

STUDEBAKER | NAULT

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May 23, 2024

VIA EMAIL

Department of Health
Certificate of Need Program
111 Israel Road S.E.
Tumwater, Washington 98501

Sent via e-mail: eric.hernandez@doh.wa.gov; fslcon@doh.wa.gov

Re: Washington Retina, PLLC

Dear Mr. Hernandez:

Our office represents Washington Retina, PLLC (“Washington Retina”). Pursuant to WAC 246-310-050, Washington Retina is requesting from the Washington State Department of Health (the “Department”) a formal determination of the applicability of the certificate of need review requirements at chapter 70.38 RCW to procedure rooms located to be located at 125 3rd Street N.E., Auburn, WA 98002.

Please find enclosed a “Certificate of Need Application, Determination of Reviewability Ambulatory Surgery Center/Facility” form completed by Washington Retina regarding the procedure rooms. A check for the review fee in the amount of \$1,925 payable to the Department has been sent via USPS, and the tracking number is #9505515633694143480450.

Please advise us at your earliest convenience whether this application is deemed complete. If the Department requires additional information for this application, please promptly advise.

Thank you in advance for your consideration. We look forward to working with you on this matter.

May 23, 2024
Page 2

Regards,

STUDEBAKER NAULT, PLLC

A handwritten signature in black ink, appearing to read "E. Studebaker", written in a cursive style.

Emily R. Studebaker

Enclosure

cc: Rahul Mandiga, M.D., Member
Benjamin Reiss, M.D., Member
Washington Retina, PLLC



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

Contents:

1.	260-014	Contents List/Mailing Information.....	1 Page
2.	260-014	Definitions.....	2 Pages
3.	260-014	Instructions.....	1 Page
4.	260-014	Determination of Reviewability Form.....	3 Page
5.	RCW/WAC and Website Links.....		1 Page

Submission Instructions:

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

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

Mail or deliver the application and review fee to:

Mailing Address:

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

Other Than By Mail:

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

Contact Us:

Certificate of Need Program Office 360-236-2955 or FSLCON@doh.wa.gov.

Definitions

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

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

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

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

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

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

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

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

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

Instructions

General Instructions:

- Include a table of contents for sections and appendices/exhibits
- Number **all** pages consecutively
- **Do not** bind or 3-hole punch the application.
- Make the narrative information complete and to the point.
- If any sections are not large enough to contain your response, please attach additional pages as necessary. Ensure that any attached pages are clearly labeled with the applicable question or section.

- If any of the documents provided in the form are in draft format, a draft is acceptable only if it includes the following elements:
 - a. identifies all entities associated with the agreement,
 - b. outlines all roles and responsibilities of all entities,
 - c. identifies all costs associated with the agreement, and
 - d. includes all exhibits that are referenced in the agreement.
 - e. any agreements in draft form must include a document signed by both entities committing to execute the agreement as submitted following CN approval.

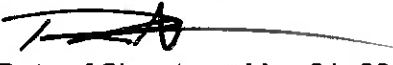
Do not skip any questions. If you believe a question is not applicable to your project, provide rationale as to why it is not applicable.

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

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

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

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

Owner/Operator Name of the surgical facility as it appears on the UBI/Master Business License Washington Retina, PLLC	
Clinical Practice UBI #: 604-896-151 Surgery Center UBI #: 604-896-151	Federal Tax ID (FEIN) # 88-1667866
Mailing Address 125 3rd Street N.E., Suite 200 Auburn, WA 98002	Surgery Center Address 125 3rd St N.E., Suite 300 Auburn, WA 98002
Website Address: http://washington-retina.com	
Phone number (10-digit): 253-275-1000	Email Address: mandiga@waretina.com
Name and Title of Responsible Officer (Print): Rahul Mandiga, M.D. Member	Signature of Responsible Officer:  Date of Signature: May 21, 2024
Identify the purpose of your request:	
<input checked="" type="checkbox"/> New Facility <input type="checkbox"/> Change of Ownership <input type="checkbox"/> Facility Relocation	<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

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

Yes No

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

Current facility's name	
Current facility's address	
Current facility's license number	ASF.FS.
Current facility's Certificate of Need status	<input type="checkbox"/> Exempt DOR# _____
	<input type="checkbox"/> Approved CN# _____
Anticipated change of ownership month and year	

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

Current facility's address	
Anticipated relocation month and year	

Facility Information

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?*

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.

- 5.

