

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re: § Chapter 11  
NEIGHBORS EMERGENCY §  
CENTER, LLC<sup>1</sup> §  
Debtor. § Case No. 18-33869 (MI)  
§

**CREDITOR INFINITY EMERGENCY MANAGEMENT GROUP, LLC’S LIMITED  
OBJECTION TO DEBTORS’ EMERGENCY MOTION FOR INTERIM AND FINAL  
ORDERS AUTHORIZING THE DEBTORS TO (I) CONTINUE OPERATING THEIR  
CASH MANAGEMENT SYSTEM, (II) HONOR CERTAIN PREPETITION  
OBLIGATIONS, (III) MAINTAIN EXISTING BUSINESS FORMS, AND (IV)  
GRANTING RELATED RELIEF (DKT 9)**

COMES NOW, Plaintiff INFINITY EMERGENCY MANAGEMENT GROUP, LLC (“Infinity”) and files this Objection to Debtors’ Emergency Motion for Interim and Final Orders Authorizing the Debtors to (I) Continue Operating Their Cash Management System, (II) Honor Certain Prepetition Obligations, (III) Maintain Existing Business Forms, and (IV) Granting Related Relief (DKT 9), and respectfully states as follows:

1. On or about July 12, 2018, Neighbors Legacy Holdings, Inc. and certain of its affiliates and subsidiaries, as debtors and debtors in possession (“Debtors”) filed the above styled Chapter 11 case.
2. On or about July 12, 2018, Debtors filed the motion to which Infinity now objects. That motion among other things sought approval and an order of the Court authorizing the continuance of Debtors Cash Management System.

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<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at [www.kccllc.net/neighbors](http://www.kccllc.net/neighbors). The location of Debtors’ principal place of business and the Debtors’ service address is: 10800 Richmond Avenue. Houston, Texas 77042.



3. Infinity is a creditor of Debtors; Class B investor in Debtors emergency center structure; and Plaintiff in litigation pending against Debtors in the 269<sup>th</sup> District Court of Harris County, Texas.

#### **I. BASIS OF OBJECTION**

4. The Cash Management System operated by Debtors is improper; violates the Debtors corporate documents and Texas law; encompasses improper business expenses; and seeks to be validated based off of sweeping generalized references to similar business structures. Such actions by Debtor leave largely the Class B members, who invested in the Debtors business—left holding the bag. This Court has broad authority to place limitations on the continued management of Debtors assets and business operations and should preclude Debtors from engaging in further intercompany transactions.

5. Debtors admit that its centralized cash management system is designed for money to flow through the myriad entities established and maintained by Debtors, seemingly without any thought to the requirements of their corporate documents or the covenants they made with their investors/members. Further, the expense categories identified by Debtors to substantiate the basis for the continuance of their cash management system are not tailored to the individual emergency centers needs and impermissibly attempt to package legitimate business expenses with illegitimate cash transfers.

6. Debtors generalization of their business structure and wholesale comparison to other over-generalized business structures omit key aspects of Debtors business that preclude such an apples-to-apples comparison. In truth, Debtors utilization of a Series Limited Liability Company and its constituent series units places debtors business structure in a separate category from other run-of-the-mill business structures and consequently requires particular treatment of the revenue generated by Debtors business.



7. Debtors apparently believe that using the term “excess cash” instead of profits allows them to skirt their contractual obligations to Infinity among 150 other member/investors. Semantics aside, Debtors—in the name of keeping their empire afloat—move money from those centers that are making money and turning a profit<sup>2</sup> to other centers that that were unable to meet their monthly expense obligations. Consequently, Infinity contends that the continued use by Debtor of its cash management system particularly as it relates to intercompany transfers is improper.

## II. FACTUAL BACKGROUND

8. Infinity filed suit against debtors in state District court for among other things misuse of moneys to which Infinity enjoyed a contractual interest.<sup>3</sup> The basis of Infinity’s dispute as stated above is predicated upon a Series Limited Liability Company as defined by TEX. BUS. ORG. CODE §101.601. NHS Emergency Centers, LLC (“NHS” a Debtor herein) structured a number of separate series businesses each designed to be contractually linked to various partnerships operating as free-standing emergency centers. In the case of Infinity the series at issue are Series 114 Eastside (“Eastside”) and Series 115 Zaragoza (“Zaragoza”). The ownership of those two series is held by two entities, Infinity (65% Class B interest holder) and Neighbors Investment Group, LLC (34% Class A interest holder). Both Eastside and Zaragoza, as separate Series of NHS, are each managed by Neighbors Health, LLC (“Manager” a Debtor herein). The purpose of Eastside and Zaragoza was to participate in the operation of two separate free-standing emergency centers, NEC Eastside Emergency Center, LP and NEC Zaragoza Emergency Center, LP, both Debtors herein. While, Eastside and Zaragoza do not hold equity ownership in the

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<sup>2</sup> Upon information and belief the other centers that are being supported by those that are cash positive are owned in whole or in part by Neighbors Investment Group, LLC which is itself made up of eight or more of the founding members of the Neighbors Healthcare System. Consequently it is these members that stand to gain by the continued support of those centers that are continuing to turn a profit.

<sup>3</sup> Cause No. 2017-73050, *Infinity Emergency Management Group, LLC. v Neighbors Health System, Inc., et. al.*, in the 269<sup>th</sup> Judicial District Court of Harris County, Texas.

respective partnerships, the partnerships profits, losses, distributions and other benefits (“Series Property”) belong to Eastside and Zaragoza respectively.<sup>4</sup>

9. Infinity filed suit against Manager and Neighbors Investment Group, LLC (among others) for using the Series Property (profits) of Eastside and Zaragoza to fund “intercompany advances” to other separate Series within NHS. These intercompany advances are referred to as “Intercompany Transactions” by debtors. See DKT 9 page 13 para 42. Such conduct violates the company documents of NHS, namely the Series Management and Administrative Services Agreement with Manager, which prohibits the use of Series Property/Profits for any purpose outside the specific Series and Series Business.

10. A Series Limited Liability Company is a creature of Texas corporate law which allows a single Limited Liability Company to designate one or more series of members, managers, and membership interests, essentially creating distinct, self-contained business units. Infinity purchased series interest (“Series Interest”) in NHS through Series Interest Purchase Agreements for both Zaragoza and Eastside in 2014 for a total of \$1,000,000.00. See Exhibits 1 and 2.

11. The role of Manager for the Series is governed by a Series Management and Administrative Services Agreement (Exhibit 3a and 3b) which vests Manager, “as an agent of the Company”<sup>5</sup>, with authority to “maintain bank accounts...[and] shall both have the right to make deposits and withdrawals from any such bank account in connection with operations of the Company”. See Exhibit 3 Section 2(d) Cash Management, Banking and Treasury. By agreeing to act as agent of Eastside and Zaragoza, Manager created a fiduciary relationship with Eastside and Zaragoza.

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<sup>4</sup> Contractually Infinity is entitled to 65% percent of the profits of the facilities while Neighbors Investment Group, LLC is entitled to 34%.

<sup>5</sup> “Company” is defined pursuant to the Series Management and Administrative Services Agreements as (in the case of Eastside) Series 114 Eastside of NHS Emergency Centers, LLC (Exhibit 3a) and Series 115 Zaragoza of NHS Emergency Centers, LLC (Exhibit 3b) for Zaragoza.

12. Because of this special relationship, together with the trust and confidence placed in Manager to appropriately manage the financial affairs of Eastside and Zaragoza as its agent, Manager owed a fiduciary duty to the Members while also serving as the gate-keeper of their profit distributions. The authority of Manager to manage the financial affairs of Eastside and Zaragoza is particularly important in that Manager had authority to make distributions “**to the Members**” pursuant to the Series agreements. *See* Exhibits 4 and 5 Series Agreements for Eastside and Zaragoza Section 2(H) and 3(A). To the extent cash on hand exceeded the reserves necessary to operate the Series Business, Manager should have made distributions to the Members in accordance with the terms of their contracts. Nevertheless, the profits (read “excess cash”) generated by NEC Eastside Emergency Center, LP and NEC Zaragoza Emergency Center, LP were distributed to other failing business entities within the Debtors empire. It is particularly important to note that the entities receiving the profits due to Eastside and Zaragoza, had no affiliation with Eastside or Zaragoza. The profits generated by the Series Business (NEC Eastside Emergency Center, LP and NEC Zaragoza Emergency Center, LP) are the assets of Eastside and Zaragoza respectively. Indeed, the Series Agreements do not provide a mechanism for Manager to divert Series Property away from Eastside or Zaragoza or make distributions to entities other than Infinity and Neighbors Investment Group, LLC absent unanimous consent of Infinity and Neighbors Investment Group, LLC—which was not given.

13. Manager is further obligated pursuant to the Operating Agreement of NHS to hold Series Property in Trust for the Series Members. *See* Exhibit 6 Section 2.09—Series Assets and Liabilities/Series Property. As a trustee, Manager owes a fiduciary duty to the Series Members, Infinity and Neighbors Investment Group, LLC. Manager owes Infinity an unwavering duty of good faith, fair dealing, loyalty and fidelity over the trust’s affairs and its corpus. By diverting

the Series Property away from Infinity and failing to hold the Series Property in trust, Manager breached the duties it owed to Infinity.

14. After much legal wrangling with Debtors, Infinity was provided with Amended Responses to Interrogatories in the State Court action. Manager admits in those responses as it does here that that it subsidized other, separate, individually structured, deficient businesses with excess cash held by other centers in a pro rata fashion. *See Exhibit 7 Defendants' Amended Answers to Plaintiff's Interrogatories.* Indeed Manager's response validates Infinity's argument that its contractual interest with NEC Eastside Emergency Center, LP and NEC Zaragoza Emergency Center, LP was taken, without cause or authority, to support facilities outside of those linked to Eastside and Zaragoza.

15. Infinity has sustained significant injury based on these actions. To date the injury to Infinity combined for Eastside and Zaragoza is believed to exceed \$8.6 million and increases daily based off of the mismanagement of Manager and blatant breach of their contractual obligations.

### III. ARGUMENT

#### **A. As debtor in possession, Debtor has an obligation to manage its assets and business according to Texas law**

16. By allowing Debtors to continue the Cash Management System as it has historically been implemented is to allow the Debtors to continue breaching the contracts and duties the Debtors have and owe to the member, Infinity.

17. Because the Operating Agreement of NHS (Exhibit 6) established multiple separate series and further states that “[t]he Series Property, or other assets of each Series, together with all income, earning, profits and proceeds thereof, including all proceeds...shall be deemed to be Series Property, held by and belonging to such Series”—Manager has breached the terms of the agreements to which they are bound, by engaging in “intercompany transactions”. *See Exhibit 6, Section 2.09—Series Assets and Liabilities/Series Property.*

18. As a debtor in possession, Debtor is obligated to manage the ongoing business operations of Debtor according to the laws of the State of Texas. Prior to bankruptcy, a director's duties to a corporation and its shareholders are generally governed by state law with the law of the company's state of incorporation controlling substantive corporate issues. *In re Schepps Food Stores, Inc.*, 160 B.R. 792, 797 (Bankr. S.D. Tex. 1993) (28 U.S.C.A. § 959 (West)). By continuing the mismanagement of its cash management system, specifically utilizing the profits of the emergency centers in manners inconsistent with the Series documents, Debtor is not able to comply with 28 U.S.C.A. § 959 because Debtor cannot comply with the terms of its state law contracts and the laws pertaining to series limited liability companies. Therefore the cash management system of Debtor cannot continue as currently implemented.

19. Series Property is further defined as “the profits, losses, distributions, and other benefits received by NHS Emergency Centers, LLC from the Series Business. *See* Exhibits 4 and 5, Section 5 *Series Property*. Series Business is defined as in the case of Eastside, NEC Eastside Emergency Center, LP and in the case of Zaragoza, NEC Zaragoza Emergency Center, LP. NHS is the sole limited partner of the Series Business. *See* Exhibits 4 and 5, Section 5 *Series Property*. Consequently, the Series Property is joined at the hip with the viability of the Series Business and has been treated so since inception. The profits of the Series Business are Series Property.

**B. Debtors use of facility profits, for purposes other than the business needs of the facilities generating those profits—is improper**

20. Debtors identify six (6) specific situations in support of why funds are moved outside of the NEC Eastside Emergency Center, LP and NEC Zaragoza Emergency Center, LP accounts. Specifically, (i) disbursement made to each respective Emergency Center's expense account; (ii) disbursements to a corporate bank account maintained by EDMG, LLC; (iii) disbursement to a payroll account maintained by EDMG; (iv) disbursements to the NPG Account; (v) disbursements to Neighbors Practice Management, LLC; and (vi) disbursements on account of deficient centers.

*See* DKT 9 ¶20. Of the six (6) situations identified by Debtors as a necessity for continuing the Cash management System of debtors, only five (5) pertain to the operating expenses and obligations of the respective facilities.

21. Disbursements are made from the accounts of NEC Eastside Emergency Center, LP and NEC Zaragoza Emergency Center, LP, to address their non-physician staff payroll of those centers; to support in part physician payroll obligations for those physicians that render services at the facilities; and to address the operating expenses including management services and billing services for those facilities. While Infinity reserves its rights to argue that these individual expenses are or were appropriate as charged to NEC Eastside Emergency Center, LP and NEC Zaragoza Emergency Center, LP—they nevertheless evidence payments made to continue the business operations of NEC Eastside Emergency Center, LP and NEC Zaragoza Emergency Center, LP.

22. The one mechanism that has no basis or rationale in maintaining the viability of the Series Business here, is the movement of money away from the Series Business accounts to other Series Businesses not affiliated with Eastside and Zaragoza. Debtors movement of “excess cash” from center to center impermissibly directs Series Property away from the separate and individually structured Series.

23. Such movement of Series Property opposes the corporate framework that Debtors created and should be allowed to continue. Profits must be maintained in the centers creating those profits and made available for distribution to the Series Members contractually associated with those emergency centers.

**C. This Court has authority to limit or place conditions on the authority of debtors in possession**

24. This Court has authority pursuant to 11 U.S.C.A § 1107 to limit or place conditions on the authority of the Debtor to continue its business operations and in this case continue with its cash management system. Indeed § 1107 states:

Subject to any limitations on a trustee serving in a case under this chapter, **and to such limitations or conditions as the court prescribes**, a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all the functions and duties, except the duties specified in sections 1106(a)(2), (3), and (4) of this title, of a trustee serving in a case under this chapter. 11 U.S.C.A. § 1107 (West) (emphasis added).

25. This Court must limit the authority of Debtors to continue operating its cash management system by disallowing debtors to fund “intercompany transactions” out of the profits of emergency centers that are contractually linked to a Series Limited Liability Company established by Debtors.

26. Alternatively, and notwithstanding the fact that Series Property should not have been moved by Debtors to begin with—debtors recorded the intercompany advances on the combined financial statements of NEC Eastside Emergency Center, LP and the Eastside Series along with NEC Zaragoza Emergency Center, LP and the Zaragoza Series. While the line items exist as payable entries back to the partnerships (which in turn constitutes Series Property for distribution to Series Members) profits continued to be siphoned off with little if any expectation that they would be repaid.

27. Debtors have been “robbing Peter to pay Paul”, except that they are also Paul. Debtors over extended themselves to such a degree and at such a furious pace that they passed right by their obligations in their own organizational documents and were left looking for a means to continue their forward progress. Which in this case was taking “excess cash” from profitable centers simply to keep others afloat instead of allowing those other centers and business interests to stand on their own as the documents require.

28. Further, Thomas Gruenert, General Counsel for Debtors, stated in a June 6, 2017 email to Jermaine Bowen (manager of Infinity) that: "...the issue of inter-company advances is not specifically addressed in the Series Agreement". *See* Exhibit 8. It stands to reason that if these intercompany transactions were such a critical part of Debtors' business structure that they would have been spelled out in specific and definitive terms through the corporate documents at issue here. But instead they were not. Mr. Gruenert further characterizes the advances as "short term" and in the Manager's discretion. Such commentary does not support Debtor's contention that they are regular and systematic expenses. Moreover, Mr. Gruenert's comments represent a departure from his amended interrogatory responses arising from Infinity's state court litigation referenced herein. Despite what Debtors would have this court believe, these intercompany transfers are not in the ordinary course of business but instead have been picked at to greater and greater extent as the years have gone by. Upon inception, Debtors covered the start-up and administrative expenses of its emergency facilities with lines of credit. These actions then turned into "short term", "discretionary" payments and ultimately morphed into a situation where Debtors house of cards could not be sustained without continued influxes of cash (read Series Property).

29. In short, intercompany transfers should not have been made to begin with. Even still, once they were made, the Debtors saw a substantial, un-tapped resource of continued, self-perpetuating funding to continue their meteoric rise into what was already a flawed and failing market.

**D. Debtors apples-to-apples comparison of their corporate structure and business model to other corporate structures as a means of justifying intercompany transactions is fatally flawed**

30. Debtors do not mention in their DKT 9 Motion, that a significant portion of Debtor's business revolves around a Series Limited Liability Company. Indeed, the other cases cited by Debtors in paragraph 73 of DKT 9, to which Debtors make such a sweeping comparison—also



neglect to mention a Series Limited Liability Company. Simply because Debtors maintain more than one inter-related business does afford them some de-facto commonality with every other debtor who likewise maintained more than one inter-related business.

