




**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 <b>EAR NOSE &amp; THROAT ASSOCIATES SOUTHWEST, INC. P.S.</b>	
Clinical Practice UBI #: <b>601-798-187</b>	Federal Tax ID (FEIN) # <b>91-1829653</b>
Surgery Center UBI #:	
Mailing Address <b>128 LILLY RD NE, SUITE 202 Olympia, WA 98506</b>	Surgery Center Address <b>128 LILLY RD NE Suite 10 Olympia, WA 98506</b>
Website Address: <b>WWW.ENTSW.COM</b>	
Phone number (10-digit): <b>(360) 357-6314</b>	Email Address: <b>kkreider@entsw.com</b>
Name and Title of Responsible Officer (Print): <b>SUNG-WON KIM</b>	Signature of Responsible Officer:  Date of Signature: <b>7/13/2020</b>
Identify the purpose of your request:	
<input checked="" type="checkbox"/> New Facility	<input type="checkbox"/> Facility Expansion – Operating Room Increase
<input type="checkbox"/> Change of Ownership	<input type="checkbox"/> Facility Expansion – Service Increase
<input type="checkbox"/> Facility Relocation	<input type="checkbox"/> Other (please provide a letter describing)

**Existing Facility Status**, complete for all applications concerning existing facilities

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

Yes  No

**Surgical Facility Owner/Operator Information**

2. Provide a copy of any applicable governance documents, including operating agreements, shareholder agreements or corporate governing documents.

(SEE ATTACHED)

**Facility Information**

3. 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  No

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

4.

Number of existing operating and procedure rooms:	
Number of new operating and procedure rooms:	/
Total:	/

**Clinical and Surgical Services**

5. 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)    |   |  |
- This is a new facility, no surgical procedures are currently performed

Check all new surgical procedures proposed to performed in the facility

- |   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> Ear, Nose, & Throat | <input type="checkbox"/> Gynecology       | <input type="checkbox"/> Oral Surgery    |
| <input checked="" 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)               |   |  |

6. 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) or proposed (new facility) percentages of income and visits for clinical and surgical services. Include all assumptions used to determine the percentages provided.

	Most recent full year of operation at current surgical site	Projected first full year of operation after the change in location
Total revenue for clinical services provided at this site.	\$ 4,813,464	\$ 4,383,782
Total revenue for this site.	4,813,464	\$ 5,844,782
Total clinical patient visits for this site.		19,281
Total surgical visits at this site.		974
Total patient visits at this site.		20,255

**FIRST RESTATED SHAREHOLDER AGREEMENT  
OF  
EAR, NOSE AND THROAT ASSOCIATES SOUTHWEST, INC., P.S.**

This **SHAREHOLDER AGREEMENT** ("Agreement") is made and entered into this 22<sup>nd</sup> day May, 2017, by and between **EAR, NOSE AND THROAT ASSOCIATES SOUTHWEST, INC., P.S.**, a Washington corporation, (hereinafter referred to as "Company"), and its existing Shareholders, **R. DEAN RUSSELL, M.D., PATRICIA A. GILMER, M.D., RAY JENSEN, M.D. AND SUNG-WON KIM, M.D.** (collectively referred to herein as "Shareholder" or "Shareholders"), who hereby bind themselves, their heirs, assigns and successors in interest, as follows:

**I. RECITALS**

- A. Shareholders, having previously entered into a Shareholder Agreement on August 1, 2004 (the "Original Agreement"), desire to amend and restate the Original Agreement and that this Agreement will supersede and replace the Original Agreement.
- B. By entering into this Agreement, Shareholders desire to provide a mechanism allowing, but restricting, the ownership and transfer of the Shares, to provide a mechanism for redemption of Shares upon death, disability, dissolution of marriage or divorce, retirement, or termination of a Shareholder, to provide a disincentive to default on intra Shareholder obligations and to make other provisions with respect to the affairs of Company.
- C. For federal tax purposes, Shareholders and Company have elected to be treated as a Subchapter "S" Corporation as defined in Internal Revenue Code ("IRC") §1361 and its related Treasury Regulations.

THEREFORE, in consideration of the mutual agreement of Shareholders and Company, Shareholders and Company agree as follows:

**II. AGREEMENT**

**1. COMPANY INFORMATION.**

1.1 Company information is set forth in Exhibit A. Company Information includes: (i) the name of each Shareholder; (ii) Shareholders' current shares (the "Shares") in Company; and (iii) the percentage of ownership interest of each Shareholder.

1.2 Company will promptly amend and restate Exhibit A to account for any changes in the information set forth on Exhibit A. Upon an amendment, Company will promptly deliver to each Shareholder a copy of the amended and restated Exhibit A.

1.3 Each Shareholder shall at all times be employed by Company as a Physician pursuant to the terms of a written employment agreement between Company and Shareholder ("Employment Agreement").

## 2. RESTRICTION ON TRANSFER OF SHARES.

2.1 Restriction. A Shareholder shall not transfer any Shares owned by such Shareholder to any person or entity other than Company, and Company is the only entity that can issue Shares to a Shareholder.

2.2 S Corporation. No transfer of Shares may be made if the transfer would result in the termination of Company's election to be an S corporation pursuant to Section 7 herein.

2.3 Transferees. No transfer of Shares may be made unless the transferee is a party to this Agreement or becomes a party to this Agreement.

2.4 Prohibited Transfers. Any transfer of Shares that is not expressly permitted or required by this Agreement will be null and void and have no force or effect unless Company is required by applicable law to recognize the transfer or unless Company elects to recognize the transfer.

3. **PERMITTED TRANSFERS/TRANSFER OF SHARES.** A Shareholder may transfer Shares as follows, subject to the terms and conditions of this Agreement:

3.1 Death of a Shareholder. Upon the death of a Shareholder, Company shall be required to purchase the deceased Shareholder's Shares and the deceased Shareholder's estate shall be required to sell such Shares. The purchase price and payment schedule shall be determined in conformity with Section 4.2. The date of death shall be the "Effective Date" for purposes of determining the purchase price. To the extent that there is life insurance purchased by Company on the life of the deceased Shareholder (for the purpose of paying the estate for Shareholder's ownership interest), the proceeds thereof shall be paid to the estate of the deceased Shareholder as soon as is practical and be deemed a credit against the purchase price. Company may also purchase key-man insurance on the lives of its Shareholders to allow Company to have funds with which to continue to practice in an orderly manner following the death of a Shareholder.

3.2 Disability of a Shareholder. If a Shareholder, by reason of disability, partial disability, or extended illness, is unable to comply with the requirements of his or her Employment Agreement and perform his or her medical practice duties ("Disability"), the Company may make an adjustment to the practice schedule and compensation of the Shareholder with the Disability ("Disabled Shareholder") as is reasonable and necessary given the financial obligations of the Company and production loss caused by the Disability as determined by a majority of the remaining non-interested Shareholders. If a Disabled Shareholder's Disability lasts for a period of over six (6) months, Company shall have the option to purchase the shares of the Disabled Shareholder, which can be exercised by the unanimous vote of the Shareholders other than the Disabled Shareholder. If a Disabled Shareholder's Disability lasts for a period of over twelve (12) months, the remaining Shareholders shall purchase, and the disabled Shareholder shall sell his or her Shares to Company. The valuation of the Disabled Shareholder's Shares and purchase terms for any purchase made pursuant to this Section shall be in accordance with Section 4.3 hereof. The Shareholders recognize that Disability of a Shareholder would be a severe hardship on the Company and therefore Shareholders enter into this Section with the understanding and agreement that provisions herein are for the purposes of ensuring the Company will have the ability to continue to practice in an orderly manner following the Disability of a Shareholder.

3.3 Voluntary Retirement. A Shareholder may voluntarily retire from Company (“Retiring Shareholder”) by providing all other Shareholders with twelve (12) months’ advance written notice of his or her intention to retire from Company. The Retiring Shareholder shall receive the benefits described in Section 4.1 of this Agreement in exchange for all of his or her Shares. The “Effective Date” for purposes of determining purchase price shall be one (1) year after the date Shareholder provided advance written notice. If the Retiring Shareholder does not provide all other Shareholders with twelve (12) months’ advance written notice of his or her intention to retire then Shareholder shall receive the benefits described in Section 4.4 of this Agreement in exchange for all of his or her Shares. The remaining non-interested Shareholders may, by majority vote, choose to provide the benefits described in Section 4.1 to the Retiring Shareholder in exchange for all of his or her Shares.

3.4 Involuntary Termination. Any Shareholder may be required to withdraw from Company for good cause upon a vote of a majority of the Shareholders other than the subject Shareholder. Good cause shall include, but shall not be limited to, the occurrence of the following:

- (a) Termination of Shareholder’s Employment Agreement for any reason other than Death, Disability or Retirement pursuant to Section 3.3;
- (b) Failure to keep timely and accurate charts;
- (c) Engaging in criminal or fraudulent activity;
- (d) Conducting the practice of medicine in a manner detrimental to the best interests of Company;
- (e) No longer being licensed to practice medicine in the state of Washington;
- (f) Inability to cooperate with the other Shareholders and/or the staff of Company to such an extent that it becomes virtually impossible to continue any kind of a meaningful collegial working relationship;
- (g) Is found to be impaired due to drugs or alcohol in any capacity during work times and any work-related events;
- (h) If Shareholder is determined to be abusing illegal substances;
- (i) Is no longer eligible for professional malpractice insurance coverage; or
- (j) Loss of hospital admitting privileges.

A Shareholder who is required to withdraw from Company under this Section 3.4 (“Terminated Shareholder”) shall receive the redemption benefits in Section 4.4. The “Effective Date” for purposes of determining purchase price in the event of involuntary termination shall be the date of vote by the other Shareholders pursuant to this Section 3.4.

3.5 No Other Transfers Effective. No transfer of Shares shall be effective, and Company shall not record or recognize any such transfer, unless and until there has been full compliance with this Agreement.

3.6 Shareholders may agree to waive or alter the requirements and/or benefits of any or all of Section 3 upon the written consent of a majority of the remaining non-interested Shareholders.

#### 4. PRICE OF SHARES AND TERMS OF PAYMENT.

4.1 Redemption Level A Benefits: A Shareholder who is entitled to Redemption Level A Benefits shall receive an amount equal to the total of the following three (3) components in exchange for all of his or her Shares:

- (a) *Accounts Receivable.* An amount equal to the amounts received by Company that are attributable to the practice of medicine by Shareholder without any interest ("AR Payment") for six (6) months following the Effective Date. Company will make every reasonable effort to collect the amounts receivable attributable to Shareholder, but any of said account receivable not collected within six (6) months of the Effective Date shall be deemed "uncollectible" and shall become the sole and separate property of Company.

The AR Payment shall be paid by Company to Shareholder no later than six (6) months following the Effective Date.