Number of existing operating and procedure rooms:	0
Number of new operating and procedure rooms:	2
Total:	2

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

Clinical and Surgical Services

6. 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) | | |
| <input type="checkbox"/> This is a new facility, no surgical procedures are currently performed | | |

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 |
| <input type="checkbox"/> Orthopedics | <input type="checkbox"/> Podiatry | <input type="checkbox"/> General Surgery |
| <input checked="" type="checkbox"/> Ophthalmology | <input type="checkbox"/> Pain Management | <input type="checkbox"/> Urology |
| <input type="checkbox"/> Other (describe) | | |

Primary Purpose of the Facility

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

This site's revenue	Most recent full year of operation Year: <u>2023</u>	Projected first full year of operation after the proposed changes Year: <u>2026</u>
Total revenue for clinical services	\$13,000,000	\$13,000,000
Total revenue for surgical services	\$0	\$2,000,000
Total revenue	\$13,000,000	\$15,000,000

This site's patient visits	Most recent full year of operation Year: <u>2023</u>	Projected first full year of operation after the proposed changes Year: <u>2026</u>
Total clinical patient visits	23,000	23,000
Total surgical patient visits	0	650
Total patient visits	23,000	23,650

The projected 2026 clinical revenue and patient visit numbers are based on actual clinical revenue and patient visit numbers for 2023 at the site. The projected 2026 surgical revenue and patient visit numbers are based on 2023 surgical cases that Washington Retina physicians performed at other facilities (because Washington Retina currently does not operate its own ASC) that Washington Retina anticipates will be shifted to its new ASC when it opens.

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](#)

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

Licensing Resources:

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

Construction Review Services Resources:

[Construction Review Services Program Web Page](#)

Phone: (360) 236-2944

Email: CRS@doh.wa.gov

OPERATING AGREEMENT
OF WASHINGTON RETINA, PLLC

**OPERATING AGREEMENT
OF
WASHINGTON RETINA, PLLC
a Washington Professional Limited Liability Company**

THIS OPERATING AGREEMENT (hereinafter referred to as “Agreement”) is made and entered into this 15 day of April, 2022 by Rahul Mandiga, M.D., and Benjamin Reiss, M.D., hereinafter referred to as “Members.”

WITNESSETH:

In consideration of the covenants and mutual agreements hereinafter set forth, the Members hereby agree as follows:

I. FORMATION OF PROFESSIONAL LIMITED LIABILITY COMPANY.

The Members have heretofore formed a Professional Limited Liability Company (hereinafter referred to as the “Company”) pursuant to the provisions of the Washington Limited Liability Company Act (hereinafter referred to as the “Act”).

II. GENERAL PROVISIONS.

A. Name. The name of the Company is Washington Retina, PLLC, and all business of the Company shall be conducted in that name, or such other name as the Members may from time-to-time hereafter designate.

B. Nature of Company’s Business The nature of the Company’s business shall be to engage in every phase and aspect of rendering specialty ophthalmologic care services to the public through providers duly licensed under the laws of the State of Washington, provided such services shall be rendered only through the Member, Manager, employees and agents of the Company (or professional service corporations formed pursuant to RCW 18.100 et seq. and qualified to serve as Members of the Company as provided in RCW 25.15.046), all of whom must be legally authorized to practice medicine specifically ophthalmology in the State of Washington. The Company shall not engage in any business other than the rendering of professional ophthalmology services for which it was formed; provided that nothing shall prohibit the Company from investing its funds in real estate, personal property, mortgages, stock, bonds, insurance or other types of investments. The Company shall at all times be maintained in compliance with RCW 25.15.046, governing professional limited liability companies.

The statement of the nature of the Company’s business, as stated herein, shall not be deemed a limitation on the general powers of the Company.

C. Principal Office. The principal office and place of business of the Company shall be 105 Mall Way, #1021 Marysville, WA 98270. The registered agent of the Company to

accept service of process is Raemi L. Gilkerson whose address is 8060 165th Avenue NE, Suite 110, Redmond, Washington 98052. The registered office and registered agent of the Company may be changed by the Members from time to time by filing documentation in accordance with the Act.

D. Term. The period of duration of the Company shall be indefinite, unless sooner dissolved and terminated in accordance with the provisions of Section X. of this Agreement.

E. Initial Members. The name and business or residence address of the Initial Members are as follows:

Name: Rahul Mandiga, M.D.
 Address: 105 Mall Way, #1021
 Marysville, WA 98270

Name: Benjamin Reiss, M.D.
 Address: 105 Mall Way, #1021
 Marysville, WA 98270

III. CAPITAL.

A. Capital Contribution of Members. In exchange for their interest in the Company, the Members shall contribute to the Company in cash, property or services at the times indicated as follows:

Member	Date of Contribution	Amount of Contribution	Form of Contribution	Units
Rahul Mandiga, M.D.	5/2/2022	\$ <u>25,000</u>	Cash	<u>50</u>
Benjamin Reiss, M.D.	6/2/2022	\$ <u>25,000</u>	Cash	<u>50</u>

B. No right to Withdraw Capital. No interest shall accrue on any contribution to the capital of the Company, and no Member shall have the right to withdraw from the Company or be repaid any contribution of capital except as otherwise specifically provided herein.

