Lease for the balance of the Lease term, less the net proceeds, if any, of any reletting of the Premises by Landlord subsequent to the termination, after deducting all of Landlord's Reletting Expenses (as defined below). Landlord shall be entitled to either collect damages from Tenant monthly on the days on which rent or other amounts would have been payable under the Lease, or alternatively, Landlord may accelerate Tenant's obligations under the Lease and recover from Tenant: (i) unpaid rent which had been earned at the time of termination; (ii) the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of rent loss that Tenant proves could reasonably have been avoided; (iii) the amount by which the unpaid rent for the balance of the term of the Lease after the time of award exceeds the amount of rent loss that Tenant proves could reasonably be avoided (discounting such amount by the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus 1%); and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the Lease, or which in the ordinary course would be likely to result from the Event of Default, including without limitation Reletting Expenses described below.
- b. **Re-Entry and Reletting.** Landlord may continue this Lease in full force and effect, and without demand or notice, re-enter and take possession of the Premises or any part thereof, expel the Tenant from the Premises and anyone claiming through or under the Tenant, and remove the personal property of either. Landlord may relet the Premises, or any part of them, in Landlord's or Tenant's name for the account of Tenant, for such period of time and at such other terms and conditions as Landlord, in its discretion, may determine. Landlord may collect and receive the rents for the Premises. To the fullest extent permitted by law, the proceeds of any reletting shall be applied: first, to pay Landlord all Reletting Expenses (defined below); second, to pay any indebtedness of Tenant to Landlord other than rent; third, to the rent due and unpaid hereunder; and fourth, the residue, if any, shall be held by Landlord and applied in payment of other or future obligations of Tenant to Landlord as the same may become due and payable, and Tenant shall not be entitled to receive any portion of such revenue. Re-entry or taking possession of the Premises by Landlord under this Section shall not be construed as an election on Landlord's part to terminate this Lease, unless a notice of termination is given to Tenant. Landlord reserves the right following any re-entry or reletting, or both, under this Section to exercise its right to terminate the Lease. Tenant will pay Landlord the Rent and other sums which would be payable under this Lease if repossession had not occurred, less the net proceeds, if any, after reletting the Premises and after deducting Landlord's Reletting Expenses. "Reletting Expenses" is defined to include all expenses incurred by Landlord in connection with reletting the Premises, including without limitation, all repossession costs, brokerage commissions and costs for securing new tenants, attorneys' fees, remodeling and repair costs, costs for removing persons or property, costs for storing Tenant's property and equipment, and costs of tenant improvements and rent concessions granted by Landlord to any new Tenant, prorated over the life of the new lease.
- c. **Waiver of Redemption Rights.** Tenant, for itself, and on behalf of any and all persons claiming through or under Tenant, including creditors of all kinds, hereby waives and surrenders all rights and privileges which they may have under any present or future law, to redeem the Premises or to have a continuance of this Lease for the Lease term, or any extension thereof.



**LEASE AGREEMENT**  
(Multi-Tenant Triple Net (NNN) Lease)  
(Continued)

- d. **Nonpayment of Additional Rent.** All costs which Tenant is obligated to pay to Landlord pursuant to this Lease shall in the event of nonpayment be treated as if they were payments of Rent, and Landlord shall have the same rights it has with respect to nonpayment of Rent.
- e. **Failure to Remove Property.** If Tenant fails to remove any of its property from the Premises at Landlord's request following an uncured Event of Default, Landlord may, at its option, remove and store the property at Tenant's expense and risk. If Tenant does not pay the storage cost within five (5) days of Landlord's request, Landlord may, at its option, have any or all of such property sold at public or private sale (and Landlord may become a purchaser at such sale), in such manner as Landlord deems proper, without notice to Tenant. Landlord shall apply the proceeds of such sale: (i) to the expense of such sale, including reasonable attorneys' fees actually incurred; (ii) to the payment of the costs or charges for storing such property; (iii) to the payment of any other sums of money which may then be or thereafter become due Landlord from Tenant under any of the terms hereof; and (iv) the balance, if any, to Tenant. Nothing in this Section shall limit Landlord's right to sell Tenant's personal property as permitted by law or to foreclose Landlord's lien for unpaid rent.
23. **MORTGAGE SUBORDINATION AND ATTORNMEN**T. This Lease shall automatically be subordinate to any mortgage or deed of trust created by Landlord which is now existing or hereafter placed upon the Premises including any advances, interest, modifications, renewals, replacements or extensions ("Landlord's Mortgage"). Tenant shall attorn to the holder of any Landlord's Mortgage or any party acquiring the Premises at any sale or other proceeding under any Landlord's Mortgage provided the acquiring party assumes the obligations of Landlord under this Lease. Tenant shall promptly and in no event later than fifteen (15) days after request execute, acknowledge and deliver documents which the holder of any Landlord's Mortgage may reasonably require as further evidence of this subordination and attornment. Notwithstanding the foregoing, Tenant's obligations under this Section to subordinate in the future are conditioned on the holder of each Landlord's Mortgage and each party acquiring the Premises at any sale or other proceeding under any such Landlord's Mortgage not disturbing Tenant's occupancy and other rights under this Lease, so long as no uncured Event of Default by Tenant exists.
24. **NON-WAIVER.** Landlord's waiver of any breach of any provision contained in this Lease shall not be deemed to be a waiver of the same provision for subsequent acts of Tenant. The acceptance by Landlord of Rent or other amounts due by Tenant hereunder shall not be deemed to be a waiver of any previous breach by Tenant.
25. **HOLDOVER.** If Tenant shall, without the written consent of Landlord, remain in possession of the Premises and fail to return them to Landlord after the expiration or termination of this Lease, the tenancy shall be a holdover tenancy and shall be on a month-to-month basis, which may be terminated according to Washington law. During such tenancy, Tenant agrees to pay to Landlord ~~74.50%~~ <sup>100%</sup> of the rate of rental last payable under this Lease, unless a different rate is agreed upon by Landlord. All other terms of the Lease shall remain in effect. Tenant acknowledges and agrees that this Section does not grant any right to Tenant to holdover, and that Tenant may also be liable to Landlord for any and all damages or expenses which Landlord may have to incur as a result of Tenant's holdover.
26. **NOTICES.** All notices under this Lease shall be in writing and effective (i) when delivered in person or via overnight courier to the other party, (ii) three (3) days after being sent by registered or certified mail to the other party at the address set forth in Section 1; or (iii) upon confirmed transmission by facsimile to the other party at the facsimile numbers set forth in Section 1. The addresses for notices and payment of rent set forth in Section 1 may be modified by either party only by written notice delivered in conformance with this Section.



**LEASE AGREEMENT**  
(Multi-Tenant Triple Net (NNN) Lease)  
(Continued)

- 27. COSTS AND ATTORNEYS' FEES.** If Tenant or Landlord engage the services of an attorney to collect monies due or to bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of Rent or other payments, or possession of the Premises, the losing party shall pay the prevailing party a reasonable sum for attorneys' fees in such action, whether in mediation or arbitration, at trial, on appeal, or in any bankruptcy proceeding.
- 28. ESTOPPEL CERTIFICATES.** Tenant shall, from time to time, upon written request of Landlord, execute, acknowledge and deliver to Landlord or its designee a written statement specifying the following, subject to any modifications necessary to make such statements true and complete: (i) the total rentable square footage of the Premises; (ii) the date the Lease term commenced and the date it expires; (iii) the amount of minimum monthly Rent and the date to which such Rent has been paid; (iv) that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way; (v) that this Lease represents the entire agreement between the parties; (vi) that all obligations under this Lease to be performed by either party have been satisfied; (vii) that there are no existing claims, defenses or offsets which the Tenant has against the enforcement of this Lease by Landlord; (viii) the amount of Rent, if any, that Tenant paid in advance; (ix) the amount of security that Tenant deposited with Landlord; (x) if Tenant has sublet all or a portion of the Premises or assigned its interest in the Lease and to whom; (xi) if Tenant has any option to extend the Lease or option to purchase the Premises; and (xii) such other factual matters concerning the Lease or the Premises as Landlord may reasonably request. Tenant acknowledges and agrees that any statement delivered pursuant to this Section may be relied upon by a prospective purchaser of Landlord's interest or assignee of any mortgage or new mortgagee of Landlord's interest in the Premises. If Tenant shall fail to respond within ten (10) days to Landlord's request for the statement required by this Section, Landlord may provide the statement and Tenant shall be deemed to have admitted the accuracy of the information provided by Landlord.
- 29. TRANSFER OF LANDLORD'S INTEREST.** This Lease shall be assignable by Landlord without the consent of Tenant. In the event of any transfer or transfers of Landlord's interest in the Premises, other than a transfer for collateral purposes only, upon the assumption of this Lease by the transferee, Landlord shall be automatically relieved of obligations and liabilities accruing from and after the date of such transfer, including any liability for any retained security deposit or prepaid rent<sup>(s)</sup> for which the transferee shall be liable, and Tenant shall attorn to the transferee.
- 30. LANDLORD'S LIABILITY.** Anything in this Lease to the contrary notwithstanding, covenants, undertakings and agreements herein made on the part of Landlord are made and intended not as personal covenants, undertakings and agreements for the purpose of binding Landlord personally or the assets of Landlord but are made and intended for the purpose of binding only the Landlord's interest in the Premises, as the same may from time to time be encumbered. In no event shall Landlord or its partners, shareholders, or members, as the case may be, ever be personally liable hereunder.
- 31. RIGHT TO PERFORM.** If Tenant shall fail to timely pay any sum or perform any other act on its part to be performed hereunder, Landlord may make any such payment or perform any such other act on Tenant's behalf. Tenant shall, within ten (10) days of demand, reimburse Landlord for its expenses incurred in making such payment or performance. Landlord shall (in addition to any other right or remedy of Landlord provided by law) have the same rights and remedies in the event of the nonpayment of sums due under this Section as in the case of default by Tenant in the payment of Rent.

**LEASE AGREEMENT**  
**(Multi-Tenant Triple Net (NNN) Lease)**  
**(Continued)**

- 32. HAZARDOUS MATERIAL.** As used herein, the term "Hazardous Material" means any hazardous, dangerous, toxic or harmful substance, material or waste including biomedical waste which is or becomes regulated by any local governmental authority, the State of Washington or the United States Government, due to its potential harm to the health, safety or welfare of humans or the environment. Landlord represents and warrants to Tenant that, to Landlord's knowledge without duty of investigation, there is no Hazardous Material on, in, or under the Premises as of the Commencement Date except as may otherwise have been disclosed to Tenant in writing before the execution of this Lease. If there is any Hazardous Material on, in, or under the Premises as of the Commencement Date which has been or thereafter becomes unlawfully released through no fault of Tenant, then Landlord shall indemnify, defend and hold Tenant harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses including without limitation sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees, incurred or suffered by Tenant either during or after the Lease term as the result of such contamination.

Tenant shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about, or disposed of on the Premises or the Property by Tenant, its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, except with Landlord's prior consent and then only upon strict compliance with all applicable federal, state and local laws, regulations, codes and ordinances. If Tenant breaches the obligations stated in the preceding sentence, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses including, without limitation, diminution in the value of the Premises or the Property; damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises or the Property, or elsewhere; damages arising from any adverse impact on marketing of space at the Premises or the Property; and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees incurred or suffered by Landlord either during or after the Lease term. These indemnifications by Landlord and Tenant include, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work, whether or not required by any federal, state or local governmental agency or political subdivision, because of Hazardous Material present in the Premises, or in soil or ground water on or under the Premises. Tenant shall immediately notify Landlord of any inquiry, investigation or notice that Tenant may receive from any third party regarding the actual or suspected presence of Hazardous Material on the Premises.

Without limiting the foregoing, if the presence of any Hazardous Material brought upon, kept or used in or about the Premises or the Property by Tenant, its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, results in any unlawful release of any Hazardous Materials on the Premises or the Property, Tenant shall promptly take all actions, at its sole expense, as are necessary to return the Premises or the Property to the condition existing prior to the release of any such Hazardous Material; provided that Landlord's approval of such actions shall first be obtained, which approval may be withheld at Landlord's sole discretion. The provisions of this Section 32 shall survive expiration or termination of this Lease.

- 33. QUIET ENJOYMENT.** So long as Tenant pays the Rent and performs all of its obligations in this Lease, Tenant's possession of the Premises will not be disturbed by Landlord or anyone claiming by, through or under Landlord.
- 34. MERGER.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.



**LEASE AGREEMENT**  
(Multi-Tenant Triple Net (NNN) Lease)  
(Continued)

**35. GENERAL.**

- a. **Heirs and Assigns.** This Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns.
- b. **Brokers' Fees.** Tenant represents and warrants to Landlord that except for Tenant's Broker, if any, described and disclosed in Section 37 of this Lease, it has not engaged any broker, finder or other person who would be entitled to any commission or fees for the negotiation, execution or delivery of this Lease and shall indemnify and hold harmless Landlord against any loss, cost, liability or expense incurred by Landlord as a result of any claim asserted by any such broker, finder or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Tenant. Landlord represents and warrants to Tenant that except for Landlord's Broker, if any, described and disclosed in Section 37 of this Lease, it has not engaged any broker, finder or other person who would be entitled to any commission or fees for the negotiation, execution or delivery of this Lease and shall indemnify and hold harmless Tenant against any loss, cost, liability or expense incurred by Tenant as a result of any claim asserted by any such broker, finder or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Landlord.
- c. **Entire Agreement.** This Lease contains all of the covenants and agreements between Landlord and Tenant relating to the Premises. No prior or contemporaneous agreements or understandings pertaining to the Lease shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or amended except in writing, signed by Landlord and Tenant.
- d. **Severability.** Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision of this Lease.
- e. **Force Majeure.** Time periods for either party's performance under any provisions of this Lease (excluding payment of Rent) shall be extended for periods of time during which the party's performance is prevented due to circumstances beyond such party's control, including without limitation, fires, floods, earthquakes, lockouts, strikes, embargoes, governmental regulations, acts of God, public enemy, war or other strife.
- f. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Washington.
- g. **Memorandum of Lease.** Neither this Lease nor any memorandum or "short form" thereof shall be recorded without Landlord's prior consent.
- h. **Submission of Lease Form Not an Offer.** One party's submission of this Lease to the other for review shall not constitute an offer to lease the Premises. This Lease shall not become effective and binding upon Landlord and Tenant until it has been fully signed by both of them.
- i. **No Light, Air or View Easement.** Tenant has not been granted an easement or other right for light, air or view to or from the Premises. Any diminution or shutting off of light, air or view by any structure which may be erected on or adjacent to the Building shall in no way effect this Lease or the obligations of Tenant hereunder or impose any liability on Landlord.
- j. **Authority of Parties.** Each party signing this Lease represents and warrants to the other that it has the authority to enter into this Lease, that the execution and delivery of this Lease has been duly authorized, and that upon such execution and delivery, this Lease shall be binding upon and enforceable against the party on signing.
- k. **Time.** "Day" as used herein means a calendar day and "business day" means any day on which commercial banks are generally open for business in the state where the Premises are situated. Any period of time which would otherwise end on a non-business day shall be extended to the next following business day. Time is of the essence of this Lease.

**LEASE AGREEMENT**  
(Multi-Tenant Triple Net (NNN) Lease)  
(Continued)

**36. EXHIBITS AND RIDERS.** The following exhibits and riders are made a part of this Lease, and the terms thereof shall control over any inconsistent provision in the sections of this Lease:

- Exhibit A Floor Plan/Outline of the Premises
- Exhibit B Legal Description of the Property
- Exhibit C Tenant Improvement Schedule

CHECK THE BOX FOR ANY OF THE FOLLOWING THAT WILL APPLY. CAPITALIZED TERMS USED IN THE RIDERS SHALL HAVE THE MEANING GIVEN TO THEM IN THE LEASE.