31. Notwithstanding the foregoing, Debtors omit key aspects of their business structure; make broad generalizations about their structure as compared to other similar business; and fail to properly inform the Court of the obligations they have to the members of their Series Limited Liability Company. Debtors argue that they should be allowed to continue operating their cash management system as they had pre-petition pursuant to among other code provisions 11 U.S.C.A § 363(b)(1), 364(a), and 503(b)(1) with their fallback position hinging on this Court's authority pursuant to 105(a). As other Class B investors have noted in the various objections filed in this proceeding—Debtors are all too willing to cast the Class B investors aside at this juncture. This is particularly egregious when it is essentially the Class B investors that staff Neighbors emergency centers.

32. Despite the broad authority of this Court, Debtors should not be allowed to continue reaping the benefits of the Class B investors hard work by using moneys due to such investors for the benefit of Debtors failing emergency centers. This court should limit the debtors cash management system to only those business expenses incurred by the emergency centers and not allow Debtors to remove excess cash from the centers to support others.

#### **IV. PRAYER**

33. Infinity prays that this Court deny Debtors the ability to utilize excess cash for the benefit of deficient centers. Alternatively, Infinity prays that this Court require Debtors to post a bond or provide other forms of adequate assurance should further intercompany transfers be allowed and for such other and further relief that Infinity may show itself justly entitled.

Respectfully submitted,

**HENDERSHOT, CANNON & HISEY, P.C.**

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**ATTORNEYS FOR INFINITY EMERGENCY  
MANAGEMENT GROUP, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 3<sup>rd</sup> day of August, 2018, a true and correct copy of the foregoing pleading was served upon all parties that are registered to receive electronic service through the court's CM/ECF notice system in the above cases.

/s/ Simon W. Hendershot, III  
SIMON W. HENDERSHOT, III

S:/Bowen/Bankruptcy/Objection 2018 08 03.Docx.

# Exhibit 1

## SERIES INTEREST PURCHASE AGREEMENT

This Series Interest Purchase Agreement (this "Agreement") is entered into to be effective on the day and date set forth opposite the signature lines below, between **NHS EMERGENCY CENTERS, LLC**, a Texas series limited liability company (hereinafter referred to as "NHS" or the "Company"), and Infinity Emergency Management Group, LLC ("Purchaser").

### RECITALS:

WHEREAS, NHS and its affiliates operate multiple free standing emergency centers in various locations throughout Texas and elsewhere;

WHEREAS, NHS and its affiliates intend to open a free-standing emergency center to be known as NEC Eastside Emergence Center, LP (the "Emergency Center");

WHEREAS, the Company, as a Texas "series" limited liability company, is legally authorized to issue multiple classes and "series" of limited liability company ownership interests;

WHEREAS, in connection with the Emergency Center, the Company has determined to offer a series of limited liability company ownership interests known as the Series 114 - Eastside Membership Interests (the "Series");

WHEREAS, the profits and losses of the Emergency Center are reserved for the owners of the Series;

WHEREAS, the Company is authorized to issue up to 6500 Class B Series Shares, representing in the aggregate 65% of the ownership of the Series;

WHEREAS, Purchaser desires to purchase a number of the Class B Series Shares on the terms set forth in Section 1 of this Agreement;

NOW, THEREFORE, in consideration of the parties' undertakings herein and the consideration recited hereafter, the receipt and sufficiency of which are duly acknowledged by the parties, the Company and Purchaser agree as follows:

### Section 1. Sale of Shares

The Company hereby sells, transfers, conveys and sets over to Purchaser 6500 shares of the Company's Class B Series Shares (referred to as the "Shares"). Purchaser shall make payment to the Company in complete satisfaction of the purchase price of \$500,000 dollars (the "Purchase Price"), delivered to the Company on or before the date of this Agreement on the following terms:  
\$50,000 Non-refundable deposit due upon management signing of series interest purchase agreement contract;

\$100,000 due on or before December 1, 2014  
\$100,000 due on or before January 1, 2015  
\$100,000 due on or before February 1, 2015  
\$150,000 due on or before March 1, 2015

The Company hereby acknowledges the receipt and sufficiency of the Purchase Price for the Shares.

### **Section 2. Certificate(s) Representing the Shares**

The Company shall deliver a certificate or certificates representing the Shares to Purchaser at Closing, configured in terms of the number of shares per certificate and the total number of certificates as may be determined by Purchaser. Purchaser agrees that the certificates shall bear, at least, restrictive legends relating to the following matters:

- (a) The fact that the Shares have not been registered under applicable securities laws and that transfer of the Shares therefore is restricted.
- (b) The fact that the holders of the Company's Class B Series Shares have limited voting rights under the terms of the Series Agreement, and that the Shares carry no preemptive or cumulative voting rights.
- (c) The fact that the Shares are subject to restrictions on transfer and rights of redemption under the terms of the Series Agreement of the Series (the "Series Agreement").

### **Section 3. Securities Law Matters**

- (a) THE SHARES SOLD HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE APPLICABLE SECURITIES LAWS OF ANY STATE. AS A RESULT, THE SHARES MAY NOT BE RESOLD UNLESS THEY ARE REGISTERED SUBSEQUENTLY UNDER APPLICABLE STATE SECURITIES LAWS OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE. NONE OF THE SHARES MAY BE RESOLD, ASSIGNED OR OTHERWISE TRANSFERRED UNLESS THE SHARES HAVE BEEN QUALIFIED UNDER APPLICABLE STATE SECURITIES LAWS OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION EXISTS.
- (b) The sale of Shares contemplated hereunder is pursuant to exemptions from registration under the Securities Act of 1933 including, without limitation, Sections 3(b), 4(2) and/or 4(6) thereof and Rule 144.



**Section 4. Representations and Warranties of the Purchaser**

Purchaser hereby represents and warrants to the Company as follows:

- (a) Purchaser has not relied on the Company's evaluation of the Shares and Purchaser's decision to purchase same on the terms and conditions set forth herein is not based on any representation, statement, financial statement or projection or other inducement of any nature, written or oral, whatsoever except the statements, representations and warranties made herein.
- (b) Purchaser is a sophisticated investor capable of evaluating the risks of the sale contemplated herein, the value of the Shares and the fairness of the purchase price set forth herein.
- (c) Purchaser has been afforded an opportunity to meet with the Manager of the Company and ask such questions and review such information contained in the books and records of the Company, as Purchaser has deemed relevant in evaluating the risks of the sale contemplated herein and the value of the Shares.
- (d) Purchaser is financially able to risk the loss of the entire purchase price for the Shares, and could suffer such loss without suffering undue financial hardship.
- (e) Purchaser has purchased the Shares with a view toward investment and for Purchaser's own account, and not with the purpose or intent of effecting a wider distribution of the Shares.
- (f) Purchaser represents to the Company that Purchaser has reviewed the Operating Agreement of the Company (the "Operating Agreement") and the Series Agreement, and has had adequate opportunity to review the Operating Agreement and the Series Agreement with counsel and such other advisors as Purchaser has deemed appropriate; Purchaser understands and agrees to the terms of the Operating Agreement and the Series Agreement and has unequivocally agreed to become bound thereto by execution of an Acknowledgment in form satisfactory to Purchaser and the Company.

**Section 5. Class B Member Organizational Documents and Agreements**

- (a) The Certificate of Formation, Operating Agreement, Members' Agreement and all similar organizational documents and agreements of the Class B Member (collectively the "Class B Documents") shall be subject to the review and approval of the Manager. The Class B Documents shall include, without limitation, the following provisions and requirements applicable to all of Purchaser's shareholders, members, managers, partners or other equity owners

(collectively the "Purchaser Equity Owners" and each individually a "Purchaser Equity Owner")/

- (i) Limitation of membership to those Purchaser Equity Owners who are either a board certified or board eligible licensed physician or a licensed physician reasonably experienced in the practice of emergency medicine;
- (ii) Agreements among the Purchaser Equity Owners to provide clinical shift coverage at the Series Business as independent contractors of Neighbors Physician Group, PLLC;
- (iii) Provisions requiring that there shall be a Purchaser Equity Owner on duty at the Series Business whenever reasonably possible;
- (iv) A requirement that all Purchaser Equity Owners shall be subject to formal credentialing through Neighbors Physician Group, PLLC;
- (v) Restrictive covenants restraining the Purchaser Equity Owners from participating as owners or managers in any emergency medicine business that is an Excluded Location (as defined in Section 6(A)(a) of the Series Agreement);
- (vi) Provisions requiring the mandatory involuntary withdrawal of any Purchaser Equity Owner, and mandatory forfeiture or sale to the remaining Purchaser Equity Owners of his or her membership interest in the Purchaser, of any Purchaser Equity Owner who has been convicted of a felony, convicted of a misdemeanor involving an act of moral turpitude, or for any other reason cannot fulfill his or her clinical shift obligations;
- (vii) Provisions requiring the mandatory resale to the Purchaser of his or her interests in the Class B Member by any Purchaser Equity Owner who elects to voluntarily withdraw from the Purchaser;
- (viii) Provisions restricting the Purchaser Equity Owners from disclosing any confidential business information relating to this Series or the Series Business, including the "Confidential Information" as defined in Section 8(A)(b) of the Series Agreement; and
- (x) Provisions requiring the Purchaser Equity Owners to acknowledge the terms of and to agree to be bound by this Series Agreement.

**Section 6. Default by Purchaser Equity Owners/Purchaser's Indemnity**

- (a) The Purchaser agrees that it shall promptly remedy any breach by a Purchaser Equity Owner of his or her obligations under the Class B Documents including,



without limitation, a breach by a Purchaser Equity Owner of the restrictive covenants set forth in the Class B Documents. The Purchaser shall promptly provide the Manager with notice of any such breach, and shall bear all costs arising from the remediation of such breach including, without limitation, attorneys' fees. In the event that the Purchaser fails to notify the Manager of a breach of the Class B Documents by a Purchaser Equity Owner, or fails to reasonably remedy such breach on a timely basis, the Manager shall have the right to take such action as it deems in its sole discretion necessary and appropriate to address such breach and to pursue an appropriate remedy. The Purchaser hereby expressly agrees that the Manager and the Class A Member are third party beneficiaries of the Class B Documents with full standing to enforce any breach of the Class B Documents by a Purchaser Equity Owner, and by its signature hereon the Purchaser hereby conveys to the Manager a non-exclusive, non-delegable power of attorney for the purpose of enforcing the Class B Documents. All reasonable costs and expenses of enforcing the Class B Documents incurred by the Manager shall be deducted from any distributions otherwise payable to the Purchaser.

- (b) The Purchaser hereby indemnifies the Class A Member, the Manager, the Class A Equity Owners, the Series and the Series Business, from any and all claims arising from (i) the breach of this Agreement by the Purchaser, (ii) a breach of the Class B Documents by a Purchaser Equity Owner, and (iii) any act or omission on the part of the Class B Member.

#### **Section 7. The Class B Series Membership Interests**

Under the terms of the Company's Series Agreement, the Shares will be subject to certain terms and conditions that may affect the value and/or transferability of the Shares, including without limitation the following:

- (a) The Shares will carry restricted voting rights as the Class B Shares are authorized to cast votes only on Major Decisions (as defined in the Series Agreement);
- (b) Holders of Class B Shares of the Company are precluded from management of the Company;
- (c) The Shares will be subject to mandatory redemption upon the Purchaser's withdrawal as a Member of the Company;
- (d) The Shares will be subject to mandatory redemption if any of Purchaser's representations and warranties made herein prove to be incorrect, and the redemption price will be equal to the Purchase Price set forth in Section 1 of this Agreement;

- (e) The Purchaser will be deemed to have withdrawn, and the Shares will be subject to mandatory redemption, upon the Purchaser's death, retirement, disability or the loss of Purchaser's license to practice medicine in the State of Texas;
- (f) The Shares will be subject to mandatory restrictions on transfer;
- (g) Purchaser, as a Member of the Company, will be subject to certain restrictive covenants including covenants not to compete against the Company as set forth in the Series Agreement.

**Section 8. Miscellaneous**

- (a) The parties hereto agree that this Agreement may not be altered or amended except by a written instrument signed by the Company and Purchaser.
- (b) THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF TEXAS.
- (c) Venue over any dispute relating to or arising under the terms of this Agreement shall lie exclusively in the state district courts of Harris County, Texas.
- (d) This Agreement, the Operating Agreement and the Series Agreement supersede all prior statements and communications of the parties with regard to the subject matter hereof. There are no verbal understandings or agreements of any nature whatsoever between the Company and Purchaser relating to any matter, including the purchase and sale of the Shares.
- (e) Notices: all notices required under the terms of this Agreement may be given electronically, by facsimile or email, by personal delivery or by First Class United States Mail to the parties at their addresses set forth on the signature page below, or such other address as shall be provided by a party in writing from time to time. Notices shall be effective upon actual receipt by the party to whom notice is given.

*[Signature Page to Follow]*

SIGNED this 3rd day of December, 2014.

"THE COMPANY:" NIS EMERGENCY CENTERS, LLC

By: \_\_\_\_\_  
Setul Patel, President of  
Neighbors Health System, Inc., Manager

"PURCHASER:" INFINITY EMERGENCY MANAGEMENT GROUP, LLC

By: \_\_\_\_\_  
Name: Samara Bower  
Title: Manager

# Exhibit 2

**SERIES INTEREST PURCHASE AGREEMENT**

This Series Interest Purchase Agreement (this "Agreement") is entered into to be effective on the day and date set forth opposite the signature lines below, between NHS EMERGENCY CENTERS, LLC, a Texas series limited liability company (hereinafter referred to as "NHS" or the "Company"), and Infinity Emergency Management Group, LLC ("Purchaser").

**RECITALS:**

WHEREAS, NHS and its affiliates operate multiple free standing emergency centers in various locations throughout Texas and elsewhere;

WHEREAS, NHS and its affiliates intend to open a free-standing emergency center to be known as NEC Zaragoza Emergence Center, LP (the "Emergency Center");

WHEREAS, the Company, as a Texas "series" limited liability company, is legally authorized to issue multiple classes and "series" of limited liability company ownership interests;

WHEREAS, in connection with the Emergency Center, the Company has determined to offer a series of limited liability company ownership interests known as the Series 115 - Zaragoza Membership Interests (the "Series");

WHEREAS, the profits and losses of the Emergency Center are reserved for the owners of the Series;

WHEREAS, the Company is authorized to issue up to 6500 Class B Series Shares, representing in the aggregate 65% of the ownership of the Series;

WHEREAS, Purchaser desires to purchase a number of the Class B Series Shares on the terms set forth in Section 1 of this Agreement;

NOW, THEREFORE, in consideration of the parties' undertakings herein and the consideration recited hereafter, the receipt and sufficiency of which are duly acknowledged by the parties, the Company and Purchaser agree as follows:

**Section 1. Sale of Shares**

The Company hereby sells, transfers, conveys and sets over to Purchaser 6500 shares of the Company's Class B Series Shares (referred to as the "Shares"). Purchaser shall make payment to the Company in complete satisfaction of the purchase price of \$500,000 dollars (the "Purchase Price"), delivered to the Company on or before the date of this Agreement on the following terms:  
\$50,000 Non-refundable deposit due upon management signing of series interest purchase agreement contract;



\$100,000 due on or before December 1, 2014

\$100,000 due on or before January 1, 2015

\$100,000 due on or before February 1, 2015

\$150,000 due on or before March 1, 2015

The Company hereby acknowledges the receipt and sufficiency of the Purchase Price for the Shares.

### Section 2. Certificate(s) Representing the Shares

The Company shall deliver a certificate or certificates representing the Shares to Purchaser at Closing, configured in terms of the number of shares per certificate and the total number of certificates as may be determined by Purchaser. Purchaser agrees that the certificates shall bear, at least, restrictive legends relating to the following matters:

- (a) The fact that the Shares have not been registered under applicable securities laws and that transfer of the Shares therefore is restricted.
- (b) The fact that the holders of the Company's Class B Series Shares have limited voting rights under the terms of the Series Agreement, and that the Shares carry no preemptive or cumulative voting rights.
- (c) The fact that the Shares are subject to restrictions on transfer and rights of redemption under the terms of the Series Agreement of the Series (the "Series Agreement").

### Section 3. Securities Law Matters

- (a) THE SHARES SOLD HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE APPLICABLE SECURITIES LAWS OF ANY STATE. AS A RESULT, THE SHARES MAY NOT BE RESOLD UNLESS THEY ARE REGISTERED SUBSEQUENTLY UNDER APPLICABLE STATE SECURITIES LAWS OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE. NONE OF THE SHARES MAY BE RESOLD, ASSIGNED OR OTHERWISE TRANSFERRED UNLESS THE SHARES HAVE BEEN QUALIFIED UNDER APPLICABLE STATE SECURITIES LAWS OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION EXISTS.
- (b) The sale of Shares contemplated hereunder is pursuant to exemptions from registration under the Securities Act of 1933 including, without limitation, Sections 3(b), 4(2) and/or 4(6) thereof and Rule 144.

**Section 4. Representations and Warranties of the Purchaser**

Purchaser hereby represents and warrants to the Company as follows:

- (a) Purchaser has not relied on the Company's evaluation of the Shares and Purchaser's decision to purchase same on the terms and conditions set forth herein is not based on any representation, statement, financial statement or projection or other inducement of any nature, written or oral, whatsoever except the statements, representations and warranties made herein.
- (b) Purchaser is a sophisticated investor capable of evaluating the risks of the sale contemplated herein, the value of the Shares and the fairness of the purchase price set forth herein.
- (c) Purchaser has been afforded an opportunity to meet with the Manager of the Company and ask such questions and review such information contained in the books and records of the Company, as Purchaser has deemed relevant in evaluating the risks of the sale contemplated herein and the value of the Shares.
- (d) Purchaser is financially able to risk the loss of the entire purchase price for the Shares, and could suffer such loss without suffering undue financial hardship.
- (e) Purchaser has purchased the Shares with a view toward investment and for Purchaser's own account, and not with the purpose or intent of effecting a wider distribution of the Shares.
- (f) Purchaser represents to the Company that Purchaser has reviewed the Operating Agreement of the Company (the "Operating Agreement") and the Series Agreement, and has had adequate opportunity to review the Operating Agreement and the Series Agreement with counsel and such other advisors as Purchaser has deemed appropriate; Purchaser understands and agrees to the terms of the Operating Agreement and the Series Agreement and has unequivocally agreed to become bound thereto by execution of an Acknowledgment in form satisfactory to Purchaser and the Company.