C. Capital Accounts. A separate capital account shall be maintained for the Members. There shall be credited to the Member's capital account: 1) the amount of cash and the fair market value of any property or services contributed by the Member; 2) the Member's share of the profits of the Company; 3) the amount of any increase to the basis of assets of the Company due to an election under §754 of the Internal Revenue Code of 1986, as amended (hereinafter referred to as the "Code"); and there shall be charged against the Member's capital account: 1) the amount of all distributions to the Member; and 2) the Member's share of losses of the Company.

IV. MEMBER'S INTEREST.

A. The Company Units. The Members shall receive one (1) unit of ownership in the Company for each dollar value of cash, property or services contributed to the Company effective as of the date of such contribution; provided, however, no such contribution by a Members other than that set forth in Section III above shall give rise to additional units of ownership in the Company without the express written agreement of the Members. A unit of ownership shall represent a proportionate ownership in the Company based on one (1) unit to the total of all units then outstanding as the same shall exist from time to time. The Members and the Member's respective interests in the Company following the contributions described in Section III. above shall be as set forth on the attached **Exhibit A**, Schedule of Members, Contributions and Interests. The Members may issue certificates of interest to the holders of the units in such form as the Members may consider appropriate.

B. Voting Rights. Each issued unit shall entitle the Member possessing such unit to one (1) vote on all matters on which the Members may vote under the Act.

V. PROFITS AND LOSSES.

Taxable income, gain, loss, deduction or credit shall be allocated to the Members in accordance with the Member's respective interests in the Company at the end of the Company year; provided, however, if the Members have contributed property other than money to the Company, the allocations shall be governed by §704(c) of the Code. If any units have been transferred or assigned during any taxable year, the allocation of the interest represented thereby shall be prorated based upon the time units were held during the year.

VI. DISTRIBUTIONS.

The cash flow of the Company may be distributed to the Member in accordance with the Member's interest in the Company subject to the limitations on distributions under the Act. Such distributions shall occur within thirty (30) days after the end of each calendar quarter and with such lesser or greater frequency as the Members shall determine consistent with the orderly administration of the business of the Company or as otherwise directed by the Members.

The "cash flow" of the Company, shall be equal to the taxable income of the Company, increased by the amount allowable as depreciation on the Company's assets, the amount of any amortization deduction and the amount of any other items deductible for federal income tax purposes in excess of actual cash payments with respect thereto, and decreased by the amount of any repayment of the principal portion of any debt of the Company, all cash expenditures not deductible for federal income tax purposes or the amount thereof in excess of the amount deductible for federal income tax purposes, and the amount of all other expenses and all reserves set aside by the Members as the Members shall determine necessary or desirable to provide for actual or contingent liabilities, working capital requirements of the Company, and for any other purpose necessary or incidental to the proper management and function of the business of the Company.

VII. MANAGEMENT.

A. Authority of the Members to Bind the Company. Except as otherwise expressly provided herein, all decisions regarding any matter set forth in this Agreement or otherwise affecting or arising out of the conduct of the business of the Company shall be made by the Members. The Members shall have the exclusive right and full authority to manage, conduct and operate the Company business. Specifically, but not by way of limitation, the Members shall be authorized to: (i) employ such agents, employees, managers, accountants, attorneys, consultants and other person necessary or appropriate to carry out the business and affairs of the Company and to pay as an expense of the Company such reasonable fees, expenses, salaries, wages and other compensation to such persons as the Members shall determine; (ii) cause to be paid all amounts due and payable by the Company to any person or entity; (iii) pay, expend, renew, modify, adjust, submit to arbitration, prosecute, defend or compromise upon such terms as the Members may determine and upon such evidence as the Members may deem sufficient any obligation, suit, liability, cause or action or claim, including taxes, either in favor of or against the Company; (iv) invest or reinvest proceeds received upon condemnation; (v) make any and all expenditures or investments of excess funds in obligations which the Members, in the Member's sole discretion, deems necessary or appropriate in connection with the management of the affairs of the Company and the carrying out of its obligations and responsibilities under this Agreement; (vi) sell or lease Company property on such terms and conditions as the Members shall determine to be in the best interest of the Company; (vii) purchase liability and other insurance to protect the Company's property and business; (viii) purchase insurance for the life of the Members or employees for the benefit of the Company; (ix) incur such indebtedness on behalf of the Company as the Members deems necessary to carry out the business and affairs of the Company; and (x) the doing and performance of all other acts as may be necessary to carry out the Company's business purpose.