- ☒ Rent Rider
- ☐ Arbitration Rider
- ☐ Letter of Credit Rider
- ☐ Guaranty of Tenant's Lease Obligations Rider
- ☐ Parking Rider
- ☒ Option to Extend Rider
- ☐ Rules and Regulations

**37. AGENCY DISCLOSURE.** At the signing of this Lease, Landlord is represented by

Neil Walter Company

(insert both the name of the Broker and the Firm as licensed) (the "Landlord's Broker"), and Tenant is represented by NA

(insert both the name of the Broker and the Firm as licensed) (the "Tenant's Broker").

This Agency Disclosure creates an agency relationship between Landlord, Landlord's Broker (if any such person is disclosed), and any managing brokers who supervise Landlord's Broker's performance (collectively the "Supervising Brokers"). In addition, this Agency Disclosure creates an agency relationship between Tenant, Tenant's Broker (if any such person is disclosed), and any managing brokers who supervise Tenant's Broker's performance (also collectively the "Supervising Brokers"). If Tenant's Broker and Landlord's Broker are different real estate licensees affiliated with the same Firm, then both Tenant and Landlord confirm their consent to that Firm and both Tenant's and Landlord's Supervising Brokers acting as dual agents. If Tenant's Broker and Landlord's Broker are the same real estate licensee who represents both parties, then both Landlord and Tenant acknowledge that the Broker, his or her Supervising Brokers, and his or her Firm are acting as dual agents and hereby consent to such dual agency. If Tenants' Broker, Landlord's Broker, their Supervising Brokers, or their Firm are dual agents, Landlord and Tenant consent to Tenant's Broker, Landlord's Broker and their Firm being compensated based on a percentage of the rent or as otherwise disclosed on the attached addendum. Neither Tenant's Broker, Landlord's Broker nor either of their Firms are receiving compensation from more than one party to this transaction unless otherwise disclosed on an attached addendum, in which case Landlord and Tenant consent to such compensation. Landlord and Tenant confirm receipt of the pamphlet entitled "The Law of Real Estate Agency."

**38. COMMISSION AGREEMENT.** If Landlord has not entered into a listing agreement (or other compensation agreement with Landlord's Broker), Landlord agrees to pay a commission to Landlord's Broker (as identified in the Agency Disclosure paragraph above) as follows:

- ☐ \$ \_\_\_\_\_
- ☐ \_\_\_\_\_ % of the gross rent payable pursuant to the Lease
- ☐ \$ \_\_\_\_\_ per square foot of the Premises
- ☒ Other 5% of the first five year base rental rate and 2.5% of the second five year base rental rate.



**LEASE AGREEMENT**  
**(Multi-Tenant Triple Net (NNN) Lease)**  
**(Continued)**

Landlord's Broker ☐ shall ☐ shall not (shall not if not filled in) be entitled to a commission upon the extension by Tenant of the Lease term pursuant to any right reserved to Tenant under the Lease calculated ☐ as provided above or ☐ as follows \_\_\_\_\_

\_\_\_\_\_  
(if no box is checked, as provided above). Landlord's Broker ☐ shall ☐ shall not (shall not if not filled in) be entitled to a commission upon any expansion of the Premises pursuant to any right reserved to Tenant under the Lease, calculated ☐ as provided above or ☐ as follows \_\_\_\_\_  
(if no box is checked, as provided above).

Any commission shall be earned upon execution of this Lease, and paid one-half upon execution of the Lease and one-half upon occupancy of the Premises by Tenant. Landlord's Broker shall pay to Tenant's Broker (as identified in the Agency Disclosure paragraph above) the amount stated in a separate agreement between them or, if there is no agreement, \$ \_\_\_\_\_ or \_\_\_\_\_ % (complete only one) of any commission paid to Landlord's Broker, within five (5) days after receipt by Landlord's Broker.

If any other lease or sale is entered into between Landlord and Tenant pursuant to a right reserved to Tenant under the Lease, Landlord ☐ shall ☐ shall not (shall not if not filled in) pay an additional commission according to any commission agreement or, in the absence of one, according to the commission schedule of Landlord's Broker in effect as of the execution of this Lease. Landlord's successor shall be obligated to pay any unpaid commissions upon any transfer of this Lease and any such transfer shall not release the transferor from liability to pay such commissions.

**38. BROKER PROVISIONS.**

LANDLORD'S BROKER, TENANT'S BROKER AND THEIR FIRMS HAVE MADE NO REPRESENTATIONS OR WARRANTIES CONCERNING THE PREMISES; THE MEANING OF THE TERMS AND CONDITIONS OF THIS LEASE; LANDLORD'S OR TENANT'S FINANCIAL STANDING; ZONING OR COMPLIANCE OF THE PREMISES WITH APPLICABLE LAWS; SERVICE OR CAPACITY OF UTILITIES; OPERATING COSTS; OR HAZARDOUS MATERIALS. LANDLORD AND TENANT ARE EACH ADVISED TO SEEK INDEPENDENT LEGAL ADVICE ON THESE AND OTHER MATTERS ARISING UNDER THIS LEASE.

IN WITNESS WHEREOF, this Lease has been executed the date and year first above written.

LANDLORD

LANDLORD *North Mullen LLC*

BY *Vern Harkins*

ITS: *Managing Partner*

TENANT

TENANT *Francis Geissler, an individual*

BY *Francis Geissler*

ITS: \_\_\_\_\_

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LEASE AGREEMENT  
(Multi-Tenant Triple Net (NNN) Lease)  
(Continued)

STATE OF WASHINGTON

COUNTY OF Pierce

SS.

I certify that I know or have satisfactory evidence that Francis Geissler is the person who appeared before me and said person acknowledged that He signed this instrument, on oath stated that He was authorized to execute the instrument and acknowledged it as the Individual of Eye MDs of Puget to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 31st day of March, 2012.



Melissa A. Broom

(Signature of Notary)

Melissa A. Broom

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington

Residing at Tacoma

My appointment expires 1-19-13

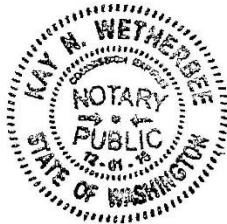
STATE OF WASHINGTON

COUNTY OF Pierce

SS.

I certify that I know or have satisfactory evidence that Vernon Haskins is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Landlord of North Mallon LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 21st day of March, 2012.



Kay Wetherbee

(Signature of Notary)

Kay Wetherbee

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington

Residing at Tacoma

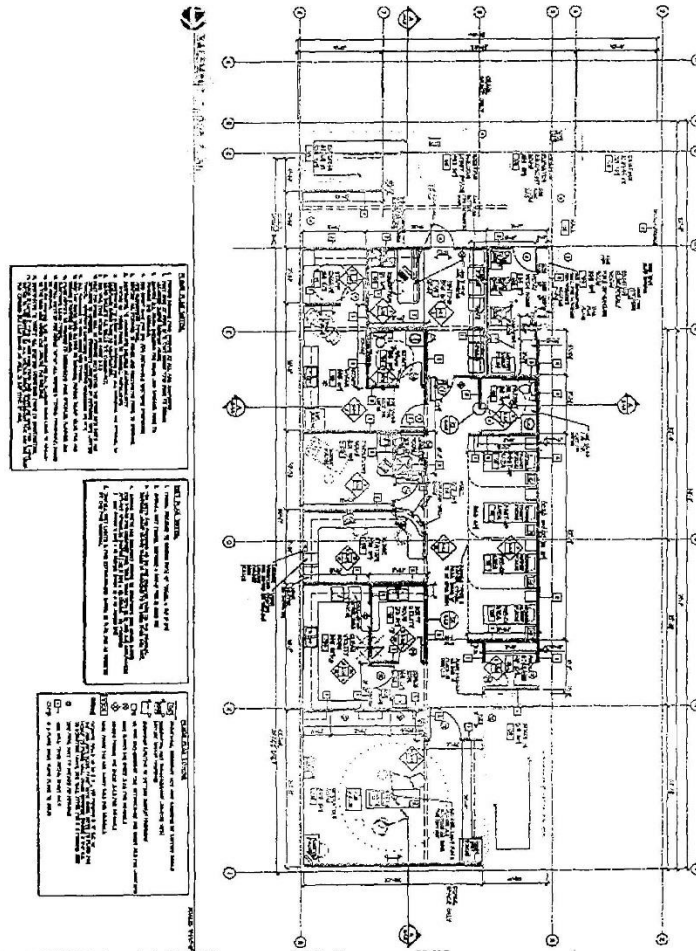
My appointment expires 12-1-15





LEASE AGREEMENT  
(Multi-Tenant Triple Net (NNN) Lease)  
(Continued)

EXHIBIT A  
[Outline of the Premises]





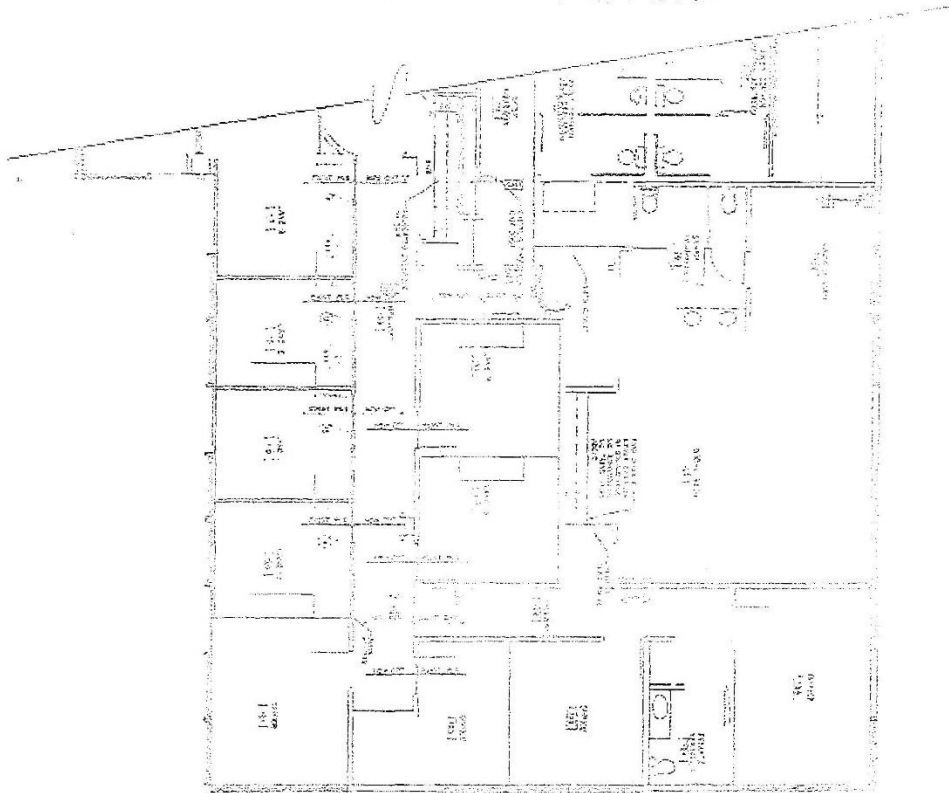


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**LEASE AGREEMENT**  
(Multi-Tenant Triple Net (NNN) Lease)  
(Continued)

**EXHIBIT A**  
[Outline of the Premises]

*Back half of the second floor*



**EXHIBIT A**



LEASE AGREEMENT  
(Multi-Tenant Triple Net (NNN) Lease)  
(Continued)

EXHIBIT B  
[Legal Description of the Property]

*Parcel A:*

*Lot 2 of City of Tacoma Short Plat No. MPD2000-00033, according to Short Plat Recorded May 9, 2001 under Recording No. 200105095004, being a portion of the Southwest Quarter of Section 1, Township 20 North, Range 2 East, W.M., and a portion of Block 3 of Firlands Addition to the City of Tacoma, according to Plat Recorded in Volume 15 of Plats at Page(s) 11, in Pierce County, Washington.*

*Parcel B:*

*A non-exclusive easement for ingress & egress as created by instruments recorded under Pierce County Recording Nos. 200003200209 and 200003200210.*

EXHIBIT B

**LEASE AGREEMENT**  
**(Multi-Tenant Triple Net (NNN) Lease)**  
**(Continued)**

**EXHIBIT C**  
**[Tenant Improvement Schedule]**

**1. Tenant Improvements to be Completed by Landlord**

*Landlord will provide Tenant an improvement allowance of \$250,000.00 applicable to tenant's build out.*

**2. Tenant Improvements to be Completed by Tenant**

*Tenant will be responsible for overseeing and completing tenant's improvements. Tenant's improvements will need to be mutually acceptable to both Landlord and Tenant prior to Tenant commencing with construction.*

**EXHIBIT C**

ADDENDUM

Property Address: The North Mullen Building, 4707 South 19th Street, Tacoma WA

1) 1a. Lease Summary, Premises

two

2) 1. Lease Summary, Premises

s

3) 1a. Lease Summary, Premises

which does not include the basement square footage

4) 1i. Lease Summary, Tenant's Pro Rata Share

excluding the basement

5) 9. Utilities

Tenant will be responsible for reimbursement of 45.16% of the utility costs for the building as Tenant's basement square footage will be included in the reimbursement pro-rata.

6) 15. Signage

Notwithstanding the above, Tenant will be allowed exterior building signage which both meets City Code Requirements and is also mutually acceptable to Landlord.

7) 25. Holdover

125%

8) 29. Transfer of Landlord's Interest.

provided Landlord assigns and transfers the security deposit and/or pre-paid rent to transferee

INITIALS MDK DATE 3-21-12  
INITIALS landlord DATE \_\_\_\_\_

INITIALS FG DATE 3-21-12  
INITIALS tenant DATE \_\_\_\_\_

ADDENDUM/AMENDMENT TO  
CBA LEASES

The following is part of the Commercial Lease Agreement dated \_\_\_\_\_  
Between North Mullen LLC ("Landlord")  
And Francis Geissler, Individual dba Eye MD's of Puget Sound PLLC ("Tenant")  
regarding the lease of the property known as The North Mullen Building,  
4707 South 19th Street, Tacoma WA

IT IS AGREED BETWEEN THE LANDLORD AND TENANT AS FOLLOWS:

*Francis Geissler individual will have the right to purchase a 10% ownership interest in the building for a purchase price of \$200,000.00 on or before the commencement date of the lease agreement. Both the Landlord and Francis Geissler individual will work in good faith to meet this date and both parties can extend this date if mutually agreed upon.*

AGENT (COMPANY): \_\_\_\_\_ By: \_\_\_\_\_

ALL OTHER TERMS AND CONDITIONS of said Agreement remain unchanged.

INITIALS: Tenant/Lessee FG DATE 3-21-12 Landlord/Lessor VWK DATE 3-26-12  
Tenant/Lessee \_\_\_\_\_ DATE \_\_\_\_\_ Landlord/Lessor \_\_\_\_\_ DATE \_\_\_\_\_



## RENT RIDER

This Rent Rider ("Rider") is made part of the Lease Agreement dated February 7, 2012, (the "Lease") between North Mullen LLC ("Landlord") and Francis Geissler, Individual dba Eye MD's of Puget Sound PLLC ("Tenant") concerning the space commonly known as \_\_\_\_\_ (the "Premises"), located at the property commonly known as The North Mullen Building, 4707 South 19th Street, Tacoma WA (the "Property").