**Section 5. Class B Member Organizational Documents and Agreements**

- (a) The Certificate of Formation, Operating Agreement, Members' Agreement and all similar organizational documents and agreements of the Class B Member (collectively the "Class B Documents") shall be subject to the review and approval of the Manager. The Class B Documents shall include, without limitation, the following provisions and requirements applicable to all of Purchaser's shareholders, members, managers, partners or other equity owners

(collectively the "Purchaser Equity Owners" and each individually a "Purchaser Equity Owner")

- (i) Limitation of membership to those Purchaser Equity Owners who are either a board certified or board eligible licensed physician or a licensed physician reasonably experienced in the practice of emergency medicine;
- (ii) Agreements among the Purchaser Equity Owners to provide clinical shift coverage at the Series Business as independent contractors of Neighbors Physician Group, PLLC;
- (iii) Provisions requiring that there shall be a Purchaser Equity Owner on duty at the Series Business whenever reasonably possible;
- (iv) A requirement that all Purchaser Equity Owners shall be subject to formal credentialing through Neighbors Physician Group, PLLC;
- (v) Restrictive covenants restraining the Purchaser Equity Owners from participating as owners or managers in any emergency medicine business that is an Excluded Location (as defined in Section 6(A)(a) of the Series Agreement);
- (vi) Provisions requiring the mandatory involuntary withdrawal of any Purchaser Equity Owner, and mandatory forfeiture or sale to the remaining Purchaser Equity Owners of his or her membership interest in the Purchaser, of any Purchaser Equity Owner who has been convicted of a felony, convicted of a misdemeanor involving an act of moral turpitude, or for any other reason cannot fulfill his or her clinical shift obligations;
- (vii) Provisions requiring the mandatory resale to the Purchaser of his or her interests in the Class B Member by any Purchaser Equity Equity Owner who elects to voluntarily withdraw from the Purchaser;
- (viii) Provisions restricting the Purchaser Equity Owners from disclosing any confidential business information relating to this Series or the Series Business, including the "Confidential Information" as defined in Section 8(A)(b) of the Series Agreement; and
- (x) Provisions requiring the Purchaser Equity Owners to acknowledge the terms of and to agree to be bound by this Series Agreement.

**Section 6. Default by Purchaser Equity Owners/Purchaser's Indemnity**

- (a) The Purchaser agrees that it shall promptly remedy any breach by a Purchaser Equity Owner of his or her obligations under the Class B Documents including,



without limitation, a breach by a Purchaser Equity Owner of the restrictive covenants set forth in the Class B Documents. The Purchaser shall promptly provide the Manager with notice of any such breach, and shall bear all costs arising from the remediation of such breach including, without limitation, attorneys' fees. In the event that the Purchaser fails to notify the Manager of a breach of the Class B Documents by a Purchaser Equity Owner, or fails to reasonably remedy such breach on a timely basis, the Manager shall have the right to take such action as it deems in its sole discretion necessary and appropriate to address such breach and to pursue an appropriate remedy. The Purchaser hereby expressly agrees that the Manager and the Class A Member are third party beneficiaries of the Class B Documents with full standing to enforce any breach of the Class B Documents by a Purchaser Equity Owner, and by its signature hereon the Purchaser hereby conveys to the Manager a non-exclusive, non-delegable power of attorney for the purpose of enforcing the Class B Documents. All reasonable costs and expenses of enforcing the Class B Documents incurred by the Manager shall be deducted from any distributions otherwise payable to the Purchaser.

- (b) The Purchaser hereby indemnifies the Class A Member, the Manager, the Class A Equity Owners, the Series and the Series Business, from any and all claims arising from (i) the breach of this Agreement by the Purchaser, (ii) a breach of the Class B Documents by a Purchaser Equity Owner, and (iii) any act or omission on the part of the Class B Member.

#### **Section 7. The Class B Series Membership Interests**

Under the terms of the Company's Series Agreement, the Shares will be subject to certain terms and conditions that may affect the value and/or transferability of the Shares, including without limitation the following:

- (a) The Shares will carry restricted voting rights as the Class B Shares are authorized to cast votes only on Major Decisions (as defined in the Series Agreement);
- (b) Holders of Class B Shares of the Company are precluded from management of the Company;
- (c) The Shares will be subject to mandatory redemption upon the Purchaser's withdrawal as a Member of the Company;
- (d) The Shares will be subject to mandatory redemption if any of Purchaser's representations and warranties made herein prove to be incorrect, and the redemption price will be equal to the Purchase Price set forth in Section 1 of this Agreement;

- (c) The Purchaser will be deemed to have withdrawn, and the Shares will be subject to mandatory redemption, upon the Purchaser's death, retirement, disability or the loss of Purchaser's license to practice medicine in the State of Texas;
- (f) The Shares will be subject to mandatory restrictions on transfer;
- (g) Purchaser, as a Member of the Company, will be subject to certain restrictive covenants including covenants not to compete against the Company as set forth in the Series Agreement.

**Section 8. Miscellaneous**

- (a) The parties hereto agree that this Agreement may not be altered or amended except by a written instrument signed by the Company and Purchaser.
- (b) THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF TEXAS.
- (c) Venue over any dispute relating to or arising under the terms of this Agreement shall lie exclusively in the state district courts of Harris County, Texas.
- (d) This Agreement, the Operating Agreement and the Series Agreement supersede all prior statements and communications of the parties with regard to the subject matter hereof. There are no verbal understandings or agreements of any nature whatsoever between the Company and Purchaser relating to any matter, including the purchase and sale of the Shares.
- (e) Notices: all notices required under the terms of this Agreement may be given electronically, by facsimile or email, by personal delivery or by First Class United States Mail to the parties at their addresses set forth on the signature page below, or such other address as shall be provided by a party in writing from time to time. Notices shall be effective upon actual receipt by the party to whom notice is given.

*[Signature Page to Follow]*

SIGNED this 3rd day of December, 2014.

"THE COMPANY:" NHS EMERGENCY CENTERS, LLC

By: \_\_\_\_\_  
Setul Patel, President of  
Neighbors Health System, Inc., Manager

"PURCHASER:" INFINITY EMERGENCY MANAGEMENT GROUP, LLC

By: \_\_\_\_\_  
Name: Samara Bower  
Title: Manager

# Exhibit 3a



**SERIES MANAGEMENT AND ADMINISTRATIVE SERVICES AGREEMENT**

This Series Management and Administrative Services Agreement ("Agreement") is entered into between Neighbors Health System, Inc., a Texas corporation ("Manager") and Series 114 - Eastside of NHS Emergency Centers, LLC, a Texas limited liability company (the "Company"), to be effective as of the 4th day of December, 2014 ("Effective Date").

**Recitals:**

WHEREAS, the Company operates an emergency medical clinic facility (hereafter the "Company Business");

WHEREAS, the Company desires to obtain management services and administrative support from Manager on the terms set forth herein and Manager desires to fulfill the engagement.

NOW, THEREFORE, the Company and Manager, for good and valuable consideration, the receipt and sufficiency of which are duly acknowledged, agree as follows:

**1. Engagement of Manager**

The Company hereby engages Manager to provide management for the Company, subject to the terms and conditions set forth herein.

- a. Manager will perform management services in accordance with the policies, procedures, rules and directives as adopted and amended by the Company and will answer directly to the Company.
- b. The management services to be delivered by Manager shall include, without limitation, the day to day management of the Company, the Administrative Services outlined in Section 2 of this Agreement, and such additional services as shall be necessary and appropriate to provide for the operation of the Company's business without interruption.
- c. Manager shall perform its services hereunder, including the Administrative Services, in compliance with the requirements of all applicable federal, state, regional and local laws, rules, regulations and orders, including those applicable to the provision of services to patients covered by federal health care programs.

**2. Management and Administrative Services**

The administrative services to be provided by Manager hereunder shall be sufficient to support the Company's ongoing business operations in all respects, including, without limitation, the following:

- a. Staffing and Human Resources. The Manager and its affiliates shall have the sole responsibility for hiring, firing and supervising all non-professional employees, shall

administer payroll and benefits, provide necessary employee training and certification, and shall maintain personnel records in compliance with state and federal laws.

- b. Accounting. Manager will supervise and manage all accounting, including tax compliance and tax return preparation, accounts payable administration, billing and collection services of the Company.
- c. Financial Planning and Forecasting. Manager will create, implement and review annual budgets for the Company. Manager will be responsible for taking all actions that Manager deems necessary to implement the approved budget.
- d. Cash Management, Banking and Treasury. Manager, as agent of the Company, will maintain bank accounts, and shall both have the right to make deposits and withdrawals from any such bank account in connection with operations of the Company. Manager will not have the authority to borrow money or execute any promissory notes on Company's behalf without the consent of the Company.
- e. Administer Insurance Programs. Manager will maintain policies of general liability, premises liability and any other insurance that it deems appropriate to insure Manager, the Company, and Manager's employees and agents against any liability resulting from manager or Manager's employees' acts or omissions during the Term of this Agreement.
- f. Executive Operations Management. Manager will advise the Company as to any equipment needs, maintenance or operational issues that are necessary for the continued operation of the Company. Manager will be responsible for negotiating and preparing service contracts and developing managed care contracts that Manager deems necessary for the operation of the Company.
- g. Marketing. Manager will create, implement and administer marketing programs for the Company. Manager will be responsible for taking all actions that Manager deems necessary to deliver and communicate the Company's services to the community.
- h. Branding. Manager, as agent of the Company, will be responsible for maintaining and implementing the name, logo, slogan and/or design scheme associated with the Company; provided, however, that it is understood that all intellectual property will be the property of Neighbors Emergency Center, LLC.
- i. Information Technology. Manager will supervise and manage the application and utilization of computers and telecommunications equipment to store, retrieve, transmit and manipulate the Company's data.
- j. Facilities Management Oversight. Manager shall have the sole responsibility of providing oversight of the Company's infrastructure, instrumentation and equipment. Manager will create, implement and review the policies, procedures and requirements for properly and adequately maintaining and managing the Company's emergency center. The Manager shall identify and manage appropriate vendor relationships for supplies and equipment.



- k. Policies and Procedures. Manager will create, implement and review policies and procedures for the operation of the Company Business and the sound administration of the Company's facilities.
- l. Licensure. Manager shall have the sole responsibility of taking all actions and performing all services that Manager deems necessary to ensure that all licenses held by the Company are properly maintained in good standing.
- m. Compliance Training. Manager shall have the sole responsibility of taking all actions to ensure the Company's employees are properly educated on the laws, regulations and policies that apply to their day-to-day job responsibilities. Manager will be responsible for taking all actions that Manager deems necessary to provide training to the Company's employees on workplace discrimination and harassment, dealings with competitors, protecting trade secrets, record management, IT and all areas of professional competence.
- n. Such other services as shall be (i) reasonably related to those specific services set forth above, or (ii) reasonably necessary, at Manager's sole discretion, to support the Company's operations.

(the foregoing referred to collectively as the "Administrative Services"). The Company agrees to provide Manager with access to, and/or copies of, the Company's business information sufficient to enable Manager's personnel to perform the Administrative Services. Manager agrees that all such information relating to the Company's business shall be treated as strictly confidential and shall not be disclosed to any person absent the Company's advance written consent except as may be necessary for Manager's accounting, tax preparation and financial reporting purposes.

3. Manager's authority to undertake specific actions shall be subject to such restrictions, consent requirements and/or limitations as are set forth in the Series Agreement of the Company from time to time.

#### 4. Fees and Expenses

- a. The Company and Manager agree to meet and determine an appropriate monthly fee for Manager's services hereunder. The parties agree that the monthly fee shall be reviewed and adjusted on a month-to-month basis to reflect the expenditure of time and resources required of Manager to adequately perform the services.
- b. The Company shall reimburse Manager's reasonable out of pocket expenses incurred in connection with the performance of Manager's services under this Agreement, subject to Manager's provision of appropriate documentation for such expenses.

#### 5. Term

This Agreement shall become effective on the Effective Date and shall remain effective thereafter for as long as the Company operates the Company Business, unless (i) terminated by either party

by giving advance written notice to the non-terminating party not less than ninety (90) days prior to the next succeeding anniversary of the Effective Date (in which case, the Agreement shall remain in full force and effect until the next succeeding anniversary of the Effective Date), or (ii) terminated by the written agreement of the parties, or (iii) terminated for cause in accordance with Section 6 of the Business Agreement attached hereto as Exhibit A.

#### **6. Indemnification**

The Company agrees to indemnify Manager, and hold Manager and its officers, directors, shareholders, employees and representatives harmless from any and all claims, losses and liabilities of all descriptions arising during the Term of this Agreement and relating to (i) any claim for property damage, personal injury and/or wrongful death caused in whole or in part by any act or omission of the Company, (ii) any agreement, written or verbal, to which the Company is a party, including any agreement entered into on behalf of the Company by Manager, (iii) the Company's business liabilities, and (iv) any breach by the Company of any term of this Agreement; excluding, however, any claim, loss or liability arising as a result of (a) Manager's sole negligence or (b) any breach by Manager of any term of this Agreement.

#### **7. Relationship of the Parties**

Manager is and shall remain an independent contractor. Manager is solely responsible for any withholding taxes as may be required under federal, state and local laws. The execution and performance of this Agreement shall not endow Manager with any ownership interest or profit participation in or to the Company. Nothing in this Agreement will require either party to refer any patients to the other party. Manager and the Company agree that (i) Manager shall have no control or authority over the delivery of medical services by Company, if any, (ii) Manager and the Company shall not be and are not intended by their execution of this Agreement to become, partners, members, shareholders, affiliates, associates, parent or subsidiary to one another, and (iii) the relationship of the parties is purely contractual and does not establish any agency, fiduciary or other type of relationship except as specifically provided for herein.

#### **8. Miscellaneous**

- a. Controlling Law. The interpretation and enforcement of this Agreement shall be governed by the internal laws of the State of Texas.
- b. Confidentiality. Manager shall take all reasonable efforts to maintain the confidentiality of all of the Company's confidential or proprietary business information.
- c. Business Records. The Company's business records, books of account, limited liability company records and other proprietary files shall remain at all times the property of the Company, and the Company and its Members shall have full access to all such records and files at all times.



- d. No Assignment. This Agreement and the parties' respective rights, duties, obligations and entitlements arising hereunder, shall not be assigned except pursuant to a written agreement signed by the Company and Manager.
- e. Authorization. The Company and Manager represent and warrant, one to another, that the execution of this Agreement by their undersigned representative and the performance of all obligations arising hereunder have been duly authorized by all necessary corporate actions.
- f. No Third Party Beneficiaries. There are no third parties intended to be beneficiaries of any obligation or right assumed by Manager or the Company under this Agreement.
- g. HIPPA. Manager and the Company have executed a business associate agreement attached hereto as ~~Exhibit A~~.

SIGNED (to be effective as of the Effective Date:

"MANAGER:" NEIGHBORS HEALTH SYSTEM, INC.

By: \_\_\_\_\_  
Setul Patel, President

"THE COMPANY:" NHS Emergency Centers, LLC Series 114 - Eastside

By: \_\_\_\_\_  
Setul Patel, President of  
Neighbors Health System, Inc., its Manager

EXHIBIT A

**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("Agreement") is entered into between NHS: Emergency Centers, LLC Series 114 - Eastside ("Covered Entity"), and Neighbors Health System, Inc., a Texas corporation ("Business Associate"), to be effective as of the 4th day of December, 2014 ("Effective Date").

WHEREAS, the Covered Entity is a covered entity, as such term is defined under HIPAA, and as such is required to comply with the requirements thereof regarding the confidentiality and privacy of Protected Health Information; and

WHEREAS, Business Associate has entered into an agreement with Covered Entity pursuant to which Business Associate will provide Covered Entity with management services and administrative support; and

WHEREAS, by providing the management services and administrative support, Business Associate shall become a business associate of Covered Entity;

NOW, THEREFORE, the Covered Entity and Business Associate, for good and valuable consideration, the receipt and sufficiency of which are duly acknowledge, agree as follows:

**1. Definitions (alternative approaches)**

a. Catch-all definition:

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.

b. Business Associate. "Business Associate" shall mean Neighbors Health System, Inc.

c. Covered Entity. "Covered Entity" shall have the meaning set forth in the Introductory paragraph above.

d. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

e. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

f. Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.



- g. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.103.
- h. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

**2. Obligations and Activities of Business Associate**

- a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- d. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- e. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- f. Business Associate agrees to provide access within five (5) business days of a written request by Covered Entity to Protected Health Information in a Designated Record Set, if any, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524.
- g. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set, if any, that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 within five (5) business days of a written request by Covered Entity.
- h. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity within five (5) business days of a written request by Covered Entity, for purposes of determining Covered Entity's compliance with the Privacy Rule.
- i. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528. In the event of a disclosure, Business

Associate shall provide Covered Entity with the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person; (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of the purpose of such disclosure.