The Members shall execute and deliver for and on behalf of the Company such deeds, leases, notes, contracts, agreements, assignments, bills of sale, security agreements, loan agreements, deeds of trust, guarantees and other documents in such form and on such terms

and conditions as the Members shall deem proper, including the licensing of intellectual property.

B. Compensation of the Members. The Members shall be reimbursed all reasonable expenses incurred on behalf of the Company and shall be entitled to reasonable compensation, in an amount to be determined from time to time by the Members.

VIII. BOOKS, RECORDS AND AUDITS.

A. Books and Records. The Company shall keep, or cause to be kept, at its office, full and true books and records of account for the Company, which shall be open to reasonable inspection and examination by the Members or the Member's duly authorized representatives.

B. Accounting Period. The accounting period of the Company shall be the calendar year ending December 31. The Members shall be provided with a financial statement of the Company as soon after the end of the Company's fiscal year as is reasonably possible.

C. Federal Income Tax Information. Rahul Mandiga, M.D. shall be the designated Partnership Representative ("Partnership Representative").

a. Duties of Partnership Representative. To the extent and in the manner required by applicable law and regulations, (i) the Partnership Representative shall furnish the name, address, profits, interest and social security number or taxpayer identification number of each Member to the Secretary of the Treasury or his delegate (the "Secretary"); (ii) keep each Member informed of administrative and judicial proceedings for the adjustment at the Company level of any item required to be taken into account by a Member for income tax purposes (such administrative proceeding referred to hereinafter as "judicial review"); and (iii) maintain any list required by §6112 of the Code. By executing this Agreement, the Members enter into a written agreement with the Partnership Representative to maintain this information.

b. Indemnification of Partnership Representative. The Company shall indemnify and reimburse the Partnership Representative for all expenses, including legal and accounting fees, claims, liabilities, losses and damages incurred in connection with any administrative or judicial proceeding with respect to the tax liability of the Members. Neither the Partnership Representative nor any other person shall have any obligation to provide funds for such purpose. The taking of any action and the incurring of any expense by the Partnership Representative in connection with any such proceeding, except to the extent required by law, are matters that are in the sole discretion of the Partnership Representative, and the provisions on limitations of liability of the Partnership Representative and indemnification set forth herein shall be fully applicable to the Partnership Representative in his capacity as such.

c. Authority of Partnership Representative. The Partnership Representative is hereby authorized, but not required:

- i. to enter into any settlement with the Internal Revenue Service or the Secretary with respect to any tax audit or judicial review, in which agreement the Partnership Representative may expressly state that such agreement shall bind the other Members, except that such settlement agreement shall not bind any Member that, within the time prescribed pursuant to the Code and regulations thereunder, files a statement with the Secretary providing that the Partnership Representative shall not have the authority to enter into a settlement agreement on the behalf of such Member;
- ii. in the event that a notice of a final administrative adjustment at the Company level of any item required to be taken into account by a Member for tax purposes (a “final adjustment”) is mailed to the Partnership Representative, to seek judicial review of such final adjustment, including the filing of a petition for readjustment with the Tax Court, the District Court of the United States for the district in which the Company’s principal place of business is located or the United States Court of Federal Claims;
- iii. to intervene in any action brought by any other Member for judicial review of a final adjustment;
- iv. to file a request for an administrative adjustment with the Secretary at any time and, if any part of such request is not allowed by the Secretary, to file a petition for judicial review with respect to such request;
- v. to enter into an agreement with the Internal Revenue Service to extend the period for assessing any tax that is attributable to any item required to be taken into account by a Member for tax purposes, or any item affected by such item; and
- vi. to take any other action on behalf of the Members or the Company in connection with any administrative or judicial tax proceeding to the extent permitted by applicable law or regulations.

IX. TRANSFER OF INTERESTS IN COMPANY.

A. Limitation of Transferability. Except as otherwise expressly provided in this Agreement, no Member shall, voluntarily or involuntarily, directly or indirectly, sell, assign, transfer, exchange, gift, bequeath, or encumber (“Transfer”) all or any part of the Member’s units, except in accordance with this Agreement or with the prior written consent of all other Members. No transfer, other than a transfer of the interest of a deceased Member in compliance with RCW Sections 25.15.046 and 18.100.116, may be made to a person who is

not a duly licensed ophthalmologist eligible to engage in the practice of ophthalmology and eligible to hold Units under RCW Section 25.15.046. Any attempted transfer in contravention of this Agreement or Washington State law shall be null and void and shall not operate to transfer any interest or title, including any security interest, to the transferee.

