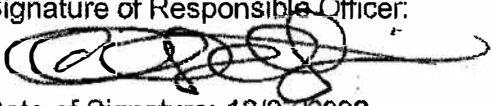


**Certificate of Need
Determination of Reviewability
Ambulatory Surgical Facility and Ambulatory Surgery Center
(Do not use this form for any other type of ASC/F project)**

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

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

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

Owner/Operator Name of the surgical facility as it appears on the UBI/Master Business License	
Orthopedics Northwest, PLLC	
Clinical Practice UBI #: 602044113	Federal Tax ID (FEIN): 87-0865996
Surgery Center UBI #: 604706353	
Mailing Address PO Box 2309 Yakima, WA 98907	Surgery Center Address 111 S. 11 th Avenue, Suite 220 Yakima, WA 98902
Website Address: <u>Orthopedics Northwest, PLLC (orthnw.com)</u>	
Phone number (10-digit): 509-454-8888	Email Address: <u>cstillwaggon@ortho-nw.com</u>
Name and Title Of Responsible Officer (Print): Chuck Stillwaggon Administrator	Signature of Responsible Officer:  Date of Signature: 12/27/2022
Identify the purpose of your request: <input checked="" type="checkbox"/> New Facility <input type="checkbox"/> Change of Ownership <input type="checkbox"/> Facility Relocation	Identify the purpose of your request: <input type="checkbox"/> Facility Expansion – Operating Room Increase <input type="checkbox"/> Facility Expansion – Service Increase <input type="checkbox"/> Other (please provide a letter describing)

Existing Facility Status

Complete for all applications concerning existing facilities- This section is not applicable.

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

No, the facility has not previously been determined as not subject to CN review. It is currently a CN approved facility being operated as a hospital-based outpatient surgical department under Astria Toppenish's hospital license. It will be now be operated as an ASC

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

Current facility's name	NA
Current facility's address	NA
Current facility's license number	NA
Current facility's Certificate of Need status	NA
Anticipated change of ownership month and year	NA

This request is not a change in ownership. Therefore, this is not applicable.

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

Current facility's address	NA
Anticipated relocation month and year	NA

This request is not a request for a relocation of an existing facility. Therefore, this is not applicable.

Facility Information

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

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

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

ONW proposes to lease the space beginning in March 2023. The space is currently operated as a surgical HOPD, and ONW physicians are currently performing procedures in the HOPD. The current lessee (Astria Toppenish) will vacate the space and ONW will, with no lapse in operation, convert it to a licensed ASC. ONW has submitted an application to Construction Review Services and is submitting an ASC license application. Please note that prior to being an HOPD, the space, for the period of 1997-2016 was operated as a licensed ASC, known as Yakima Ambulatory Surgery Center.

5.

Number of existing operating and procedure rooms:	3
Number of new operating and procedure rooms:	0
Total:	3

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

Clinical and Surgical Services

Check all surgical procedures currently performed in the facility.

- | | | |
|--|---|--|
| <input type="checkbox"/> Ear, Nose, & Throat | <input type="checkbox"/> Gynecology | <input type="checkbox"/> Oral Surgery |
| <input type="checkbox"/> Plastic Surgery | <input type="checkbox"/> Gastroenterology | <input type="checkbox"/> Maxillo facial |
| <input type="checkbox"/> Orthopedics | <input type="checkbox"/> Podiatry | <input type="checkbox"/> General Surgery |
| <input type="checkbox"/> Ophthalmology | <input type="checkbox"/> Pain Management | <input type="checkbox"/> Urology |
| <input type="checkbox"/> Other (describe) | | |

X While this is a new licensed ASC facility, orthopedic procedures are currently performed in the facility (an HOPD of Astria Toppenish Hospital).

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

- | | | |
|--|---|--|
| <input type="checkbox"/> Ear, Nose, & Throat | <input type="checkbox"/> Gynecology | <input type="checkbox"/> Oral Surgery |
| <input type="checkbox"/> Plastic Surgery | <input type="checkbox"/> Gastroenterology | <input type="checkbox"/> Maxillo facial |
| X Orthopedics | <input type="checkbox"/> Podiatry | <input type="checkbox"/> General Surgery |
| <input type="checkbox"/> Ophthalmology | X Pain Management | <input type="checkbox"/> Urology |
| <input type="checkbox"/> Other (describe) | | |

Primary Purpose of the Facility

6. The Certificate of Need Program must understand how a facility operates in order to determine the facility's primary purpose. Typically, governance documents can aid the department in this understanding. These could be in the form of operating agreements, shareholder agreements, or corporate governing documents. Provide any documentation that could aid in this understanding.