- (b) *Ancillary Services Income.* If Shareholder has been employed by Company for no less than fifteen (15) years, an amount equal to Shareholder's share of Company's monthly ancillary services income payment ("Ancillary Services Payment"). Ancillary Services are services not attributable to individual physician services including but not limited to: CT scan, allergy and audiology ("Ancillary Services"). The Ancillary Services Payment shall be calculated as follows: the average monthly collections (calculated based on the twenty four (24) months prior to the Effective Date of Shareholder) received by Company as a result of Ancillary Services provided by Company, divided pro rata by the percentage of all of the Shares owned by Shareholder on the Effective Date.

The Ancillary Services Payment shall be paid by Company to Shareholder on a monthly basis for eighteen (18) months following the Effective Date.

- (c) *Value of Fixed Assets.* A prorated amount of the value of Company's fixed assets ("Fixed Asset Payment"). The value of Company's fixed assets shall be determined by the most recent regular update provided to Company by Company's accountant. The Fixed Asset Payment will be an amount equal to the value of the fixed assets (as determined by the most recent regular update provided by Company's accountant) divided pro rata by the percentage of all of the Shares owned by Shareholder on the Effective Date.

The Fixed Asset Payment shall be paid out by Company to Shareholder at the discretion of the remaining Shareholders over a period not to exceed five (5) years with interest at the IRS's lowest imputed rate as of the Effective Date.

4.2 Redemption Level B Benefits. A Shareholder who is entitled to Redemption Level B Benefits shall receive an amount equal to the total of the following three (3) components in exchange for all of his or her Shares:

- (a) *Accounts Receivable.* AR Payment for one hundred twenty (120) days following the Effective Date. Company will make every reasonable effort to collect the amounts receivable attributable to Shareholder, but any of said account receivable not collected within one hundred twenty (120) days of the Effective Date shall be deemed "uncollectible" and shall become the sole and separate property of Company.

The AR Payment shall be paid by Company to Shareholder no later than six (6) months following the Effective Date.

- (b) *Ancillary Services Income.* If Shareholder has been employed by Company for no less than fifteen (15) years, Shareholder shall receive Ancillary Services Payment as defined and calculated in 4.1(b).

The Ancillary Services Payment shall be paid by Company to Shareholder on a monthly basis for eighteen (18) months following the Effective Date.

- (c) *Value of Fixed Assets.* Fixed Asset Payment as defined and calculated in 4.1(c).

The Fixed Asset Payment shall be paid out by Company to Shareholder at the discretion of the remaining Shareholders over a period not to exceed five (5) years with interest at the IRS's lowest imputed rate as of the Effective Date.

4.3 Redemption Level C Benefits. A Shareholder who is entitled to Redemption Level C Benefits shall receive an amount equal to the total of the following three (3) components in exchange for all of his or her Shares:

- (a) *Accounts Receivable.* AR Payment for one hundred twenty (120) days following the Effective Date. Company will make every reasonable effort to collect the amounts receivable attributable to Shareholder, but any of said account receivable not collected within one hundred twenty (120) days of the Effective Date shall be deemed "uncollectible" and shall become the sole and separate property of Company.

The AR Payment shall be paid by Company to Shareholder no later than six (6) months following the Effective Date from Company.



- (b) *Ancillary Services Income.* If Shareholder has been employed by Company for no less than fifteen (15) years, Shareholder shall receive Ancillary Services Payment as defined and calculated in 4.1(b).

The Ancillary Services Payment shall be paid by Company to Shareholder on a monthly basis for eighteen (18) months following the Effective Date.

- (c) *Value of Fixed Assets.* Fixed Asset Payment as defined and calculated in 4.1(c). For Redemption Level C Benefits, the Fixed Asset Payment shall be reduced by twenty percent (20%).

The Fixed Asset Payment shall be paid out by Company to Shareholder at the discretion of the remaining Shareholders over a period not to exceed five (5) years with interest at the IRS's lowest imputed rate as of the Effective Date.

4.4 Redemption Level D Benefits. A Shareholder who is entitled to Redemption Level D Benefits shall receive an amount equal to the total of the following three (3) components in exchange for all of his or her Shares:

- (a) *Accounts Receivable.* AR Payment for one hundred twenty (120) days following the Effective Date. Company will make every reasonable effort to collect the amounts receivable attributable to Shareholder, but any of said account receivable not collected within one hundred twenty (120) days of the Effective Date shall be deemed "uncollectible" and shall become the sole and separate property of Company. For Redemption Level D Benefits, the AR Payment may be reduced by ten percent (10%) at the discretion of Company determined by a majority vote of the remaining non-interested Shareholders.

Payment to Shareholder of the AR Payment may be, at the discretion of Company determined by a majority vote of the remaining non-interested Shareholders, delayed for one (1) year after the Effective Date. The AR Payment shall be paid out by Company to Shareholder no later than eighteen (18) months following the Effective Date.

- (b) *Ancillary Services Income.* If Shareholder has been employed by Company for no less than fifteen (15) years, Shareholder shall receive Ancillary Services Payment as defined and calculated in 4.1(b).

For Redemption Level D Benefits, the Ancillary Services Payment may be reduced by ten percent (10%) at the discretion of Company determined by a majority vote of the remaining non-interested Shareholders.

The Ancillary Services Payment shall be paid by Company to Shareholder on a monthly basis for eighteen (18) months following the Effective Date.

- (c) *Value of Fixed Assets.* Fixed Asset Payment as defined and calculated in 4.1(c). For Redemption Level D Benefits, the Fixed Asset Payment may be reduced by ten percent (10%) at the discretion of Company determined by a majority vote of the remaining non-interested Shareholders.

The Fixed Asset Payment shall be paid out by Company to Shareholder at the discretion of the remaining Shareholders over a period not to exceed five (5) years with interest at the IRS's lowest imputed rate as of the Effective Date.

4.5 Purpose of Redemption Scheme: Shareholders have deliberately selected the redemption scheme contained in this Section 4 of this Agreement as a method of compensating a withdrawing Shareholder for his or her Shares and setting off the amount of damage which would occur to Company if a Shareholder withdrew under the circumstances described in this Section 4. This redemption scheme is not intended to be a penalty, but rather an educated guess as to the probable damages caused to Company by the withdrawal of a Shareholder.

4.6 One Buyout at a Time. The AR Payment, Ancillary Services Payment and Fixed Asset Payment made to a Shareholder due to death, disability, involuntary termination from Company or because a Shareholder is retiring from Company shall only be made to one (1) Shareholder at a time. To the extent a Shareholder withdraws from Company while another Shareholder is receiving AR Payment, Ancillary Services Payment or Fixed Asset Payments, the second withdrawing Shareholder shall not begin to receive his or her AR Payment, Ancillary Services Payment or Fixed Asset Payments until Company has completed making the AR Payment, Ancillary Services Payment and Fixed Asset Payments to the first withdrawing Shareholder.

**5. ISSUANCE OF SHARE CERTIFICATES.** The ownership of Company is reflected in this Agreement and any subsequent amendments thereto. At present Company elects not to issue individual shares of Company ownership interest, but reserves the right to do so at a future time, upon unanimous vote of Shareholders.

## **6. S CORPORATION PROVISIONS.**

6.1 Election. Shareholders and Company acknowledge that an Internal Revenue Service ("IRS") Form 2553 "Election by a Small Business Corporation," was filed by Company and its Shareholders pursuant to which Company elected to be treated as an "S corporation" under Subchapter S of the IRC, effective \_\_\_\_\_. Shareholders and Company agree not to take any action which would cause Company to lose its status as an S corporation as defined in IRC Section 1361 (unless otherwise determined by Shareholders owning a majority of the issued and outstanding Shares of stock of Company), and each Shareholder further agrees not to sell or otherwise transfer his or her Shares, either during his or her lifetime or by will or trust instrument, to any party or parties who would cause Company to lose its status as an "S corporation" including, but not limited to, a transfer to an individual who is a non-resident alien, a transfer to one (1) or more other persons who would cause Company to have more than the permitted number of shareholders (presently one hundred (100)), a transfer to a trust which is not a "permitted shareholder" under IRC, or a transfer to any other non-permitted S corporation shareholder. Any

such transfer of Shares by a Shareholder which would cause Company to lose its status as an "S corporation" shall be void *ab initio*.

6.2 Opinion of Counsel. Notwithstanding any other provision in this Agreement, Company may require as a condition precedent to any transfer of Shares hereunder that the transferor Shareholder, at the sole expense of such Shareholder, furnish to Company an opinion of counsel approved by Company that the transfer of Shares will not cause Company to lose its status as a "Small Business Corporation" as described in IRC Section 1361(b), and that the transfer will not cause Company to lose its eligibility as an "S corporation" as defined in IRC Section 1361(a)(1).

6.3 Mandatory Dividends. Shareholders agree that they will cause the Corporation (to the extent it has funds available for distribution) to declare and pay a pro rata dividend (which shall be in proportion to the Shares held by each Shareholder of Company without regard to class of stock), payable in cash or by check, either during, or within three (3) months after the close of, each taxable year of Company during which it is an S corporation, except to the extent any such dividend may be prohibited by applicable law. The amount of such dividend shall be computed by multiplying the taxable income of Company (as determined for federal income tax purposes) for such taxable year, by a percentage equal to the highest marginal federal income tax rate applicable to an individual taxpayer (determined without regard to any special "surtax" or "phase-out adjustment" rates) for such taxable year. This provision shall not be construed as prohibiting the payment of dividends in an amount greater than those provided for hereunder.

6.4 Inadvertent Termination. If at any time prior to a dissolution of Company or a formal revocation of its election as an S corporation in accordance with IRC Section 1362(d), Company's election is terminated due to inadvertence, then Company shall, as soon as practicable after discover of the circumstances resulting in such termination, seek a determination of the IRS in accordance with IRC Section 1362(f) that the circumstances resulting in termination of the S election were inadvertent and that the status of Company as an electing small business corporation under Subchapter S shall be restored. In such event, each person who was a Shareholder at any time during the period of such inadvertent termination agrees to consent to the action of Company in requesting a determination of inadvertent termination and Company and each Shareholder agrees to make such adjustments consistent with treatment of Company as an S corporation as may be required by the IRS with respect to the period of inadvertent termination.