- ☒ 1. **BASE MONTHLY RENT SCHEDULE.** Tenant shall pay Landlord base monthly rent during the Lease Term according to the following schedule:

Lease Year (Stated in Years or Months)	Base Monthly Rent Amount
<u>Years 1-3:</u>	\$ <u>10,852.00</u>
<u>Years 4-6:</u>	\$ <u>11,243.00</u>
<u>Years 7-9:</u>	\$ <u>11,833.00</u>
<u>Year 10:</u>	\$ <u>12,423.00</u>
	\$ _____

- ☐ 2. **CONSUMER PRICE INDEX ADJUSTMENT ON BASE MONTHLY RENT.** The base monthly rent shall be increased on the first day of the second year of the Lease and on the first day of each year of the Lease thereafter (each, an "Adjustment Date") during the term of this Lease (but not during any extension term(s) unless specifically set forth elsewhere in the Lease or another Rider attached thereto). The increase shall be determined in accordance with the increase in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (all items for the geographical statistical area in which the Premises is located on the basis of 1982-1984 equals 100) (the "Index"). The base monthly rent payable immediately prior to the applicable adjustment date shall be increased by the percentage that the Index published for the date nearest preceding the applicable Adjustment Date has increased over the Index published for the date nearest preceding the first day of the Lease Year from which the adjustment is being measured. Upon the calculation of each increase, Landlord shall notify Tenant of the new base monthly rent payable hereunder. Within twenty (20) days of the date of Landlord's notice, Tenant shall pay to Landlord the amount of any deficiency in Rent paid by Tenant for the period following the subject Adjustment Date, and shall thereafter pay the increased Rent until receiving the next notice of increase from Landlord. If the components of the Index are materially changed after the Commencement Date, or if the Index is discontinued during the Lease term, Landlord shall notify Tenant of a substitute published index which, in Landlord's reasonable discretion, approximates the Index, and shall use the substitute index to make subsequent adjustments in base monthly rent. In no event shall base monthly rent be decreased pursuant to this Rider.

INITIALS: LANDLORD LMH DATE 3-14-12 TENANT FG DATE 3-21-12  
LANDLORD \_\_\_\_\_ DATE \_\_\_\_\_ TENANT \_\_\_\_\_ DATE \_\_\_\_\_

ADDENDUM

Property Address: The North Mullen Building, 4707 South 19th Street, Tacoma WA

1) 1. Base Monthly Rent Schedule

For the 7,100 sf in Suite #210

INITIALS UW DATE 3-21-12  
INITIALS Landlord DATE \_\_\_\_\_

INITIALS FG DATE 3-21-12  
INITIALS Tenant DATE \_\_\_\_\_

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CBA

CBA Form RR  
Rent Rider  
Rev. 1/2011  
Page 1 of 1

### RENT RIDER

This Rent Rider ("Rider") is made part of the Lease Agreement dated February 7, 2012, (the "Lease") between North Mullen LLC ("Landlord") and Francis Geissler, Individual dba Eye MD's of Puget Sound PLLC ("Tenant") concerning the space commonly known as \_\_\_\_\_ (the "Premises"), located at the property commonly known as The North Mullen Building, 4707 South 19th Street, Tacoma WA (the "Property").

- ☒ 1. **BASE MONTHLY RENT SCHEDULE.** Tenant shall pay Landlord base monthly rent during the Lease Term according to the following schedule:

Lease Year (Stated in Years or Months)

Year 1: \_\_\_\_\_

Years 2-10: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Base Monthly Rent Amount

\$ \$13.00 psf annually.

\$ Annual \$.55 psf rent increases each year.

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

- ☐ 2. **CONSUMER PRICE INDEX ADJUSTMENT ON BASE MONTHLY RENT.** The base monthly rent shall be increased on the first day of the second year of the Lease and on the first day of each year of the Lease thereafter (each, an "Adjustment Date") during the term of this Lease (but not during any extension term(s) unless specifically set forth elsewhere in the Lease or another Rider attached thereto). The increase shall be determined in accordance with the increase in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (all items for the geographical statistical area in which the Premises is located on the basis of 1982-1984 equals 100) (the "Index"). The base monthly rent payable immediately prior to the applicable adjustment date shall be increased by the percentage that the Index published for the date nearest preceding the applicable Adjustment Date has increased over the Index published for the date nearest preceding the first day of the Lease Year from which the adjustment is being measured. Upon the calculation of each increase, Landlord shall notify Tenant of the new base monthly rent payable hereunder. Within twenty (20) days of the date of Landlord's notice, Tenant shall pay to Landlord the amount of any deficiency in Rent paid by Tenant for the period following the subject Adjustment Date, and shall thereafter pay the increased Rent until receiving the next notice of increase from Landlord. If the components of the Index are materially changed after the Commencement Date, or if the Index is discontinued during the Lease term, Landlord shall notify Tenant of a substitute published index which, in Landlord's reasonable discretion, approximates the index, and shall use the substitute index to make subsequent adjustments in base monthly rent. In no event shall base monthly rent be decreased pursuant to this Rider.

INITIALS: LANDLORD UUAH DATE 3-21-12 TENANT FG DATE 3-21-12  
LANDLORD \_\_\_\_\_ DATE \_\_\_\_\_ TENANT \_\_\_\_\_ DATE \_\_\_\_\_

ADDENDUM

Property Address: The North Mullen Building 4707 South 19th Street, Tacoma WA

1) 1. Base Monthly Rent Schedule

For the 2,500 sf in the basement.

INITIALS UWH DATE 3-21-12  
INITIALS Samford DATE \_\_\_\_\_

INITIALS FG DATE 3-21-12  
INITIALS Tenant DATE \_\_\_\_\_

Form generated by: TrueForms™ www.TrueForms.com 800-499-9612

### OPTION TO EXTEND RIDER

This Option to Extend Rider ("Rider") is made part of the lease agreement dated February 7, 2012,  
(the "Lease") between North Mullen LLC ("Landlord") and  
Francis Geissler, individual dba Eye MD's of Puget Sound PLLC ("Tenant") concerning the leased space commonly  
known as \_\_\_\_\_ (the "Premises"), located  
at the property commonly known as The North Mullen Building, 4707 South 19th Street, Tacoma WA  
(the "Property").

1. **Extension of Lease.** Provided Tenant is not in default of any provision of the Lease at the time that Tenant exercises the right to extend the Lease or at the time the new term begins, Tenant shall have Two (zero if not completed) successive options to extend the term of the Lease for Five years each. The term of the Lease shall be extended on the same terms, conditions and covenants set forth in the Lease, except that (i) the amount of the Base Rent stated in the Lease shall be adjusted as set forth below (provided, however, that Base Rent shall not be decreased); (ii) there shall be no free or abated rent periods, tenant improvement allowances or other concessions that may have been granted to Tenant at the beginning of the initial term hereof; and (iii) after exercise of Tenant's final extension term option, there shall be no further extension or renewal term options.
2. **Notice.** To extend the Lease, Tenant shall deliver written notice to Landlord not less than one hundred eighty (180) days prior to the expiration of the then-current Lease term. Time is of the essence of this Rider.
3. **Monthly Rent.** Landlord and Tenant shall make a good faith effort to determine and agree on the fair market value of rent for the Premises for the next term of the Lease.
  - a. **Failure to Agree on Rent.** If Landlord and Tenant are unable to agree on the fair market rental value for the Premises within thirty (30) days after Tenant gives notice to extend, they shall then have ten (10) days to select or, appoint one real estate appraiser to determine the fair market value of rent for the Premises. All appraisers selected or appointed pursuant to this Rider shall be a Member of the American Institute of Real Estate Appraisers ("M.A.I.") with at least ten (10) years experience appraising commercial properties in the commercial leasing market in which the Premises are located, or equivalent. The appraiser appointed shall determine the fair market rental value for the Premises within twenty (20) days of appointment, which determination shall be final, conclusive, and binding upon both Landlord and Tenant, and Base Rent shall be adjusted accordingly for the new term. The appraiser's fees and expenses shall be shared equally between the parties.
  - b. **Failure to Appoint One Appraiser.** If Landlord and Tenant cannot mutually agree upon an appraiser, then either party may give the other party written notice that it has selected and appointed an M.A.I. appraiser, complete with the name, address, and other identifying information about the appraiser. The party receiving such notice shall then have ten (10) days to select and appoint its own M.A.I. appraiser and respond by giving written notice to the other party, complete with the name, address, and other identifying information about the appraiser. If, however, the responding party fails to select and appoint an appraiser and give notice to the other party within ten (10) days, the determination of the appraiser first appointed shall be final, conclusive and binding upon both parties, and Base Rent shall be adjusted accordingly for the new term. The appraiser's fees and expenses shall be shared equally between the parties.

INITIALS: LANDLORD UWH DATE 3-21-12 TENANT FG DATE 3-21-12  
LANDLORD \_\_\_\_\_ DATE \_\_\_\_\_ TENANT \_\_\_\_\_ DATE \_\_\_\_\_



**OPTION TO EXTEND RIDER**  
(Continued)

- c. **Method of Determining Rent.** The appraisers appointed shall proceed to determine fair market rental value within twenty (20) days following their appointment. The conclusion shall be final, conclusive and binding upon both Landlord and Tenant. If the appraisers should fail to agree, but the difference in their conclusions as to fair market rental value is ten percent (10%) or less of the lower of the two appraisals, then the fair market rental value shall be deemed to be the average of the two, and Base Rent shall be adjusted accordingly for the new term. If the two appraisers should fail to agree on the fair market rental value, and the difference between the two appraisals exceeds ten percent (10%) of the lower of the two appraisals, then the two appraisers shall appoint a third M.A.I.-qualified appraiser. If they fail to agree on a third appraiser within ten (10) days after their individual determination of the fair market rental value, either party may apply to the courts for the county in which the Premises are located, requesting the appointment of a third M.A.I.-qualified appraiser. The third appraiser shall promptly determine the fair market rental value of the Premises. The parties shall then take the average of the two appraisals that are closest in value, which shall then constitute the fair market value; shall be final, conclusive and binding upon both parties; and Base Rent shall be adjusted accordingly for the new term. Each party shall pay the fees and expenses for its own appraiser. In the event a third appraiser must be appointed, his or her fees and expenses shall be borne equally by Landlord and Tenant.

INITIALS: LANDLORD UWH DATE 3-16-12 TENANT FG DATE 3-21-12  
LANDLORD \_\_\_\_\_ DATE \_\_\_\_\_ TENANT \_\_\_\_\_ DATE \_\_\_\_\_

## FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between NORTH MULLEN, LLC, (the "Landlord"), and FRANCIS GEISSLER, an individual dba EYE MD'S OF PUGET SOUND PLLC (the "Tenant").

WHEREAS, Landlord and Tenant entered into a Lease Agreement dated February 7, 2012, (collectively, the "Lease"), for certain premises located in the North Mullen Building at 4707 South 19<sup>th</sup> Street, #210, Tacoma, Washington (the "Premises"), as more fully described in the Lease; and

WHEREAS, the current term of the Lease is scheduled to expire August 31, 2022; and

WHEREAS, Both Landlord and Tenant desire to modify the Lease accordingly;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the parties hereby mutually agree as follows:

1. Expansion of Premises. Effective November 1, 2021, or sooner if the Premises become available, Tenant shall expand its Premises to include suite #201, (an additional 2,460 sf of space). Expansion Premises outlined per the attached Exhibit "A" and Tenant's total square footage leased after the expansion will be 12,060 square feet.
2. Extension of Term. Effective September 1, 2022, the term of the Lease shall be extended an additional sixty (60) months, terminating on August 31, 2027.
3. Rent. Effective November 1, 2021, or sooner if the space becomes available, Tenant's monthly rent for suite #201 shall be:

Suite #201:

<u>Years</u>	<u>PSF/yr</u>	<u>Monthly Rent</u>
Occupancy thru 8/31/22:	\$21.00	\$4,305.00 in addition to Tenant's current rent schedule.

Effective September 1, 2022 and continuing through Tenant's extended lease term Tenant rent shall be as follows:

2<sup>nd</sup> Floor Space: 9,560 Sqr. Ft.:

<u>Years:</u>	<u>PSF/yr.</u>	<u>Monthly Rent</u>
9/01/22 thru 8/31/23:	\$21.00	\$16,730.00
9/01/23 thru 8/31/26:	\$22.05	\$17,455.50
9/01/26 thru 8/31/27:	\$23.15	\$18,442.83

Basement Space: 2,500 Sqr. Ft.:

<u>Years:</u>	<u>PSF/yr.</u>	<u>Monthly Rent</u>
9/01/22 thru 8/31/23:	\$18.00	\$3,750.00
9/01/23 thru 8/31/26:	\$18.55	\$3,864.58
9/01/26 thru 8/31/27:	\$19.10	\$3,979.17

4. Operating Expenses: Tenant's pro-rata share reimbursement of building operating expenses shall increase to 51.15% upon Tenant's expansion into Suite #201.
5. Tenant Improvements: Landlord shall provide Tenant \$20.00 psf in TI's (\$49,200.00) when Tenant takes occupancy of Suite #201, which can be in the form of either rent credit or improvements to the space. Landlord shall also provide Tenant \$7.50 psf in TI's on Tenant's existing Premises, (\$72,000.00) for Tenant to use towards space improvements after 9/01/22.
6. Tenant warrants that all necessary corporate actions have been duly taken to permit Tenant to enter into this First Amendment to Lease and that each undersigned officer has been duly authorized and instructed to execute this Second Amendment to Lease.
7. Except as expressly modified above, all terms and conditions of the Lease remain in full force and effect and are hereby ratified and confirmed.

LANDLORD:

North Mullen, LLC

By: 

Its: Managing Member

Date: 4-19-21

TENANT:

Francis Geissler, d/b/a Eye MD's of Puget Sound, PLLC

By: 

Its: Owner

Date: 4-19-21

**LANDLORD:**

STATE OF WASHINGTON     )  
  )  
COUNTY OF Pierce     )     ss.

On this day personally appeared before me Maria L. Steppan, to me known to be the Managing Member of Nathan Miller LLC, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the same instrument.

GIVEN under my hand and official seal this 19 day of April, 2021.



Maria L. Steppan  
Maria L. Steppan  
(print notary's name)

Notary Public in and for the State of Washington,  
residing at Edgewood  
My commission expires: 1-10-2022

**TENANT:**

State of Washington     )  
  )  
County of Pierce     )     ss.

On 4-19-2021, before me, Maria L. Steppan, Notary Public, personally appeared Francis Geissler, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

GIVEN under my hand and official seal this 19 day of April, 2021.



Maria L. Steppan  
MARIA L. Steppan  
(print notary's name)

Notary Public in and for the State of Washington,  
residing at Edgewood  
My commission expires: 1-10-2022

# **EXHIBIT A**

Membership in the North Mullen, LLC Company, Property and Business as described in Article 2 of the Certification of Formation shall be as follows:

<u>Name and Address</u>	<u>Date</u>	<u>ICC</u>	<u>Percentage Interest</u>	<u>Group Designation</u>
Vernon W. Harkins 976 Altadena Drive Fircrest, WA 98466			15.22088	A
Daniel L. Hannula 14 Country Club Dr. SW Lakewood, WA 98498-5303			15.22088	A
Daniel R. Kyler P.O. Box 984 13245 Banner Road SE Olalla, WA 98359			15.22088	A
Harold T. Dodge, Jr. 3706 No. 30 <sup>th</sup> Street Tacoma, WA 98407			8.67472	A
Michael and Shawn Robinson Living Trust Dated February 11, 1999 4404 76 <sup>th</sup> Ave. Ct. NW Gig Harbor, WA 98335			15.22088	B
Jeff C. Jensen 7525 28 <sup>th</sup> St. W. University Place, WA 98466			15.22088	B
Francis Geissler 2236 66 <sup>th</sup> Ave. NW Olympia, WA 98502			15.22088	B



**AMENDED LIMITED LIABILITY COMPANY OPERATING AGREEMENT OF  
NORTH MULLEN, L.L.C.,  
A Washington Limited Liability Company  
(DATED JANUARY 21, 2019)**

THIS LIMITED LIABILITY COMPANY OPERATING AGREEMENT is made and entered into this 21<sup>st</sup> day of January, 2019, by and between Group A composed initially of Members Daniel L. Hannula, Vernon W. Harkins, Daniel R. Kyler and Harold T. Dodge, Jr. and Group B composed initially of Members Michael and Shawn Robinson Living Trust Dated February 11, 1999, who is represented by Trustee Michael Robinson, Jeff C. Jensen and Francis Geissler.