Attached is the current operating agreement.

7. A facility that receives more than 50% of their income or 50% of their visits from surgeries is subject to CN requirements. In order to determine if your project is subject to CN review, please provide the current (existing facility) and proposed (new facility) percentages of income and visits for clinical and surgical services. Include all assumptions used to determine the percentages provided.

This site's revenue	Most recent full year of operation Year: <u>2021</u>	Projected first full year of operation after the proposed changes Year: <u>2024</u>
Total revenue for clinical services	\$ 15,253,100	\$ 13,488,523
Total revenue for surgical services	\$ 0.0	\$ 5,906,788
Total revenue	\$15,253,100	\$ 19,395,311

This site's patient visits	Most recent full year of operation Year: <u>2021</u>	Projected first full year of operation after the proposed changes Year: <u>2024</u>
Total clinical patient visits	71,271	67,107
Total surgical patient visits		4,987
Total patient visits		72,094

**OPERATING AGREEMENT
OF
ORTHOPEDECS NORTHWEST AMBULATORY SURGERY CENTER, L.L.C.**

DATE: February 5, 2021

MEMBER: Orthopedics Northwest, P.L.L.C.

RECITAL:

The party to this agreement (the "Member") is signing this agreement for the purpose of forming a limited liability company (the "Company") under the Limited Liability Company Act of the state of Washington (the "Act").

AGREEMENTS:

**SECTION 1.
FORMATION OF LIMITED LIABILITY COMPANY**

1.1 Name. The name of the Company is ORTHOPEDICS NORTHWEST AMBULATORY SURGERY CENTER, L.L.C.

1.2 Articles of Organization. Articles of organization for the Company were filed with the Secretary of State for the state of Washington on February 5, 2021 .

1.3 Duration. The Company will exist until dissolved as provided in this agreement.

1.4 Principal Place of Business. The Company's principal place of business will initially be at 1211 N. 16th Avenue, Yakima, WA 98902, but it may be relocated by the Member at any time.

1.5 Registered Office and Registered Agent. The Company's initial registered office will be at 605 North 39th Avenue, Yakima, WA 98902, and the name of its initial registered agent at that address will be Michael J. Thorner. The Company's registered office and its registered agent may only be changed by filing notice of the change with the Secretary of State for the state in which the articles of organization of the Company were filed.

1.6 Purposes and Powers. The Company is formed for the purpose of **own and operate an ambulatory surgery center** and any lawful business that a limited liability company may engage in under the Act. The Company has the power to do all things necessary, incident, or in furtherance of that business.

1.7 Title to Assets. Title to all assets of the Company must be held in the name of the Company. The Member does not have any right to the assets of the Company or any ownership

interest in those assets except indirectly as a result of the Member's ownership of an interest in the Company.

SECTION 2. MEMBER

2.1 Name and Address. The name and address of the sole Member of the Company is:

<u>Names of Member</u>	<u>Address of Members</u>	<u>Dollar Amount of Initial Contribution</u>	<u>Ownership Interest</u>
Orthopedics Northwest, P.L.L.C.	1211 N. 16 th Avenue Yakima, WA 98902	\$5,000.00	100%

2.2 Termination of Member's Interest. The Member will cease to be a Member of the Company on the Member's death, incapacity, dissolution, termination, or bankruptcy, or on assignment of the Member's entire membership interest. Unless there are one or more other members of the Company, the person who is the holder of the Member's interest immediately after the Member ceases to be a member will become a member. If there are one or more other members of the Company at the time the Member ceases to be a member, the person who is the holder of the Member's interest immediately after the Member ceases to be a member will become a member only with the consent of the other members.

2.3 Additional Members. Except for the holder of a member's interest who becomes a member under the provisions of the section of this agreement relating to the termination of a member's interest, additional members of the Company may be admitted only by written agreement of all persons who are then members.