## 7. NONCOMPETITION, NONSOLICITATION AND CONFIDENTIALITY.

7.1 Noncompetition. In consideration of this Agreement, each Shareholder agrees that for one (1) year after the termination of Shareholder's ownership of Company (the "Restricted Period") for any reason, Shareholder shall not, directly or indirectly, take any action that results or may reasonably be expected to result, in owning, leasing, managing, operating, extending credit to, controlling or participating in, practicing in, engaging in, or providing professional, administrative, development, management or consulting services to, in each instance, whether as an employer, shareholder, employee, director, manager, lender, joint venturer, member, owner, independent contractor, consultant, advisor, Shareholder or otherwise, and whether or not compensated for any of the foregoing, any Person (defined below) (other than Company) that,

directly or indirectly, anywhere within Thurston County, Mason County, Lewis County, Grays Harbor County and/or Pacific County (the "Restricted Area"), engages in the provision of professional medical services in the area of otolaryngology; provided, however that the foregoing shall not prohibit Shareholder from passively owning five percent (5%) or less of any one (1) class of securities of any publicly-held company that engages in the foregoing.

As used herein "Person" means any natural person, sole proprietorship, firm, partnership, association, corporation, professional service corporation, company, limited liability company, professional limited liability company, trust, business trust, joint venture, unincorporated organization, hospital, clinic, network, group, association or other entity.

7.2 Nonsolicitation. In consideration of this Agreement, Shareholders agree that during the Restricted Period, each Shareholder shall not: (i) solicit or seek to provide services to any person who was treated by Company during the two (2) year period prior to Shareholder's termination of ownership of Company, or influence any such person to seek services from any provider other than Company; (ii) solicit or encourage any of Company's physicians, employees, independent contractors, representatives or agents to work for any Person or to curtail or terminate such employee's, independent contractors, representative's or agent's affiliation or contractual relationship with Company; (iii) hire any person that is an employee, independent contractor, representative or agent of Company or was an employee, independent contractor, representative or agent of Company within ninety (90) days prior to the date of such hire; or (iv) interfere with, disrupt or attempt to disrupt the relationship between Company and any third party, including any patient, customer, supplier or vendor.

7.3 Liquidated Damages. The parties acknowledge and agree that the harm caused to Company by Shareholder's breach of this Article 7 would be extremely difficult to ascertain. Therefore, in the event that any provision of this Article 7 is breached, in addition to any other remedies available to Company at law or in equity, Shareholder agrees to pay to Company liquidated damages equal to the greater of the following: (a) One Hundred Thousand and 00/100 Dollars (\$100,000.00), or (b) the W-2 compensation paid by Company to Shareholder for the prior twelve (12) month period immediately preceding such breach. The parties agree that this amount of liquidated damages represents a reasonable forecast of just compensation for the harm caused by the breach of this covenant not to compete and is not a penalty.

Because monetary damages alone may not be adequate to make Company whole in the event of Shareholder's breach of Article 7, Company may, in addition to its other remedies hereunder or at law, seek injunctive relief to enjoin or prevent any breach of Shareholder's covenants set forth herein. In the event any such relief is sought or granted, Shareholder agrees to waive the posting of any bond or security in connection therewith. Any election by Company to pursue less than all remedies provided shall not bar subsequent remedies. The remedies provided herein are deemed cumulative and non-exclusive.

Without limiting Company's remedies, Company may offset the liquidated damages set forth herein against any other amounts presently due Shareholder or that would become payable in the future. In the event that such other amounts do not fully offset the amount under this Section 7.3, Shareholder shall promptly pay the balance of the amount under this Section 7.3 to Company. In

the event Shareholder fails to pay the liquidated damages amount set forth herein, Company shall be entitled to recover its costs of collection, including reasonable attorneys' fees.

7.4 Confidentiality. Shareholders agree as follows:

- (a) The Shareholders acknowledge that during Shareholder's ownership of Company, each Shareholder will be brought into contact with Company's confidential patient records, business plans, methods of operations, compensation methods and formulas, performance standards, pricing policies, marketing strategies, records, trade secrets and other information about Company's operations, employees and business of a confidential nature ("Confidential Information"). Without limiting the generality of the foregoing, "Confidential Information" shall also include, without limitation: all such information that is by law protected, as well as any and all information that is maintained and designated as such by Company, or any owner or employee of Company, including but not limited to the following: (i) information regarding the identity, address, health plan or insurance status, medical history, diagnosis and treatment of Company's patients (whether or not treated by Shareholder); (ii) the records and proceedings of quality assurance, peer review or utilization review evaluations; (iii) information about the financial operations, business plans or strategy of Company; (iv) information agreed to be held as confidential with entities with which Company has contracted; (v) patient lists; (vi) proprietary internal practices and procedures; (vii) supply of materials information, including sources and costs; and (viii) information relating to designs, formulas, developmental or experimental work, know-how, products, processes, computer programs, source codes, data bases, designs, schematics, inventions, creations, original works of authorship, or other subject matter related to research and development, strategic planning, manufacturing, engineering, purchasing, finance, marketing, promotion, distribution, licensing and selling activities, whether now existing, or acquired, developed or made available anytime in the future. Each Shareholder shall treat such information as confidential by seeing that it is stored securely and kept under password, if stored on a computer. Confidential Information does not include any information which is (x) available to the public other than by breach of this covenant by Shareholder or (y) rightfully received by Shareholder from a third party without proprietary or confidentiality restrictions and not as a work-around to the protections afforded Company by these confidentiality restrictions.
- (b) Each Shareholder represents and warrants that Shareholder shall at all times keep strictly confidential all Confidential Information. Shareholders shall not at any time (including after termination of ownership of Company) disclose, duplicate, record, use, or in any other manner reproduce in whole or in part any Confidential Information, except as necessary for the performance of Shareholder's duties on behalf of and for the benefit of Company during Shareholder's ownership of Company, and except to the extent Shareholder is required by applicable law to

disclose any Confidential Information; provided, however, that if Shareholder is required by applicable law to disclose any Confidential Information, Shareholder shall (i) provide Company with prompt written notice in advance of such disclosure so that Company may attempt to obtain a protective order or other assurance that confidential treatment will be accorded such Confidential Information, and (ii) cooperate with Company in attempting to obtain such protective order or confidential treatment. Other than for Company, Shareholder shall not at any time provide services to any person or entity if providing such services would require or likely result in Shareholder's using or disclosing Confidential Information.

- (c) Upon termination of ownership of Company (or earlier if requested), Shareholders shall immediately return to Company all originals and copies of Confidential Information and all other Company materials and property in Shareholder's possession.

## **8. COMPENSATION.**

8.1 Employment Agreement for Physician Services/Accounts Receivable. Income attributable to the practice of medicine shall be paid to the physician Shareholders as compensation through Shareholder's Employment Agreement pursuant to the compensation formula on Exhibit C.

8.2 Ancillary Income. Income obtained from Ancillary Services and any other remaining profit that is not income attributable to the physician services shall be distributed and allocated equally amongst Shareholders.

8.3 Profits and losses from the sale of assets shall be allocated to Shareholders in proportion to the Shares owned by each Shareholder.

**9. DECISION MAKING/VOTING.** Each Shareholder shall have one (1) vote for each Share owned for the purpose of management of Company business. The number of Shares each Shareholder has is shown on Exhibit A.

Except as may otherwise be provided herein, all Company business must be approved by the majority vote or written consent of Shareholders.

In the event of deadlock of Shareholders, the matter in question shall be determined and settled by arbitration in accordance with the applicable rules of the American Arbitration Association then in effect.

**10. AMENDMENT TO AGREEMENT.** This Agreement may be altered, amended, or terminated by a writing signed by Company and by Shareholders owning a minimum of seventy-five percent (75%) of the then outstanding shares.

**11. INTERESTS OF SPOUSES.** Any asset or property interest now owned or hereafter acquired by Company by any spouse of a Shareholder, solely by virtue of being a spouse of a

Shareholder, shall be subject to the terms of this Agreement and shall be subject to the restriction on transfer herein. The spouse of each Shareholder shall execute this Agreement and the Spousal Consent thereby signifying that such spouse has reviewed this Agreement, understands its contents and consequences, and agrees to be bound by its provisions.

**12. TERMINATION OF THE AGREEMENT.** This Agreement shall be terminated on the occurrence of any of the following events:

- a. The written agreement of all Shareholders to that effect.
- b. Bankruptcy, receivership or dissolution of Company.
- c. When there remains only one (1) Shareholder as party to this Agreement.

**13. MISCELLANEOUS.**

13.1 Genders; Plurals. Whenever appropriate, all words used in this Agreement in the masculine, feminine, or neutral gender shall be deemed to be or include words of other genders, and all singular words shall be deemed to be or include plural words, and all plural words shall be deemed to be or include singular words.

13.2 Headings. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision thereof.

13.3 Binding Effect. It is understood and agreed by and between these Shareholders that all of the covenants, terms and conditions herein shall extend, apply to and generally bind the heirs, executors, administrators, and assigns of the respective Shareholders hereto, as fully as though the respective Shareholders are themselves bound.

13.4 Severability. If any provision of this Agreement is ruled invalid or modified, it will be deemed severable from the other paragraph sections so that to the extent this Agreement is not modified or ruled invalid, then it shall remain valid in all other respects.

13.5 Waivers. The failure of any Shareholder to seek redress for violation of or to insist upon the 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 an original violation.

13.6 Dispute Resolution; Professional Fees and Costs. Shareholders agree that in the event of a dispute involving the instruction, interpretation, performance, or breach of this Agreement, they will mediate the same by jointly selecting a Thurston County, Washington, attorney experienced in business matters. If the mediation is not successful, then the dispute shall be resolved by arbitration under the auspices of the Thurston County Superior Court rules for mandatory arbitration, regardless of the amount in controversy. Either party may request the Thurston County Superior Court to appoint an arbitrator if the parties cannot reach agreement between themselves. Mediation fees and costs shall be split equally between each party involved in the mediation. Arbitration fees shall be as awarded by the arbitrator to the extent that he or she

finds one more parties prevail. The award shall also include reasonable attorney fees and costs of whatever nature incident to said arbitration.

13.7 Application of Washington Law. This Agreement, and the application and interpretation hereof, shall be governed exclusively by its terms and by the laws of the state of Washington.


13.8 Exhibits. Exhibits A, B and C are attached to and by this reference made a part of this Agreement.



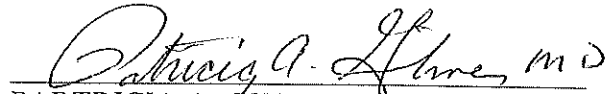
IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date set forth below.

**SHAREHOLDERS:**

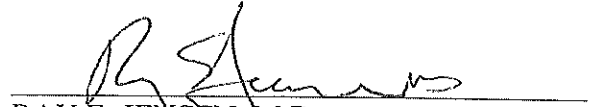
DATE: 5/22/17, 2017

  
R. DEAN RUSSELL, M.D.


DATE: 5/22, 2017

  
PARTRICIA A. GILMER, M.D.

DATE: 5/23, 2017

  
RAY E. JENSEN, M.D.

DATE: 5/23, 2017

  
SUNG-WON KIM, M.D.