- j. Business Associate agrees to provide to Covered Entity or an Individual, within two (2) business days of a written request by Covered Entity, information collected in accordance with Section 2i of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

### **3. Permitted Uses and Disclosures by Business Associate**

- a. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- b. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- c. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(c)(2)(i)(B).
- d. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities consistent with § 164.502(j)(1).

### **4. Obligations of Covered Entity**

- a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.



- c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

**5. Permissible Requests by Covered Entity**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

**6. Term and Termination**

- a. Term. The Term of this Agreement shall be effective as of the 4th day of December, 2014 and shall terminate upon the termination or expiration of the Management and Administrative Services Agreement and when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - i. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within ten (10) business days of Business Associate's receipt of notice from Covered Entity of the breach;
  - ii. Immediately terminate this Agreement and the Management and Administrative Services Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
  - iii. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- c. Effect of Termination.
  - i. Except as provided in Paragraph b of this Section 6, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

- ii. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. In any such event, Business Associate shall immediately extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

**7. Miscellaneous**

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- c. Survival. The respective rights and obligations of Business Associate under Section 6c of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

SIGNED to be effective as of the Effective Date:

NEIGHBORS HEALTH SYSTEM, INC., Business Associate

By: \_\_\_\_\_  
Setul Patel, President

NHS Emergency Centers, LLC Series 114 - Eastside, Covered Entity

By: \_\_\_\_\_  
Setul Patel, President of  
Neighbors Health System, Inc., its Manager

# Exhibit 3b



**SERIES MANAGEMENT AND ADMINISTRATIVE SERVICES AGREEMENT**

This Series Management and Administrative Services Agreement (“Agreement”) is entered into between Neighbors Health System, Inc., a Texas corporation (“Manager”) and Series 115 - Zaragoza of NHS Emergency Centers, LLC, a Texas limited liability company (the “Company”), to be effective as of the 4<sup>th</sup> day of November, 2014 (“Effective Date”).

**Recitals:**

WHEREAS, the Company operates an emergency medical clinic facility (hereafter the “Company Business”);

WHEREAS, the Company desires to obtain management services and administrative support from Manager on the terms set forth herein and Manager desires to fulfill the engagement.

NOW, THEREFORE, the Company and Manager, for good and valuable consideration, the receipt and sufficiency of which are duly acknowledged, agree as follows:

**1. Engagement of Manager**

The Company hereby engages Manager to provide management for the Company, subject to the terms and conditions set forth herein.

- a. Manager will perform management services in accordance with the policies, procedures, rules and directives as adopted and amended by the Company and will answer directly to the Company.
- b. The management services to be delivered by Manager shall include, without limitation, the day to day management of the Company, the Administrative Services outlined in Section 2 of this Agreement, and such additional services as shall be necessary and appropriate to provide for the operation of the Company’s business without interruption.
- c. Manager shall perform its services hereunder, including the Administrative Services, in compliance with the requirements of all applicable federal, state, regional and local laws, rules, regulations and orders, including those applicable to the provision of services to patients covered by federal health care programs.

**2. Management and Administrative Services**

The administrative services to be provided by Manager hereunder shall be sufficient to support the Company’s ongoing business operations in all respects, including, without limitation, the following:

- a. Staffing and Human Resources. The Manager and its affiliates shall have the sole responsibility for hiring, firing and supervising all non-professional employees, shall



- administer payroll and benefits, provide necessary employee training and certification, and shall maintain personnel records in compliance with state and federal laws.
- b. Accounting. Manager will supervise and manage all accounting, including tax compliance and tax return preparation, accounts payable administration, billing and collection services of the Company.
  - c. Financial Planning and Forecasting. Manager will create, implement and review annual budgets for the Company. Manager will be responsible for taking all actions that Manager deems necessary to implement the approved budget.
  - d. Cash Management, Banking and Treasury. Manager, as agent of the Company, will maintain bank accounts, and shall both have the right to make deposits and withdrawals from any such bank account in connection with operations of the Company. Manager will not have the authority to borrow money or execute any promissory notes on Company's behalf without the consent of the Company.
  - e. Administer Insurance Programs. Manager will maintain policies of general liability, premises liability and any other insurance that it deems appropriate to insure Manager, the Company, and Manager's employees and agents against any liability resulting from manager or Manager's employees' acts or omissions during the Term of this Agreement.
  - f. Executive Operations Management. Manager will advise the Company as to any equipment needs, maintenance or operational issues that are necessary for the continued operation of the Company. Manager will be responsible for negotiating and preparing service contracts and developing managed care contracts that Manager deems necessary for the operation of the Company.
  - g. Marketing. Manager will create, implement and administer marketing programs for the Company. Manager will be responsible for taking all actions that Manager deems necessary to deliver and communicate the Company's services to the community.
  - h. Branding. Manager, as agent of the Company, will be responsible for maintaining and implementing the name, logo, slogan and/or design scheme associated with the Company; provided, however, that it is understood that all intellectual property will be the property of Neighbors Emergency Center, LLC.
  - i. Information Technology. Manager will supervise and manage the application and utilization of computers and telecommunications equipment to store, retrieve, transmit and manipulate the Company's data.
  - j. Facilities Management Oversight. Manager shall have the sole responsibility of providing oversight of the Company's infrastructure, instrumentation and equipment. Manager will create, implement and review the policies, procedures and requirements for properly and adequately maintaining and managing the Company's emergency center. The Manager shall identify and manage appropriate vendor relationships for supplies and equipment.

- k. Policies and Procedures. Manager will create, implement and review policies and procedures for the operation of the Company Business and the sound administration of the Company's facilities.
- l. Licensure. Manager shall have the sole responsibility of taking all actions and performing all services that Manager deems necessary to ensure that all licenses held by the Company are properly maintained in good standing.
- m. Compliance Training. Manager shall have the sole responsibility of taking all actions to ensure the Company's employees are properly educated on the laws, regulations and policies that apply to their day-to-day job responsibilities. Manager will be responsible for taking all actions that Manager deems necessary to provide training to the Company's employees on workplace discrimination and harassment, dealings with competitors, protecting trade secrets, record management, IT and all areas of professional competence.
- n. Such other services as shall be (i) reasonably related to those specific services set forth above, or (ii) reasonably necessary, at Manager's sole discretion, to support the Company's operations.

(the foregoing referred to collectively as the "Administrative Services"). The Company agrees to provide Manager with access to, and/or copies of, the Company's business information sufficient to enable Manager's personnel to perform the Administrative Services. Manager agrees that all such information relating to the Company's business shall be treated as strictly confidential and shall not be disclosed to any person absent the Company's advance written consent except as may be necessary for Manager's accounting, tax preparation and financial reporting purposes.

3. Manager's authority to undertake specific actions shall be subject to such restrictions, consent requirements and/or limitations as are set forth in the Series Agreement of the Company from time to time.

#### 4. Fees and Expenses

- a. The Company and Manager agree to meet and determine an appropriate monthly fee for Manager's services hereunder. The parties agree that the monthly fee shall be reviewed and adjusted on a month-to-month basis to reflect the expenditure of time and resources required of Manager to adequately perform the services.
- b. The Company shall reimburse Manager's reasonable out of pocket expenses incurred in connection with the performance of Manager's services under this Agreement, subject to Manager's provision of appropriate documentation for such expenses.

#### 5. Term

This Agreement shall become effective on the Effective Date and shall remain effective thereafter for as long as the Company operates the Company Business, unless (i) terminated by either party



by giving advance written notice to the non-terminating party not less than ninety (90) days prior to the next succeeding anniversary of the Effective Date (in which case, the Agreement shall remain in full force and effect until the next succeeding anniversary of the Effective Date), or (ii) terminated by the written agreement of the parties, or (iii) terminated for cause in accordance with Section 6 of the Business Agreement attached hereto as Exhibit A.

#### **6. Indemnification**

The Company agrees to indemnify Manager, and hold Manager and its officers, directors, shareholders, employees and representatives harmless from any and all claims, losses and liabilities of all descriptions arising during the Term of this Agreement and relating to (i) any claim for property damage, personal injury and/or wrongful death caused in whole or in part by any act or omission of the Company, (ii) any agreement, written or verbal, to which the Company is a party, including any agreement entered into on behalf of the Company by Manager, (iii) the Company's business liabilities, and (iv) any breach by the Company of any term of this Agreement; excluding, however, any claim, loss or liability arising as a result of (a) Manager's sole negligence or (b) any breach by Manager of any term of this Agreement.

#### **7. Relationship of the Parties**

Manager is and shall remain an independent contractor. Manager is solely responsible for any withholding taxes as may be required under federal, state and local laws. The execution and performance of this Agreement shall not endow Manager with any ownership interest or profit participation in or to the Company. Nothing in this Agreement will require either party to refer any patients to the other party. Manager and the Company agree that (i) Manager shall have no control or authority over the delivery of medical services by Company, if any, (ii) Manager and the Company shall not be and are not intended by their execution of this Agreement to become, partners, members, shareholders, affiliates, associates, parent or subsidiary to one another, and (iii) the relationship of the parties is purely contractual and does not establish any agency, fiduciary or other type of relationship except as specifically provided for herein.

#### **8. Miscellaneous**

- a. Controlling Law. The interpretation and enforcement of this Agreement shall be governed by the internal laws of the State of Texas.
- b. Confidentiality. Manager shall take all reasonable efforts to maintain the confidentiality of all of the Company's confidential or proprietary business information.
- c. Business Records. The Company's business records, books of account, limited liability company records and other proprietary files shall remain at all times the property of the Company, and the Company and its Members shall have full access to all such records and files at all times.

- d. No Assignment. This Agreement and the parties' respective rights, duties, obligations and entitlements arising hereunder, shall not be assigned except pursuant to a written agreement signed by the Company and Manager.
- e. Authorization. The Company and Manager represent and warrant, one to another, that the execution of this Agreement by their undersigned representative and the performance of all obligations arising hereunder have been duly authorized by all necessary corporate actions.
- f. No Third Party Beneficiaries. There are no third parties intended to be beneficiaries of any obligation or right assumed by Manager or the Company under this Agreement.
- g. HIPPA. Manager and the Company have executed a business associate agreement attached hereto as Exhibit A.

SIGNED to be effective as of the Effective Date:

"MANAGER:" NEIGHBORS HEALTH SYSTEM, INC.

By: \_\_\_\_\_  
Setul Patel, President

"THE COMPANY:" NHS Emergency Centers, LLC Series 115 Zaragoza

By: \_\_\_\_\_  
Setul Patel, President of  
Neighbors Health System, Inc., its Manager



EXHIBIT A

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered into between NHS Emergency Centers, LLC Series 115 - Zaragoza ("Covered Entity"), and Neighbors Health System, Inc., a Texas corporation ("Business Associate"), to be effective as of the 4th day of November, 2014 ("Effective Date").

WHEREAS, the Covered Entity is a covered entity, as such term is defined under HIPAA, and as such is required to comply with the requirements thereof regarding the confidentiality and privacy of Protected Health Information; and

WHEREAS, Business Associate has entered into an agreement with Covered Entity pursuant to which Business Associate will provide Covered Entity with management services and administrative support; and

WHEREAS, by providing the management services and administrative support, Business Associate shall become a business associate of Covered Entity;

NOW, THEREFORE, the Covered Entity and Business Associate, for good and valuable consideration, the receipt and sufficiency of which are duly acknowledge, agree as follows:

1. Definitions (alternative approaches)

a. Catch-all definition:

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.

b. Business Associate. "Business Associate" shall mean Neighbors Health System, Inc.

c. Covered Entity. "Covered Entity" shall have the meaning set forth in the introductory paragraph above.

d. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

e. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

f. Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

- g. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.103.
- h. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

**2. Obligations and Activities of Business Associate**

- a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- d. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- e. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- f. Business Associate agrees to provide access within five (5) business days of a written request by Covered Entity to Protected Health Information in a Designated Record Set, if any, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524.
- g. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set, if any, that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 within five (5) business days of a written request by Covered Entity.
- h. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity within five (5) business days of a written request by Covered Entity, for purposes of determining Covered Entity's compliance with the Privacy Rule.
- i. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528. In the event of a disclosure, Business



Associate shall provide Covered Entity with the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person; (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of the purpose of such disclosure.

- j. Business Associate agrees to provide to Covered Entity or an Individual, within two (2) business days of a written request by Covered Entity, information collected in accordance with Section 2i of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

### **3. Permitted Uses and Disclosures by Business Associate**

- a. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- b. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- c. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).
- d. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities consistent with § 164.502(j)(1).

### **4. Obligations of Covered Entity**

- a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.



- c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

**5. Permissible Requests by Covered Entity**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

**6. Term and Termination**

- a. Term. The Term of this Agreement shall be effective as of the 4th day of November, 2014 and shall terminate upon the termination or expiration of the Management and Administrative Services Agreement and when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - i. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within ten (10) business days of Business Associate's receipt of notice from Covered Entity of the breach;
  - ii. Immediately terminate this Agreement and the Management and Administrative Services Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
  - iii. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- c. Effect of Termination.
  - i. Except as provided in Paragraph b of this Section 6, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

- ii. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. In any such event, Business Associate shall immediately extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

7. Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- c. Survival. The respective rights and obligations of Business Associate under Section 6c of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

SIGNED to be effective as of the Effective Date:

NEIGHBORS HEALTH SYSTEM, INC., Business Associate

By: \_\_\_\_\_  
Setul Patel, President

NHS Emergency Centers, LLC Series 115 – Zaragoza, Covered Entity

By: \_\_\_\_\_  
Setul Patel, President of  
Neighbors Health System, Inc., its Manager

# Exhibit 4



### SERIES AGREEMENT

This Series Agreement, dated to be effective as of December 03, 2014, is adopted, executed and agreed to, for good and valuable consideration, by the undersigned owners and holders of Membership Interests issued by NHS Emergency Centers, LLC (each a "Member") under Series 114 - Eastside (the "Series").

I. *Acknowledgments.*

- A. The Series has been established to operate a free standing emergency center known as NEC Eastside Emergency Center, LP (the "Series Business").
- B. "The Class A Member" is Neighbors Investment Group, LLC. There shall be a total of 3400 shares of Class A Interests. The Class A Member shall have a Sharing Ratio of 34%. The execution and delivery of this Agreement by the Class A Member has been duly authorized by all necessary entity action.
- C. "The Class B Member" is Infinity Emergency Management Group, LLC. There shall be a total of 6500 shares of Class B Interests. The Class B Members shall have a Sharing Ratio of 65%.
- D. The Class A Member and Class B Members are collectively referred to as "the Members" and each may be referred to from time to time as a "Member."
- E. The Members hereby agree to adopt and to be bound by the terms of this Series Agreement for the Series.
- F. The Members hereby consent to and approve the terms of the Operating Agreement of NHS Emergency Centers, LLC.
- G. The Members hereby consent to and approve the terms of the Management and Administrative Services Agreement for the Series, between Neighbors Health System, Inc. and the Series.
- H. NHS Emergency Centers, LLC and/or the Series may from time to time enter into credit, guaranty or similar loan agreements with one or more commercial lenders (collectively the "Loan Agreements"). The Members hereby consent to the imposition of liens, security interests, mortgages or other encumbrances upon the Series Property (as defined in Section 5 of this Agreement) pursuant to the terms of the Loan Agreements. The Members hereby waive the right to challenge the making or enforceability of any guaranty by NHS Emergency Centers, LLC or by the Series on the grounds that such guaranty cannot reasonably be expected to benefit NHS Emergency Centers, LLC or the Series.

2. *The Series Membership Interests (the "Interests").*

A. *Rights, Entitlements, and Designations.*

(a) *Class A Interests.*

- (i) The Class A Interests of the Series shall be certificated and shall be issued to the Class A Member.
- (ii) The Class A Interests of the Series carry voting rights. Each share of Class A Interests carries the right to cast one (1) vote on any matter submitted to the Members for their action or approval.
- (iii) The Class A Interests shall be equal, one to the other, and to the Class B Interests, in priority and seniority. Upon a liquidation or dissolution of the Series, the Class A Members shall participate in distributions of the Series Liquidation/Dissolution Proceeds (as defined in Section 8(B)(d) below), each in accordance with such Member's Sharing Ratio.
- (iv) The Class A Members of this Series shall not be individually liable for any debt or obligation of the Series by virtue of the Members' ownership of Interests of the Series.
- (v) Neither the Series nor the Series Property shall be responsible for, liable for or obligated in any way for the liabilities and obligations of any other Series of Membership Interests established by NHS Emergency Centers, LLC. The Series Property identified herein shall not be chargeable with any debt, obligation, mortgage or security interest relating to the assets or business activities of any other Series of Membership Interests established by NHS Emergency Centers, LLC.

(b) *Class B Interests.*

- (i) The Class B Interests of the Series shall be certificated and shall be issued to the Class B Member.
- (ii) The Class B Interests of the Series do not carry voting rights except with regard to "Major Decisions" as defined in Section 3(A) below. With regard to Major Decisions, each share of Class B Interest shall carry one vote.
- (iii) The Class B Interests shall be equal, one to the other, and to the Class A Interests, in priority and seniority. Upon a liquidation or



dissolution of the Series, the Class B Members shall participate in distributions of the Series Liquidation/Dissolution Proceeds (as defined in Section 8(B)(d) below), each in accordance with such Member's Sharing Ratio.