SECTION 3. CAPITAL

3.1 Initial Capital Contributions. The capital contributions of Orthopedics Northwest, P.L.L.C. must be paid to the Company in full immediately after all the members have signed this Agreement

3.2 Additional Contributions. Except as otherwise provided in the Act, the Member is not required to contribute additional capital to the Company. But the Member may make additional capital contributions to the Company from time to time as the Member wishes.

3.3 No Interest on Capital Contributions. No interest will be paid on capital contributions.

SECTION 4. PROFITS AND LOSSES AND DISTRIBUTIONS

4.1 Profits and Losses. The entire net profit or net loss of the Company for each fiscal year will be allocated to the Member and must be reported by the Member on all federal, state, and local income and other tax returns required the Member is required to file.

4.2 Distributions. Subject to the restrictions governing distributions under the Act, distributions of cash or property may be made from time to time by the Company to the Member, as the Member directs. But the assets of the Company may not be used to pay the separate expenses of the Member, to make personal investments for the account of the Member, or for any other purpose not related to the business of the Company.

**SECTION 5.
ADMINISTRATION OF COMPANY BUSINESS**

5.1 Management. The Member has the sole right to manage and conduct the Company's business. Actions by the Member relating to the management of the Company may be recorded in written resolutions signed by the Member, but written resolutions are not required to authorize action by the Member.

5.2 Authority of Member. The Member is an agent of the Company and has authority to bind the Company on all matters. The authority of the Member includes, without limitation, the authority to: (a) sell, lease, exchange, mortgage, pledge, or otherwise transfer or dispose of all or substantially all of the property or assets of the Company; (b) merge the Company with any other entity; (c) amend the articles of organization of the Company or this agreement; (e) change the nature of the business of the Company; or (f) commence a voluntary bankruptcy case for the Company.

5.3 Compensation and Reimbursement. The Member is not entitled to the payment of any salary or other compensation for services provided to the Company. The Member is, however, entitled to reimbursement from the Company for reasonable expenses incurred on behalf of the Company, including expenses incurred in the formation, dissolution, and liquidation of the Company.

**SECTION 6.
ACCOUNTING AND RECORDS**

6.1 Books and Records. The Company may keep such books and records relating to the operation of the Company as are appropriate and adequate for the Company's business. The books and records must be available for inspection by the Member at the principal office of the Company.

6.2 Separate Accounts. The funds, assets, properties, and accounts of the Company must be maintained separately, and may not be commingled with those of the Member or any other person.

6.3 Fiscal Year. The fiscal year of the Company will be the calendar year.

**SECTION 7.
DISSOLUTION AND WINDING UP**

7.1 Events of Dissolution. The Company will dissolve at such time as the Company has no Members unless the Member has approved of dissolution of the Company prior to that time, in which case the Company will dissolve when the Member consents. Neither the death, incapacity, nor bankruptcy of the Member, nor the assignment of the Member's entire membership interest, will dissolve the Company. Rather, the successor interest to the Member will succeed to the rights of the Member under this agreement.

7.2 Winding Up. Following the dissolution of the Company, the affairs of the Company must be wound up by the Member. If the affairs of the Company are to be wound up, a full account must be taken of the assets and liabilities of the Company, and the assets of the Company must then be promptly liquidated. The proceeds must first be paid to creditors of the Company in satisfaction of all liabilities and obligations of the Company, including, to the extent permitted by law, liabilities and obligations owed to the Member as a creditor. Any remaining proceeds may then be distributed to the Member. Property of the Company may be distributed in kind in the process of winding up and liquidation.

7.3 Insolvency. If the liabilities of the Company exceed the value of its assets after it is dissolved and wound up, the Member will have no obligation to make any contribution to the capital of the Company to make up the deficit, and the deficit will not be considered a debt owed by the Member to the Company or any other person for any purpose.

SECTION 8. INDEMNIFICATION AND LIABILITY LIMITATION

8.1 Indemnification. The Company must indemnify the Member to the fullest extent permitted under the law of the state in which the articles of organization of the Company have been filed, as the same exists or may be amended in the future, against all liability, loss, and costs (including, without limitation, attorney's fees) incurred or suffered by the Member by reason of or arising from the fact that the Member is or was a Member of the Company, or is or was serving at the request of the Company as a manager, member, director, officer, partner, trustee, employee, or agent of another foreign or domestic limited liability company, corporation, partnership, joint venture, trust, benefit plan, or other enterprise. The Company may, by action of the Member, provide indemnification to employees and agents of the Company who are not members. The indemnification provided in this section will not be exclusive of any other rights to which any person may be entitled under any statute, agreement, resolution of the Member, contract, or otherwise.