## SPOUSAL CONSENTS


Each of the undersigned spouses acknowledges that he or she has read and understands this First Restated Shareholder Agreement of Ear, Nose and Throat Associates Southwest, Inc., P.S. (the "Agreement") dated May 22, 2017, and agrees to be bound by its terms and conditions. In accordance with the Agreement, each of the undersigned spouses hereby agrees on behalf of himself or herself and all successors-in-interest, that the Agreement shall bind his or her community property interest, if any, in any Shares therein that is at any time registered on the books of Company in the name of each of the Shareholder spouse. In addition to the above, each of the undersigned spouses hereby consents to: (i) the execution of all documents relating to Company business or property by his or her Shareholder spouse, without the necessity of obtaining each of the undersigned spouse's signature; and (ii) the grant of a power of attorney in each respective Shareholder spouse for the sole and exclusive purpose of dealing with his or her respective Shares and Property.

Each of the undersigned spouses hereby agrees that because he or she are not a physician he or she is ineligible to and will not claim an ownership in Company. In the event of a marital dissolution, each of the undersigned spouses will not receive the interest in Company and he or she will receive other compensating assets in lieu thereof. Each of the undersigned spouses agree that in the event a Shareholder spouse predeceases him or her, the undersigned spouse cannot own Company, except as may be permitted by law as a personal representative of the estate for purposes of liquidating the estate.

Each of the undersigned spouses acknowledges that he or she recognize and understand that new Shareholders may come into Company. Each of the undersigned spouses waive his or her future rights to review the Shareholder Agreement of Company in the future, as it may be amended and/or new Shareholders may be added to Company.

Each of the undersigned spouses acknowledges that he or she have been advised to seek separate counsel in execution of this consent.

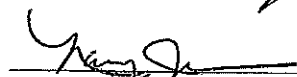
DATE: 5/31, 2017

  
KATHRYN RUSSELL  
Spouse of R. Dean Russell, M.D.

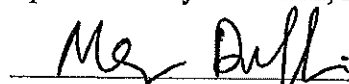
DATE: 5/24, 2017

  
HAROLD SCOGIN  
Spouse of Patricia A. Gilmer, M.D.

DATE: 5/26, 2017

  
NANCY JENSEN  
Spouse of Ray E. Jensen, M.D.

DATE: 5/29, 2017

  
MEGHAN DUFFIE  
Spouse of Sung-Won Kim, M.D.

**EXHIBIT A**

Corporation Information as of May 22, 2017

The Shareholders' current membership shares (the "Shares") in Company are as follows:

<u>NAME</u>	<u>SHARES</u>	<u>PERCENTAGE</u>
R. Dean Russell, M.D.	100	25%
Patricia A. Gilmer, M.D.	100	25%
Ray Jensen, M.D.	100	25%
Sung-Won Kim, M.D.	100	25%

**EXHIBIT B**  
**FIXED ASSETS**

**EXHIBIT C**  
**COMPENSATION FORMULA**

**FIRST AMENDMENT  
TO THE FIRST RESTATED  
SHAREHOLDER AGREEMENT OF  
EAR, NOSE AND THROAT ASSOCIATES SOUTHWEST, INC., P.S.**

This First Amendment to the First Restated Shareholder Agreement (“Agreement”), by and among **EAR, NOSE AND THROAT ASSOCIATES SOUTHWEST, INC., P.S.** a Washington corporation (“Company”), and **R. DEAN RUSSELL, M.D., RAY JENSEN, M.D. AND SUNG-WON KIM, M.D.**, (collectively, the “Shareholders”), being all of the shareholders of the Company.

**RECITALS**

- A. All of the current Shareholders of the Company executed the First Restated Shareholder Agreement of the Company on May 22, 2017, (“Shareholder Agreement”).
- B. The Shareholders have voted to accept the withdrawal of Patricia A. Gilmer, M.D., (“Dr. Gilmer”) from the Company and the redemption of Dr. Gilmer’s shares in the Company (the “Shares”), on terms consistent with the Shareholder Agreement and as further provided in a Share Transfer Agreement between the Company and Dr. Gilmer.
- C. The Shareholders desire to update the Shareholder Agreement to effectuate Dr. Gilmer’s withdrawal from the Company.

**AGREEMENT**

The Shareholders agree to amend the Shareholder Agreement as follows:

- 1. Exhibit A of the Shareholder Agreement shall be deleted in its entirety and replaced with Exhibit A of this First Amendment.
- 2. All references in the Shareholder Agreement to require a seventy-five percent (75%) vote of the Shareholders shall instead require a two-thirds (2/3) vote of the members.
- 3. In all other respects the Shareholder Agreement shall remain the same.

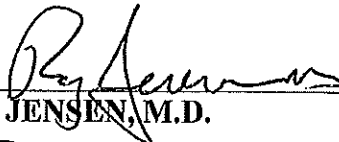
IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date set forth below.

**SHAREHOLDERS:**

DATE: July 27, 2018 2018

  
\_\_\_\_\_  
**R. DEAN RUSSELL, M.D.**

DATE: July 19, 2018

  
RAY JENSEN, M.D.

DATE: July 31, 2018

  
SUNG-WON KIM, M.D.

**SPOUSAL CONSENTS**

The undersigned acknowledges that he or she has reviewed this Amendment, understands its contents and consequences, and agrees to be bound by its provisions.

**SPOUSES:**

DATE: July 19, 2018

Kary E. Jones

DATE: July 25, 2018

M. D. [Signature]

DATE: July 27, 2018

Kathryn Russell



**EXHIBIT A**

**Effective August 31, 2017**

**EAR, NOSE AND THROAT ASSOCIATES SOUTHWEST, INC., P.S.**

The Shareholders' current membership shares (the "Shares") in Company are as follows:

<u>Name</u>	<u>Shares/Percentage</u>
<b>R. Dean Russell, M.D.</b>	<b>100 (33.1/3%)</b>
<b>Ray Jensen, M.D.</b>	<b>100 (33.1/3%)</b>
<b>Sung-Won Kim, M.D.</b>	<b>100 (33.1/3%)</b>

**SECOND AMENDMENT  
TO THE FIRST RESTATED  
SHAREHOLDER AGREEMENT OF  
EAR, NOSE AND THROAT ASSOCIATES SOUTHWEST, INC., P.S.**

This Second Amendment to the First Restated Shareholder Agreement by and among **EAR, NOSE AND THROAT ASSOCIATES SOUTHWEST, INC., P.S.** a Washington corporation ("Company"), and **R. DEAN RUSSELL, M.D., RAY JENSEN, M.D., AND SUNG-WON KIM, M.D.** (collectively, the "Shareholders"), being all of the shareholders of the Company.

**RECITALS**

- A. All of the current Shareholders of the Company executed the First Restated Shareholder Agreement of the Company on May 22, 2017, ("Shareholder Agreement") and the First Amendment of the First Restated Shareholder Agreement of the Company on July 31, 2018.
- B. The Shareholders have voted to admit Nathan Sautter, M.D. as a shareholder of the Company effective January 1, 2019.
- C. The Shareholders desire to update the Shareholder Agreement to effectuate Dr. Sautter's entry into the Company with this document ("Second Amendment").
- D. Dr. Sautter has, concurrent with this Second Amendment, agreed to be bound by the terms of the Shareholder Agreement and this Second Amendment.

**AGREEMENT**

The Shareholders agree to amend the Shareholder Agreement as follows:

- 1. Exhibit A of the Shareholder Agreement shall be deleted in its entirety and replaced with Exhibit A of this Second Amendment.
- 2. All references in the Shareholder Agreement to require a two-thirds (2/3) vote of the Shareholders shall instead require a seventy-five percent (75%) vote of the Shareholders.
- 3. In all other respects the Shareholder Agreement shall remain the same.

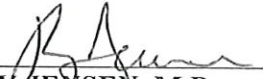
IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date set forth below.

**SHAREHOLDERS:**

DATE: 11/30/19 2019

  
\_\_\_\_\_  
R. DEAN RUSSELL, M.D.

DATE: 1/31/19 2019

  
\_\_\_\_\_  
RAY JENSEN, M.D.

DATE: 1/29/19 2019

  
\_\_\_\_\_  
SUNG WON KIM, M.D.

**SPOUSAL CONSENTS**

The undersigned acknowledges that he or she has reviewed this Amendment, understands its contents and consequences, and agrees to be bound by its provisions.

**SPOUSES:**

DATE: 2/5/19, 2019

Kathryn Russell

DATE: Dec. 31, 2019

May E. Jan

DATE: 2/11/2019, 2019

M. A. Li

**AGREEMENT TO BE BOUND**

I, **NATHAN SAUTTER, M.D.**, have read the First Restated Shareholder Agreement of the Company dated May 22, 2017, and the First Amendment to the Shareholder Agreement of the Company dated July 31, 2018, and this Second Amendment and agree to be bound by the terms and conditions therein as if I had been a signatory thereto. I have read it, understand it, and agree to be bound by it.

DATED: 31 January, 2019.

  
\_\_\_\_\_  
**NATHAN SAUTTER, M.D.**

**SPOUSAL CONSENT**

I, \_\_\_\_\_, spouse of Nathan Sautter, M.D., have reviewed the First Restated Shareholder Agreement of the Company dated May 22, 2017, and the First Amendment to the Shareholder Agreement of the Company dated July 31, 2018, and this Second Amendment and agree to be bound by the terms and conditions therein as if I had been a signatory thereto. I understand its contents and consequences as it may affect me, vis-a-vis death or disability of my spouse, and I agree to be bound thereby and consent to the terms thereof.

DATED: \_\_\_\_\_, 2019

\_\_\_\_\_

**EXHIBIT A**

**Effective January 1, 2019**

**EAR, NOSE AND THROAT ASSOCIATES SOUTHWEST, INC., P.S.**

The Shareholders' current membership shares (the "Shares") in Company are as follows:

<u>Name</u>	<u>Shares/Percentage</u>
<b>R. Dean Russell, M.D.</b>	<b>100 (25%)</b>
<b>Ray Jensen, M.D.</b>	<b>100 (25%)</b>
<b>Sung-Won Kim, M.D.</b>	<b>100 (25%)</b>
<b>Nathan Sautter, M.D.</b>	<b>100 (25%)</b>

**THIRD AMENDMENT  
TO THE FIRST RESTATED  
SHAREHOLDER AGREEMENT OF  
EAR, NOSE AND THROAT ASSOCIATES SOUTHWEST, INC., P.S.**

EAR, NOSE AND THROAT ASSOCIATES SOUTHWEST, INC., P.S. a Washington corporation (“Company”), and MATTHEW JUNG, M.D., NATHAN SAUTTER, M.D., SUNG-WON KIM, M.D., R. DEAN RUSSELL, M.D., AND RAY JENSEN, M.D. (collectively, the “Shareholders”), being all of the shareholders of the Company enter into this Third Amendment to the First Restated Shareholder Agreement (“Amendment”) effective June 30, 2020 (“Effective Date”).