B. Units are Restricted Securities. No transfer of part or all of any interest may be made if, in the opinion of counsel for the Company, such transfer or assignment: (i) will result in the Company being considered to have been terminated within the meaning of Section 708 of the Code; (ii) will result in the Company being treated as an association for federal income tax purposes; or (iii) will violate any applicable federal or state securities laws. Prior to making any transfer of any units of ownership in the Company, the transferor must notify the Company in writing and the non-transferring Member(s) shall, if they believe there is a risk of violating this Section, obtain an opinion from the Company's legal counsel confirming whether the proposed transfer would, if made, cause such termination, change in tax status or violation of securities laws. Legal fees shall be the responsibility of the transferor.

C. Right of First Refusal. A Member may sell his entire interest in the Company upon compliance with Section IX., A., above as well as the following conditions:

a. In the event a Member ("Selling Member") desires to sell his entire Member Interest in the Company and receives a written offer ("Offer") thereof which the Selling Member intends to accept, the Selling Member before accepting such Offer shall first notify the other Member ("Non-Selling Member") and provide them with a copy of the Offer. The Offer must contain all material terms relating to the purchase and sale (including the name of the transferee), the consideration must be entirely monetary, and the Offer must contain a provision that the transferee agrees to be bound by all the terms and conditions of the Agreement.

b. After receiving a copy of the Offer, the Non-Selling Member shall have sixty (60) days within which to elect to purchase the entire Member Interest of the Selling Member upon the terms and conditions set forth in the Offer. If the Non-Selling Member does not respond or does not elect to purchase the Member Interest of the Selling Member within sixty (60) days, the Selling Member may affect the purchase and sale to the purchaser identified in the Offer and upon the terms and conditions set forth in the Offer, but not otherwise.

c. In the event any Member files for bankruptcy or any Member's interest in the Company would be subject to any bankruptcy proceedings or other judgement or creditor proceeding, the Member's interest in the Company shall immediately be subject to this Right of First Refusal.

D. Death of a Member.

a. Deceased Member's Interest. The Member may transfer their units upon death by Will, Trust or other testamentary instrument to their lineal descendants subject to the terms of this Agreement. The other Member shall have the right to purchase such Deceased Member's Member Interest in the Company as provided herein. Such right shall be exercised by notice in writing to the personal representative of the Deceased Member with a copy to all other Members, within ninety (90) days of the date of death. If more than one Member elects to purchase the Deceased Member's interest, they shall purchase such Member Interest jointly, and unless such buying Members agree otherwise each shall purchase an equal share of such Member Interest.

The purchase price for the Deceased Member's interest shall be an amount equal to the amount such Member would receive under this Agreement if all assets of the Company were sold (intact as a going concern if the Company is then a going concern) for their fair market value (less a ten percent (10%) deduction for deemed and actual closing expenses), all liabilities of the Company were satisfied, and the net proceeds were distributed to the Members pursuant to Section X., C.

The fair market value of the assets of the Company shall be determined first by good faith negotiation between the parties. The term "fair market value" means the price which a seller, willing but not obligated to sell, would accept for the assets of the Company, not including goodwill of the Company, in its then condition, and which a buyer, willing but not obligated to buy, would pay therefore in any arm's length transaction. Fair market value shall be determined by the parties or, if the parties are unable to agree thereon, by the following procedure:

In the event the parties are unable to agree as to the fair market value, either party may give written notice of such disagreement to the other party. The parties thereafter within ten (10) days shall attempt to agree on a mutually acceptable appraiser who shall determine the fair market value of the transferring Member's Member Interests. In the event the parties are unable to agree upon an appraiser, the party whose Member Interest is being purchased shall select one appraiser and the Member(s) (or the Company) who are purchasing such Member interest, shall select an appraiser. If the party whose interests are being purchased fails to appoint an appraiser, then the appraiser selected by the party purchasing the Member Interest shall be the sole appraiser who shall determine fair market value and shall be deemed a jointly selected appraiser. If two appraisers are selected, and the difference between the two appraisals is within ten percent (10%) of the lower of the two appraisals, then the fair market value shall be the average of the two appraisals. If the difference between the two appraisals is greater than ten percent (10%) of the lower of the two appraisals, then the two appraisers shall jointly select a third appraiser. If the third appraisal is less than either of the first two, then the fair market value shall be the average of the two lowest appraisals. If the third appraisal is greater than the first two, then the fair market value shall be the average of the two highest appraisals. If the third appraisal falls between the previous two appraisals, the fair market value shall be the value established by the third appraisal. The Members shall share the cost in proportion to their respective