WHEREAS, the parties have filed with the Secretary of State the Certificate of Formation and are desirous of taking certain other steps deemed appropriate as a means of organizing a limited liability company pursuant to the provisions of the Washington Limited Liability Company Act (RCW Ch. 25.15, as amended) ("The Washington LLC Act"); and

WHEREAS, the parties have selected NORTH MULLEN, L.L.C. (the "Company") as the name of their limited liability company;

NOW, THEREFORE, in consideration of the mutual promises and obligations herein expressed, the parties hereby agree as follows:

**ARTICLE 1**

**GENERAL ORGANIZATION, DEFINITIONS,  
AND LIMITS ON PERSONAL LIABILITY**

1.1 Company Formation and Its Period of Existence. The Company's effective date of its existence is the delayed effective date of December 1, 2004 identified in the Certificate of Formation filed on November 24, 2004, and the Company shall continue in perpetuity unless otherwise dissolved under the provisions of this Agreement.

Upon the sale of all or substantially all of its assets, or a request for the Company to dissolve because of a Member's death, retirement, resignation, expulsion, failure in paying for a residual interest, bankruptcy, or business dissolution, the other Members may vote to continue the existence of the LLC provided there is at least one remaining Member.

1.2 Definitions

1.2.1 Member. A Member shall mean the owner of a Membership Interest.

1.2.2 Disassociated Member. A disassociated Member is an expelled Member, a Member whose Membership Interest has been approved for transfer, a Member who has

become incompetent, and/or a deceased Member, none of whom have rights of membership except a Distributional Interest, if any, as provided for herein.

1.2.3 Distributional Interest. Included within a Membership Interest is a Distributional Interest, meaning the right to a transfer of money, property, or other benefits from the Company.

1.2.4 Formation and Operating Documents. The Certificate of Formation ("Certificate") and this Limited Liability Company Operating Agreement ("LLC Agreement"), along with any amendments, shall be jointly referred to as the "Formation and Operating Documents" and will be deemed to constitute the full agreement between the parties for opening and operating the Company, as well as satisfying those requirements of the Washington LLC Act.

1.2.5 Membership Groups. All Members are intended to be part of one of two Membership Groups, either Group A or Group B. The combined membership of Group A is deemed owners of 54% of the LLC and the combined membership of Group B is deemed owners of 46% of the LLC. No change in this percentage ownership ratio shall occur, except as may be allowed by the provisions of the Formation and Operating Documents.

1.2.6 Member's Qualification Requirement. A permanent Member of either Group A or Group B must be a person named as one of the initial Members in this Agreement or one obtaining membership pursuant to the provisions of Article 8.

1.2.7 Person. A person is an individual, including an individual serving in the capacity of trustee for a living trust that benefits his or her family.

1.3 Fiscal Year. The Company shall use the calendar year as its fiscal year.

1.4 Amendments. The Formation and Operating Documents may be amended together or separately, from time to time, by a vote of all capital of the Company.

1.5 Member Identification and Capital Contributions. The names and addresses of the Members, their Initial Capital Contribution ("ICC"), their Percentage Interest are set forth on attached **Exhibit A**, (including amendments, if any, as approved from time to time).

1.6 Membership Interest. Each Percentage Interest of the Company's capital, which at the election of the Membership may be reflected by issued certificates of ownership units (signed by at least one designated Member), consists of ownership rights collectively known as a "Membership Interest". Included within the Membership Interest is a "Distributional Interest", as defined in Section 1.2.3 and the Member's rights to vote and participate in the management of the Company as these two rights are specifically accorded by the Act and the provisions set forth in the Formation and Operating Documents.

The Company may issue new certificates of ownership to replace any valid previously issued certificate as necessary to comply with an approved ownership transfer or a need based upon the belief that a certificate has become lost, stolen or destroyed. Similarly, the Company has authority to void certificates whenever its identified owner is no longer entitled to own and exercise all rights of the Membership Interest.

1.7 Non-Approved Membership Interest. There can be no valid Membership Interest created or transferred without approval or acceptance in accord with the provisions of the Formation and Operating Documents.

1.8 Limited Liability. Unless otherwise provided in the Washington LLC Act, no owner of a Membership Interest, shall be obligated personally for any debt, obligation or liability of the Company, whether arising in contract, tort or otherwise, solely by reason of owning a Membership Interest.

1.9 Indemnification. No Manager or Member of the LLC shall be personally liable to the LLC or its Members for monetary damages because of conduct carried out on behalf of the Company, except where the liability of a Manager or Member is for (i) acts or omissions that involve intentional misconduct or a knowing violation of the law, (ii) conduct which violates section 6.05 of the Washington LLC Act, pertaining to unpermitted distributions to Members or loans to Managers, or (iii) any transaction for which the Manager or Member will personally receive a benefit in money, property or services for which there is no legal entitlement. If the Washington LLC Act is amended to further eliminate or limit the personal liability of Managers or Members, then the liability of a Manager or Member of the LLC shall be eliminated or limited to the fullest extent permitted by the amendment. Any repeal or modification of the foregoing paragraph by the Members of the LLC shall not adversely affect any right or protection of the Manager or Member of the LLC existing at the time of such repeal or modification.

The Company shall indemnify each Manager and Member to the maximum extent allowed by this section 1.9 as against all liability, damage or expense resulting from the fact that such person is or was acting on behalf of the Company.

## **ARTICLE 2**

### **VOTING DECISIONS BY ALL CAPITAL OF THE COMPANY**

All votes taken by the Membership shall only be effective upon a favorable vote of 80% of all voting capital of the Company, except as otherwise modified in this Agreement.

## **ARTICLE 3**

### **INTERNAL MANAGEMENT**

3.1 Choice of Governance and Authority.

3.1.1 Management Structure. The Members, voting in compliance with Section 2, shall establish the number of Managers who will run the Company if this is to be one or any number less than the total membership.

3.1.2 Initial Management Structure. For the first year, the Company shall be managed by VERNON W. HARKINS. Thereafter, the Company shall be managed by the full membership, unless changed by a vote of the Members in compliance with Article 2.

3.1.3 Term of Office for Manager. When the Company is managed by the full membership, then no office term for management shall be required; otherwise, the initial Manager or his replacement shall hold office for one year as provided for in Section 3.1.2 and thereafter, if a Manager position is re-established by a vote of the Members, the term of office shall be until the next annual meeting of the Members, or until a successor is elected, or until such Manager's resignation, removal from office or death.

3.1.4 Management Authority. Unless the Members otherwise decide, the Manager's authority shall include all the rights and powers of management as provided by the Washington LLC Act and Washington State law, in order to do all things which, in the Manager's judgment, are necessary, proper or desirable as a means of carrying out the affairs of the Company; provided, however, that the authority of the Manager to expend funds without the approval of the Members shall not exceed the sum of \$2,500.00.

3.1.5 Restriction on Authority of Members. Unless the Members otherwise decide, no Member shall engage in the following business activities:

- (a) Borrowing. Borrow or lend money on behalf of the company or purchase any property on behalf of the Company;
- (b) Pledging. Assign, transfer, pledge, compromise or release any claim of the Company except for full payment, or arbitrate or consent to the arbitration of any of its disputes or controversies;
- (c) Lending of Company Name. Use the name, credit or property of the Company for any purpose; or
- (d) Acting Detrimentally. Do any act detrimental to the Company business or which would make it impossible to carry on that business.

3.2 Management Compensation. From time to time, members shall determine the compensation, if any, for the chosen Manager of the Company.

3.3 Procedures of Management When There Are Several Managers.

3.3.1 Manager Meetings. Regular or special meetings of the Managers may be held with or without notice at such time and at such place as they shall determine from time to time.

3.3.2 Quorum. When there is more than one Manager, all Managers must be present, in person or by proxy, to make a decision.

3.3.3 Voting Requirement. Management decisions, unless otherwise provided by the Formation and Operating Documents, shall be determined by a favorable vote of 80% of the Managers.

3.3.4 Action By Consent of Managers. Unless otherwise restricted by law, any action required or permitted to be taken at any meeting of the Managers may be taken without a meeting, if all Managers agree in writing.

3.3.5 Telephonic Meetings of Managers. Unless otherwise restricted by law, Managers may participate in any meeting by means of conference telephone or similar communication equipment, by means of which all persons participating in the meeting can communicate with one another, and such participation in a meeting shall constitute presence in person at the meeting.

3.3.6 Stalemate Resolution. In the event the vote on a Company issue cannot be decided pursuant to the voting requirements provided for in Article 2 because of a resulting stalemate caused by the counting of votes, then the resulting impasse shall be decided by the following process:

- (a) Members shall first vote on the question of postponing their decision until a date certain in an effort to create a cooling off period, but if this vote fails, then
- (b) The Members shall vote on the appointment of a third person whose vote on the stalemated issue or issues shall be deemed binding; provided, however, that the person selected agrees to the appointment.

3.3.7 Power of Attorney. The Members, by their execution hereof, jointly and severally, hereby make, constitute and appoint VERNON W. HARKINS as their true and lawful agent and attorney-in-fact, holding an irrevocable power of attorney as a result of the grant being coupled with an interest and which shall survive the incapacity of each Member, but may be revoked by a majority interest of the Members. If VERNON W. HARKINS is unable to act as attorney-in-fact, the Members appoint, in the following order but with priority to be given to the individual most available when needed, HAROLD T. DODGE, JR., DANIEL L. HANNULA, DANIEL R. KYLER, MICHAEL ROBINSON as Trustee of the MICHAEL AND SHAWN ROBINSON LIVING TRUST, JEFF C. JENSEN or FRANCIS GEISSLER to act as such agent.

This grant provides full power of substitution, in the Members' name, place and stead to make, execute, sign, acknowledge, swear by, record and file, on behalf of them and on behalf of the company:

- (a) all certificates and other instruments to permit the Company to become or to continue as a limited liability company;
- (b) all instruments that effect a change or modification to the Company in accordance with this Agreement;
- (c) all conveyances;
- (d) all necessary other instruments to effect the dissolution and termination of the Company;
- (e) all fictitious or assumed name certificates required or permitted to be filed on behalf of the Company; and
- (f) all other instruments which may be required or permitted by law to be filed on behalf of the Company.

#### ARTICLE 4

##### **MEMBERSHIP STATUS, VOTING RULES, GOOD FAITH OBLIGATION, AND REIMBURSEMENT POLICY**

4.1 Membership Status. No one, including spouses, shall be admitted as a Member without the favorable vote of the voting capital of the Company or obtaining admittance through compliance with the approval requirements of Article 8. Additionally, in either case, such person must agree in writing to be bound by all of the terms and conditions of the Formation and Operating Documents and all amendments thereto. Furthermore, when a Member, new or existing, acquires the Membership Interest of a withdrawing, deceased or bankrupt Member, then all outstanding unpaid obligations owed by the acquired Membership Interest shall be deemed to be obligations assumed by said Member.

The failure to comply with the provisions of this Article shall render null and void any claim to membership status.

4.2 Membership Meetings. Meetings of the Membership shall be held no less than quarterly at those times established by the Manager, a Majority Interest, or an individual Member. Notice of the time, place, and purpose for each meeting, unless waived, shall be given to each Member in writing at least ten (10) days early and, if the notice is mailed, then the third day following the date of mailing shall be deemed the effective date of the Notice.

Except as otherwise modified by this Agreement, the manner, the procedure for voting, and the rights of shareholders as provided by RCW 23B.07 et seq. shall apply as if Members were deemed akin to shareholders under the statute.

#### 4.3 Membership Voting.

4.3.1 In Person. Any vote of the Members may be taken at a meeting of Members called for such purpose.

4.3.2 Written Consent. Any vote of the Members may be taken, in lieu of a meeting, by written consent.

4.3.3 By Proxy. The interest of a Member may be voted in accord with Sections 4.3.1 and 4.3.2 by any person who has been given a written proxy, so long as the Members present are given an opportunity in advance of the vote taken to rule upon any question raised as to validity.

4.3.4 Telephonic Voting. Members may participate at any meeting by means of conference telephone or similar communication equipment, by means of which all persons participating in the meeting can communicate with one another, and such participation in a meeting shall constitute presence in person at the meeting.

4.4 Majority Approval. Until there is a change in this document, all voting shall be as provided for in Article 2; provided, however, a simple majority of the voting capital may reschedule a meeting under Section 4.5.2(c) when a meeting cannot be held due to the lack of a quorum.

#### 4.5 Vote Tally.

4.5.1 Weighted Interest. All votes taken by the Members shall be weighted in accordance with their percentage ownership of all voting capital among those who vote.

##### 4.5.2 Quorum.

- (a) Voting Interest Required. The presence in person, by proxy, or by telephonic communication of the persons entitled to vote 80% of the capital of the Company at any meeting constitutes a quorum for the transaction of business.
- (b) Loss of Quorum. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the loss of the quorum due to the early departures of some Members so long as approval for doing so is done pursuant to Article 2 before the quorum is lost, in person, by proxy, or by telephonic communication.



- (c) Adjournment for Lack of Quorum. In the absence of a quorum, any valid meeting of the Members may be rescheduled by the vote of a simple majority of the Members present, in person, by proxy, or by telephonic communication.

4.6 Good Faith of Members. The Members acknowledge they owe a fiduciary responsibility to the Company and agree to manage and control the affairs of the Company to the best of their ability, as well as to apply their personal time when appropriate and otherwise their best efforts in carrying out the purposes of the Company for the benefit of all of the Members.

4.7 Reimbursement Policy.

4.7.1 No Compensation. The Members shall not receive any compensation for performing their general duties under the Agreement; provided, however, that this provision shall not affect a Member's right to receive approved compensation for management responsibilities nor an entitlement share of distribution of Company funds as set forth in the Formation and Operating Documents, or to receive reimbursements as set forth in the following Section 4.7.2, or to receive approved compensation for work performed on behalf of the Company or receive other payments pursuant to contracts entered into as provided in Article 5.

4.7.2 Reimbursement of Expenses. Members shall be entitled to receive reimbursement of all approved amounts personally incurred with respect to a Company obligation.

## ARTICLE 5

### DISCLOSURE REQUIRED OF COMPANY CONTRACTS WITH MEMBERS

The Members may, on behalf of the Company, enter into contracts or other relationships with a Member or any other business entity with which a Member has some direct or indirect interest, provided there is disclosure to the other Members of the Member's interest, as well as the terms and conditions of the contract and other relationships which are relevant. The validity of any transaction, agreement or payment permitted by this provision or the Formation and Operating Documents shall not be affected by reason of the relationship between the Company and a Member or such other business entity in which a Member has a direct or indirect interest.

## ARTICLE 6

### RECORDS, ACCOUNTING AND TAX MATTERS

6.1 Records Maintained. The Members shall maintain records and books of account of the Company's business to include the following minimum information:



6.1.1 A List of Members. A current and past list (including disassociated Members), setting forth the full name and last known mailing address of each Member and Manager;

6.1.2 Certificate of Formation. A copy shall be retained along with all amendments thereto;

6.1.3 LLC Operating Agreement. A copy shall be retained with all amendments thereto, along with a copy of any prior agreements no longer in effect;

6.1.4 Detailed Statement of Contributions and Rights to Distributions. Unless contained in the Certificate of Formation or Limited Liability Company Operating Agreement, the Company shall have a written statement of:

- (a) The amount of cash and a description of the agreed value of the other property or services contributed by each Member (including that Member's predecessors in interest), and which each Member has agreed to contribute;
- (b) The times at which an event on the happening of which any additional contributions agreed to be made by each Member are to be made; and
- (c) Any right of any Member to receive distributions which include a return of all or any part of the Member's contribution.

6.1.5 Tax Returns. A copy of the limited liability company's federal, state and local tax returns and reports, if any, for the three most recent years shall be retained; and

6.1.6 Financial Records. Copies of any financial statements of the limited liability company for the three most recent years shall be retained; and

6.1.7 Member Access. A complete copy of the records shall be maintained at the Company's principal place of business, and each Member or the duly authorized representative of a Member or the estate of a Member shall have access to them, upon reasonable notice and for a proper purpose, at all reasonable times during the business hours.