**RECITALS**

- A. R. Dean Russell, M.D. (“Dr. Russell”), Ray Jensen, M.D. (“Dr. Jensen”) and Sung-Won Kim, M.D. executed the First Restated Shareholder Agreement of the Company on May 22, 2017, the First Amendment of the First Restated Shareholder Agreement of the Company on July 31, 2018, and the Second Amendment of the First Restated Shareholder Agreement of the Company on January 1, 2019 (collectively, the “Existing Shareholder Agreement”).
- B. There are two redemptions and one buy-in happening at relatively the same time within the Company. The Shareholders would like to document and approve those three transactions in this Amendment. The Shareholder Agreement as modified by this Amendment shall hereinafter be referred to as the “Updated Shareholder Agreement”.
- C. The Shareholders have voted to accept the withdrawal of Dr. Jensen from the Company and the redemption of Dr. Jensen’s shares in the Company, effective April 1, 2019, on terms consistent with the Shareholder Agreement and as further provided in a Share Transfer Agreement between the Company and Dr. Jensen.
- D. The Shareholders have voted to admit Matthew Jung, M.D. (“Dr. Jung”) as a shareholder of the Company effective January 1, 2020.
- E. The Shareholders have voted to accept the withdrawal of Dr. Russell from the Company and the redemption of Dr. Russell’s shares in the Company, effective June 30, 2020, on terms consistent with the Shareholder Agreement and as further provided in a Share Transfer Agreement between the Company and Dr. Russell.
- F. The Shareholders desire to update the Existing Shareholder Agreement to effectuate Dr. Russell’s withdrawal, Dr. Jung’s admission and Dr. Russell’s withdrawal from the Company.

**AGREEMENT**





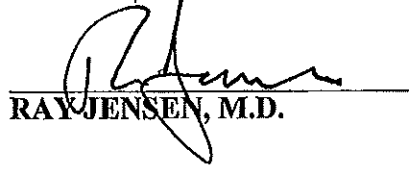
The Shareholders agree to amend the Shareholder Agreement as follows:

1. Exhibit A of the Existing Shareholder Agreement shall be deleted in its entirety and replaced with Exhibit A of this Amendment.
2. Exhibit C of the Existing Shareholder Agreement shall be deleted in its entirety and replaced with Exhibit B of this Amendment.
3. All references in the Shareholder Agreement to require a seventy-five percent (75%) vote of the then outstanding shares shall instead require the percentage vote of the then outstanding shares as indicated on Exhibit A under the column Required Vote.
4. A new section 4.7 shall be added which is titled Set off Against Buy In and shall read as follows:

The balance of any amounts which a Shareholder owes the Company as a result of the Shareholder's buy in or for any other reasons shall be credited against any amounts the Company owes shareholder pursuant to this Agreement.

5. In all other respects the Shareholder Agreement shall remain the same.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date set forth below.

SHAREHOLDERS:	
DATE: <u>7/20/2020</u> 2020	 MATTHEW JUNG, M.D.
DATE: <u>7/20/20</u> 2020	 NATHAN SAUTTER, M.D.
DATE: <u>7/20/20</u> 2020	 SUNG-WON KIM, M.D.
DATE: <u>7/21/20</u> 2020	 R. DEAN RUSSELL, M.D.
DATE: <u>7/29/20</u> 2020	 RAY JENSEN, M.D.



**AGREEMENT TO BE BOUND**

I, **MATTHEW JUNG, M.D.**, have read the First Restated Shareholder Agreement of the Company on May 22, 2017, the First Amendment of the First Restated Shareholder Agreement of the Company on July 31, 2018, the Second Amendment of the First Restated Shareholder Agreement of the Company on January 1, 2019, and this Amendment and agree to be bound by the terms and conditions therein as if I had been a signatory thereto. I have read it, understand it, and agree to be bound by it.

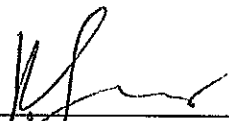
DATED: 7/20/20, 2020

  
\_\_\_\_\_  
**MATTHEW JUNG, M.D.**

**SPOUSAL CONSENT**

I, Kara Jung, spouse of Matthew Jung, M.D., have reviewed the First Restated Shareholder Agreement of the Company on May 22, 2017, as amended, above referred to. I understand its contents and consequences as it may affect me, vis-a-vis death or disability of my spouse, and I agree to be bound thereby and consent to the terms thereof.

DATED: July 20, 2020

  
\_\_\_\_\_  
By: Kara Jung

**SPOUSAL CONSENTS**

The undersigned acknowledges that he or she has reviewed this Amendment, understands its contents and consequences, and agrees to be bound by its provisions.

**SPOUSES:**

By: *[Signature]*  
By: Karen Jung

DATE: July 20, 2020

By: *[Signature]*  
By: ~~Mrs. Megan Duffe~~

DATE: July 21, 2020

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

DATE: \_\_\_\_\_, 2020

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

DATE: \_\_\_\_\_, 2020

**EXHIBIT A**

**EAR, NOSE AND THROAT ASSOCIATES SOUTHWEST, INC., P.S.**

The Shareholders' current membership shares (the "Shares") in Company are as follows:

For the period of time From April 1, 2019 to December 31, 2019

<u>Name</u>	<u>Number of Shares</u>	<u>Required Vote</u>
R. Dean Russell, M.D.	100 (33.1/3%)	66.2/3%
Nathan Sautter, M.D.	100 (33.1/3%)	66.2/3%
Sung-Won Kim, M.D.	100 (33.1/3%)	66.2/3%

For the Period of Time from January 1, 2020 to June 29, 2020

<u>Name</u>	<u>Number of Shares</u>	<u>Required Vote</u>
R. Dean Russell, M.D.	100 (25%)	75%
Nathan Sautter, M.D.	100 (25%)	75%
Sung-Won Kim, M.D.	100 (25%)	75%
Matthew Jung, M.D.	100 (25%)	75%

For the Period of Time beginning on June 30, 2020

<u>Name</u>	<u>Number of Shares</u>	<u>Required Vote</u>
Matthew Jung, M.D.	100 (33.1/3%)	66.2/3%
Nathan Sautter, M.D.	100 (33.1/3%)	66.2/3%
Sung-Won Kim, M.D.	100 (33.1/3%)	66.2/3%

## EXHIBIT B

### PHYSICIANS' COMPENSATION FORMULA

Each Shareholder shall receive compensation in exchange for the services described in their Shareholder Employment Agreement in the amount of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) ("Salary") per year which shall be paid in accordance with each Shareholder's Shareholder Employment Agreement. As part of each Shareholder's Salary, Shareholders shall also be entitled to receive on demand from time to time an additional amount that is equal to or less than the Funds Available for Shareholder Draw as an additional distribution of Company profits. All Salary and Funds Available for Shareholder Draw payments to Shareholder shall be subject to the withholdings described in the Shareholder Employment Agreement.

The Funds Available for Shareholder Draw shall be determined as follows:

**Revenue:** The Company shall add together the following amounts to determine the Shareholder's Share of Revenue:

1. Physician Services Revenue: This shall be defined as the year to date revenue collected by the Company attributable to the medical services provided by the Shareholder to the Company's patients.
2. Non-Shareholder Provider Revenue: This shall be defined as an equal share (split with the other Shareholders) of the year to date revenue collected by the Company attributable to employee medical providers who are not shareholders.
3. Ancillary Services Revenue: This shall be defined as an equal share (split with the other Shareholders) of all revenue from the ancillary services provided by the Company which include the following: audiology, allergy and CT.
4. Other Company Income: This shall be defined as an equal share (split with the other shareholders) of all other Company income that is not Physician Services Revenue, Non-Shareholder Provider Revenue or Ancillary Services Revenue.

**Expenses:** The Company shall subtract from the Shareholder's Share of Revenue the following amounts to determine the Funds Available for Shareholder Draw:

1. The Shareholder's year to date Salary paid to Shareholder.
2. The Shareholder's year to date equal share of those items of Company overhead which are shared equally by the Shareholders of the Company which include but are not limited to the following:
  - a. Professional fees HHS;

- b. Professional fees MU;
- c. CT fees;
- d. Allergy fees;
- e. Interest income;
- f. Refunds;
- g. Staff compensation;
- h. 401k deferrals;
- i. Taxes (payroll/staff);
- j. Employee benefits (staff);
- k. Staff meetings;
- l. DB employer contribution;
- m. Education;
- n. Meals (100% deductible);
- o. Meals (50% deductible);
- p. Dues/fees;
- q. Books and magazines;
- r. Business gifts;
- s. Business gifts (nondeductible);
- t. Medical supplies;
- u. Laundry and uniforms;
- v. Rent (office)
- w. Rent (equipment)
- x. Office expenses;
- y. Audiology expenses;
- z. Transcription;
- aa. Data processing;
- bb. Postage;
- cc. Bank charges;
- dd. Credit card fees;
- ee. Advertising;
- ff. Telephone;
- gg. Utilities;
- hh. Travel and lodging;
- ii. Taxes (state and city excise);
- jj. Taxes (property);
- kk. Taxes (other);
- ll. Malpractice insurance;
- mm. Insurance (other);
- nn. Legal and accounting;
- oo. Professional services (other);
- pp. Licenses;
- qq. Repairs and maintenance;
- rr. Donations;
- ss. Interest expense; and
- tt. Payroll expense.

3. Those items of Company overhead paid year to date that are attributable to one Shareholder. These include but are not limited to supplies utilized by a physician that are not usually stocked by the Company and CME related expenses.
  4. The amount of Ten Thousand and 00/100 Dollars (\$10,000.00) which shall be held as a reserve for the Company ("Reserve Amount").
- Reserve Amount:** If at any time, payments to a Shareholder or reduced revenue cause the Shareholder to not be able to maintain the Reserve Amount for thirty (30) days, the Company may adjust the Salary of the Shareholder to replenish the Reserve Amount over the course of thirty (30) days.

**RESOLUTION AND UNANIMOUS CONSENT  
OF THE SHAREHOLDERS OF  
EAR, NOSE AND THROAT ASSOCIATES SOUTHWEST, INC., P.S.**

The undersigned, being all of the Shareholders of **EAR, NOSE AND THROAT ASSOCIATES SOUTHWEST, INC., P.S.**, a Washington corporation (the "Company"), hereby consent to the following Resolutions. This consent ("Consent") shall have the same force and effect as a unanimous vote by the Shareholders under RCW 23B.07.040 and pursuant to Section 9 of the Company's First Restated Shareholder Agreement as amended ("Shareholder Agreement").