Percentage Interest of any appraiser jointly selected and shall pay the costs of the appraiser they each individually select and shall share the cost equally of any third appraiser. Any appraiser designated to serve as above provided, shall be disinterested, shall (i) have at least ten (10) years recent experience in appraising business values in the greater Seattle/Bellevue area, and (ii) be a member of a professional appraisal association, group or institute. After reaching a decision, the appraiser, joint appraisers or third appraiser, as the case may be, shall give written notice thereof to each of the Members which notice shall state the fair market value so determined, and the fair market value so stated shall be considered the fair market value and shall be binding upon the Members.

The purchase and sale shall close within thirty (30) days of the determination of the fair market value. The purchase price shall be paid all in cash at closing, unless the Company or the purchasing Member elects to purchase on terms in which case it shall pay twenty percent (20%) down at closing and the balance in twenty (20) equal quarterly payments including interest at three percent (3%) per annum over the Prime Rate in effect on the date of closing. Prepayment of all or part of the principal shall be permitted at any time without premium or penalty. Such indebtedness shall be accelerated and become payable upon the closing of any sale or refinancing by the Company of all or substantially all assets of the Company. Such obligation shall be secured by the Company's assets.

E. Default.

a. Purchase of Defaulting Member's Interest. If any Member fails to perform any of its obligations under this Agreement, and such failure is not cured within sixty (60) days after such Member receives written notice from the other Member or Members identifying such failure with reasonable specificity, then such Member shall be in Default, and, in addition to the other remedies that may be available for such Default, the non-Defaulting Members may elect at any time thereafter until such Default is cured to purchase or cause the Company to purchase the interest of the Defaulting Member in the Company. Such right may be exercised by notice in writing to the Defaulting Member.

In the event of such election under default, the interest of the Defaulting Member shall be purchased and sold under the terms and conditions of Section IX., D., as though the Member in Default were a Deceased except that the purchase price shall be ninety percent (90%) of the price that otherwise would be paid under Section IX. D. The purchasing Member(s) or the Company, as the case may be, shall pay the applicable purchase price in cash at closing; provided, however, for any purchase made pursuant to this Section IX. E, the Company or purchasing Member(s) may elect to pay twenty percent (20%) down at closing and the balance in twenty (20) equal quarterly payments including interest per annum at the Prime Rate in effect on the date of closing. Prepayment of all or part of the principal shall be permitted at any time without premium or penalty. Such indebtedness shall be accelerated and become payable upon the closing of any sale or refinancing by the Company of all or substantially all assets of the Company. Such obligation shall be unsecured by the Company's assets.

F. Consent Required for Substitution of New Members. Subject this Section IX, any one or more units held by a Member may be assigned by such Member at any time by written assignment in form and substance approved by the Members, but only: (i) upon execution and delivery by the assignee of a written acceptance and adoption of this Agreement, as the same may be amended, together with such other documents, if any, as the Members may require; (ii) the payment to the Company by the Member selling his or her units of all reasonable expenses incurred by the Company in connection with such assignment; and (iii) with the unanimous written consent of the Members, which consent may, in each case, be given or denied in their absolute discretion. Upon such execution and consent, when applicable, but not otherwise, the assignee shall, with respect to the units assigned, be admitted to the Company and become a substituted Member therein.

G. Transfer of Member's Interest. An interest of a Member in the Company may be transferred or assigned by (a) transfer of a Certificate, if Certificates have been issued by the Company, or (b) by any manner sufficient to transfer personal property under applicable law. However, if all the other Members of the Company other than the Members proposing to dispose of his or her interest do not approve of the proposed transfer or assignment by unanimous consent, the transferee of the interest of the Member shall have no right to participate in the management of the business and affairs of the Company or to become a Member. The transferee shall be entitled to receive only the share of profits or other compensation by way of income and the return of contributions to which that Member otherwise would be entitled. Any interest of a Member in the Company transferred subject to any bankruptcy proceedings or other judgement or creditor proceeding in which the Members of the Company do not purchase the Member's interest under the Right of First Refusal shall result in any new Member being only an economic interest holder. Said new Member shall have no voting rights or participation in the management of the Company.