- (iv) The Members of this Series shall not be individually liable for any debt or obligation of the Series by virtue of the Members' ownership of Interests of the Series. The Class B Members shall be subject to the provisions of this Agreement regarding providing services to the Series Business, as indicated below.
- (v) Neither the Series nor the Series Property shall be responsible for, liable for or obligated in any way for the liabilities and obligations of any other Series of Membership Interests established by NHS Emergency Centers, LLC. The Series Property identified herein shall not be chargeable with any debt, obligation, mortgage or security interest relating to the assets or business activities of any other Series of Membership Interests established by NHS Emergency Centers, LLC.

B. *Representations and Warranties.* Each Class B Member hereby represents and warrants to the Series as follows:

- (a) that Member has duly executed the Acknowledgement to this Agreement, and it constitutes the legal, valid and binding obligation of that Member enforceable against that Member in accordance with its terms (except as may be limited by bankruptcy, insolvency or similar laws of general application and by the effect of general principles of equity that permit the exercise of judicial discretion, regardless of whether considered at law or in equity, and except that any indemnification provisions may be limited by applicable securities laws and public policy);
- (b) that Member's authorization, execution, delivery, and performance of the Acknowledgement to this Agreement do not and will not (i) conflict with, or result in a breach, default or violation of, (A) any contract or agreement to which that Member is a party or is otherwise subject, or (B) any law, order, judgment, decree, writ, injunction or arbitral award to which that Member is subject; or (ii) require any consent, approval or authorization from, filing or registration with, or notice to, any governmental authority or other Person, unless such requirement has already been satisfied;

- (c) that Member is acquiring its Interests for investment, solely for the Member's own beneficial account and not with a view to or any present intention or directly or indirectly selling, transferring, offering to sell or transfer, participating in any distribution or otherwise transferring all or a portion of its Interests; and such Member acknowledges that the Interests have not been registered under the Securities Act or any other applicable federal or state securities laws, and that the Series has no intention, and shall not have any obligation, to register or to obtain an exemption from registration for the Interests or to take action so as to permit sales pursuant to the Securities Act (including Rules 144 and 144A thereunder);
  - (d) that, the execution and delivery of this Agreement by the Member's undersigned representative has been duly authorized by all necessary action.
- C. **Issuance of Additional Interests.** Additional Interests may be created and issued to existing Members or to other Persons upon the unanimous approval and consent of all of the Members in accordance with the terms of Section 3(A) below, and such other Persons may be admitted to the Series as Members, at the direction of the Members on such terms and conditions as the Members may determine at the time of admission. The terms of admission or issuance as presented to the Members for approval must specify all terms and rights applicable thereto and may provide for the creation of different classes or groups of Members having different rights, powers, and duties. The Members may reflect the creation of any new class or group in an amendment to this Agreement indicating the different rights, powers, and duties, and such amendment shall be approved and executed only by the Members. Any such admission is effective only after the new Member has executed and delivered to the Series an instrument containing the notice address of the new Member, the new Member's ratification of this Agreement and agreement to be bound by it, and its confirmation that the representations and warranties in Section 2(B) are true and correct with respect to it.
- D. **Withdrawal.** Withdrawal of a Member shall be governed by the provisions of Section 7(C). Except as provided therein, Members will have no right to Withdraw.
- E. **Information.**
  - (a) The Series shall be managed by the Manager with reasonable financial transparency, and the Manager shall provide to the Members information

regarding the business affairs, properties and financial results of the Series Business.

- (b) If requested by a Member in writing (email notification constitutes written notice), the Manager shall send to each Member a copy of (i) a balance sheet of the Series as of the end of the most recent fiscal year, (ii) an income statement of the Series for such year, and (iii) a statement showing the revenues distributed by the Series to Members in respect of such year. Such financial statements shall be delivered by the Manager no later than thirty (30) days following the Manager's receipt of such request.
- (c) The Members acknowledge that they may receive information from or regarding the Series in the nature of trade secrets or that otherwise is confidential, the release of which may be damaging to the Series or Persons with which it does business. Each Member shall hold in strict confidence any information it receives regarding the Series that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any Person other than another Member, except for disclosures (i) compelled by law (but the Member must notify the Members promptly of any request for that information, before disclosing it if practicable), (ii) to advisers or representatives of the Member but only if the recipients have agreed to be bound by the provisions of this Section 2(E)(c), or (iii) of information that a Member also has received from a source independent of the Series that the Member reasonably believes he or she obtained that information without breach of any obligation of confidentiality. The Members agree that breach of the provisions of this Section 2(E)(c) may cause irreparable injury to the Series for which monetary damages (or other remedy at law) are inadequate in view of (A) the complexities and uncertainties in measuring the actual damages that would be sustained by reason of the failure of a Member to comply with such provisions or (B) the uniqueness of the Series Business and the confidential nature of the information described in this Section 2(E)(c). Accordingly, the Members agree that the provisions of this Section 2(E)(c) may be enforced by specific performance.

F. *Liability to Third Parties.* No Member shall be liable for the debts, obligations or liabilities of the Series, including under a judgment decree or order of a court.

G. *Certificates and Ledger.* The Class A Shares and Class B Shares shall be represented by share certificates that shall be issued from time to time by the Series, acting through its Manager. The Manager shall maintain a current transfer



ledger of all Share issuances and transfers. A copy of such transfer ledger will be provided to a Member within ten (10) days of such Member's written request, therefore.

- H. *Distributions.* Commencing no later than the end of the Series' first fiscal quarter, the Manager shall, periodically balance the Series' accounts and, in its sole discretion, distribute to the Members the amount by which cash on hand exceeds the amount necessary or appropriate to meet the current costs, expenses and liabilities of the Series (including, without limitation, a reserve for working capital and contingencies and cash sufficient to fund the Series' growth plans). Subject to Section 9(B), all distributions shall be made to the Members pro rata in accordance with their ownership of Shares. The Series shall not make any distribution to the Members if, immediately after giving effect to the distribution, (i) all liabilities of the Series, other than liabilities to Members with respect to their Interests and liabilities for which the recourse of creditors is limited to specified property of the Series, exceed the fair value of Series Property (except that the fair value of Series Property that is subject to a liability for which recourse of creditors is limited shall be included in the Series assets only to the extent that the fair value of that Series Property exceeds that liability), or (ii) the Series would be in default of any financial covenant binding upon the Series under any contract associated with the Series commercial debt.

I. *Determination of Sharing Ratio.*

(a) *Class A Members.*

- (i) Each share of Class A Interests represents 0.01% of the aggregate interests. Each Class A Member's Sharing Ratio is equal to the number of shares owned by such Member, multiplied times 0.01%

(b) *Class B Members.*

- (i) Each share of Class B Interests represents 0.01% of the aggregate Interests. Each Class B Member's Sharing Ratio is equal to the number of Class B shares owned by such Member, multiplied times 0.01%

J. *Class B Member Organizational Documents and Agreements*

- (a) The Certificate of Formation, Operating Agreement, Members' Agreement and all similar organizational documents and agreements of the Class B Member (collectively the "Class B Documents") shall be subject to the review and approval of the Manager. The Class B

Documents shall include, without limitation, the following provisions and requirements applicable to all Class B Equity Owners:

- (i) Limitation of membership to those Class B Equity Owners who are either a board certified or board eligible licensed physician or a licensed physician reasonably experienced in the practice of emergency medicine;
- (ii) Agreements among the Class B Equity Owners to provide clinical shift coverage at the Series Business as independent contractors of Neighbors Physician Group, PLLC;
- (iii) Provisions requiring that there shall be a Class B Equity Owner on duty at the Series Business whenever reasonably possible;
- (iv) A requirement that all Class B Equity Owners shall be subject to formal credentialing through Neighbors Physician Group, PLLC;
- (v) Restrictive covenants restraining the Class B Equity Owners from participating as owners or managers in any emergency medicine business that is an Excluded Location (as defined in Section 6(B) below);
- (vi) Provisions requiring the mandatory involuntary withdrawal from the Class B Member and mandatory forfeiture or sale to the remaining Class B Equity Owners of his or her membership interest in the Class B Member of any Class B Equity Member who has been convicted of a felony, convicted of a misdemeanor involving an act of moral turpitude, or for any other reason cannot fulfill his or her clinical shift obligations;
- (vii) Provisions requiring the mandatory resale to the Class B Member of his or her interests in the Class B Member by any Class B Equity Owner who elects to voluntarily withdraw from the Class B Member;
- (viii) Provisions restricting the Class B Equity Owners from disclosing any confidential business information relating to this Series or the Series Business, including the "Confidential Information" as defined in Section 6(B) below;
- (ix) Provisions requiring the spouses or life partners of all Class B Equity Owners to disclaim any community property interest or other property right in the Class B Member, the Series and the



Series Business and to acknowledge such disclaimer in writing;  
and

- (x) Provisions requiring the Class B Equity Owners to acknowledge the terms of and to agree to be bound by this Series Agreement.

K. *Default Provisions/Indemnities.*

- (a) The Class B Member agrees that it shall promptly remedy any breach by a Class B Equity Owner of his or her obligations under the Class B Documents including, without limitation, a breach by a Class B Equity Owner of the restrictive covenants set forth in the Class B Documents. The Class B Member shall promptly provide the Manager with notice of any such breach, and shall bear all costs arising from the remediation of such breach including, without limitation, attorneys' fees. In the event that the Class B Member fails to notify the Manager of a breach of the Class B Documents by a Class B Equity Member, or fails to reasonably remedy such breach on a timely basis, the Manager shall have the right to take such action as it deems in its sole discretion necessary and appropriate to address such breach and to pursue an appropriate remedy. The Class B Member hereby expressly agrees that the Manager and the Class A Member are third party beneficiaries of the Class B Documents with full standing to enforce any breach of the Class B Documents by a Class B Equity Owner, and by its signature hereon the Class B Member hereby conveys to the Manager a non-exclusive, non-delegable power of attorney for the purpose of enforcing the Class B Documents. All reasonable costs and expenses of enforcing the Class B Documents incurred by the Manager shall be deducted from any distributions otherwise payable to the Class B Member.
- (b) The Class B Member hereby indemnifies the Class A Member, the Manager, the Class A Equity Owners, the Series and the Series Business, from any and all claims arising from (i) the breach of this Agreement by the Class B Member, (ii) a breach of the Class B Documents by a Class B Equity Owner, and (iii) any act or omission on the part of the Class B Member.
- (c) The Class A Member hereby indemnifies the Class B Member, the Manager, the Class B Equity Owners, the Series and the Series Business, from any and all claims arising from (i) the breach of this Agreement by the Class A Member, and (ii) any act or omission on the part of the Class A Member.

3. *Management.*

A. *Management by Manager.* Management of the Series is reserved to a Manager. The Manager of the Series shall be Neighbors Health System, Inc. ("Neighbors"). It will require the unanimous affirmative vote of the Class A and Class B Members to authorize the following actions (each a "Major Decision"):

- (a) To authorize any distribution or dividend to any Member except in accordance with the provisions of this Agreement; or
- (b) To issue additional Interests.

Nothing in this Section 3 shall limit the right of the Manager to take any action without the consent or vote of any Member except an action that is a Major Decision as defined above.

B. *Meetings of Members.* The Members shall have the right to meet in person, or by teleconference, upon fifteen (15) days advance written notice to all Members with voting rights with respect to the matters to be voted on at such meeting. Notice of a special meeting of Members does not require any proposed agenda, and the matters on which the Members may take action shall not be limited by the form of notice. Any action requiring the consent of the Members can be approved by a unanimous written consent of the Members in lieu of a meeting.

C. *Employment of Members by the Series Business.*

- (a) The Class B Member agrees to provide staffing for the Series Business, and the Class B Documents shall provide that each Class B Equity Owner shall serve as an independent contractor of Neighbors Physician Group, PLLC, an affiliate of the Manager, pursuant to the terms of an Independent Contractor Agreement. The Series Business agrees that it will provide to the Class B Equity Owners medical malpractice insurance coverage.
- (b) Subject to their engagement with Neighbors Physician Group, PLLC, the Class B Equity Owners shall be subject to the supervision of the Chief Medical Officer of the Manager.

D. *Provisions Relating to TRICARE.* The Members acknowledge that certain of the Class B Equity Owners are military personnel or employees who receive health benefits, or provide services to patients who receive benefits, under the Department of Defense's TRICARE health insurance plan, and who have or may have certain restrictive covenants applicable to their practice of medicine outside of Department of Defense authorized environments. Accordingly, the Members

agree that, for so long as any Class B Equity Owner is in the military or an employee of the Department of Defense:

- (a) The Series shall not accept TRICARE insurance, submit any billing to TRICARE or accept patients whose third party payor is TRICARE.
- (b) The Manager, its professional staffing Affiliates and the Series shall not bill TRICARE for any physician services.

E. *Manager Event.* If Neighbors Health System, Inc. ceases to be the Manager of the Series, or there is a change in control of Neighbors Health System, Inc., or it sells substantially all of its assets (collectively, a "Manager Event"), it shall within ten (10) days of such Manager Event provide written notice thereof to the Class B Member. The Class B Member will have the option, exercisable within fifteen (15) days of receipt of such notice, to require the Series to repurchase all (and not less than all) of its Class B Shares for their fair market value, as reasonably determined by the Manager. Any repurchase pursuant to this Section will be consummated within ten (10) days of the Series receiving written notice from the Class B Member of its intent to exercise its option hereunder.

4. *Business Purpose.*

The purpose of the Series is to operate a free standing emergency center.

5. *Series Property.*

The Series Property of the Series shall consist of the profits, losses, distributions, and other benefits received by NHS Emergency Centers, LLC from the Series Business. NHS Emergency Centers, LLC is the sole limited partner of the Series Business.

6. *Series Membership.*

A. *Restrictive Covenants.*

- (a) The Class B Member agrees that, for the time during which the Class B Member is a Member of the Series and for a period of 24 months thereafter (the "Restricted Period"), absent the prior written consent of the Manager, the Class B Member shall not participate as an owner or manager in any company or practice group that provides emergency medicine services at an Excluded Location (as defined below). For purposes of this Agreement, the term "Excluded Location" means any facility that is (y) licensed by the applicable Department of Health as a free standing emergency medical facility and (z) is located within twenty



five (25) miles in any direction of any free standing emergency medical facility operated or managed by the Series or any Affiliate of the Manager as of the Effective Date hereof. The foregoing restrictive covenant shall not preclude any Class B Equity Owner from providing medical services as a contract physician at any facility provided that such Member does not have a beneficial ownership interest in such facility or provide management services to such facility.

- (b) Each Member agrees that such Member shall not disclose to any Person any Confidential Information (as defined below) of the Series except upon the Series' advance written consent. For purposes of this Agreement, "Confidential Information" means any information intended by the Manager to remain confidential relating to the Series' professional staff, business plans, facilities, equipment, financial results, assets, liabilities, practice management plans, agreements and business operations.
- (c) Each Member agrees, during the Restricted Period, to refrain from soliciting any officer, director, employee, contractor, manager, patient or other Person affiliated with or representing the Series or the Manager to terminate or modify their respective existing business and/or medical relationships with the Series or the Manager.
- (d) The Members acknowledge that the foregoing restrictive covenants are reasonable in scope and necessary for the sound administration of the Series Business. The Members acknowledge and agree that any breach of the restrictive covenants set forth in this Section 6 would result in the irreparable injury to the Series Business, and that the Series would be entitled in such event to obtain a temporary restraining order and temporary and permanent injunctive relief to restrain further breaches of this Section 6.

7. ***Restrictions on Transfer.*** No Member shall transfer such Member's Shares except in accordance with the terms of this Agreement, including, without limitation, the following:

A. ***Prohibited and Permitted Transfers.***

- (a) Except as permitted by this Agreement, no Member may directly or indirectly Transfer all or part of its Shares without the prior written consent of the Manager, and any such prohibited Transfer, if made, shall be void and without force or effect.



- (b) Notwithstanding the provisions of Section 7(A)(a), the following Transfers shall be "Permitted Transfers:"
  - (i) a Transfer approved in writing by the Manager in advance.
  - (ii) a Transfer to an entity if, following the Transfer, at least a majority interest in the entity is owned by the transferring Member or if the entity is Controlled by the transferring Member;
  - (iii) a Transfer to another Member; or
  - (iv) a redemption of Shares by the Series approved in accordance with the terms hereof.
- (c) In connection with any Transfer permitted under this Agreement, and any admission of an assignee as a Member, the Member making such Transfer and the assignee shall furnish the Manager with such documents regarding the Transfer as the Manager may reasonably request (in form and substance reasonably satisfactory to the Manager), including a copy of the Transfer instrument and a ratification by the assignee of this Agreement (if the assignee is to be admitted as a Member).

B. *Withdrawal.* In the event that a majority of the Class B Equity Owners authorize the Class B Member to withdraw from the Series, the Class A Member shall have a mandatory and irrevocable right to repurchase the Class B Shares at the then applicable book value as reasonably determined by the Manager.

C. *Encumbrance of an Interest.* With the consent of the Manager, a Member may Encumber (and the pledgee, assignee, or secured party may foreclose on) all or any part of a Member's rights to distributions from the Series.

8. *Termination/Dissolution.*

A. *Dissolution.*

- (a) Subject to Section 8(A)(b), the Series shall dissolve and its affairs shall be wound up on the first to occur of the following events (each a "Dissolution Event"):
  - (i) the, Withdrawal, dissolution or Bankruptcy of any Member, or the occurrence of any other event that terminates the continued membership of any Member in the Series;
  - (ii) entry of a decree of judicial dissolution of the Series; and

- (iii) the unanimous affirmative vote of the Members.
- (b) If a Dissolution Event described in subparagraphs (i), (ii) or (iii) of Section 8(A)(a) shall occur and there shall be at least one other Member remaining, the Series shall not be dissolved, and the business of the Series shall be continued, if a Majority in Interest (calculated without reference to any Member with respect to whom a Dissolution Event described in subparagraph (iii) has occurred) so agree within ninety (90) days of the occurrence of such Dissolution Event (such agreement is referred to herein as a "Continuation Election").