**BACKGROUND**

- A. The Company is engaged in the practice of medicine with a focus on the area of otolaryngology. The Company is in the midst of a number of Shareholder transitions so the Shareholders are entering into this Consent to approve them all at once.
- B. Ray Jensen, M.D. ("Dr. Jensen") withdrew as a Shareholder of the Company effective on April 1, 2019 ("Jensen Transaction") when the Company redeemed his one hundred (100) shares of stock in the Company pursuant to the agreement attached hereto as Exhibit A ("Jensen Share Transfer Agreement"). As part of the Jensen Transaction, the Company will enter into an Employment Agreement in the form attached as Exhibit B.
- C. R. Dean Russell, M.D. ("Dr. Russell") will withdraw as a Shareholder of the Company effective on June 30, 2020 ("Russell Transaction") when the Company will redeem his one hundred (100) shares of stock in the Company pursuant to an agreement attached hereto as Exhibit C ("Russell Share Transfer Agreement"). As part of the Russell Transaction the Company will enter into an Employment Agreement in the form attached as Exhibit D.
- D. The Shareholders also desire to admit Matthew Jung, M.D. ("Dr. Jung") as a Shareholder of the Company effective April 1, 2020 ("Jung Transaction") by issuing him one hundred (100) shares of stock in the Company in exchange for payment of Two Hundred Sixty-Eight Thousand, Nine Hundred Nineteen and 00/100 Dollars (\$268,919.00) ("Jung Transaction") pursuant to an agreement attached hereto as Exhibit E ("Jung Share Transfer Agreement"). As part of the Jung Transaction the Company will enter into an Employment Agreement in the form attached as Exhibit F.
- E. The Company now desires to approve the Jensen Transaction, the Russell Transaction and the Jung Transaction (collectively, the "Shareholder Transactions") by the unanimous written Consent of its Shareholders.
- F. The Shareholders agree that in order to effectuate the contemplated transactions, the Shareholders will amend the Shareholder Agreement by entering into the Third Amendment to the Shareholder Agreement attached as Exhibit G ("Shareholder Agreement Amendment").

**EXHIBIT A**  
**JENSEN SHARE TRANSFER AGREEMENT**



**EXHIBIT C**  
**RUSSELL SHARE TRANSFER AGREEMENT**

**EXHIBIT E**  
**JUNG SHARE TRANSFER AGREEMENT**

**EXHIBIT G**  
**SHAREHOLDER AGREEMENT AMENDMENT**

BYLAWS  
OF  
EAR, NOSE AND THROAT ASSOCIATES, SOUTHWEST, INC., P.S.

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ARTICLE I.

Registered Office and Registered Agent

Registered office of the corporation shall be located in the State of Washington at such place as may be fixed from time to time by the board of directors upon filing of such notices as may be required by law, and the registered agent shall have a business office identical with such registered office. Any change in the registered agent or registered office shall be effective upon filing such change with the office of the Secretary of State of the State of Washington.

ARTICLE II.

Shareholders' Meetings

Section 1. Annual Meetings. The annual meeting of the shareholders of this corporation, for the purpose of election of directors and for such other business as may come before it, shall be held at the registered office of the corporation, or such other place as may be designated by the notice of the meeting during the month of May of each year.

Section 2. Special Meetings. Special meetings of the shareholders of this corporation may be called at any time by the holders of two-thirds of the voting shares of the corporation, or by the president, or by a majority of the board of directors. No business shall be transacted at any special meeting of shareholders except as is specified in the notice calling for said meeting. The board of directors may designate any place as the place of any special meeting called by the president or the board of directors, and special meetings called at the request of shareholders shall be held at such place as may be determined by the board of directors and placed in the notice of such meetings.

Section 3. Notice of Meetings. Written notice of annual or special meetings of shareholders stating the place, day, and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given by the secretary or persons authorized to call the meeting to each shareholder of record entitled to vote at the meeting.

Such notice shall be given not less than ten (10) nor more than sixty (60) days prior to the date of the meeting, except that notice of a meeting to act on an amendment to the Articles of Incorporation, a plan of merger or share exchange, a proposed sale, lease,

exchange or other disposition of all or substantially all of the assets of the corporation other than in the usual or regular course of business, or the dissolution of corporation shall be given no fewer than twenty (20) days nor more than sixty (60) days before the meeting date. Notice may be transmitted by: mail, private carrier or personal delivery, telegraph or teletype, or telephone, wire or wireless equipment which transmits a facsimile of the notice. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer books of the corporation.

Section 4. Waiver of Notice. Notice of the time, place, and purpose of any meeting may be waived in writing (either before or after such meeting) and will be waived by any shareholder by his attendance thereat in person or by proxy, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting. Any shareholder so waiving shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

Section 5. Quorum and Adjourned Meetings. A majority of the outstanding shares of the corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. A majority of the shares represented at a meeting, even if less than a quorum, may adjourn the meeting from time to time without further notice. At such reconvened meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The shareholders present at a duly organized meeting may continue to transact business at such meeting and at any adjournment of such meeting (unless a new record date is or must be set for the adjourned meeting), notwithstanding the withdrawal of enough shareholders from either meeting to leave less than a quorum.

Section 6. Proxies. At all meetings of shareholders, a shareholder may vote by proxy executed in writing by the shareholder or by his duly authorized attorney in fact. Such proxy shall be filed with the secretary of the corporation before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

Section 7. Voting Record. After fixing a record date for a shareholders' meeting, the corporation shall prepare an alphabetical list of the names of all shareholders on the record date who are entitled to notice of the shareholders' meeting. The list shall be arranged by voting group, and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder. A shareholder, shareholder's agent, or a shareholder's attorney may inspect the shareholder's list, beginning ten days prior to the shareholders' meeting and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held during regular business hours and at the shareholder's expense. The shareholders' list shall be kept open for inspection during such meeting or any adjournment.

Section 8. Voting of Shares. Except as otherwise provided in the Articles of Incorporation or in these Bylaws, every shareholder of record shall have the right at every shareholders' meeting to one vote for every share standing in his name on the books of the corporation, and the affirmative vote of a majority of the shares actually voting thereat shall be necessary for the adoption of a motion or for the determination of all questions and business which shall come before the meeting.

Section 9. Record Date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders, or any adjournment thereof, or entitled to receive payment of any dividend, the board of directors may fix in advance a record date for any such determination of shareholders, such date to be not more than seventy (70) days prior to the date on which the particular action requiring such determination of shareholders is to be taken. If no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the day before the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof, unless the board of directors fixes a new record date, which it must do if the meeting is adjourned more than one hundred twenty (120) days after the date is fixed for the original meeting.

### ARTICLE III.

#### DIRECTORS

Section 1. General Powers. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of the board of directors except as otherwise provided by the laws under which this corporation is formed or in the Articles of Incorporation.

Section 2. Number. The number of directors of the corporation shall be three. The number of directors can be increased or decreased from time to time by amending this Section 2, provided that the number shall be not less than one nor more than six directors, the specific number to be set by resolution of the board of directors or the shareholders.

Section 3. Tenure and Qualifications. Each director shall hold office until the next annual meeting of shareholders and until his successor shall have been elected and qualified. Directors need not be residents of the state or shareholders of the corporation.

Section 4. Election. The directors shall be elected by the shareholders at their annual meeting each year; and if, for any cause, the directors shall not have been elected at an annual meeting, they may be elected at a special meeting of shareholders called for that purpose in the manner provided by these Bylaws.

Section 5. Vacancies. In case of any vacancy in the board of directors, including a vacancy resulting from an increase in the number of directors, the remaining directors, whether constituting a quorum or not, or the shareholders may fill the vacancy.

Section 6. Resignation. Any director may resign at any time by delivering written notice to the board of directors, its chairperson, the president or the secretary of the corporation. A resignation shall be effective when the notice is delivered unless the notice specifies a later effective date.

Section 7. Removal of Directors. At a meeting of shareholders called expressly for that purpose, the entire board of directors, or any member thereof, may be removed, with or without cause, by a vote of the holders of a majority of shares then entitled to vote at an election of such directors. A director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal.

Section 8. Meetings.

(a) The annual meeting of the board of directors shall be held immediately after the annual shareholders' meeting at the same place as the annual shareholders' meeting or at such other place and at such time as may be determined by the directors. No notice of the annual meeting of the board of directors shall be necessary.

(b) Special meetings may be called at any time and place upon the call of the president, secretary, or a majority of the directors. Notice of the time and place of each special meeting shall be given by the secretary, or the persons calling the meeting, by mail, private carrier, radio, telegraph, telegram, facsimile transmission, personal communication by telephone or otherwise at least two (2) days in advance of the time of the meeting. The purpose of the meeting need not be given in the notice. Notice of any special meeting may be waived in writing or by telegram (either before or after such meeting) and will be waived by any director by attendance thereat.

(c) Regular meetings of the board of directors shall be held at such place and on such day and hour as shall from time to time be fixed by resolution of the board of directors. No notice of regular meetings of the board of directors shall be necessary.

(d) At any meeting of the board of directors, any business may be transacted, and the board may exercise all of its powers.

Section 9. Quorum and Voting.

(a) A majority of the directors presently in office shall constitute a quorum, but a lesser number may adjourn any meeting from time to time until a quorum is obtained, and no further notice thereof need be given.

(b) At each meeting of the board at which a quorum is present, the act of a majority of the directors present at the meeting shall be the act of the board of directors. The directors present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum.

Section 10. Compensation. By resolution of the board of directors, the directors may be paid their expenses, if any, of attendance at each meeting of the board of directors and may be paid a fixed sum for attendance at each meeting of the board of directors or a stated salary as director. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

Section 11. Presumption of Assent. A director of the corporation who is present at a meeting of the board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless:

(a) The director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding it or transacting business at the meeting;

(b) The director's dissent or abstention from the action taken is entered in the minutes of the meeting; or

(c) The director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation within a reasonable time after adjournment of the meeting.

The right of dissent or abstention is not available to a director who votes in favor of the action taken.

Section 12. Committees. The board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its member one or more committees, each of which must have two or more members and, to the extent provided in such resolution, shall have and may exercise all the authority of the board of directors, except that no such committee shall have the authority to: authorize or approve a distribution except according to a general formula or method prescribed by the board of directors; approve or propose to shareholders action that the Washington Business Corporation Act requires to be approved by shareholders; fill vacancies on the board of directors or on any of its committees; amend any Articles of Incorporation not requiring shareholder approval; adopt, amend or repeal Bylaws; approve a plan or merger not requiring shareholder approval; or authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences and limitations of a class or series of shares, except that the board of directors may authorize a committee, or a senior executive officer of the corporation, to do so within limits specifically prescribed by the board of directors.