6.2 Accrual Basis of Accounting Election. Books and records of the Company shall be kept on the accrual basis of accounting, which shall be the method of accounting followed by the Company for federal income tax purposes.

6.3 Tax Information for Members. Within ninety (90) days after the end of each fiscal year, the Members shall cause to be delivered to each Person who was a Member or held a Distributional Interest at any time during such fiscal year all information necessary to prepare the applicable schedules of such Person's federal income tax returns relating to the Company,

including a statement showing such Person's share of income, gain or loss, deductions and credits for such a year for federal income tax purposes, and the amount of any distribution made to or for the account of such Person pursuant to this Agreement during the applicable tax year.

6.4 Bank Accounts for Company Funds. The funds of the Company shall be deposited in a bank account or accounts, or invested in interest-bearing or non-interest-bearing investments, including, without limitation, checking and savings accounts, certificates of deposit and time or demand deposits as a vote of all voting capital shall decide. Such funds shall not be commingled with funds of any other Person. Withdrawals therefrom shall be made upon such signatures as a vote of all voting capital of the Company shall designate.

6.5 Tax Elections and Accounting Decisions. All decisions as to tax elections and accounting principles, except when specifically provided to the contrary in Article 2 or by the Act, shall be made by the vote of all voting capital of the Company.

6.6 Designation of Tax Matters Partner. The Manager or one Member selected by the Members if there is no Manager, shall serve as the tax matters partner for purposes of negotiations or discussion of tax matters with the Internal Revenue Service and continue to hold this responsibility until a replacement is designated by the Members.

## ARTICLE 7

### **CAPITAL ACCOUNTS, PROFITS, LOSSES AND ADDITIONAL FUNDS PAID IN BY MEMBERS**

7.1 Capital Accounts. An individual capital account shall be established and maintained for each Member and shall be credited with the Member's paid capital contribution amount. A Member shall not be entitled to interest on the capital contribution, or to withdraw any part of the capital account, or to receive any distribution from the Company, except as specifically provided herein or by law.

#### 7.2 Allocation of Profits or Loss; Cash Flow.

7.2.1 Profits and Losses. The net profits and the net losses of the Company shall be shared by the Members in accordance with their respective proportionate capital interest in the Company. The terms "net profits" and "net losses" shall mean, for each fiscal year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with the Internal Revenue Code of 1986 (the "Code"), as amended, with the goal that the Company is treated for tax purposes as a partnership under the Code.

7.2.2 Limitation on Allocations of Net Loss. The Net Loss allocated to each Member for any Company fiscal year shall not exceed the maximum amount of Net Loss that can be so allocated without causing such Member to have a Deficit Capital Account at the end of the fiscal year. A Net Loss in excess of the limitations set forth herein shall be allocated to the other Members who do not have a Deficit Capital Account proportionately and according to their respective Percentage Interests.

7.2.3 Cash Flow. The Company's "cash flow", for each fiscal year or other period, shall be equal to the net profits or net losses of the Company for such year or period, plus:

- (a) Depreciation and other non-cash charges deducted in determining such net profits or net losses;
- (b) The net cash proceeds resulting from any refinancing of Company property or the sale of any Company property received during such year or period,  
  
and minus;
- (c) Principal payments made during such year or period on Company loans;
- (d) Any other cash expenditures made during such year or period which have not been deducted in determining the net profits or net losses of the Company for such year or period; and
- (e) Any amount determined by the Members to be required to maintain sufficient working capital and/or a reserve for repairs and/or replacements.

For each fiscal year, the Company's cash flow shall be determined and, as so determined, shall be distributed to the Members as often as determined by the Manager or Managers, but not less often than annually in accordance with their respective proportionate capital interest in the Company.

7.3 Circumstances When Members Must Provide Additional Funds (Capital or Loans).

7.3.1 Circumstances Necessitating Additional Member Contributions. The Members acknowledge that the percentage of income produced by the Company may be insufficient to pay all of the Company's share of the costs of operations, including within the meaning of the term "cost of operations" (and without limiting the generality of said term) all real estate taxes, assessments and other governmental charges, insurance premiums, costs of repair and maintenance, cost of improvements and the principal and interest payments required to be made of the Company loans.

7.3.2 Manager Call for Funds. If, in the judgment of the Manager, additional funds are required to operate the Company, such additional funds shall be contributed by the Members in proportion to their capital ownership interest in the Company. Such contributions shall be made within thirty (30) days from receipt of notice of the amount required, and these

shall be treated as additional capital contributions or loans, as determined by a favorable vote of all voting capital.

## ARTICLE 8

### RESTRICTIONS ON OWNERSHIP TRANSFERS

8.1 General Mandate Restricting Transfers. Unless a Member complies with the terms of the Formation and Operating Documents, no such Member, nor any duly authorized attorney in fact, shall have authority to make a valid transfer of all or any portion of a Membership Interest.

8.2 Treatment of Unapproved Transfers. Notwithstanding anything to the contrary in the Formation and Operating Documents, if there is any unapproved transfer of a Membership Interest prior to death, including the unapproved transfer (court ordered or otherwise) of a Member's interest to a spouse or if transferred to the control of a trustee of a family trust who is not a Member, said transfer shall be void and ineffective. The recipient of the unapproved transfer shall have no more than a Distributional Interest without any right of participation in the management of the business and affairs of the Company, or to become a Member unless approved in accord with Section 8.6.2, or to claim ownership of a Membership Interest, and if there is a dispute on this issue, the Company shall purchase from such person or entity, and such person or entity shall sell to the Company for a purchase price of One Hundred Dollars (\$100.00), all such rights and interest claimed by such person or entity which immediately prior to such transfer were associated with the transferring Member's Membership Interest, except that in the case of a court ordered transfer, there will be a purchase of the established Distributional Interest under Section 8.6 as if the Membership Interest involved was that of a deceased Member.

8.3 Membership Interest Cannot Be Used as Collateral. A payee, including a former Member, owed an amount as a result of an expulsion or the approved transfer of a Membership Interest, may not use any portion of the Membership Interest as collateral to secure payment of any amount owed. Such attempt to use a Membership Interest as collateral shall have no legal effect as security.

#### 8.4 Expulsion and Mandatory Ownership Transfer.

8.4.1 Expulsion for Payment Default of Capital. A Member may be expelled pursuant to the procedures of Section 8.4.3 for failing to pay the initial or any other capital contribution required by this Agreement.

8.4.2 Expulsion Allowed for Other Reasons. In the event a fully paid in Member becomes the subject of a receivership or bankruptcy, becomes insane or incompetent, commits an act of fraud against the Company, intentionally seeks to avoid requirements of a transfer, or breaches a fiduciary duty owed to the Company that causes a financial loss, then such Member's entire Membership Interest shall be purchased pursuant to the procedures of Section 8.4.3.

#### 8.4.3 Mandatory Purchase Procedure with Regard to an Expulsion.

- (a) A written notice of expulsion shall be issued to the Member being expelled upon an approval vote of the voting capital, but excluding the interest of the Member being voted upon.
- (b) The expulsion shall become effective on the thirtieth (30<sup>th</sup>) day after the notice of expulsion is issued, unless a payment cure is first made to rectify an expulsion voted upon pursuant to Section 8.4.1 or the expulsion is enjoined by litigation, in which latter event the effectiveness of the expulsion shall be determined by a court or arbitration order.
- (c) Upon the issuance of a written notice of expulsion, the Member voted for expulsion shall at that instance cease having any further rights to vote or participate in decisions of the Company, unless later modified under Section 8.4(b).
- (d) The effective date of expulsion shall obligate the remaining Members from the Membership Group an expelled Member was part of to purchase the entire expelled Member's Distributional Interest on a pro rata basis by Members within group or on what other basis those Members shall decide or, if the expelled Member's group defaults in its obligation to purchase, a purchase shall then be allowed outside of the Membership Group in accordance with Section 8.9
- (e) The purchase of an expelled Member's capital interest shall be paid in accordance with Section 8.10.

#### 8.5 Lifetime Voluntary Ownership Transfer.

8.5.1 Requirement of First Offer. A Member may make a Voluntary Transfer of all or any percentage of such Member's interest in the Company only if the transferring Member shall have first offered to make a Voluntary transfer of such interest to the non-transferring Members of the group to which the Member is part of or, if the non-transferring Members of his or her group decline, then to the non-transferring Members of the group to which he or she did not belong, but in all events, the procedure followed shall be those of this Section 8.5 and Section 8.7.

8.5.2 Notice. The transferring Member shall notify the respective non-transferring Members of each of the two groups of the terms and conditions of any offer of a

Voluntary Transfer of an interest in the Company (hereafter, "Notice of Offer"), which Notice of Offer shall state:

- (a) the percentage interest or ownership units in the Company to be transferred;
- (b) the complete terms and conditions of the offer or the same terms and conditions as those contained in any offer, acceptable to the transferring Member, made by any prospective transferee (if any);
- (c) the name, address, occupation, and basis of prospective transferee's compliance with the requirement of Section 1.2.6 (and any affiliates or controlling persons of the transferee, if known); and
- (d) any financial and other information concerning any prospective transferee that is reasonably requested by a Member in determining his or her acceptability as a Member.

8.5.3 Choices Available to Non-Transferring Members. the non-transferring Members within a Membership Group may in turn, in accordance with Section 8.5.1, and solely in their discretion either:

- (a) elect to purchase the transferring Member's interest in the Company at the price determined in accordance with Section 8.8.1 and make use of the procedure in Section 8.7; or
- (b) elect to purchase the transferring Member's interest in the Company as presented in the Notice of Offer at the same price, and upon the same terms and conditions and making use of the procedure in Section 8.7; or
- (c) elect not to purchase the transferring Member's interest in the Company and thereby assign the same decision process to the non-transferring Members of the Membership Group to which the transferring Member does not belong or if this step has been completed and no non-transferring Members of either Membership Group decide to purchase, then the transferring Member may continue forward and sell to an otherwise qualified outside person by following the procedures in Sections 8.5.4 and 8.7 and the sales terms announced in the Notice of Offer.

8.5.4 Further Conditions of Ownership Transfer to Outsiders. If the non-transferring Members of the two Membership Groups do not elect to purchase the Membership

Interest in the Company described in the Notice of Offer in Section 8.5.2, the transferring Member shall have the right to sell all, but no less than all, of the Membership Interest in the Company described in the Notice of Offer to any other qualified person for the purchase price and upon the payment terms and other terms and conditions stated in the Notice of Offer at any time within one hundred twenty (120) days after the expiration of the last of the time periods specified in Section 8.7. If the purchase is not closed within that time, then the transferring Member's right to make the Voluntary Transfer of his or her interest in the Company shall lapse.

#### 8.6 Ownership Transfer After Member's Death or Dissolution.

8.5.1 Offer of Member's Interest. In the event of death or dissolution of a Member, it shall be deemed that a Notice of Offer has on the date of the event been issued by the estate of the deceased Member, the trustee(s) of a deceased Member's living trust, or the owners of the dissolved Member for the purpose of initiating a procedure for all of the deceased Member's Distributional Interest in the Company to be acquired by the surviving Members. The time periods described in Section 8.7 shall commence upon either the date of death or the date of dissolution of the Member, whichever is appropriate under the circumstances. The purchase price shall be in accordance with Section 8.9; the payment terms shall be as provided in Section 8.10; and the responsibility for purchasing their interest shall be in accordance with the choices available to non-transferring Members as provided for in Section 8.5.3.

8.6.2 Prohibition on Estate Transfers to Heirs. No Member may by Will or living trust, transfer his or her ownership interest to an heir. All such transfers are prohibited, even if the heir is otherwise qualified under Section 1.2.6, unless the heir first receives the unanimous vote of approval by the voting capital. However, at the time of a Member's death and during the time pending sale, the entity holding the deceased Member's interest whether it be a Will, living trust, or an heir, will be allowed only the benefits of a Distributional Interest as defined in Section 1.2.3.

8.6.3 Conditions Mandating Either Purchase or Company Liquidation. If no purchase of the ownership interest of a deceased Member occurs as a result of the procedures provided for in Section 8.6.1, then the surviving Members shall be deemed to have unanimously voted to liquidate the Company, and such liquidation shall occur in accordance with the provisions of Section 8.6.1.

8.6.4 Contingent Company Liquidation. In the event the Company is to be liquidated under the mandate described in the preceding paragraph, the Company's Members shall cause all actions necessary to approve a liquidation and dissolution of the Company at least 30 days prior to the first year anniversary of the deceased Member's death. If the Company and its Members fail to comply with this requirement, then the lawful representative or representatives of the estate of the deceased Member shall have the right to enforce the liquidation by legal proceedings in the Superior Court of Pierce County for the State of Washington.

8.7 Notice of Offer, Acceptance. Subject to the purchasing prior of an ownership interest being offered first to the Membership Group in which the offering Membership Interest

was assigned, any Member receiving a Notice of Offer shall promptly notify all Members of the first priority group, and as a courtesy all other Members, of the Notice of Offer, and the offeree Members in the first priority Membership Group shall then decide whether to accept the offer and become thereby subscribers of a pro rata share of the Membership Interest being sold as calculated on the basis of all membership voting capital within their group, or a subscriber to such greater proportionate amount derived from a similar calculation that is instead based upon the membership voting capital as adjusted to take into account those subscribing to purchase more than the minimum amount; provided, however, that a purchase of more than a minimum amount shall first require the other Members of the group to waive their individual right of purchase. Any Member of a priority group may elect both of these purchase options. Furthermore, any Member who fails to subscribe within thirty (30) days of the date the Notice of Offer is issued, shall be deemed to have waived the right to purchase.

If, after thirty (30) days, the non-transferring Members of the first priority group have subscribed to purchase all of the Membership Interest offered pursuant to the Notice of Offer, a closing date for the sale and purchase of said shares shall be set for no later than ninety (90) days after the Notice of Offer was issued. However, if those subscribing Members fail to close within ninety (90) days, or if subscriptions were less than the number necessary to purchase the entire Membership Interest identified in the Notice of Offer, then the second Membership Group shall follow that same procedure stated herein to give effect to their opportunity to purchase, but if all non-transferring Members of the second group similarly become deemed to have waived their right to purchase, then said Membership Interest may be transferred to a qualified outside in accordance with the provisions of Section 8.5.4.

#### 8.8 Purchase Price.

8.8.1 Voluntary Transfer. The purchase price to Members for a Membership Interest acquired through a voluntary transfer shall be decided by a simple majority of the voting capital held by the purchasing Members of the respective Membership Group, who shall choose either:

- (a) the purchase price stated in the Notice of Offer, or
- (b) the Company Price.

If the purchasing Members fail to agree, then the purchase price shall be the lowest purchase price, or if both are the same, then whichever option is deemed more favorable to the purchasers.

8.8.2 Other Transfers. The purchase price to Members for the Membership Interest acquired as a result of expulsion or death shall be the Company Price.

#### 8.9 Company Price. The Company Price shall be determined as follows:

The Company Price for purposes of the Agreement shall as of this date and for a period of five (5) years thereafter be a Member's proportionate percentage of an amount derived by



multiplying 80% times 100% of the value of the buildings and properties described in Article 2 of the Certificate of Formation, an amount initially established at \$670,000.00. Then for the years 6-10 from the date of this Agreement, the multiplier shall increase to 87.5% and for all years thereafter it shall increase to and remain at 95%.