B. *Winding-Up and Termination.* On the occurrence of a Dissolution Event, unless a Continuation Election is made, the Manager shall act as liquidator, or in the absence of a Manager, the Members may appoint one or more Members as liquidator; provided, however that (i) no Member with respect to whom a Dissolution Event described in subparagraph (iii) of Section 8(A)(a) has occurred shall serve as a liquidator. The liquidator shall proceed diligently to wind up the affairs of the Series and make final distributions as provided herein and in the Act. The costs of winding up shall be borne as a Series expense. Until final distribution, the liquidator shall continue to operate the Series properties with all of the power and authority of the Manager. The steps to be accomplished by the liquidator are as follows:

- (a) as promptly as possible after dissolution and again after final winding up, the liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Series' assets, liabilities, and operations through the last calendar day of the month in which the dissolution occurs or the final winding up is completed, as applicable;
- (b) the liquidator shall cause notice to be mailed to each known creditor of and claimant against the Series;
- (c) the liquidator shall pay, satisfy or discharge from the Series' funds all of the debts, liabilities and obligations of the Series or otherwise make adequate provision for payment and discharge thereof (including the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine); and
- (d) all remaining assets of the Series (the "Series LP Liquidation/Dissolution Proceeds") shall be distributed to the Members as follows:

- (i) the liquidator may sell any or all Series property, including to Members, and any resulting gain or loss from each sale shall be computed and allocated to the Capital Accounts of the Members in accordance with the provisions of Section 9;
- (ii) with respect to all Series property that has not been sold the Fair Market Value of that property shall be determined and the Capital Accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the Capital Accounts previously would be allocated among the Members if there were a taxable disposition of that property for the fair market value of that property on the date of distribution; and
- (iii) The Series Liquidation/Dissolution Proceeds property, including the proceeds of accounts receivable, shall be distributed among the Members in accordance with their respective Sharing Ratios and those distributions shall be made by the end of the taxable year of the Series during which the liquidation of the Series occurs (or, if later, ninety (90) days after the date of the liquidation).

All distributions in kind to the Members shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Series has committed prior to the date of termination and those costs, expenses, and liabilities shall be allocated to the distributee pursuant to this Section 8(B). The distribution of cash and/or property to a Member in accordance with the provisions of this Section 8(B) constitutes a complete return to the Member of its Capital Contributions and a complete distribution to the Member of its Membership Rights and all the Series' property and constitutes a compromise to which all Members have consented. To the extent that a Member returns funds to the Series, it has no claim against any other Member for those funds.

- C. *Deficit Capital Accounts.* No Member will be required to pay to the Series, to any other Member or to any third party any deficit balance which may exist from time to time in the Member's Capital Account.
- D. *Certificate of Termination.* On completion of the distribution of Series' assets as provided herein, the Manager (or such other Person or Persons as the BOC may require or permit) shall file Certificate of Termination with the Secretary of State of Texas, cancel any other filings made pursuant to foreign qualifications, and take such other actions as may be necessary to terminate the existence of the



Series. Upon the issuance of a certificate of dissolution by the Secretary of State of Texas, the existence of the Series shall cease, except as may be otherwise provided by the BOC or other applicable Law.

9. *Distributions/Allocations of Profits and Losses.*

- A. *Distributions on Dissolution and Winding Up.* Upon the dissolution and winding up of the Series, all available proceeds distributable to the Members as determined under Section 8(B) shall be distributed to all Members.
- B. *Allocations of Profit and Loss.* Profit and Loss of the Series shall be allocated to the Members in their Sharing Ratios.
- C. *Allocation of Net Gains or Net Losses from the Dissolution and Winding Up of the Series.*
  - (a) *Net Gains.* Net gain resulting from a sale of the Series' property upon the dissolution and winding up of the Series shall be allocated to the Members in their Respective Sharing Ratios.
  - (b) *Net Loss.* After adjusting the Capital Accounts for distributions and allocations, net loss resulting from a sale of the Series' assets upon the dissolution and winding up of the Series shall be allocated to the Members in their respective Sharing Ratios.
- D. *Adjustment of Book Value.* Book Value with respect to any asset of the Series for any purpose shall be the asset's adjusted tax basis for federal income tax purposes. The Book Value of each asset will be increased or decreased to reflect any adjustment to the adjusted basis of the asset under Code Section 734(b) or 743(b), but only to the extent that the adjustment is taken into account in determining Capital Accounts under Treasury Regulation Section 1.704-1(b)(2)(iv)(m). Book Value will be adjusted by Book Depreciation, and gain or loss on a disposition of any asset shall be determined by reference to such asset's Book Value as adjusted herein. The determination of the fair market value of property as required under this Section 9(D) shall be determined by the Members using any reasonable method of valuation.
- E. *Tax Allocations.*
  - (a) Except as otherwise provided in this Section 9(E), each item of income, gain, loss, deduction and credit determined for federal income tax purposes shall be allocated among the Members in the same manner as each correlative item of income, gain, loss, deduction and credit is



allocated to the Members for purposes of maintaining their respective Capital Accounts.

- (b) Under Code Section 704(c) and Treasury Regulation Section 1.704-1(b)(2)(iv)(d)(3), income, gain, loss and deduction with respect to any asset contributed to the capital of the Series, solely for federal income tax purposes, shall be allocated among the Members so as to take into account any variation between the adjusted tax basis of the asset for federal income tax purposes and the initial Book Value. If the Book Value of any asset is adjusted under Section 9(D), subsequent allocations of income, gain, loss and deduction, solely for federal income tax purposes, will be allocated among the Members so as to take into account any variation between the adjusted tax basis of the asset and its Book Value as adjusted in the manner required under Treasury Regulation Section 1.704-3(a)(6). The allocations required by this Section 9(E) shall be made by the Manager.
- F. **Stop Loss.** Notwithstanding any other provision hereof to the contrary, no Loss (or item of loss or deduction) of the Series shall be allocated to a Member if such allocation would result in a deficit balance in such Member's Adjusted Capital Account. Such Loss (or item of loss or deduction) shall be allocated among the Members whose Adjusted Capital Account balances are positive in proportion to such positive balances to the extent necessary to reduce the balances of such other Member's positive Adjusted Capital Accounts balances to zero, it being the intention of the Members that no Member's positive Adjusted Capital Account balance shall fall below zero while any other Member's positive Adjusted Capital Account balance has a positive balance.
- G. **Nonrecourse Deductions.** All Nonrecourse Deductions shall be allocated among the Members in their Sharing Ratios.
- H. **Mandatory Distributions.** Unless prohibited by bank covenants or contractual restrictions, the Company shall make distributions to the Members in such amounts as may be reasonably determined by the Manager to be necessary to fund the Class A Equity Owners' and the Class B Equity Owners' respective income tax obligations arising as a result of their ownership of Class A Equity interests or Class B Equity interests, but not otherwise. Unless prohibited by bank covenants or contractual restrictions, the Company also shall make distributions of operating profits, at such times and intervals as shall be reasonably determined by the Manager, and not less than annually.
- I. **Suspension of Distributions/Allocations.** NHS Emergency Centers, LLC is a party to the Loan Agreements (defined above). In the event of an uncured Event

of Default under any Loan Agreement, all distributions and allocations hereunder may be suspended until such default is cured.

10. *CLASS B MEMBER'S RIGHT OF FIRST REFUSAL*

The parties acknowledge that affiliates of the Class A Member is in the business of developing and operating free standing emergency departments that are similar to the Series Business. The Class A Member hereby grants unto the Class B Member a right of first refusal to purchase all Class B Shares offered by the Class A Member and/or its affiliates for any free standing emergency department located within 50 miles in any direction of El Paso, Texas. The Class A Member agrees to provide the Class B Member with written notice of any offering of Class B Shares relating to any such free standing emergency department, which notice shall include the material terms of such offering, including purchase price. The Class B Member shall have thirty (30) days from the receipt of such notice to exercise the right of first refusal granted herein. The decision by the Class B Member to decline an opportunity to purchase Class B Shares in any free standing emergency center shall not negate the rights granted under this Section 10, and such rights shall be fully applicable to any subsequent offering by the Class A Member and/or its affiliates.

*[Signature Page to Follow]*

IN WITNESS WHEREOF, the undersigned owner and holder of Class A Series 114 - Eastside Membership Interests have executed the foregoing Series Agreement, intending thereby to be bound in all respects by its terms, as of the effective date first set forth above.


NEIGHBORS INVESTMENT GROUP, LLC

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

Schul Patel, President of  
Neighbors Health System Inc., its Manager

IN WITNESS WHEREOF, the undersigned owner and holder of Class B Series 114 – Eastside Membership Interests have executed the foregoing Series Agreement, intending thereby to be bound in all respects by its terms, as of the effective date first set forth above.

INFINITY EMERGENCY MANAGEMENT GROUP, LLC, Class B Member

By:   
Name: Samara Bower  
Title: Manager



# Exhibit 5

## SERIES AGREEMENT

This Series Agreement, dated to be effective as of Dec. 03, 2014, is adopted, executed and agreed to, for good and valuable consideration, by the undersigned owners and holders of Membership Interests issued by NHS Emergency Centers, LLC (each a "Member") under Series 115 - Zaragoza. (the "Series").

### I. *Acknowledgments.*

- A. The Series has been established to operate a free standing emergency center known as NEC Zaragoza Emergency Center, LP (the "Series Business").
- B. "The Class A Member" is Neighbors Investment Group, LLC. There shall be a total of 3400 shares of Class A Interests. The Class A Member shall have a Sharing Ratio of 34%. The execution and delivery of this Agreement by the Class A Member has been duly authorized by all necessary entity action.
- C. "The Class B Member" is Infinity Emergency Management Group, LLC. There shall be a total of 6500 shares of Class B Interests. The Class B Members shall have a Sharing Ratio of 65%.
- D. The Class A Member and Class B Members are collectively referred to as "the Members" and each may be referred to from time to time as a "Member."
- E. The Members hereby agree to adopt and to be bound by the terms of this Series Agreement for the Series.
- F. The Members hereby consent to and approve the terms of the Operating Agreement of NHS Emergency Centers, LLC.
- G. The Members hereby consent to and approve the terms of the Management and Administrative Services Agreement for the Series, between Neighbors Health System, Inc. and the Series.
- H. NHS Emergency Centers, LLC and/or the Series may from time to time enter into credit, guaranty or similar loan agreements with one or more commercial lenders (collectively the "Loan Agreements"). The Members hereby consent to the imposition of liens, security interests, mortgages or other encumbrances upon the Series Property (as defined in Section 5 of this Agreement) pursuant to the terms of the Loan Agreements. The Members hereby waive the right to challenge the making or enforceability of any guaranty by NHS Emergency Centers, LLC or by the Series on the grounds that such guaranty cannot reasonably be expected to benefit NHS Emergency Centers, LLC or the Series.

2. *The Series Membership Interests (the "Interests").*

A. *Rights, Entitlements, and Designations.*

(a) *Class A Interests.*

- (i) The Class A Interests of the Series shall be certificated and shall be issued to the Class A Member.
- (ii) The Class A Interests of the Series carry voting rights. Each share of Class A Interests carries the right to cast one (1) vote on any matter submitted to the Members for their action or approval.
- (iii) The Class A Interests shall be equal, one to the other, and to the Class B Interests, in priority and seniority. Upon a liquidation or dissolution of the Series, the Class A Members shall participate in distributions of the Series Liquidation/Dissolution Proceeds (as defined in Section 8(B)(d) below), each in accordance with such Member's Sharing Ratio.
- (iv) The Class A Members of this Series shall not be individually liable for any debt or obligation of the Series by virtue of the Members' ownership of Interests of the Series.
- (v) Neither the Series nor the Series Property shall be responsible for, liable for or obligated in any way for the liabilities and obligations of any other Series of Membership Interests established by NHS Emergency Centers, LLC. The Series Property identified herein shall not be chargeable with any debt, obligation, mortgage or security interest relating to the assets or business activities of any other Series of Membership Interests established by NHS Emergency Centers, LLC.

(b) *Class B Interests.*

- (i) The Class B Interests of the Series shall be certificated and shall be issued to the Class B Member.
- (ii) The Class B Interests of the Series do not carry voting rights except with regard to "Major Decisions" as defined in Section 3(A) below. With regard to Major Decisions, each share of Class B Interest shall carry one vote.
- (iii) The Class B Interests shall be equal, one to the other, and to the Class A Interests, in priority and seniority. Upon a liquidation or

dissolution of the Series, the Class B Members shall participate in distributions of the Series Liquidation/Dissolution Proceeds (as defined in Section 8(B)(d) below), each in accordance with such Member's Sharing Ratio.

- (iv) The Members of this Series shall not be individually liable for any debt or obligation of the Series by virtue of the Members' ownership of Interests of the Series. The Class B Members shall be subject to the provisions of this Agreement regarding providing services to the Series Business, as indicated below.
- (v) Neither the Series nor the Series Property shall be responsible for, liable for or obligated in any way for the liabilities and obligations of any other Series of Membership Interests established by NHS Emergency Centers, LLC. The Series Property identified herein shall not be chargeable with any debt, obligation, mortgage or security interest relating to the assets or business activities of any other Series of Membership Interests established by NHS Emergency Centers, LLC.

B. *Representations and Warranties.* Each Class B Member hereby represents and warrants to the Series as follows:

- (a) that Member has duly executed the Acknowledgement to this Agreement, and it constitutes the legal, valid and binding obligation of that Member enforceable against that Member in accordance with its terms (except as may be limited by bankruptcy, insolvency or similar laws of general application and by the effect of general principles of equity that permit the exercise of judicial discretion, regardless of whether considered at law or in equity, and except that any indemnification provisions may be limited by applicable securities laws and public policy);
- (b) that Member's authorization, execution, delivery, and performance of the Acknowledgement to this Agreement do not and will not (i) conflict with, or result in a breach, default or violation of, (A) any contract or agreement to which that Member is a party or is otherwise subject, or (B) any law, order, judgment, decree, writ, injunction or arbitral award to which that Member is subject; or (ii) require any consent, approval or authorization from, filing or registration with, or notice to, any governmental authority or other Person, unless such requirement has already been satisfied;



- (c) that Member is acquiring its Interests for investment, solely for the Member's own beneficial account and not with a view to or any present intention or directly or indirectly selling, transferring, offering to sell or transfer, participating in any distribution or otherwise transferring all or a portion of its Interests; and such Member acknowledges that the Interests have not been registered under the Securities Act or any other applicable federal or state securities laws, and that the Series has no intention, and shall not have any obligation, to register or to obtain an exemption from registration for the Interests or to take action so as to permit sales pursuant to the Securities Act (including Rules 144 and 144A thereunder);
- (d) that, the execution and delivery of this Agreement by the Member's undersigned representative has been duly authorized by all necessary action.

C. *Issuance of Additional Interests.* Additional Interests may be created and issued to existing Members or to other Persons upon the unanimous approval and consent of all of the Members in accordance with the terms of Section 3(A) below, and such other Persons may be admitted to the Series as Members, at the direction of the Members on such terms and conditions as the Members may determine at the time of admission. The terms of admission or issuance as presented to the Members for approval must specify all terms and rights applicable thereto and may provide for the creation of different classes or groups of Members having different rights, powers, and duties. The Members may reflect the creation of any new class or group in an amendment to this Agreement indicating the different rights, powers, and duties, and such amendment shall be approved and executed only by the Members. Any such admission is effective only after the new Member has executed and delivered to the Series an instrument containing the notice address of the new Member, the new Member's ratification of this Agreement and agreement to be bound by it, and its confirmation that the representations and warranties in Section 2(B) are true and correct with respect to it.

D. *Withdrawal.* Withdrawal of a Member shall be governed by the provisions of Section 7(C). Except as provided therein, Members will have no right to Withdraw.

E. *Information.*

- (a) The Series shall be managed by the Manager with reasonable financial transparency, and the Manager shall provide to the Members information

regarding the business affairs, properties and financial results of the Series Business.

- (b) If requested by a Member in writing (email notification constitutes written notice), the Manager shall send to each Member a copy of (i) a balance sheet of the Series as of the end of the most recent fiscal year, (ii) an income statement of the Series for such year, and (iii) a statement showing the revenues distributed by the Series to Members in respect of such year. Such financial statements shall be delivered by the Manager no later than thirty (30) days following the Manager's receipt of such request.
- (c) The Members acknowledge that they may receive information from or regarding the Series in the nature of trade secrets or that otherwise is confidential, the release of which may be damaging to the Series or Persons with which it does business. Each Member shall hold in strict confidence any information it receives regarding the Series that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any Person other than another Member, except for disclosures (i) compelled by law (but the Member must notify the Members promptly of any request for that information, before disclosing it if practicable), (ii) to advisers or representatives of the Member but only if the recipients have agreed to be bound by the provisions of this Section 2(F)(c), or (iii) of information that a Member also has received from a source independent of the Series that the Member reasonably believes he or she obtained that information without breach of any obligation of confidentiality. The Members agree that breach of the provisions of this Section 2(F)(c) may cause irreparable injury to the Series for which monetary damages (or other remedy at law) are inadequate in view of (A) the complexities and uncertainties in measuring the actual damages that would be sustained by reason of the failure of a Member to comply with such provisions or (B) the uniqueness of the Series Business and the confidential nature of the information described in this Section 2(F)(c). Accordingly, the Members agree that the provisions of this Section 2(F)(c) may be enforced by specific performance.