## ARTICLE IV.

### Special Measures for Corporate Action

Section 1. Actions by Written Consent. Any corporate action required or permitted by the Articles of Incorporation, Bylaws, or the laws under which this corporation is formed, to be voted upon or approved at a duly called meeting of the directors, committee of directors, or shareholders may be accomplished without a meeting if one or more unanimous written consents of the respective directors or shareholders, setting forth the actions so taken, shall be signed, either before or after the action taken, by all the directors, committee members, or shareholders, as the case may be. Action taken by unanimous written consent is effective when the last director or committee member signs the consent, unless the consent specifies a later effective date. Action taken by unanimous written consent of the shareholders is effective when all consents are in possession of the corporation, unless the consent specifies a later effective date.

Section 2. Meetings by Conference Telephone. Members of the board of directors, members of a committee of directors, or shareholders may participate in their respective meetings by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time; participation in a meeting by such means shall constitute presence in person at such meeting.

## ARTICLE V.

### Officers

Section 1. Officers Designated. The officers of the corporation shall be a president, one or more vice presidents (the number thereof to be determined by the board of directors), a secretary, and a treasurer, each of whom shall be elected by the board of directors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the board of directors. Any two or more offices may be held by the same person.

The board of directors may, in its discretion, elect a chairperson of the board of directors; and, if a chairperson has been elected, the chairperson shall, when present, preside at all meetings of the board of directors and the shareholders and shall have such other powers as the board may prescribe.

Section 2. Election, Qualification and Term of Office. Each of the officers shall be elected by the board of directors. None of said officers, except the president and the chairperson, of the board of directors, need be a director, but a vice president who is not a director cannot succeed to or fill the office of president. The officers shall be elected by the board of directors at each annual meeting of the board of directors. Except as hereinafter provided, each of said officers shall hold office from the date of his election until the next annual meeting of the board of directors and until his successor shall have been duly elected and qualified.

Section 3. Powers and Duties.

(a) President. The president shall be the chief executive officer of the corporation and, subject to the direction and control of the board of directors, shall have general charge and supervision over its property, business, and affairs. He shall, unless a chairperson of the board of directors has been elected and is present, preside at meetings of the shareholders and the board of directors.

(b) Vice President. In the absence of the president or his inability to act, the senior vice president shall act in his place and stead and shall have all the powers and authority of the president, except as limited by resolution of the board of directors.

(c) Secretary. The secretary shall: (1) keep the minutes of the shareholders' and of the board of directors' meetings in one or more books provided for that purpose; (2) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (3) be custodian of the corporate records and of the seal of the corporation and affix the seal of the corporation to all documents as may be required; (4) keep a register of the post office address of each shareholder which shall be furnished to the secretary by such shareholder; (5) sign with the president, or a vice president, certificates for shares of the corporation, the issuance of which shall have been authorized by resolution of the board of directors; (6) have general charge of the stock transfer books of the corporation; and (7) in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the president or by the board of directors.

(d) Treasurer. Subject to the direction and control of the board of directors, the treasurer shall have the custody, control, and disposition of the funds and securities of the corporation and shall account for the same; and, at the expiration of his term of office, he shall turn over to his successor all property of the corporation in his possession.

Section 4. Assistant Secretaries and Assistant Treasurers. The assistant secretaries, when authorized by the board of directors, may sign with the president, or a vice president, certificates for shares of the corporation, the issuance of which shall have been authorized by resolution of the board of directors. The assistant treasurers shall, respectively, if required by the board of directors, give bonds for the faithful discharge of their duties in such sums and with such sureties as the board of directors shall determine. The assistant secretaries and assistant treasurers, in general, shall perform such duties as shall be assigned to them by the secretary or the treasurer, respectively, or by the president or the board of directors.

Section 5. Removal. The board of directors shall have the right to remove any officer whenever in its judgment the best interests of the corporation will be served thereby.

Section 6. Vacancies. The board of directors shall fill any office which becomes vacant with a successor who shall hold office for the unexpired term and until his successor shall have been duly elected and qualified.

Section 7. Salaries. The salaries of all officers of the corporation shall be fixed by the board of directors.

## ARTICLE VI.

### Share Certificates

Section 1. Issuance, Form and Execution of Certificates. No shares of the corporation shall be issued unless authorized by the board. Such authorization shall include the maximum number of shares to be issued, the consideration to be received for each share, the value of noncash consideration, and a statement that the board has determined that such consideration is adequate. Certificates for shares of the corporation shall be in such form as is consistent with the provisions of the Washington Business Corporation Act and shall state:

(a) The name of the corporation and that the corporation is organized under the laws of this state;

(b) The name of the person to whom issued; and

(c) The number and class of shares and the designation of the series, if any, which such certificate represents.

They shall be signed by two officers of the corporation, and the seal of the corporation may be affixed thereto. Certificates may be issued for fractional shares. No certificate shall be issued for any share until the consideration established for its issuance has been paid.

Section 2. Transfers. Shares may be transferred by delivery of the certificate therefor, accompanied either by an assignment in writing on the back of the certificate or by a written power of attorney to assign and transfer the same, signed by the record holder of the certificate. The board of directors may by resolution, provide that beneficial owners of shares shall be deemed holders of record for certain specified purposes. Except as otherwise specifically provided in these Bylaws, no shares shall be transferred on the books of the corporation until the outstanding certificate therefor has been surrendered to the corporation.

Section 3. Loss or Destruction of Certificates. In case of loss or destruction of any certificate of shares, another may be issued in its place upon proof of such loss or destruction and upon the giving of a satisfactory indemnity bond to the corporation. A new certificate may be issued without requiring any bond, when in the judgment of the board of directors it is proper to do so.

## ARTICLE VII.

### Books and Records

Section 1. Books of Accounts, Minutes and Share Register. The corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors exercising the authority of the board of directors on behalf of the corporation. The corporation shall maintain appropriate accounting records. The corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each. The corporation shall keep a copy of the following records at its principal office: the Articles or Restated Articles of Incorporation and all amendments to them currently in effect; the Bylaws or Restated Bylaws and all amendments to them currently in effect; the minutes of all shareholders' meetings, and records of all actions taken by shareholders without a meeting, for the past three years; its financial statements for the past three years, including balance sheets showing in reasonable detail the financial condition of the corporation as of the close of each fiscal year, and an income statement showing the results of its operations during each fiscal year prepared on the basis of generally accepted accounting principles or, if not, prepared on a basis explained therein; all written communications to shareholders generally within the past three years; a list of the names and business addresses of its current directors and officers; and its most recent annual report delivered to the Secretary of State of Washington.

Section 2. Copies of Resolutions. Any person dealing with the corporation may rely upon a copy of any of the records of the proceedings, resolutions, or votes of the board of directors or shareholders, when certified by the president or secretary .

## ARTICLE VIII.

### Corporate Seal

The board of directors may provide for a corporate seal which shall have inscribed thereon the name of the corporation, the year and state of incorporation and the words "corporate seal."

## ARTICLE IX.

### Amendment of Bylaws

Section 1. By the Shareholders. These Bylaws may be amended, altered, or repealed at any regular or special meeting of the shareholders if notice of the proposed alteration or amendment is contained in the notice of the meeting.

Section 2. By the Board of Directors. These Bylaws may be amended, altered, or repealed by the affirmative vote of a majority of the whole board of directors at any regular or special meeting of the board.

ARTICLE X.

Fiscal Year

The fiscal year of the corporation shall be set by resolution of the board of directors.

ARTICLE XI.

Rules of Order

The rules contained in the most recent edition of Robert's Rules of Order, Newly Revised, shall govern all meetings of shareholders and directors where those rules are not inconsistent with the Articles of Incorporation, Bylaws, or special rules of order of the corporation.

CERTIFICATE OF ADOPTION

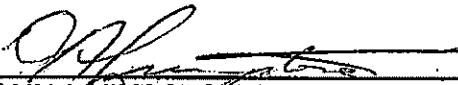
The undersigned, being the stockholders and directors of EAR, NOSE AND THROAT ASSOCIATES, SOUTHWEST, INC., P.S., hereby certify that the foregoing are the Bylaws of EAR, NOSE AND THROAT ASSOCIATES, SOUTHWEST, INC., P.S., and ordered certified and filed in the Minute Book of said corporation by unanimous vote of the holders of all of the stock thereof at the stockholder's meeting held on the day of 6-17, 1997.

In Witness Whereof, we have affixed our signatures hereunto this 17 day of June, 1997.

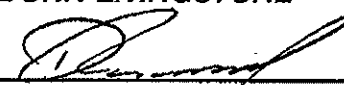
STOCKHOLDERS:



RICHARD SEAMAN



DONN LIVINGSTONE




R. DEAN RUSSELL

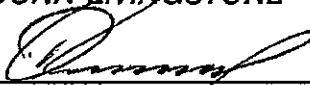
DIRECTORS:



RICHARD SEAMAN



DONN LIVINGSTONE



R. DEAN RUSSELL

601-798-187

ARTICLES OF INCORPORATION

OF

EAR, NOSE AND THROAT ASSOCIATES, SOUTHWEST, INC., P.S.

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FILED

JUN 17 1997

SECRETARY OF STATE  
STATE OF WASHINGTON

The undersigned, *RICHARD SEAMAN, DONN LIVINGSTONE and R. DEAN RUSSELL*, who are over the age of eighteen (18) years and are legally authorized to practice ear, nose and throat medicine in the state of Washington, associate themselves for the purpose of forming a professional corporation under the laws of the state of Washington, and adopts the following Articles of Incorporation:

**FIRST.** The name of this corporation shall be *EAR, NOSE AND THROAT ASSOCIATES, SOUTHWEST, INC., P.S.*

**SECOND.** The duration of this corporation shall be in perpetuity.

**THIRD.** The purpose of this corporation is to provide ear, nose and throat services. This corporation shall not engage in any business other than the rendering of the professional services for which it was incorporated; provided that nothing shall prohibit the corporation from investing its funds in real estate, personal property, mortgages, stocks, bonds, insurance, or any other type of investments.

**FOURTH.** The aggregate number of shares which the corporation shall have authority to issue is One Thousand (1000) shares of no par common stock.

**FIFTH.** The corporation will not commence business until at least Five Hundred Dollars (\$500.00) has been received by it as consideration for the issuance of shares.

**SIXTH.** Provisions for the regulation of the internal affairs of the corporation, including provisions restricting the transfer of shares are:

No shares of the capital stock of the corporation shall be issued to anyone other than an individual who is legally authorized to render services as an ear, nose and throat doctor in the state of Washington.

No shareholder of this corporation shall sell or transfer any of his shares in the corporation except to another individual who is eligible to be a shareholder of this corporation, and then only in accordance with procedures set forth in the Bylaws for such sale or transfer and in accordance with an agreement between the corporation and its shareholders restricting transfer.

No shareholder of this corporation shall enter into any voting trust agreement or any other type agreement vesting another person with the authority to exercise the voting power of any or all of his stock.