Commencing at the end of the fiscal year ending December 31, 2005 and each year thereafter, the Members shall, within ninety (90) days following the end of each year, approve a redetermination of the Company Price by taking a vote of the voting capital to re-establish a value amount of the buildings and other assets owned by the Company. If the Members fail to re-establish value in a particular year, then the Company Price shall be established as follows:

- (a) For two consecutive years after the failure to approve a redetermined price, the price shall be the past and most recently approved price.
- (b) If no price redetermination occurs for two consecutive years, then the price shall be the past and most recently approved price, plus five percent (5%) compounded growth for each year that has passed without the price being redetermined.
- (c) During the time allowed for price redetermination, or at any time after the lapse of two consecutive years since redetermining the price, a Member(s) may request in writing that the Company Price be established by a binding appraisal prepared by one appraiser, whose selection shall be determined as follows:

By unanimous agreement, the Members may select an appraiser. Otherwise, the Member(s) who has requested an appraisal shall select an appraiser and a second appraiser shall be selected by majority vote of the remaining Members. Then following qualification criteria established by a majority vote of the voting capital of the Company, the two appraisers shall select a third appraiser, who shall be hired by the Company Price to determine the Company Price. Once the Company Price has been determined, it shall be binding as though this redetermination of the price had been timely approved by the Members pursuant to this section 8.9.

**8.10 Payment of Purchase Price.** In the event of the purchase of a Member's interest in the Company pursuant to Section 8.4 (Involuntary Expulsion Transfer), Section 8.5 (Voluntary Transfer), Section 8.6 (Death or Dissolution of Member), the purchase price shall be paid as follows: ten percent (10%) or more, shall be paid in cash as a down payment; the balance shall be paid in equal monthly payments, including interest, amortized over a period of ten (10) years; provided, however, that the amortization period for a member owning an interest of ten percent (10%) or less shall be five (5) years. Interest shall be paid on the declining balance at a rate equal to the stated prime of Columbia Bank (or a comparable bank's prime if no longer published), adjusted annually, on the annual anniversary date of the closing of such purchase; provided, however, that if the purchase price selected is the same as in the Notice of Offer, then

the payment terms shall also be those set forth in the Notice of Offer, unless no terms of payment are stated.

8.11 Continuation of Company Business. If the interest of a Member is purchased in accordance with Article 8, then the Company's business shall not terminate but shall continue.

## ARTICLE 9

### TERMINATION AND DISTRIBUTION

#### 9.1 Termination and Distribution.

9.1.1 Winding Up; Priorities. Upon termination of the Company, the affairs of the Company shall be wound up and all of its debts and liabilities discharged in the order of priority as provided by law. The fair market value of the respective remaining assets of the Company shall then be determined, with the fair market value of any assets other than cash being determined by an independent appraiser selected by a Majority Interest of the Members. Thereupon, the assets of the Company (including without limitation those which consist of an obligation of a Member to the Company as represented by a debit balance in the Member's Capital Account kept for income tax purposes) shall be distributed to the Members in the following order of priority:

- (a) to creditors, including Members who are creditors to the extent otherwise permitted by law, in satisfaction of the liabilities of the Company;
- (b) to the Members, the respective balances in their Capital Accounts as provided for in Article 7.

To the extent that the distribution to any Member is insufficient to eliminate a deficit Capital Account balance (as determined for income tax purposes), such Member shall pay to the Company an amount equal to such deficit Capital Account balance.

9.1.2 Cash and In Kind Distributions. Each Member shall receive that Member's share of the assets in cash or in kind, and the proportion of such share that is received in cash may vary from Member to Member, all as the Members in their sole discretion may decide. If all the Members cannot agree as to each Member's share of cash or property, then a Majority Interest of Members shall decide upon a reasonable basis for allocating the share of cash and in kind property that each Member is to receive. Any assets distributed in kind shall be subject to all operating agreements or other agreements relating thereto which shall survive the termination of the Company. Any property distributed in kind shall be valued and treated as though the property were sold and the cash proceeds were distributed. The difference between the value of the property and its book value on the Company books shall be treated as Net Profit or Net Loss and shall be credited or charged to the Members as provided in Article 7.

9.1.3 Power and Authority to Wind Up Company Affairs. The winding up of the affairs of the Company and the distribution of its assets shall be conducted exclusively by the Members who are hereby authorized to do all acts authorized by law for these purposes. Without limiting the generality of the foregoing, the Members, in carrying out such winding up and distribution, shall have full power and authority to sell all or any of the Company assets.

## ARTICLE 10

### MISCELLANEOUS

10.1 Entire Agreement. This Agreement, together with the Certificate of Formation, constitute the Company's Formation and Operating Documents, and represent the entire agreement of the parties for the formation and management of the Company, and may not be modified or amended other than pursuant to Section 1.4 of this Agreement.

10.2 Company Legal Representation. This Amended Agreement was prepared by Daniel R. Kyler of Rush, Hannula, Harkins & Kyler, LLP at the request of the Members within both Groups A and B. Each Member acknowledges having reviewed this Agreement with a personal attorney and the free and voluntary entry into this Agreement.

10.3 No Personal Liability for Failing to Follow Formalities. A failure to observe any formalities or requirements of the Company's Formation and Operating Documents shall not be grounds for imposing personal liability on any Member or Manager for liabilities of the Company.

10.4 No Partnership Entity Intended. The Initial Members have formed the Company under the Act and expressly do not intend hereby to form a partnership under either the Washington Uniform Partnership Act or the Washington Uniform Limited Partnership Act or a corporation under the Washington Business Corporation Act. The Members do not intend to be partners one to another, or parties as to any third party. To the extent any Member, by words or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who incurs personal liability by reason of such wrongful representation.

10.5 Third Party Beneficiaries. The provisions of this Agreement are intended solely for the benefit of the parties hereto and shall create no rights or obligations enforceable by any third party, including any creditor of the Company, except as otherwise provided by this LLC Agreement and applicable law.

10.6 Rights Are Cumulative. The rights and remedies provided by the Formation and Operating Documents are cumulative. The use of any one right or remedy shall not preclude or waive the right to use any or all other remedies, and are given in addition to any other rights the parties hereto may have by law, statute, ordinance or otherwise.

10.7 Notices. Any Notice, offer, consent or other communication required or permitted to be given or made hereunder shall be in writing and shall be deemed to have been

sufficiently given or made when delivered personally to the party (or an officer of the party) to whom the same is directed, or (except in the event of a mail strike) three (3) days after being mailed by first-class mail, postage prepaid, if to the Company, to the principal place of business, or if to a Member, to the address set forth on **Exhibit A**. Every Member shall be required to notify the Company of address changes which shall then become effective in the tenth (10<sup>th</sup>) day after such Notice is given.

10.8 Waiver of Partition. Each Member hereby irrevocably waives during the existence of the Company any right that such Member shall have to maintain any action for partition with respect of any Company property.

10.9 Governing Law, Successors, Severability. The Agreement shall be governed by the laws of the State of Washington as such laws are applied by Washington courts to agreements entered into and to be performed in Washington by and between residents of Washington, and shall subject to the restrictions on transferability set forth herein, bind and inure to the benefit of the heirs, personal representatives, successors and permitted assigns of the parties hereto. If any provision of the Agreement shall be held to be invalid, the remainder of the Agreement shall not be affected thereby.

10.10 Headings, etc. The headings in the Agreement are inserted by convenience of reference only and shall not affect interpretation of this Agreement. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, the pronouns stated in either the masculine or the neuter gender shall include the masculine, the feminine and the neuter.

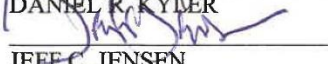
10.11 No Waiver. The failure of any Member to seek redress for violation, or to insist on strict performance, of any covenant or condition of this Agreement shall not prevent a subsequent act which would have constituted a violation from having the effect of an original violation.

10.12 Other Business Ventures. Any Member, or any shareholder, director, Member, employee, Affiliate or other Person holding a legal or beneficial interest in any entity which is a Member, may engage in or possess an interest in other business ventures (including ventures in competition with the Company) of every nature and description, independently or with others.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

  
VERNON W. HARKINS

  
DANIEL R. KYLER

  
JEFF C. JENSEN

  
DANIEL L. HANNULA

  
HAROLD T. DODGE, JR.

  
FRANCIS GEISSLER

MICHAEL ROBINSON, Trustee of the MICHAEL  
AND SHAWN ROBINSON LIVING TRUST DATED FEBRUARY 11, 1999



sufficiently given or made when delivered personally to the party (or an officer of the party) to whom the same is directed, or (except in the event of a mail strike) three (3) days after being mailed by first-class mail, postage prepaid, if to the Company, to the principal place of business, or if to a Member, to the address set forth on **Exhibit A**. Every Member shall be required to notify the Company of address changes which shall then become effective in the tenth (10<sup>th</sup>) day after such Notice is given.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

\_\_\_\_\_  
VERNON W. HARKINS

\_\_\_\_\_  
DANIEL L. HANNULA

\_\_\_\_\_  
DANIEL R. KYLER

\_\_\_\_\_  
HAROLD T. DODGE, JR.

\_\_\_\_\_  
JEFF C. JENSEN

\_\_\_\_\_  
FRANCIS GEISSLER

\_\_\_\_\_  
MICHAEL ROBINSON, Trustee of the MICHAEL  
AND SHAWN ROBINSON LIVING TRUST DATED FEBRUARY 11, 1999

STATE OF WASHINGTON )  
 )ss  
COUNTY OF PIERCE )

On this day personally appeared before me VERNON W. HARKINS to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 21 day of January, 2019.



Maria L. Steppan  
Print Name: MARIA L. Steppan  
NOTARY PUBLIC in and for the State of  
Washington, residing at Edgewood.  
My Commission expires: 1-10-22

STATE OF WASHINGTON )  
 )ss  
COUNTY OF PIERCE )

On this day personally appeared before me DANIEL L. HANNULA to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 21 day of January, 2019.

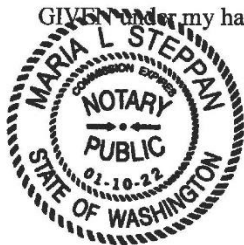


Maria L. Steppan  
Print Name: MARIA L. Steppan  
NOTARY PUBLIC in and for the State of  
Washington, residing at Edgewood.  
My Commission expires: 1-10-22

STATE OF WASHINGTON )  
 )ss  
COUNTY OF PIERCE )

On this day personally appeared before me DANIEL R. KYLER to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 21 day of January, 2019.



Maria L. Steppan  
Print Name: MARIA L. Steppan  
NOTARY PUBLIC in and for the State of  
Washington, residing at Edgewood.  
My Commission expires: 1-10-22

STATE OF WASHINGTON )  
 )ss  
COUNTY OF PIERCE )

On this day personally appeared before me HAROLD T. DODGE, JR. to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 25 day of Jan, 2019.

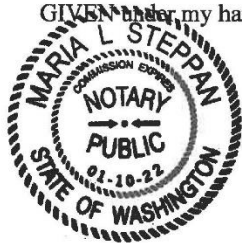


Maria L. Steppan  
Print Name: MARIA L. Steppan  
NOTARY PUBLIC in and for the State of  
Washington, residing at Edgewood.  
My Commission expires: 1-10-22

STATE OF WASHINGTON )  
 )ss  
COUNTY OF PIERCE )

On this day personally appeared before me JEFF C. JENSEN to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 21 day of January, 2019.



Maria L. Steppan  
Print Name: MARIA L. Steppan  
NOTARY PUBLIC in and for the State of  
Washington, residing at Edgewood.  
My Commission expires: 1-10-22

STATE OF WASHINGTON )  
 )ss  
COUNTY OF PIERCE )

On this day personally appeared before me FRANCIS GEISSLER to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 24 day of Jan, 2019.



Maria L. Steppan  
Print Name: MARIA L. Steppan  
NOTARY PUBLIC in and for the State of  
Washington, residing at Edgewood.  
My Commission expires: 1-10-22

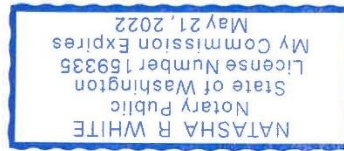


STATE OF WASHINGTON )  
 )ss  
COUNTY OF PIERCE )

On this day personally appeared before me MICHAEL ROBINSON, Trustee of the MICHAEL AND SHAWN ROBINSON LIVING TRUST Dated February 11, 1999, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 21<sup>st</sup> day of January, 2019.

Print Name: Natasha R. White  
NOTARY PUBLIC in and for the State of  
Washington, residing at Tacoma.  
My Commission expires: 5-21-22



**CONSENT OF SPOUSES**

The undersigned, being the spouses of the above Members, have read the above Agreement, understand the terms and conditions thereof, and hereby consent to and agree to the terms and conditions to the Agreement insofar as they may affect the undersigned spouse's community property rights, if any, in the property being conveyed herein.

\_\_\_\_\_  
KATHLEEN HARKINS

\_\_\_\_\_  
MARGARET HANNULA

\_\_\_\_\_  
DEBORAHANN KYLER

*Shawn Robinson*  
\_\_\_\_\_  
SHAWN ROBINSON, Co-Trustee of The  
Michael and Shawn Robinson Living Trust  
Dated February 11, 1999

\_\_\_\_\_  
MARGARET DODGE

*Alberta L. Cochrane*  
\_\_\_\_\_  
ALBERTA L. COCHRANE

**CONSENT OF SPOUSES**

The undersigned, being the spouses of the above Members, have read the above Agreement, understand the terms and conditions thereof, and hereby consent to and agree to the terms and conditions to the Agreement insofar as they may affect the undersigned spouse's community property rights, if any, in the property being conveyed herein.

  
KATHLEEN HARKINS

  
MARGARET HANNULA

  
DEBORAH ANN KYLER

SHAWN ROBINSON, Co-Trustee of The  
Michael and Shawn Robinson Living Trust  
Dated February 11, 1999

  
MARGARET DODGE

  
ALBERTA L. COCHRANE

**EXHIBIT A**

Membership in the Company owned property and business as described in Article 2 of the Certificate of Formation.

<u>Name and Address</u>	<u>Date</u>	<u>ICC</u>	<u>Percentage Interest</u>	<u>Group Designation</u>
Vernon W. Harkins 976 Altadena Drive Fircrest, WA 98466			15.33	A
Daniel L. Hannula 1334 Coral Drive Tacoma, WA 98466			15.33	A
Daniel R. Kyler P.O. Box 984 13245 Barner Road SE Olalla, WA 98359			15.33	A
Harold T. Dodge, Jr. 3706 No. 30 <sup>th</sup> Street Tacoma, WA 98407			8.6747	A
Michael and Shawn Robinson Living Trust Dated February 11, 1999 4404 – 76 <sup>th</sup> Ave. Ct. NW Gig Harbor, WA 98335			15.33	B
Jeff C. Jensen 7525 28 <sup>th</sup> St. W. University Place, WA 98466			15.33	B
Francis Geissler 2236 66 <sup>th</sup> Ave. NW Olympia, WA 98502			15.33	B

**PURCHASE AND SALE AGREEMENT OF  
NORTH MULLEN, L.L.C. MEMBER INTEREST**

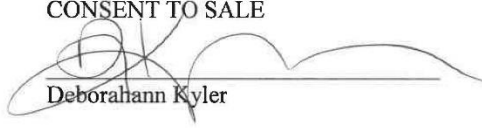
THIS AGREEMENT is entered into this 21<sup>st</sup> day of January, 2019, by and between DANIEL R. KYLER (Seller) and FRANCIS GEISSLER (Purchaser) for the purchase and sale of 1.066% interest of Seller in the North Mullen, L.L.C. entity. This Purchase and Sale Agreement is made pursuant to Article 8 of the Limited Liability Company Operating Agreement of North Mullen, L.L.C. and pursuant to the unanimous agreement of the Members to redistribute and equalize the Member Interest between Purchaser FRANCIS GEISSLER and the other LLC Members. The resulting sale reflected herein and by each of the other LLC Members will result in equalization of Member Interest, to the interest of 15.33% each. HAROLD T. DODGE, JR. shall retain his interest of 8.02%.