8.2 Limitation of Liability. The Member is not liable to the Company for monetary damages resulting from the Member's conduct except to the extent that the Act, as it now exists or may be amended in the future, prohibits the elimination or limitation of liability of Members of limited liability companies. No repeal or amendment of this section or of the Act will adversely affect any right or protection of the Member for actions or omissions prior to the repeal or amendment.

SECTION 9. MISCELLANEOUS PROVISIONS

9.1 Dispute Resolution. In the event of any claims or disputes over this contract, and as a condition precedent to the commencing of any legal action on said contract, the parties do hereby agree that they will first subject said dispute to binding arbitration in Yakima, Washington. A single arbitrator shall be selected by agreement of the parties, in the alternative by the Presiding Judge of Yakima County Superior Court. Each party shall be responsible for one-half of the fees and expenses of the arbitrator. The mandatory arbitration rules, as implemented locally, of the Yakima County Superior Court shall be binding as to the right of appeal which is not applicable herein. Within ten (10) days of notice of arbitration by a party, an arbitrator shall be designated and the hearing held within thirty (30) days thereof, and a decision made within ten (10) days of such hearing.

9.2 Amendment. The Member may amend or repeal all or part of this agreement by unanimous written agreement. This agreement may not be amended or repealed by oral agreement.

9.3 Binding Effect. The provisions of this agreement are binding on and will inure to the benefit of the heirs, personal representatives, successors, and assigns of the Member. This section is, however, not a modification of any restriction on transfer set forth in this agreement.

9.4 Notice. Any notice or other communication required or permitted to be given under this agreement must be in writing and personally delivered or mailed by certified mail, return receipt requested, with postage prepaid. Notices mailed to a Member must be addressed to the Member's address listed in the section of this agreement relating to initial Member, or if there is none, the current address of the Member shown on the records of the Company. Notices mailed to

the Company must be addressed to its principal office. The address of a party to which notices must be mailed may be changed by the party's giving written notice to the other parties. All mailed notices will be deemed to be given at the expiration of three (3) days after the date of mailing unless the recipient acknowledges receipt prior to that time.

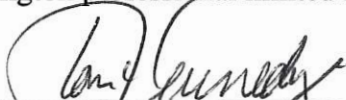
9.5 Litigation Expense. If any legal proceeding is commenced for the purpose of interpreting or enforcing any provision of this agreement, including any proceeding in the United States Bankruptcy Court, the prevailing party is entitled to recover reasonable attorneys' fees in the proceeding, or any appeal, to be set by the court without the necessity of hearing testimony or receiving evidence, in addition to the costs and disbursements allowed by law.


9.6 Governing Law. This agreement is governed by the law of the state in which the Articles of Organization of the Company were filed and must be construed in accordance with the law of that state.


9.7 Third Party Beneficiaries. The provisions of this agreement are intended solely for the benefit of the Member and create no rights or obligations enforceable by any third party, including any creditor of the Company, except as otherwise provided by applicable law.

IN WITNESS WHEREOF, the Member has executed this Agreement as of the date first above written.


ORTHOPEDECS NORTHWEST, P.L.L.C.,
a Washington professional limited liability company


By: 
THOMAS C. KENNEDY, M.D.
Member

By: 
JOHN W. ADKISON, M.D.
Member


By: 
JOHN J. HWANG, M.D.
Member

By: 
TODD B. ORVALD, M.D.
Member

By: 
RICHARD D. ROUX, M.D.
Member

By: 


GEORGE S. LIU, M.D.
Member

By: 


ROBERT N. GREENE, M.D.
Member

By: 

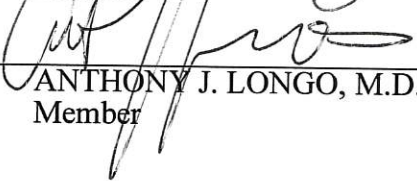
GENE L. GRIFFITHS, M.D.
Member

By: 

SHYLER L. DEMILL, D.O.
Member

By: 

MICHAEL A. CHANG, M.D.
Member

By: 

ANTHONY J. LONGO, M.D.
Member