If any director, officer, shareholder, agent or employee of this corporation becomes legally disqualified to render services as a doctor in the state of Washington, he shall immediately sever all employment with, and financial interest in this corporation.

**SEVENTH.** The address of the initial registered office of the corporation is 320 North Columbia Street, Olympia, Washington 98501, and the name of the initial registered agent at such address is STEPHEN J. BEAN.

**EIGHTH.** The number of directors constituting the initial Board of Directors of this corporation is three and the names and addresses of said persons who are to serve as directors until the first annual meeting of shareholders or until the election and qualification for their successors are:

RICHARD SEAMAN  
3525 ENSIGN ROAD NE, SUITE R  
OLYMPIA WA 98506

DONN LIVINGSTONE  
611 NORTH F  
ABERDEEN WA 98520

**CONSENT TO APPOINTMENT AS REGISTERED AGENT**

I, *Stephen J. Bean*, hereby consent to serve as registered agent, in the state of Washington, for the following corporation, *EAR, NOSE AND THROAT ASSOCIATES, SOUTHWEST, INC., P.S.* I understand that as agent for the corporation, it will be my responsibility to accept service of process in the name of the corporation; to forward all mail and license renewals to the appropriate officer(s) of the corporation; and to immediately notify the Office of the Secretary of State of my resignation or of any changes in the address of the registered office of the corporation for which I am agent.

DATED: \_\_\_\_\_

*6-17-99*



\_\_\_\_\_  
**STEPHEN J. BEAN**  
**320 NORTH COLUMBIA STREET**  
**OLYMPIA WA 98501**

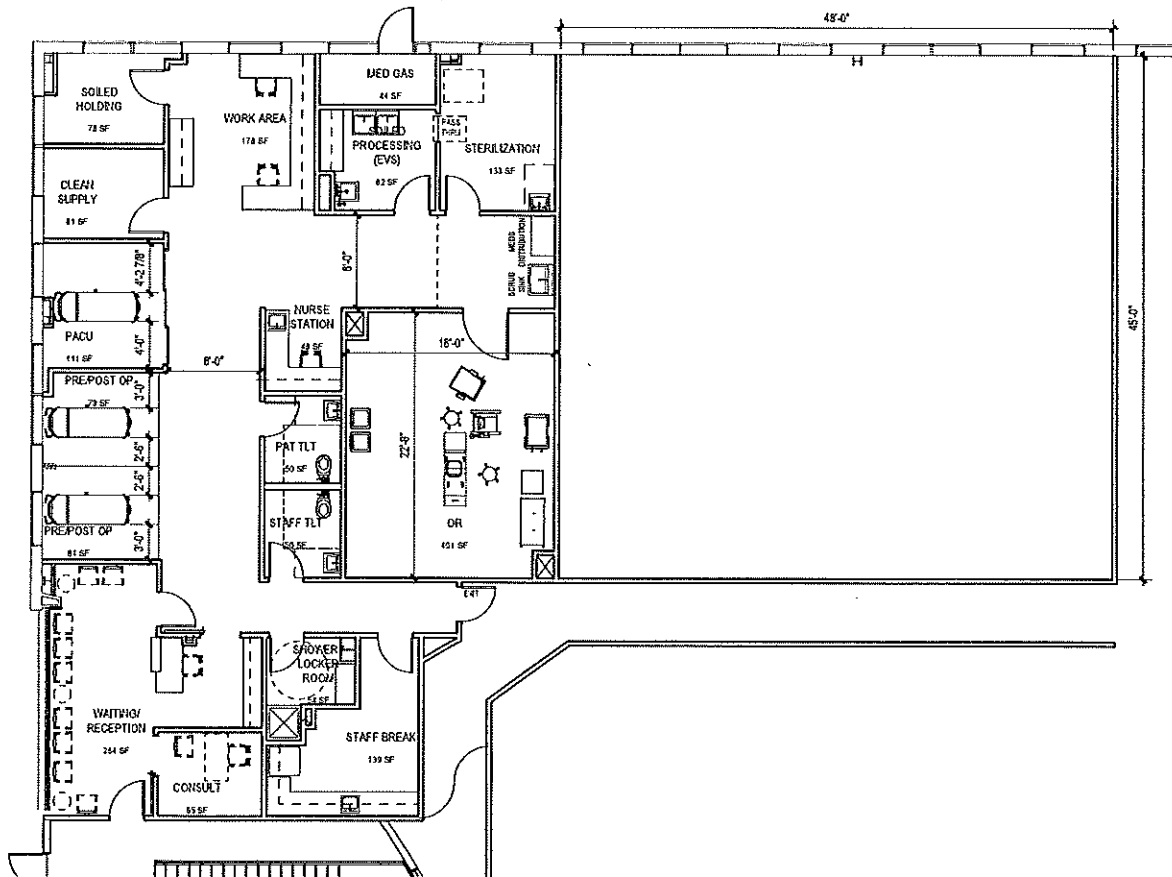


Sec. 17 Ann. Policy  
needed

~~James~~  
"5" Jim Fratt

Not your with in  
or

ENT fax 413-8150



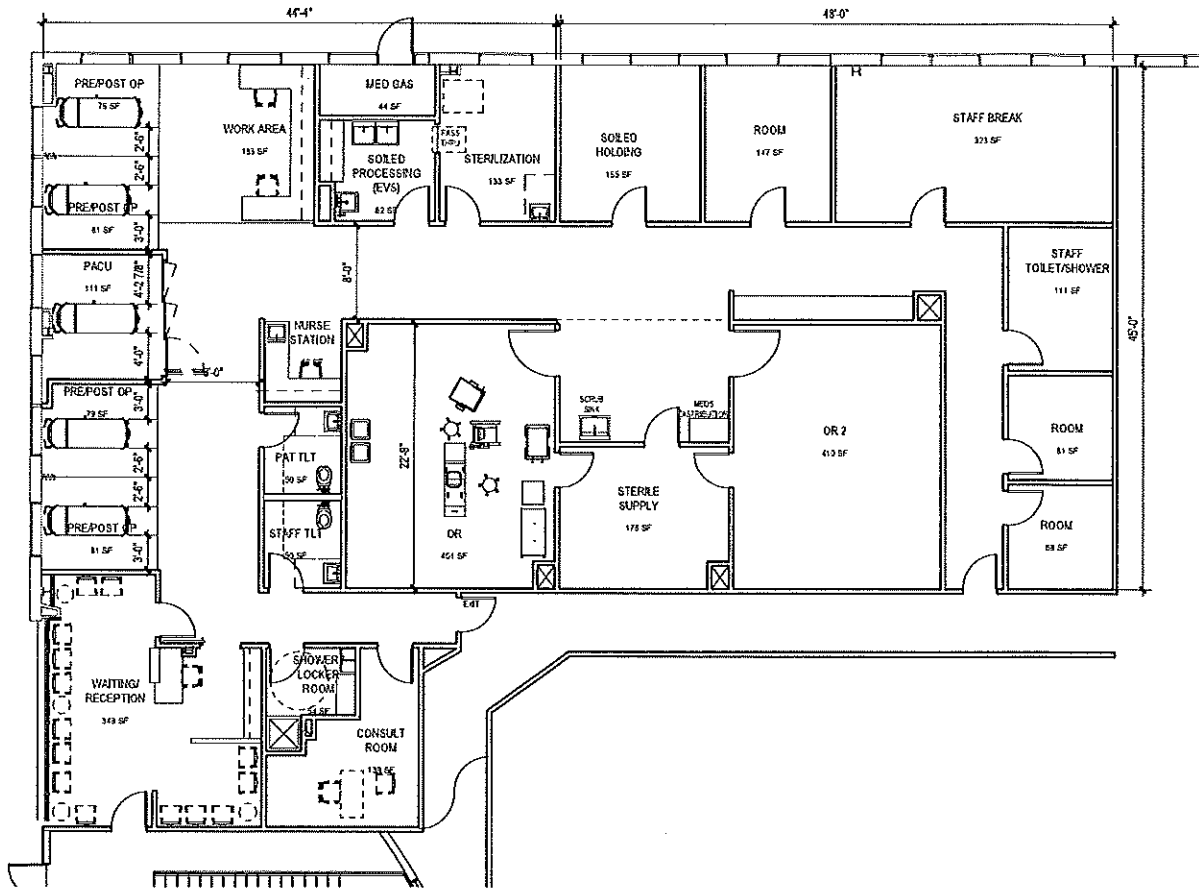
FLOOR PLAN PHASE I  
07/15/20

ENT ASSOCIATES SW - ASC  
128 LILLY ROAD NE  
OLYMPIA, WA 98506  
TGB PROJECT: 20027

SCALE: 1/8" = 1'-0"

**tgb**

21911 76th Ave W, Suite 210  
Edmonds, WA 98026  
t 425.778.1530



SCALE: 1/8" = 1'-0"

FLOOR PLAN - PHASE II  
07/15/20

ENT ASSOCIATES SW - ASC  
128 LILLY ROAD NE  
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21911 76th Ave W, Suite 210  
Edmonds, WA 98026  
1 425.778.1530



July 21, 2020

VIA E-MAIL and U.S. MAIL

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

*Sent via e-mail: [Karen.Nidermayer@DOH.WA.GOV](mailto:Karen.Nidermayer@DOH.WA.GOV)*

Re: EAR NOSE & THROAT ASSOCIATES SOUTHWEST, INC. P.S.

I am the Administrator of EAR NOSE & THROAT ASSOCIATES SOUTHWEST, INC. P.S. (ENTSW). Pursuant to WAC 246-310-050, ENTSW is requesting a formal determination of the CN review requirements under chapter 70.38 RCW for our proposed surgical facility.

Please find enclosed a "CN Application, Determination of Reviewability Ambulatory Surgery Center/Facility" for our planned facility. Also enclosed, please find a check for our review fee in the amount of \$1,925 payable to the Department of Health.

Using the Department's new criteria, we are enclosing relevant information we understand the Department will need to make its Determination.

- ENTSW's clinical practice and proposed new ASC will be located at the same physical address: 128 Lilly Rd NE, Olympia, WA 98506.
- ENTSW's clinical practice and surgical facility will operate under the same ownership: UBI# 601-798-187; and FEIN #91-1829653.
- The primary purpose of the ENTSW site is not specialty or multi-specialty surgical services.
- Income derived from surgical services at this location is expected to be 33% percent of the total revenues at this location.
- Patient visits for surgical services at this facility are expected to be 5% percent of the total patient visits to the site.

We hope the information in this application is complete. Should you need additional materials, please don't hesitate to contact me.

On behalf of the physicians, thank you in advance for your prompt consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Katie Kreider', written in a cursive style.

Katie Kreider, CPC  
Clinic Administrator  
(360) 486-2603  
[kkreider@entsw.com](mailto:kkreider@entsw.com)

Enclosures

cc: Sung-Won Kim, M.D.