Attached hereto as **Exhibit A** is Exhibit A to the Amended Limited Liability Company Operating Agreement of North Mullen, L.L.C. reflecting the respective interests in the L.L.C. by the Membership after the subject sale herein. Attached hereto as **Exhibit B**, incorporated herein by reference as though fully set forth herein is a true and correct copy of the Bill of Sale between Seller and Purchaser herein. The purchase price of the interest sold by Seller herein has been agreed upon between the parties with the unanimous consent of the Membership pursuant to Article 8 of \$31,980.00 which figure represents the percentage of interest sold based on the agreed equity value in the North Mullen, L.L.C.

DATED this 21<sup>st</sup> day of January, 2019.

  
DANIEL R. KYLER

CONSENT TO SALE

  
Deborahann Kyler

  
FRANCIS GEISSLER

STATE OF WASHINGTON )  
 )ss  
COUNTY OF PIERCE )

On this day personally appeared before me DANIEL R. KYLER to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 21 day of January, 2019.



Maria L. Steppan  
Print Name: MARIA L. STEPPAN  
NOTARY PUBLIC in and for the State of  
Washington, residing at Edgewood.  
My Commission expires: 1-10-22

STATE OF WASHINGTON )  
 )ss  
COUNTY OF PIERCE )

On this day personally appeared before me FRANCIS GEISSLER to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 24 day of Jan, 2019.



Maria L. Steppan  
Print Name: MARIA L. STEPPAN  
NOTARY PUBLIC in and for the State of  
Washington, residing at Edgewood.  
My Commission expires: 1-10-22

## **EXHIBIT A**

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Membership in the Company owned property and business as described in Article 2 of the Certificate of Formation.

<u>Name and Address</u>	<u>Date</u>	<u>ICC</u>	<u>Percentage Interest</u>	<u>Group Designation</u>
Vernon W. Harkins 976 Altadena Drive Fircrest, WA 98466			15.33	A
Daniel L. Hannula 1334 Coral Drive Tacoma, WA 98466			15.33	A
Daniel R. Kyler P.O. Box 984 13245 Banner Road SE Olalla, WA 98359			15.33	A
Harold T. Dodge, Jr. 3706 No. 30 <sup>th</sup> Street Tacoma, WA 98407			8.6747	A
Michael and Shawn Robinson Living Trust Dated February 11, 1999 4404 – 76 <sup>th</sup> Ave. Ct. NW Gig Harbor, WA 98335			15.33	B
Jeff C. Jensen 7525 28 <sup>th</sup> St. W. University Place, WA 98466			15.33	B
Francis Geissler 2236 66 <sup>th</sup> Ave. NW Olympia, WA 98502			15.33	B



## **EXHIBIT B**

**BILL OF SALE FOR**  
**NORTH MULLEN, L.L.C. EQUITY UNIT INTEREST**

Pursuant to the Purchase and Sale Agreement between the undersigned and FRANCIS GEISSLER, dated January 21<sup>st</sup>, 2019, the undersigned hereby sells and transfers to FRANCIS GEISSLER, 1.066% of the Member Interest held by the undersigned in North Mullen, L.L.C. to equalize the ownership interests of the Members, exclusive of Harold T. Dodge, Jr., to 15.33%.

DATED this 21<sup>st</sup> day of January, 2019

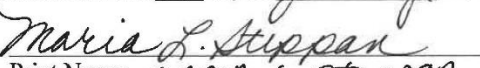
  
DANIEL R. KYLER

STATE OF WASHINGTON )  
                                  )ss  
COUNTY OF PIERCE     )

On this day personally appeared before me DANIEL R. KYLER to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 21 day of January, 2019.



  
Print Name: MARIA L. STEPPAN  
NOTARY PUBLIC in and for the State of  
Washington, residing at Edgewood.  
My Commission expires: 1-10-22

# Exhibit 12

## Medical Director

## MEDICAL DIRECTOR

### 6.1 QUALIFICATIONS

The Governing Board shall select and appoint an individual to be designated and qualified to serve as the Medical Director of the facility. The physician appointed by Governing Board will be a member of the active staff of NESC in good standing. The Medical Director should have an interest in ambulatory surgical care and the time to commit to the ongoing responsibilities of the position.

### 6.2 DUTIES

The Medical Director shall review all applications for privileges on the medical staff and make recommendations for granting or privileges for NESC. be responsible for the overall day to day operation of the facility under the philosophy established by the Governing Board. The Medical Director shall see to the preparation of up-to-date Policy and Procedure Manuals within the applicable local, regional, city, state and federal laws and regulations for use by all personnel in the facility. The Medical Director shall see to the preparation of position descriptions defining authority and relationships of all employees and recommend to the Governing Board compensation rates, benefits, and personnel policies for all facility agents or employees. The Medical Director shall see to the appropriate collection and disbursement of all physical and financial assets of the facility per its policies. He shall designate a person to be in charge of the facility in his absence who shall be knowledgeable of his functions. The Medical Director shall perform other appropriate duties that are assigned by the Governing Board.

# Exhibit 13

## Transfer Agreement

## TRANSFER AGREEMENTS

### POLICY:

Narrows Eye Surgery Center will request the transfer of any patient that is in need of emergent care in a safe and timely manner. See written Patient Transfer Agreement with Multicare in Patient Transfer file.

### PROCEDURE:

The surgeons that practice at Narrows Eye Surgery Center have privileges at Allenmore Hospital in Tacoma. In case of a life-threatening emergency, the closest hospital is Allenmore.

If there should be a non-life-threatening emergency where one of our patients should require medical assistance, our facility has a written agreement with Allenmore.

## EMERGENCY PHONE LIST

911

Allenmore Hospital	253-459-6633
Patient Admit Line	253-459-6544
AMR Ambulance Service	253-272-5899

**MULTICARE HEALTH SYSTEM  
PATIENT TRANSFER AGREEMENT**

This Patient Transfer Agreement ("Agreement") is made by and between MultiCare Health System ("MHS"), a nonprofit corporation formed under the laws of the State of Washington and Eye M.D.S of Puget Sound, PLLC d/b/a Eye M.D.S of Puget Sound ("Facility"), a Washington Professional Limited Liability Company formed under the laws of the State of Washington, to establish a coordinated program for the use of the respective skills, resources and physical plant of each Party to provide improved and continuous patient care. MHS and Facility are sometimes referred to in this Agreement individually as "Party" or, collectively, as the "Parties."

**NOW, THEREFORE,** MHS and Facility agree as follows:

- 1. Term of Agreement.** This Agreement shall be effective 6/1/2019 and shall continue for a term of three (3) years unless terminated earlier as set forth below. Thereafter, unless terminated by written notice delivered at least thirty (30) days prior to the effective date of termination, this Agreement shall automatically renew for an additional three (3) year terms.
- 2. Purpose of Agreement.** In order to provide continuous patient care to meet the needs of patients, each Party agrees to accept appropriate transfers from one Party to the other Party of patients in need of the specialized services of the type provided by the receiving Party. In the event of a transfer, the transferred patient will qualify for admission to the receiving Party on an emergency basis. If a transferred patient does not have an attending provider able to continue care at the receiving Party, the receiving Party may refer the patient to an appropriate attending provider.
- 3. Independent Contractor Status.** Each Party is an independent contractor with respect to the other Party. Neither Party is authorized or permitted to act or to claim to be acting as an agent or employee of the other Party. Nothing in this Agreement alters in any way control of the management, assets or affairs of either Party. Neither Party by virtue of this Agreement assumes any liability for any debts or obligations of any kind incurred by the other Party to this Agreement. Nothing in this Agreement shall be construed as limiting the rights of either Party to contract with any other Facility on a limited or general basis.
- 4. Patient Transfer & Transport Policy.** Facility shall follow the guidelines and provisions of the MultiCare Health System Patient Care Policy, entitled: Patient Transfer & Transport to Another Facility, as amended, whenever transferring or transporting an MHS patient between facilities. In addition:
  - a. Patients transferred for cardiac surgery back-up must meet the requirements on Exhibit A.
  - b. Patients transferred to neuro interventional radiology must meet the requirements set forth on Exhibit B.
  - c. Patients transferred for obstetrics must meet the requirements set forth on Exhibit C.
  - d. Neonate patient transfers must meet the requirements set forth on Exhibit D.

- e. Pediatric patients transferred to Mary Bridge Children's Hospital and Medical Center must meet the requirements set forth on Exhibit E.

5. **Coordination of Transfer of Patient.** The need to transfer a patient from one Party to the other shall be determined by the patient's attending physician. When such a determination has been made, the transferring Party shall immediately notify the appropriate physician in the receiving Party's unit of the proposed transfer. The transferring physician and the receiving physician shall confer and jointly determine the patient's appropriateness for transfer. A patient with emergency medical condition within the meaning of the Emergency Medical Treatment and Active Labor Act (codified at 42 USC § 1395dd) may be transferred only if the receiving Party has agreed to accept the transfer and to provide appropriate medical treatment and has available space and qualified personnel to treat the patient. Prior to moving the patient, the transferring Party must receive confirmation from the receiving Party that it will accept the patient. To the extent applicable, the Emergency Medical Treatment and Active Labor Act of 1985 (the "Act") and its implementing regulations shall supersede any contrary provision of this Agreement.

6. **Patient Medical Records.** The transferring Party shall send with each transferred patient copies of pertinent medical and other information necessary to continue the patient's treatment without interruption including, without limitation, a discharge summary and essential identifying and administrative information. The information shall include, when appropriate, the following:

- a. Initial diagnostic impression.
- b. Patient's name, address, hospital number and age, and name, address and phone number of next of kin.
- c. History of injury or illness.
- d. Condition at admission.
- e. Vital signs (including Glasgow coma score).
- f. Pre-hospital condition and treatment.
- g. Condition and treatment during stay in emergency department and at time of transfer.
- h. Treatment rendered to patient including medications given and route of administration.
- i. Laboratory and x-ray findings, appropriate laboratory specimens (when appropriate or indicated) and all x-ray films.
- j. Fluids given by type and volume.
- k. Name, address and phone number of physician referring the patient.
- l. Name of physician at receiving Party who has been contacted about the patient.
- m. Name, address and phone number of patient's designee who is patient's attorney-in-fact under patient's healthcare power of attorney.
- n. The original or a copy of patient's healthcare power of attorney, living will and/or healthcare directives.

Additional information may be required as set forth on the applicable Exhibit.



7. **Transportation of Patient.** Unless otherwise agreed, the transferring Party shall arrange transportation of the patient to the receiving Party including selection of the mode of transportation and providing qualified personnel and transportation equipment as required including the use of necessary and medically appropriate life support measures during the transfer. The receiving Party's responsibility for the patient's care shall begin when the patient is admitted either as an inpatient or an outpatient to the receiving Party's facility.

8. **Transfer of Patient's Personal Property.** The transferring Party is responsible for the transfer or the appropriate disposition of the patient's personal effects including money and valuables and information related to these items. The receiving Party's responsibility for the Patient's personal effects and belongings shall begin at such time as the receiving Party has inventoried and documented receipt of such items.

9. **Patient's Consent to Transfer.** The transferring Party is responsible for obtaining the patient's consent (or proper substituted or implied consent) for the transfer.

10. **Patient Transfer Coordinators.** Each Party shall provide the other Party with the name and title of persons authorized to initiate, confirm and accept the transfer of a patient on behalf of such Party. Each receiving Party shall inform the transferring Party of the location to which to bring patients in the facility. The Parties agree to provide each other information about the patient care services offered by such Party. The Parties agree to cooperate and jointly review cases in which either Party has questions about appropriateness of transfer.

11. **Transfers Arising from Mass Casualties or Natural Disasters: Mutual Aid Pact.** In the event of any cause or circumstance arising from a natural disaster or mass casualty, the Parties shall communicate with one another as soon thereafter as is practicable, in order to ascertain the relative impacts of such disaster or casualty upon one another and their respective capabilities for sending and/or receiving patients under the Agreement. In such situations:

- a. Whenever circumstances allow, each Party, as the receiving Party, further agrees to accept "block transfers" of as many patients sent from the sending Party as may be practicable, in order to free up beds in the facility of the Party most directly impacted by the event, including patients with lower acuity levels or non-emergent needs.
- b. The Parties will, in addition to their obligations under the Agreement, establish communications protocols to be triggered in the event of a natural disaster or mass casualty, including the appointment of designated patient transfer coordinators at MHS and Facility who shall act as the primary point(s) of contact during any such event or circumstance.
- c. At such time as the long-term needs of the sending Party are better understood in the context of the event, the sending Party will advise the receiving Party of its capacity to retrieve patients sent in contemplation of the need for bed space, at which time the Parties will evaluate the plan of care for each such patient and determine whether the patient's needs will best be met by returning to the sending Party or remaining at the receiving Party.

**12. Nondiscrimination.** Neither Party may refuse to receive a patient by reason of such patient's race, religion, gender, age, national origin, sexual orientation, marital status, handicap, disability or medical diagnosis in providing services under this Agreement.

**13. Patient HIV Status.** Neither Party may refuse to receive a patient because the patient is HIV positive or has AIDS. The portion of the medical records reflecting the patient's HIV or AIDS status will be transmitted in a secure and sealed envelope with the patient's medical records. The patient's HIV status may be disseminated only to those healthcare providers who have a medical need to know or as provided by law.

**14. Confidentiality.** Both Parties agree that the confidentiality of each patient's medical records must be maintained. To achieve that goal, the Parties agree to transport medical records in a manner designed to maintain the confidentiality of the medical record as required by applicable law, including applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Parties agree to amend or modify this Agreement at such times as may be required by the terms of HIPAA with respect to the exchange of protected health information for purposes of each Party's treatment, payment or operations associated with any transfers conducted under this Agreement.

**15. Financial Arrangement.** Charges for services performed by either of the Parties for patients transferred pursuant to this Agreement shall be collected by the Party rendering such services and shall be collected directly from patient, from third party payors or other sources of payment. Neither Party shall have any liability to the other for the billing, collection or payment of charges for services performed by such other Party except as otherwise provided in this Agreement or to the extent that such liability would exist separate and apart from this Agreement.

**16. Compliance with Laws and Regulations.** Each Party is deemed an instrumentality of the Federal Government [Medicare/Medicaid Providers] and terms of this agreement will be construed in accordance with applicable Federal and State statutes.

**17. Notice.** Any notice given with respect to this Agreement must be in writing and shall be delivered either by hand to the Party or by certified mail, return receipt requested to the Party at the Party's address stated herein. Any Party may change its address herein by giving notice of the change in the manner described in this section.

**18. Termination Without Cause.** Either Party may terminate this Agreement without cause, upon thirty (30) days' advance written notice, in which event the terminating Party must complete its duties under the Agreement with respect to any patient who is being transferred at the time of termination.

**19. Automatic Termination.** This Agreement shall be terminated immediately upon the occurrence of any of the following:

- a. Either Party fails to maintain its licensure, certification or accreditation under local, state or federal law or is otherwise legally prohibited from providing the services described herein.

b. Either Party is in material default under any of the terms of this Agreement.

**20. Advertising and Publicity.** Neither Party shall use the name of the other or the existence of this Agreement in any promotional or advertising material unless prior written approval of the material to be used and the intended use is first obtained from the other Party.

**21. Liability.** Each Party shall be responsible for its own acts and omissions and shall not be responsible for the acts and omissions of the other Party.

**22. Claims.** The Parties shall promptly notify one another in writing of any claim or demand to indemnify arising out of performance of transfer pursuant to this Agreement and shall cooperate with one another in a reasonable manner to facilitate the defense of such claim.

**23. Non-waiver.** The failure of either Party to exercise any of its rights under this Agreement is not a waiver of such rights or a waiver of any rights for subsequent breach.

**24. Assignment.** This Agreement may not be assigned by either Party without the prior written consent of the other Party.

**25. Severability.** If any part of this Agreement is held to be unenforceable, the remainder of this Agreement will remain in full force and effect.

**26. Amendments.** This Agreement may be supplemented, amended, or revised only in writing by agreement of both Parties.

**27. Headings.** The heading to the various sections of this Agreement have been inserted for convenience only and shall not modify, define, limit or expand express provisions of this Agreement.