X. DISSOLUTION AND TERMINATION.

A. Events of Dissolution. The Company shall be dissolved: (i) upon the sale or other disposition of all or substantially all of its property and assets; (ii) upon the filing by the Members of a voluntary petition in bankruptcy or upon an adjudication of the Members as bankrupt or insolvent, or upon the filing by the Members of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law regarding bankruptcy, insolvency or other relief for debtors, or acquiescing in the appointment of any trustee, receiver, conservator or liquidator of such Members or of all or any substantial portion of the Member's property or of the Member's interest in the Company; (iii) upon the occurrence of any event resulting in there being no Members of the Company; or (iv) upon the consent of the holders of one hundred percent (100%) of the units. In the event of the dissolution of the Company pursuant to the events of dissolution described above, the business and affairs of the Company shall not be discontinued, and the Company shall remain in existence as a

Professional Limited Liability Company under the laws of the State of Washington if the Members agree to continue the Company under this Agreement within sixty (60) days of such event of dissolution.

B. Liquidation. The dissolution of the Company shall be effective on the date on which the event occurs giving rise to such dissolution, but the Company shall not be wound up until the Company's Certificate of Formation shall have been cancelled and the assets of the Company shall have been distributed as provided herein. Notwithstanding the dissolution of the Company prior to the winding up of the Company, the business of the Company and the rights of the Members shall continue to be governed by this Agreement. Upon dissolution of the Company, the Members shall liquidate the assets of the Company, apply and distribute the proceeds thereof as contemplated by this Agreement and cause the cancellation of the Company's Certificate of Formation.

C. Distributions in Liquidation. Upon the dissolution of the Company and incident to the winding up of the Company's business and affairs, the Members shall pay or make provision for the payment of all liabilities and obligations of the Company, actual or contingent, and all expenses of liquidation. Any amounts deemed necessary by the Members to provide a reserve for any unforeseen liabilities and obligations may, in the Member's discretion, be deposited in a bank or trust company upon such terms and for such period of time as the Members may determine. Following the payment of or provision for the liabilities of the Company as aforesaid, the remaining assets of the Company shall be distributed to the Members.

XI. AMENDMENTS.

A. Amendments. Amendments to this Agreement may be proposed by the Members. Following such proposal there shall be submitted to the Members a written, verbatim statement of any proposed amendment. A proposed amendment shall be adopted and be effective as an amendment hereto if it receives the affirmative vote of holders of one hundred percent (100%) of the units of the Company.

B. Restrictions on Amendments. Notwithstanding Section XI, A. above, this Agreement shall not be amended without the consent of the Members adversely affected if such amendment would (i) modify the limited liability of a Members; or (ii) alter the interest of the Members in profits, losses, or any Company distributions.

XII. INDEMNIFICATION AND LIABILITY.

A. Limitation of Liability. The debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and the Members of the Company shall not be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Members.

B. Indemnification. To the fullest extent not prohibited by law, the Company shall indemnify and hold harmless the Members from and against any and all losses, claims, demands, costs, damages, liabilities (joint and several), expenses of any nature (including attorneys; fees and disbursements), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, in which the Members may be involved, or threatened to be involved, as a party or otherwise, arising out of or incidental to any business of the Company transacted or occurring while the Members were a Member regardless of whether the Members continue to be a Member of the Company at the time any such liability or expense is paid or incurred.

XIII. MARITAL PROPERTY.

A. General. The Member's Spouse (the "Member Spouse") hereby joins in the execution of this Agreement, by signing Exhibit B, Consent of Spouse, solely for the purpose of subjecting their marital property interest, if any, in the Member's units of ownership to the terms of this Agreement. The execution of this Agreement by any Member Spouse shall not by itself create any marital property interest in the Member's units of ownership in the Company. If the Member and his Spouse have a marital property agreement in place which provides that the Member's units of ownership in the Company are individual property, then this marital agreement shall be taken into account when interpreting this section and shall govern the classification of the Member's units of ownership as between the Member and his Spouse.

B. Management and Control. The Members shall have the sole right of management and control of the Member's units of ownership in the Company of which he is the owner of record, including the right to vote and to transfer such units pursuant to this Agreement.

XIV. MISCELLANEOUS.

A. Scope of Legal Representation. The Members acknowledge that the formation of the Company, by its nature, involves certain inherent conflicts of interest among the Members' and between the Members and the Company. In advising the Company on formation issues and in preparation and/or modification of the Certificate of Formation, Professional Limited Liability Company Operating Agreement and other legal documentation, the role of Leos & Gilkerson, PLLC is limited to representing the Company and not any individual Member or other individuals. Accordingly, Raemi L. Gilkerson and the law firm of Leos & Gilkerson, PLLC hereby advise the Members and/or prospective Members to consult with separate legal counsel in order to discuss the individual rights, duties, and obligations of the Members to this Agreement and any investment in the Company. By the Members' signature, the undersigned Members consent to any potential conflict of interest this representation may pose and acknowledge that the Members are

entitled to seek separate legal counsel regarding this Agreement and related documents prepared by Leos & Gilkerson, PLLC in connection with Membership and the Company.