F. *Liability to Third Parties.* No Member shall be liable for the debts, obligations or liabilities of the Series, including under a judgment decree or order of a court.

G. *Certificates and Ledger.* The Class A Shares and Class B Shares shall be represented by share certificates that shall be issued from time to time by the Series, acting through its Manager. The Manager shall maintain a current transfer

ledger of all Share issuances and transfers. A copy of such transfer ledger will be provided to a Member within ten (10) days of such Member's written request therefore.

- H. **Distributions.** Commencing no later than the end of the Series' first fiscal quarter, the Manager shall, periodically balance the Series' accounts and, in its sole discretion, distribute to the Members the amount by which cash on hand exceeds the amount necessary or appropriate to meet the current costs, expenses and liabilities of the Series (including, without limitation, a reserve for working capital and contingencies and cash sufficient to fund the Series' growth plans). Subject to Section 9(B), all distributions shall be made to the Members pro rata in accordance with their ownership of Shares. The Series shall not make any distribution to the Members if, immediately after giving effect to the distribution, (i) all liabilities of the Series, other than liabilities to Members with respect to their Interests and liabilities for which the recourse of creditors is limited to specified property of the Series, exceed the fair value of Series Property (except that the fair value of Series Property that is subject to a liability for which recourse of creditors is limited shall be included in the Series assets only to the extent that the fair value of that Series Property exceeds that liability), or (ii) the Series would be in default of any financial covenant binding upon the Series under any contract associated with the Series commercial debt.

I. **Determination of Sharing Ratio.**

(a) **Class A Members.**

- (i) Each share of Class A Interests represents 0.01% of the aggregate interests. Each Class A Member's Sharing Ratio is equal to the number of shares owned by such Member, multiplied times 0.01%

(b) **Class B Members.**

- (i) Each share of Class B Interests represents 0.01% of the aggregate Interests. Each Class B Member's Sharing Ratio is equal to the number of Class B shares owned by such Member, multiplied times 0.01%

J. **Class B Member Organizational Documents and Agreements**

- (a) The Certificate of Formation, Operating Agreement, Members' Agreement and all similar organizational documents and agreements of the Class B Member (collectively the "Class B Documents") shall be subject to the review and approval of the Manager. The Class B



Documents shall include, without limitation, the following provisions and requirements applicable to all Class B Equity Owners:

- (i) Limitation of membership to those Class B Equity Owners who are either a board certified or board eligible licensed physician or a licensed physician reasonably experienced in the practice of emergency medicine;
- (ii) Agreements among the Class B Equity Owners to provide clinical shift coverage at the Series Business as independent contractors of Neighbors Physician Group, PLLC;
- (iii) Provisions requiring that there shall be a Class B Equity Owner on duty at the Series Business whenever reasonably possible;
- (iv) A requirement that all Class B Equity Owners shall be subject to formal credentialing through Neighbors Physician Group, PLLC;
- (v) Restrictive covenants restraining the Class B Equity Owners from participating as owners or managers in any emergency medicine business that is an Excluded Location (as defined in Section 6(B) below);
- (vi) Provisions requiring the mandatory involuntary withdrawal from the Class B Member and mandatory forfeiture or sale to the remaining Class B Equity Owners of his or her membership interest in the Class B Member of any Class B Equity Member who has been convicted of a felony, convicted of a misdemeanor involving an act of moral turpitude, or for any other reason cannot fulfill his or her clinical shift obligations;
- (vii) Provisions requiring the mandatory resale to the Class B Member of his or her interests in the Class B Member by any Class B Equity Owner who elects to voluntarily withdraw from the Class B Member;
- (viii) Provisions restricting the Class B Equity Owners from disclosing any confidential business information relating to this Series or the Series Business, including the "Confidential Information" as defined in Section 6(B) below;
- (ix) Provisions requiring the spouses or life partners of all Class B Equity Owners to disclaim any community property interest or other property right in the Class B Member, the Series and the



Series Business and to acknowledge such disclaimer in writing;  
and

- (x) Provisions requiring the Class B Equity Owners to acknowledge the terms of and to agree to be bound by this Series Agreement.

K. *Default Provisions/Indemnities.*

- (a) The Class B Member agrees that it shall promptly remedy any breach by a Class B Equity Owner of his or her obligations under the Class B Documents including, without limitation, a breach by a Class B Equity Owner of the restrictive covenants set forth in the Class B Documents. The Class B Member shall promptly provide the Manager with notice of any such breach, and shall bear all costs arising from the remediation of such breach including, without limitation, attorneys' fees. In the event that the Class B Member fails to notify the Manager of a breach of the Class B Documents by a Class B Equity Member, or fails to reasonably remedy such breach on a timely basis, the Manager shall have the right to take such action as it deems in its sole discretion necessary and appropriate to address such breach and to pursue an appropriate remedy. The Class B Member hereby expressly agrees that the Manager and the Class A Member are third party beneficiaries of the Class B Documents with full standing to enforce any breach of the Class B Documents by a Class B Equity Owner, and by its signature hereon the Class B Member hereby conveys to the Manager a non-exclusive, non-delegable power of attorney for the purpose of enforcing the Class B Documents. All reasonable costs and expenses of enforcing the Class B Documents incurred by the Manager shall be deducted from any distributions otherwise payable to the Class B Member.
- (b) The Class B Member hereby indemnifies the Class A Member, the Manager, the Class A Equity Owners, the Series and the Series Business, from any and all claims arising from (i) the breach of this Agreement by the Class B Member, (ii) a breach of the Class B Documents by a Class B Equity Owner, and (iii) any act or omission on the part of the Class B Member.
- (c) The Class A Member hereby indemnifies the Class B Member, the Manager, the Class B Equity Owners, the Series and the Series Business, from any and all claims arising from (i) the breach of this Agreement by the Class A Member, and (ii) any act or omission on the part of the Class A Member.

3. *Management.*

A. *Management by Manager.* Management of the Series is reserved to a Manager. The Manager of the Series shall be Neighbors Health System, Inc. ("Neighbors"). It will require the unanimous affirmative vote of the Class A and Class B Members to authorize the following actions (each a "Major Decision"):

- (a) To authorize any distribution or dividend to any Member except in accordance with the provisions of this Agreement; or
- (b) To issue additional Interests.

Nothing in this Section 3 shall limit the right of the Manager to take any action without the consent or vote of any Member except an action that is a Major Decision as defined above.

B. *Meetings of Members.* The Members shall have the right to meet in person, or by teleconference, upon fifteen (15) days advance written notice to all Members with voting rights with respect to the matters to be voted on at such meeting. Notice of a special meeting of Members does not require any proposed agenda, and the matters on which the Members may take action shall not be limited by the form of notice. Any action requiring the consent of the Members can be approved by a unanimous written consent of the Members in lieu of a meeting.

C. *Employment of Members by the Series Business.*

- (a) The Class B Member agrees to provide staffing for the Series Business, and the Class B Documents shall provide that each Class B Equity Owner shall serve as an independent contractor of Neighbors Physician Group, PLLC, an affiliate of the Manager, pursuant to the terms of an Independent Contractor Agreement. The Series Business agrees that it will provide to the Class B Equity Owners medical malpractice insurance coverage.
- (b) Subject to their engagement with Neighbors Physician Group, PLLC, the Class B Equity Owners shall be subject to the supervision of the Chief Medical Officer of the Manager.

D. *Provisions Relating to TRICARE.* The Members acknowledge that certain of the Class B Equity Owners are military personnel or employees who receive health benefits, or provide services to patients who receive benefits, under the Department of Defense's TRICARE health insurance plan, and who have or may have certain restrictive covenants applicable to their practice of medicine outside of Department of Defense authorized environments. Accordingly, the Members

agree that, for so long as any Class B Equity Owner is in the military or an employee of the Department of Defense:

- (a) The Series shall not accept TRICARE insurance, submit any billing to TRICARE or accept patients whose third party payor is TRICARE.
- (b) The Manager, its professional staffing Affiliates and the Series shall not bill TRICARE for any physician services.

E. **Manager Event.** If Neighbors Health System, Inc. ceases to be the Manager of the Series, or there is a change in control of Neighbors Health System, Inc., or it sells substantially all of its assets (collectively, a "Manager Event"), it shall within ten (10) days of such Manager Event provide written notice thereof to the Class B Member. The Class B Member will have the option, exercisable within fifteen (15) days of receipt of such notice, to require the Series to repurchase all (and not less than all) of its Class B Shares for their fair market value, as reasonably determined by the Manager. Any repurchase pursuant to this Section will be consummated within ten (10) days of the Series receiving written notice from the Class B Member of its intent to exercise its option hereunder.

4. **Business Purpose.**

The purpose of the Series is to operate a free standing emergency center.

5. **Series Property.**

The Series Property of the Series shall consist of the profits, losses, distributions, and other benefits received by NHS Emergency Centers, LLC from the Series Business. NHS Emergency Centers, LLC is the sole limited partner of the Series Business.

6. **Series Membership.**

A. **Restrictive Covenants.**

- (a) The Class B Member agrees that, for the time during which the Class B Member is a Member of the Series and for a period of 24 months thereafter (the "Restricted Period"), absent the prior written consent of the Manager, the Class B Member shall not participate as an owner or manager in any company or practice group that provides emergency medicine services at an Excluded Location (as defined below). For purposes of this Agreement, the term "Excluded Location" means any facility that is (y) licensed by the applicable Department of Health as a free standing emergency medical facility and (z) is located within twenty



five (25) miles in any direction of any free standing emergency medical facility operated or managed by the Series or any Affiliate of the Manager as of the Effective Date hereof. The foregoing restrictive covenant shall not preclude any Class B Equity Owner from providing medical services as a contract physician at any facility provided that such Member does not have a beneficial ownership interest in such facility or provide management services to such facility.

- (b) Each Member agrees that such Member shall not disclose to any Person any Confidential Information (as defined below) of the Series except upon the Series' advance written consent. For purposes of this Agreement, "Confidential Information" means any information intended by the Manager to remain confidential relating to the Series' professional staff, business plans, facilities, equipment, financial results, assets, liabilities, practice management plans, agreements and business operations.
- (c) Each Member agrees, during the Restricted Period, to refrain from soliciting any officer, director, employee, contractor, manager, patient or other Person affiliated with or representing the Series or the Manager to terminate or modify their respective existing business and/or medical relationships with the Series or the Manager.
- (d) The Members acknowledge that the foregoing restrictive covenants are reasonable in scope and necessary for the sound administration of the Series Business. The Members acknowledge and agree that any breach of the restrictive covenants set forth in this Section 6 would result in the irreparable injury to the Series Business, and that the Series would be entitled in such event to obtain a temporary restraining order and temporary and permanent injunctive relief to restrain further breaches of this Section 6.

7. **Restrictions on Transfer.** No Member shall transfer such Member's Shares except in accordance with the terms of this Agreement, including, without limitation, the following:

A. ***Prohibited and Permitted Transfers.***

- (a) Except as permitted by this Agreement, no Member may directly or indirectly Transfer all or part of its Shares without the prior written consent of the Manager, and any such prohibited Transfer, if made, shall be void and without force or effect.



- (b) Notwithstanding the provisions of Section 7(A)(a), the following Transfers shall be "Permitted Transfers:"
  - (i) a Transfer approved in writing by the Manager in advance.
  - (ii) a Transfer to an entity if, following the Transfer, at least a majority interest in the entity is owned by the transferring Member or if the entity is Controlled by the transferring Member;
  - (iii) a Transfer to another Member; or
  - (iv) a redemption of Shares by the Series approved in accordance with the terms hereof.
- (c) In connection with any Transfer permitted under this Agreement, and any admission of an assignee as a Member, the Member making such Transfer and the assignee shall furnish the Manager with such documents regarding the Transfer as the Manager may reasonably request (in form and substance reasonably satisfactory to the Manager), including a copy of the Transfer instrument and a ratification by the assignee of this Agreement (if the assignee is to be admitted as a Member).

B. *Withdrawal.* In the event that a majority of the Class B Equity Owners authorize the Class B Member to withdraw from the Series, the Class A Member shall have a mandatory and irrevocable right to repurchase the Class B Shares at the then applicable book value as reasonably determined by the Manager.

C. *Encumbrance of an Interest.* With the consent of the Manager, a Member may Encumber (and the pledgee, assignee, or secured party may foreclose on) all or any part of a Member's rights to distributions from the Series.

8. *Termination/Dissolution.*

A. *Dissolution.*

- (a) Subject to Section 8(A)(b), the Series shall dissolve and its affairs shall be wound up on the first to occur of the following events (each a "Dissolution Event"):
  - (i) the, Withdrawal, dissolution or Bankruptcy of any Member, or the occurrence of any other event that terminates the continued membership of any Member in the Series;
  - (ii) entry of a decree of judicial dissolution of the Series; and

- (iii) the unanimous affirmative vote of the Members.
  - (b) If a Dissolution Event described in subparagraphs (i), (ii) or (iii) of Section 8(A)(a) shall occur and there shall be at least one other Member remaining, the Series shall not be dissolved, and the business of the Series shall be continued, if a Majority in Interest (calculated without reference to any Member with respect to whom a Dissolution Event described in subparagraph (iii) has occurred) so agree within ninety (90) days of the occurrence of such Dissolution Event (such agreement is referred to herein as a "Continuation Election").
- B. *Winding-Up and Termination.* On the occurrence of a Dissolution Event, unless a Continuation Election is made, the Manager shall act as liquidator, or in the absence of a Manager, the Members may appoint one or more Members as liquidator; provided, however that (i) no Member with respect to whom a Dissolution Event described in subparagraph (iii) of Section 8(A)(a) has occurred shall serve as a liquidator. The liquidator shall proceed diligently to wind up the affairs of the Series and make final distributions as provided herein and in the Act. The costs of winding up shall be borne as a Series expense. Until final distribution, the liquidator shall continue to operate the Series properties with all of the power and authority of the Manager. The steps to be accomplished by the liquidator are as follows:
- (a) as promptly as possible after dissolution and again after final winding up, the liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Series' assets, liabilities, and operations through the last calendar day of the month in which the dissolution occurs or the final winding up is completed, as applicable;
  - (b) the liquidator shall cause notice to be mailed to each known creditor of and claimant against the Series;
  - (c) the liquidator shall pay, satisfy or discharge from the Series' funds all of the debts, liabilities and obligations of the Series or otherwise make adequate provision for payment and discharge thereof (including the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine); and
  - (d) all remaining assets of the Series (the "Series LP Liquidation/Dissolution Proceeds") shall be distributed to the Members as follows:

- (i) the liquidator may sell any or all Series property, including to Members, and any resulting gain or loss from each sale shall be computed and allocated to the Capital Accounts of the Members in accordance with the provisions of Section 9;
- (ii) with respect to all Series property that has not been sold the Fair Market Value of that property shall be determined and the Capital Accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the Capital Accounts previously would be allocated among the Members if there were a taxable disposition of that property for the fair market value of that property on the date of distribution; and
- (iii) The Series Liquidation/Dissolution Proceeds property, including the proceeds of accounts receivable, shall be distributed among the Members in accordance with their respective Sharing Ratios and those distributions shall be made by the end of the taxable year of the Series during which the liquidation of the Series occurs (or, if later, ninety (90) days after the date of the liquidation).

All distributions in kind to the Members shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Series has committed prior to the date of termination and those costs, expenses, and liabilities shall be allocated to the distributee pursuant to this Section 8(B). The distribution of cash and/or property to a Member in accordance with the provisions of this Section 8(B) constitutes a complete return to the Member of its Capital Contributions and a complete distribution to the Member of its Membership Rights and all the Series' property and constitutes a compromise to which all Members have consented. To the extent that a Member returns funds to the Series, it has no claim against any other Member for those funds.

- C. *Deficit Capital Accounts.* No Member will be required to pay to the Series, to any other Member or to any third party any deficit balance which may exist from time to time in the Member's Capital Account.
- D. *Certificate of Termination.* On completion of the distribution of Series' assets as provided herein, the Manager (or such other Person or Persons as the BOC may require or permit) shall file Certificate of Termination with the Secretary of State of Texas, cancel any other filings made pursuant to foreign qualifications, and take such other actions as may be necessary to terminate the existence of the



Series. Upon the issuance of a certificate of dissolution by the Secretary of State of Texas, the existence of the Series shall cease, except as may be otherwise provided by the BOC or other applicable Law.

9. *Distributions/Allocations of Profits and Losses.*

- A. *Distributions on Dissolution and Winding Up.* Upon the dissolution and winding up of the Series, all available proceeds distributable to the Members as determined under Section 8(B) shall be distributed to all Members.
- B. *Allocations of Profit and Loss.* Profit and Loss of the Series shall be allocated to the Members in their Sharing Ratios.
- C. *Allocation of Net Gains or Net Losses from the Dissolution and Winding Up of the Series.*
  - (a) *Net Gains.* Net gain resulting from a sale of the Series' property upon the dissolution and winding up of the Series shall be allocated to the Members in their Respective Sharing Ratios.
  - (b) *Net Loss.* After adjusting the Capital Accounts for distributions and allocations, net loss resulting from a sale of the Series' assets upon the dissolution and winding up of the Series shall be allocated to the Members in their respective Sharing Ratios.
- D. *Adjustment of Book Value.* Book Value with respect to any asset of the Series for any purpose shall be the asset's adjusted tax basis for federal income tax purposes. The Book Value of each asset will be increased or decreased to reflect any adjustment to the adjusted basis of the asset under Code Section 734(b) or 743(b), but only to the extent that the adjustment is taken into account in determining Capital Accounts under Treasury Regulation Section 1.704-1(b)(2)(iv)(m). Book Value will be adjusted by Book Depreciation, and gain or loss on a disposition of any asset shall be determined by reference to such asset's Book Value as adjusted herein. The determination of the fair market value of property as required under this Section 9(D) shall be determined by the Members using any reasonable method of valuation.
- E. *Tax Allocations.*
  - (a) Except as otherwise provided in this Section 9(E), each item of income, gain, loss, deduction and credit determined for federal income tax purposes shall be allocated among the Members in the same manner as each correlative item of income, gain, loss, deduction and credit is

allocated to the Members for purposes of maintaining their respective Capital Accounts.