**28. Authorization for Agreement.** The execution and performance of this Agreement by each Party have been duly authorized by all necessary laws, resolutions or corporate actions and this Agreement constitutes the valid and enforceable obligation of each Party in accordance with its terms.

**29. Entire Agreement.** This Agreement sets forth the Parties' final and entire agreement and supersedes all prior and contemporaneous oral or written communications between the Parties, their agents and representatives related to this matter. There are no representations, promises, terms, conditions or obligations other than those contained herein.

*Signature Page to Follow*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed to be effective the day and year set forth above.

**MultiCare Health System:**

By: Alden Bishop   
Print Name: Alden Bishop  
Title: Campus COO-AH  
Date: 10/02/2019  
02:21 PM EDT

MultiCare's Contact Information:  
Designated Representative: Jo Quetsch  
Designated Representative Title: Admin-Periop Service Line  
Address: PO Box 5299  
Tacoma, Washington 98415  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email Address: jquetsch@multicare.org  
Copy to Email: ContractSupport@multicare.org

**Facility:**

Eye M.D.s of Puget Sound, PLLC  
d/b/a Eye M.D.s of Puget Sound

By: [Signature]  
Print Name: Francis Geissler  
Title: Physician/Owner  
Date: 8/26/19

Facility's Contact Information:  
Designated Representative: Francis Geissler  
Designated Representative Title: Physician/Owner  
Address: 4717 S 19 St  
Tacoma, WA 98405  
Telephone: 253-248-2020  
Facsimile: 253-752-8800  
E-mail address: Mblackwell@eyemdsputesound.com  
Facility's EIN No.: \_\_\_\_\_

## Exhibit A

### Requirements for Elective PCI Patients

**Purpose:** This Exhibit A to the Patient Transfer Agreement (the "Agreement") between MultiCare Health System ("MHS") and Eye M.D.s of Puget Sound, PLLC d/b/a Narrows Eye Surgery Center ("Facility"), applies to patients transferred to MHS' Tacoma General Hospital in order to obtain cardiac surgery back-up and support due to undergoing elective percutaneous coronary interventions without on-site cardiac surgery ("PCI Patients"). MHS and Facility are sometimes referred to in this Exhibit A individually as "Party" or, collectively, as the "Parties."

**1. Consent.** In addition to the requirements set forth in the Agreement, the Party performing the intervention or PCI shall obtain consent from PCI Patients which explicitly communicates to such patients that the percutaneous coronary intervention ("PCI") is being performed without on-site surgery back-up and addresses risks related to transfer, the risk of urgent surgery which would require a transfer to MHS' Tacoma General Hospital for on-site surgery back-up, and refer to this Agreement.

**2. Coordination.** The Parties shall coordinate, to the extent possible, the availability of surgical teams and operating rooms at MHS so that for all hours that elective PCIs are being performed at Facility, there is a reasonable likelihood that MHS has the capacity to immediately accept a referral. The Parties acknowledge and agree that nothing in this Agreement imposes an obligation on MHS to maintain an available cardiac surgical suite twenty-four hours a day, seven days a week and that the only MHS Hospital that has on-site surgery back-up is MHS' Tacoma General Hospital.

**3. Periods of High Occupancy.** During times of high census where MHS' ability to accept a patient referral is impacted by lack of bed availability or a closed emergency department ("ED"), MHS will notify Facility and Facility's elective procedures will be rescheduled subject to the attending physician's assessment that such delay does not compromise the patient's care and condition.

**4. Transportation of PCI Patients.** In addition to the requirements set forth in Section 6 of the Agreement, Facility shall:

- a. Maintain a signed transportation agreement with a qualified vendor that provides for expeditious transport for any patient experiencing complications during an elective PCI that requires transfer to MHS. A qualified vendor is one whose transport staff is ACLS certified;
- b. Document and confirm that emergency transportation begins for each patient within twenty minutes of the initial identification of a complication by the attending physician;
- c. Document transportation times from the decision to transfer the patient with an elective PCI complication to arrival in the operating room of MHS and confirm transportation time is less than one hundred twenty minutes; and
- d. Participate annually in two timed emergency transportation drills with outcomes communicated to both Parties' quality assurance programs. The staff and cost of internal resources used for such drills will be the responsibility of the Party employing such staff

or owning that resource. The cost of any external resources required for such drills will be the responsibility of Facility.

MHS shall not have any financial obligation or liability whatsoever under this Section 4.

**5. PCI Patient Medical Records.** In addition to the information required in Section 6 of the Agreement, Facility shall send to MHS all records (or copies thereof) related to the emergency condition which the patient has presented available at the time of the transfer, along with all diagnostic imaging and videos.

**6. Physician Communication.** Facility will monitor all transfers to assure that the physician performing the elective PCI communicates immediately and directly with MHS' cardiac surgeon(s) about the clinical reasons for the urgent transfer and the PCI Patient's clinical condition.

**7. Quality Assurance.** The Parties shall schedule cardiac patient care quality assurance conferences at least twice per year that involve case reviews of a significant number of pre-operative and post-operative PCI cases at Facility including a one-hundred percent (100%) review of all transport cases.

## Exhibit B

### Requirements for Stroke Patients

**Purpose:** This Exhibit B to the Patient Transfer Agreement between **MultiCare Health System ("MHS")** and Eye M.D.s of Puget Sound, PLLC d/b/a Narrows Eye Surgery Center ("**Facility**"), applies to stroke patients transferred to a MHS neuro-interventional radiology program ("**Stroke Program**"). MHS and Facility are sometimes referred to in this Exhibit B individually as "**Party**" or, collectively, as the "**Parties**."

1. **Coordination.** The Parties shall coordinate, to the extent possible, transfer process and communication through the MultiCare Health System Transfer and Triage Center. There is a reasonable likelihood that MHS has the capacity to immediately accept a transfer.

2. **Periods of High Occupancy.** During times of high census where MHS' ability to accept a patient referral is impacted by lack of bed availability or a closed emergency department ("ED"), MHS will notify Facility and Facility's elective procedures will be rescheduled subject to the attending physician's assessment that such delay does not compromise the patient's care and condition.

3. **Transportation of Stroke Patients.** In addition to the requirements set forth in Section 6 of the Agreement, Facility shall:

- a. Maintain a signed transportation agreement with a qualified vendor that provides for expeditious transport for any stroke patient that requires transfer to MHS. A qualified vendor is one whose transport staff is ACLS certified; critical care transport is preferred.
- b. The patient's medical condition and the ability of the transferring hospital to provide necessary stabilizing treatment and the clinical judgment of the transferring and receiving physicians is the determining factor as to when the patient should be transferred.
- c. Provide the following patient care including:
  - IV access (Preference is RAC and Left arm 18 gauge if possible)
  - Use Normal saline for all fluids
  - NPO unless patient passed a documented RN swallow screen (consider gastric tube for medications)

4. **Stroke Patient Medical Records.** In addition to the information required in Section 6 of the Agreement, Facility shall send to MHS all records (or copies thereof) related to the emergency condition which the patient has presented available at the time of the transfer, along with all diagnostic imaging and videos.

5. **Physician Communication.** Facility will monitor all transfers to assure that the receiving physician immediately is available to address the clinical reasons for the urgent transfer and patient's clinical condition.

7. **Quality Assurance.** The receiving facility shall provide hospital summary after discharge. This is handled by the MHS Transfer and Triage Center. The receiving facility reviews 100% of transfers, coordinated by the Director of Stroke Quality Management. Summary reports are provided on a quarterly basis to the sending facilities.



## Exhibit C

### Requirements for Obstetric Patients

**Purpose:** This Exhibit C to the Patient Transfer Agreement between MultiCare Health System ("MHS") and Eye M.D.s of Puget Sound, PLLC d/b/a Narrows Eye Surgery Center ("Facility"), applies to obstetric patients transferred to a MHS location. MHS and Facility are sometimes referred to in this Exhibit E individually as "Party" or, collectively, as the "Parties."

#### **1. Contact Numbers:**

- a. Transfers to TG: (253-403-1034)
- b. Transfers to GSH: (253-697-5900)
- c. Transfers to AMC: (232-333-2522)

#### **2. Tacoma General Hospital.** Each Facility shall use the following checklist when transferring obstetric patients to Tacoma General Hospital.

- a. Contact the Birth Center Charge Nurse (253-403-1034) to coordinate transfer, to include confirmation of available obstetric bed space, confirmation of available NICU bed space (if applicable), and identification of an accepting provider.
- b. If transferring to Maternal Fetal Medicine service, the Birth Center Charge Nurse will contact the MFM Provider on call and arrange a return call to the transferring provider.
- c. If transferring a low risk patient due to unavailable obstetric services and the patient has no Obstetric provider at Tacoma General Hospital, the Birth Center Charge Nurse will facilitate contact with the MultiCare OB/GYN Associate on call to receive the patient as an obstetric "NO DOC" patient.
- d. If transferring a low risk patient requiring the level of services available at Tacoma General Hospital, but transferring provider is retaining status as attending provider, coordinate transfer with the Birth Center Charge Nurse.
- e. Proceed to Section 4 below, All MHS Obstetrics Transfers.

#### **3. Good Samaritan Hospital and Auburn Medical Center.** Each Facility shall use the following checklist when transferring obstetric patients to Good Samaritan Hospital or Auburn Medical Center.

- a. Patients must be 34 weeks or greater and deemed low risk prior to transfer. All pt less than 34 weeks or deemed high risk will be transferred to TG.
- b. Contact the Labor and Delivery Charge Nurse at Good Samaritan (253-697-4383) or Auburn Medical Center (232-333-2522) to coordinate transfer, to include confirmation of available obstetric bed space, confirmation of available SCN bed space (if applicable), and identification of an accepting provider.
- c. OBHG will be contacted to assess and accept appropriate transfers. This will be a provider to provider call.
- d. Proceed to Section 4 below, All MHS Obstetrics Transfers.

#### **4. All MHS Obstetrics Transfers.** After consultation, if the patient is accepted for transfer, follow sending Party's policies for transferring a patient to another facility. For patients whose prenatal course is not documented in EPIC, include copy of the prenatal chart with transport documents.

- a. For patients with diagnosis of preterm labor or active term labor, reassess cervical dilatation prior to transporting the patient, if last exam has been greater than 1 hour (documentation of which shall be provided under Section 4(d) below), to assure that advanced labor has not increased the risk of in transit delivery.
- b. For patients with preterm labor or active labor with fetal concerns, where risk for delivery in transit is high, contact the NICU to coordinate attendance of the Neonatal Transport Team to stabilize and transport the neonate.
- c. Prior to the patient's departure from the transferring Party, a hand off report to the Birth Center Charge Nurse will occur.
- d. In addition to the requirements of this Agreement, provide the following, if such records are not directly available at the receiving Party through EPIC or other systems maintained by MHS at the receiving Party:
  - i. Copy of the patient's hospital chart including:
    1. Prenatal record
    2. Allergies
    3. Past medical history, home medications
    4. Medications and treatment at the transferring Party
    5. Summary of current complaint to include onset, signs and symptoms
    6. Demographic face sheet
    7. Documentation of the (1) labor assessment, (2) last exam, (3) fetal heart rate and (4) vital signs.

## **Exhibit D**

### **Requirements for Neonates**

**Purpose:** This Exhibit D to the Patient Transfer Agreement between MultiCare Health System ("MHS") and Eye M.D.s of Puget Sound, PLLC d/b/a Narrows Eye Surgery Center ("Facility"), applies to neonate patients transferred to a MHS location. MHS and Facility are sometimes referred to in this Exhibit D individually as "Party" or, collectively, as the "Parties."

#### **1. Contact Numbers:**

- a. Transfers to TG: (253-403-1024)
- b. Transfers to GSH: (253-697-5900)
- c. Transfers to AMC: (253-545-2522 and request the NICU dept)

#### **2. Tacoma General.** Facility shall adhere to the following when requesting a transfer to the Tacoma General NICU:

- a. Consult with the Neonatologist on call in the MHS NICU (253-403-1024).
- b. After consultation, if the patient is accepted for transfer by the neonatologist, the TG NICU Transport Team will be dispatched to transport the infant.
- c. The Transport Team will provide the following documents and request they be completed (the transport team may assist in completing the forms or the physician at the referring hospital may do so):
  - i. Signed, dated and timed "Neonatal Transport Consent"
  - ii. Signed, dated and timed "Notice of Privacy Practices Acknowledgement Form"
  - iii. Signed, dated and timed "Authorization for MultiCare to use or disclose My Health Care Information"
  - iv. Provide copies of the patient/maternal chart:
    - 1. All maternal documentation (i.e. Maternal History/physical; lab values; delivery notes; nurses/physician notes; etc.)
    - 2. All infant documentation: (i.e. Admission physical, lab values, radiology studies, nursing notes, physician notes, etc.)

#### **3. Good Samaritan Hospital and Auburn Medical Center.** Facility shall use the following checklist when transferring neonatal patients to Good Samaritan Hospital or Auburn Medical Center.

- a. Patients must be 34 weeks or greater and deemed low risk prior to transfer. Any patient less than 34 weeks or deemed high risk must be transferred to the TG NICU.
- b. Contact the Labor and Delivery Charge Nurse at Good Samaritan (253-697-4383) or Auburn Medical Center (232-333-2522) to coordinate transfer, to include confirmation of available SCN bed space and identification of an accepting provider.
- c. IPS (253-597-4626) will be contacted to assess and accept appropriate transfers. This will be a provider to provider call.
- d. After consultation, if the patient is accepted for transfer, follow sending Party's policies for transferring a patient to another facility.
- e. Prior to the patient's departure from the transferring Party, a hand off report to the Special Care Nursery Nurse must occur.
- f. In addition to the requirements of this Agreement, provide the following, if such records are not directly available at the receiving Party through EPIC or other systems maintained by MHS at the receiving location:
  - i. Copy of the patient's hospital chart including:
    - 1. Birth record

2. Medications and treatment at the transferring Party
3. Nursing notes
4. Summary of current complaint to include onset, signs and symptoms (H&P and progress notes)
5. Physician orders
6. Demographic face sheet

## Exhibit E

### Requirements for Pediatric Patients

**Purpose:** This Exhibit E to the Patient Transfer Agreement between MultiCare Health System ("MHS") and Eye M.D.s of Puget Sound, PLLC d/b/a Narrows Eye Surgery Center ("Facility"), (collectively referred to as the "Party" or "Parties") applies to pediatric patients transferred to Mary Bridge Children's Hospital.

**1. Contact Numbers:**

Transfer to Mary Bridge Children's Hospital:

Contact the Transfer Center (855-647-1010)

**2. Transfers to Mary Bridge:** Facility shall adhere to the following when requesting a transfer to Mary Bridge Children's Hospital:

- a. Contact the transfer center to get in touch with any of the following Inpatient Physician Services (IPS), Emergency Department physician or Pediatric Intensivist. (855-647-1010)
- b. The transfer center will connect the referring physician to the correct MB physician to consult and accept transfer.
- c. If the patient is accepted for transfer by the MB designated physician, the MB physician will offer the pediatric transport team (TT) to come and retrieve the patient.
- d. In the event that the TT is not available, the referral physician and the MB physician will discuss the safest alternative mode of transportation for the patient.
- e. The Transport Team will provide the following documents and request they be completed (the transport team may assist in completing the forms or the physician at the referring hospital may do so):
  1. Signed, dated and timed "Transport Consent"
  2. Signed, dated and timed "Notice of Privacy Practices Acknowledgement Form"
  3. Signed, dated and timed "Authorization for MultiCare to use or disclose My Health Care Information"
  4. Provide copies of the patient's chart:
    1. All pediatric documentation: (i.e. Admission physical, lab values, radiology studies, nursing notes, physician notes, transfer summary, etc.)
  5. Signed, dated and timed "Passenger Release of Liability"
    1. It will be at the TT discretion to allow 1 family member to accompany the patient in the ambulance. So long as the patient's status is stable and the family member will not be a hindrance to the safe transport of the patient.