B. Notices. Any and all notices, elections, consents or demands permitted or required to be made under this Agreement shall be made in writing signed by the Members giving such notice, election, consent or demand and shall be delivered personally or sent by registered or certified mail to the Company at the address or addresses set forth in the Company's records or to such other address as may be supplied by written notice given in conformity with the terms of this paragraph.

C. Successors and Assigns. Subject to the restrictions on transfers set forth herein, this Agreement and each and every provision hereof shall be binding upon and shall inure to the benefit of the Members, their respective successors, successors in title, heirs and assigns, and each and every successor in interest to the Members, whether such successor acquires such an interest by way of gift, purchase, foreclosure or by any other method, shall hold such interest subject to all the terms and provisions of this Agreement.

D. Applicable Law. This Agreement and the rights of the parties hereunder shall be governed by the laws of the State of Washington.

E. Construction. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

F. Headings. The headings used in this Agreement are used solely for convenience of reference and shall not constitute a part of this Agreement or affect its meaning, construction or effect.

G. Waivers. The failure of any person to seek redress for violation of or to insist upon strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of any original violation.

H. Severability. If any provision of this Agreement or any application thereof shall be adjudicated as invalid, unenforceable or contrary to applicable law by a court of competent jurisdiction, the remainder of this Agreement, or the application of such invalid or unenforceable provision to persons or circumstances other than those acts to which it is held invalid, unenforceable or contrary to applicable law, shall not be affected thereby and shall continue in full force and effect to the fullest extent permitted by law.

I. Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company or the Members.


J. Further Assurances. The Members agree to execute, acknowledge, deliver, file and record such further certificates, amendments, instruments, promissory notes, documents, and other items as may be reasonably requested by the Company and to deliver, file and record such further certificates, amendments, instruments and documents, and to do all such other acts and things as may be required by law, or as may in the opinion of legal counsel to the Company be necessary or advisable to carry out the intent and purposes of this Agreement. The Members shall not unreasonably withhold or unduly delay any approval authorized or required by such party pursuant to this Agreement.

K. Attorneys' Fees. In any action at law or in equity or in any arbitration to enforce any of the provisions or rights under this Agreement, the non-prevailing party in such litigation or arbitration, as determined by the court or arbitrator(s) in a final judgment or decree, shall pay the prevailing party or parties all costs, expenses and reasonable attorneys' fees incurred therein by such party or parties (including, without limitation, such costs, expenses and fees on any appeals), and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees shall be included in, as part of, such judgment.

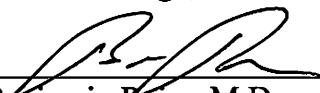
L. Investment Representations. The Members hereby represent, warrant and agree that said Members are acquiring the Member's interest in the Company for the Member's own account for investment only and not for purposes of or with a view to the resale or distribution of all or any part thereof, nor with a view to selling or otherwise distributing said interest at any particular time or under any predetermined circumstances. The Members understand and acknowledge the units have not been registered under the Securities Act of 1933, the Securities Act of Washington or any other state securities laws (collectively, the "Securities Acts") because the Company is issuing the units in reliance upon the exemptions from the registration requirements of the Securities Acts.

M. Entire Agreement. This Agreement contains the entire agreement with respect to the subject matter hereof.

IN WITNESS WHEREOF, this Agreement has been executed by the Members as of the day and year first above written.

By  _____
Rahul Mandiga, M.D.

Dated this 15 day of April, 2022.

By  _____
Benjamin Reiss, M.D.

Dated this 15 day of April, 2022.

EXHIBIT A


SCHEDULE OF MEMBER'S, CONTRIBUTIONS AND INTERESTS

Member	Date of Contribution	Amount of Contribution	Form of Contribution	Units
Rahul Mandiga, M.D.	5/2/2022	\$ <u>25,000</u>	Cash	<u>50</u>
Benjamin Reiss, M.D.	6/2/2022	\$ <u>25,000</u>	Cash	<u>50</u>

EXHIBIT B
CONSENT OF SPOUSE

I, Varsha Manjunath, having read and understood the above Operating Agreement, hereby consent to its terms and agree to be bound by the above Operating Agreement of Washington Retina, PLLC and have had a chance to consult independent counsel in regards thereto.

Dated this 15 day of APRIL, 2022.

By 
Varsha Manjunath
Spouse of Rahul Mandiga, M.D., Member