- (b) Under Code Section 704(c) and Treasury Regulation Section 1.704-1(b)(2)(iv)(d)(3), income, gain, loss and deduction with respect to any asset contributed to the capital of the Series, solely for federal income tax purposes, shall be allocated among the Members so as to take into account any variation between the adjusted tax basis of the asset for federal income tax purposes and the initial Book Value. If the Book Value of any asset is adjusted under Section 9(D), subsequent allocations of income, gain, loss and deduction, solely for federal income tax purposes, will be allocated among the Members so as to take into account any variation between the adjusted tax basis of the asset and its Book Value as adjusted in the manner required under Treasury Regulation Section 1.704-3(a)(6). The allocations required by this Section 9(E) shall be made by the Manager.
- F. **Stop Loss.** Notwithstanding any other provision hereof to the contrary, no Loss (or item of loss or deduction) of the Series shall be allocated to a Member if such allocation would result in a deficit balance in such Member's Adjusted Capital Account. Such Loss (or item of loss or deduction) shall be allocated among the Members whose Adjusted Capital Account balances are positive in proportion to such positive balances to the extent necessary to reduce the balances of such other Member's positive Adjusted Capital Accounts balances to zero, it being the intention of the Members that no Member's positive Adjusted Capital Account balance shall fall below zero while any other Member's positive Adjusted Capital Account balance has a positive balance.
- G. **Nonrecourse Deductions.** All Nonrecourse Deductions shall be allocated among the Members in their Sharing Ratios.
- H. **Mandatory Distributions.** Unless prohibited by bank covenants or contractual restrictions, the Company shall make distributions to the Members in such amounts as may be reasonably determined by the Manager to be necessary to fund the Class A Equity Owners' and the Class B Equity Owners' respective income tax obligations arising as a result of their ownership of Class A Equity interests or Class B Equity interests, but not otherwise. Unless prohibited by bank covenants or contractual restrictions, the Company also shall make distributions of operating profits, at such times and intervals as shall be reasonably determined by the Manager, and not less than annually.
- I. **Suspension of Distributions/Allocations.** NHS Emergency Centers, LLC is a party to the Loan Agreements (defined above). In the event of an uncured Event

of Default under any Loan Agreement, all distributions and allocations hereunder may be suspended until such default is cured.

10. *CLASS B MEMBER'S RIGHT OF FIRST REFUSAL*

The parties acknowledge that affiliates of the Class A Member is in the business of developing and operating free standing emergency departments that are similar to the Series Business. The Class A Member hereby grants unto the Class B Member a right of first refusal to purchase all Class B Shares offered by the Class A Member and/or its affiliates for any free standing emergency department located within 50 miles in any direction of El Paso, Texas. The Class A Member agrees to provide the Class B Member with written notice of any offering of Class B Shares relating to any such free standing emergency department, which notice shall include the material terms of such offering, including purchase price. The Class B Member shall have thirty (30) days from the receipt of such notice to exercise the right of first refusal granted herein. The decision by the Class B Member to decline an opportunity to purchase Class B Shares in any free standing emergency center shall not negate the rights granted under this Section 10, and such rights shall be fully applicable to any subsequent offering by the Class A Member and/or its affiliates.

*[Signature Page to Follow]*




IN WITNESS WHEREOF, the undersigned owner and holder of Class A Series 115 - Zaragoza Membership Interests have executed the foregoing Series Agreement, intending thereby to be bound in all respects by its terms, as of the effective date first set forth above.

NEIGHBORS INVESTMENT GROUP, LLC

By: \_\_\_\_\_  
Sctul Patel, President of  
Neighbors Health System Inc., its Manager

IN WITNESS WHEREOF, the undersigned owner and holder of Class B Series 115 - Zaragoza Membership Interests have executed the foregoing Series Agreement, intending thereby to be bound in all respects by its terms, as of the effective date first set forth above.

INFINITY EMERGENCY MANAGEMENT GROUP, LLC, Class B Member

By:   
Name: Samara Bower  
Title: Manager

# Exhibit 6



**OPERATING AGREEMENT  
OF  
NHS EMERGENCY CENTERS, LLC**

**A Texas Limited Liability Company**

This Operating Agreement (this "Agreement"), dated to be effective as of January 1, 2014, is adopted, executed and agreed to, for good and valuable consideration, by all of the Members (as defined below) of NHS Emergency Centers, LLC, a Texas limited liability company.

**ARTICLE I  
DEFINITIONS**

1.01 *Definitions.* As used in this Agreement, the following terms have the respective meanings set forth below or set forth in the provision following such term:

*Adjusted Capital Account* – a Capital Account determined and maintained for each Member throughout the term of this Agreement, the balance of which shall be equal to such Member's Capital Account balance, modified as follows:

- (a) increased by the amount, if any, of such Member's share of the Minimum Gain of the Company as determined under Treasury Regulation Section 1.704-2(g)(1);
- (b) increased by the amount, if any, of such Member's share of the Minimum Gain attributable to Member Nonrecourse Debt of the Company pursuant to Treasury Regulation Section 1.704-2(i)(5);
- (c) increased by the amount, if any, of such Member's share of the Member's Modified 752 Share of Recourse Debt;
- (d) increased by the amount, if any, that such Member is treated as being obligated to contribute subsequently to the capital of the Company as determined under Treasury Regulation Section 1.704-1(b)(2)(ii)(c);
- (e) decreased by the amount, if any, of cash that is reasonably expected to be distributed to such Member, but only to the extent that the amount thereof exceeds any offsetting increase in such Member's Capital Account that is reasonably expected to occur during (or prior to) the tax year during which such distributions are reasonably expected to be made as determined under Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(6); and
- (f) decreased by the amount, if any, of loss and deduction that is reasonably expected to be allocated to such Member pursuant to Code Section

704(e)(2) or 706(d), Treasury Regulation Section 1.751-1(b)(2)(ii) or Treasury Regulation Section 1.704-1(b)(2)(iv)(k).

*Affiliate* – (a) with respect to any Person who is a natural person, (i) each entity that such Person Controls, and (ii) each member of such Person’s immediate family; and (b) with respect to any person that is an entity, (i) each entity that such person Controls, (ii) each person that Controls such Person, and (iii) each entity that is under common Control with such Person.

*Arbitration Notice* – Section 13.01(b).

*Arbitrator* – Section 13.02(a).

*Assignee* – any Person that acquires Membership Rights or any portion thereof (including an Interest) through a Disposition. The Assignee of a deceased Member is the Person or Persons to whom the deceased Member’s Membership Rights are bequeathed, or by whom they are inherited, pursuant to the deceased Member’s duly-probated will or a probate court order applying the laws of intestate succession. The Assignee of a dissolved Member is the shareholder, partner, member or other equity owner or owners of the dissolved Member to whom such Member’s Membership Rights are assigned by the Person conducting the liquidation or winding up of such Member. The Assignee of a Bankrupt Member is the Person or Persons (if any) to whom such Bankrupt Member’s Membership Rights are assigned by order of the bankruptcy court or other governmental authority having jurisdiction over such Bankruptcy; or, in the event of a general assignment for the benefit of creditors, the creditor to which such Membership Rights are assigned. In the case of a Divorce, the Assignee is the spouse of the applicable Member. In the case of a Spouse’s Death, the Assignee is the Person or Persons to whom the spouse’s (or former spouse’s) Spouse’s Fraction is bequeathed, or by whom it is inherited, pursuant to the deceased spouse’s (or former spouse’s) duly-probated will or a probate court order applying the laws of intestate succession.

*BOC* – The Texas Business Organizations Code, as the same may be amended from time to time.

*Bankruptcy* or *Bankrupt* – with respect to any Person, that (a) such Person (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceedings; (iv) files a petition or answer seeking for such Person a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against such Person in a proceeding of the type described in subclauses (i) through (iv) of this clause (a); or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of such Person’s or of all or any substantial part of such Person’s properties; or (b) against such Person, a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Law has



been commenced and 120 Days have expired without dismissal thereof or with respect to which, without such Person's consent or acquiescence, a trustee, receiver, or liquidator of such Person or of all or any substantial part of such Person's properties has been appointed and 90 Days have expired without the appointment's having been vacated or stayed, or 90 Days have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

**Book Depreciation** – for each fiscal year (or other period for which Book Depreciation must be computed) the depreciation, amortization or other cost recovery deduction allowable for federal income tax purposes with respect to an asset, except that, if the Book Value of an asset differs from its adjusted tax basis at the beginning of the year, Book Depreciation will be an amount which bears the same ratio to Book Value at the beginning of the year as the federal income tax depreciation, amortization or other cost recovery deduction for the year bears to the beginning adjusted tax basis; provided, however, that if the adjusted tax basis of the asset at the beginning of the year is zero, Book Depreciation will be determined by the Member using any reasonable method.

**Book Value** – with respect to any asset, the adjusted basis of the asset for federal income tax purposes, adjusted as provided in Section 7.04.

**Business Day** – any day other than a Saturday a Sunday, or a holiday on which national banking associations in the State of Texas are closed.

**Capital Account** – the account to be maintained by the Company for each Member in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv) and, to the extent not inconsistent therewith, the following provisions:

- (a) a Member's Capital Account shall be credited with the cash or Net Agreed Value of the Member's Capital Contributions, the amount of any Company liabilities assumed by the Member, the Member's distributive share of Profit and any item of income or gain specially allocated to the Member pursuant to the provisions of Article 6 and
- (b) a Member's Capital Account shall be debited with the amount for cash and the Net Agreed Value of any Company property distributed to the Member, the amount of any liabilities of the Member assumed by the Company (or which are secured by property contributed by the Member to the Company), the Member's distributive share of Loss and any item of expenses or losses specially allocated to the Member pursuant to the provisions of Article 6.

If any Interest is transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Interest; provided, however, that if the transfer causes a termination of the Company under Code Section 708(b)(1)(B), the Capital Accounts of the Members shall be adjusted in conformance with Treasury Regulation Section 1.704-

1(b)(2)(iv)(I). A Member that has more than one Interest shall have a single Capital Account that reflects all of its Interests, regardless of the class of Interest owned by that Member and regardless of the time or manner in which it was acquired.

*Capital Contribution* – with respect to any Member, the amount of money and the initial Book Value of any property (other than money) contributed to the Company by the Member. Any reference in this Agreement to the Capital Contribution of a Member shall include a Capital Contribution of his predecessors in interest.

*Capital Transaction* – any transaction that results in the Company's receipt of cash or other consideration other than Capital Contributions, including proceeds of sales or exchanges or other Dispositions of property not in the ordinary course of business, financings, refinancings, condemnations, recoveries of damage awards, and insurance proceeds that, in accordance with generally accepted accounting principles, are considered capital in nature.

*Code* – the United States Internal Revenue Code of 1986, as amended from time to time. All references herein to sections of the Code shall include any corresponding provision or provisions of succeeding Law.

*Company* – NHS EMERGENCY CENTERS, LLC, a Texas limited liability company.

*Company Interests* – Section 3.01(a)

*Control* – the possession, directly or indirectly, through one or more intermediaries, of the following: (a) in the case of a Company, more than 50% of the outstanding voting securities thereof; (b) in the case of a professional limited liability company, partnership, limited partnership or venture, the right to more than 50% of the distributions therefrom (including liquidating distributions); (c) in the case of a trust or estate, more than 50% of the beneficial interest therein; (d) in the case of any other entity, more than 50% of the economic or beneficial interest therein; or (e) in the case of any entity, the power or authority, through ownership of voting securities, by contract or otherwise, to direct the management, activities or policies of the entity.

*Control Person* – with regard to each Entity Member, the Person who has Control of such Entity Member, whether directly or through one or more intermediaries.

*Day* – a calendar day; provided, however, that, if any period of Days referred to in this Agreement shall end on a Day that is not a Business Day, the expiration of such period shall be automatically extended until the first succeeding Business Day.

*Default* – with respect to any Member, (a) the failure of such Member to contribute, within 10 Days of the date required, all or any portion of a Capital Contribution that such Member is required to make as provided in this Agreement; or (b) the failure of a Member to comply in any material respect with any of its other



agreements, covenants or obligations under this Agreement (other than its agreement not to Withdraw from the Company in Section 3.06), or the failure of any representation or warranty made by a Member in this Agreement to have been true and correct in all material respects at the time it was made, in each case if such default is not cured by the applicable Member within 30 Days of its receiving notice of such default from the Manager or any other Member (or, if such default is not capable of being cured within such 30-Day period, if such Member fails to promptly commence substantial efforts to cure such default or to prosecute such curative efforts to completion with continuity and diligence).

*Default Rate* – a rate per annum equal to the lesser of (a) 10.0%, and (b) the maximum rate permitted by Law.

*Director* – a member of the Company's Board of Directors.

*Dispose, Disposing or Disposition* – with respect to any asset (including Membership Rights or any portion thereof, including an Interest), a sale, assignment, transfer, conveyance, gift, exchange or other disposition of such asset, whether such disposition be voluntary, involuntary or by operation of Law, including the following: (a) in the case of an asset owned by a natural person, a transfer of such asset upon the death of its owner, whether by will, intestate succession or otherwise; (b) in the case of an asset owned by an Entity, (i) a merger or consolidation of such Entity, (ii) a conversion of such Entity into another type of Entity, or (iii) a distribution of such asset in connection with the dissolution, liquidation, winding-up or termination of such Entity (unless, in the case of dissolution, such Entity's business is continued without the commencement of liquidation or winding-up); and (c) a disposition in connection with, or in lieu of, a foreclosure of an Encumbrance; but such terms shall not include the creation of an Encumbrance.

*Dispute* – Section 13.01(a).

*Disputing Party* – Section 13.01(a).

*Dissolution Event* – Section 14.01(a).

*Divorce* – the establishment of a Spouse's Fraction as a result of the divorce or other termination of the marital relationship of any Member (other than by death), or upon the partition of community of property or other Disposition of property between a Member and such Member's spouse.

*Encumber, Encumbering, or Encumbrance* – the creation of a security interest, lien, pledge, mortgage or other encumbrance, whether such encumbrance be voluntary, involuntary or by operation of Law.

*Expel, Expelled or Expulsion* – the expulsion or removal of a Member from the Company as a member.

*Including* – “including, without limitation,”.

*Interest* – a Person's share of the income, gain, loss, deduction and credits of, and the right to receive distributions from, the Company.

*Law* – any applicable constitutional provision, statute, act, code (including the Code), law, regulation, rule, ordinance, order, decree, ruling, proclamation, resolution, judgment, decision, declaration, or interpretative or advisory opinion or letter of a governmental authority.

*Liquidation Sharing Ratio* – Section 14.02(d).

*Manager* – Section 8.01.

*Member Nonrecourse Deductions* – the meaning assigned to that term in Treasury Regulation Section 1.704-2(i).

*Member Nonrecourse Debt* – the meaning assigned to that term in Treasury Regulation Section 1.704-2(b)(4).

*Member Nonrecourse Minimum Gain* – the meaning assigned to that term in Treasury Regulation Section 1.704-2(i)(2).

*Membership Rights* – with respect to any Member, (a) that Member's status as a Member; (b) that Member's Interest; (c) all other rights, benefits and privileges enjoyed by that Member (under the Act, the Articles, this Agreement or otherwise) in its capacity as a Member, including that Member's rights to vote, consent and approve and otherwise to participate in the management of the Company; and (d) all obligations, duties and liabilities imposed on that Member (under the Act, the Articles, this Agreement or otherwise) in its capacity as a Member, including any obligations to make Capital Contributions.

*Minimum Gain* – the meaning assigned to that term in Treasury Regulation Section 1.704-2(d).

*Modified 752 Share of Recourse Debt* – of any Member, as of any date, the aggregate amount of economic risk of loss that such Member and all Related Persons to such Member are treated as bearing with respect to such liability pursuant to Treasury Regulation Section 1.752-2 with respect to any Company liability (or portion thereof) that is neither a Nonrecourse Liability nor a Company liability that is treated as a “member nonrecourse debt” under Treasury Regulation Section 1.704-2(b)(4) (determined, as of the date in question, by assuming, for purposes of Treasury Regulation Section 1.752-2, that the Company constructively liquidates on such date (within the meaning of Treasury Regulation Section 1.752-2) except that all Company properties shall be deemed thereunder to be transferred in fully taxable exchanges for an aggregate



amount of cash consideration equal to their respective book values and such consideration shall be deemed thereunder to be used, in the appropriate order of priority, in full or partial satisfaction of all Company liabilities).

*Net Agreed Value* – (a) in the case of any property contributed to the Company, the Book Value of the Company's property reduced by any indebtedness either assumed by the Company upon the contribution of the property or to which such property is subject when contributed; and (b) in the case of any property distributed to a Member, the Book Value of such property reduced by any indebtedness either assumed by such Member upon such distribution or to which such property is subject at the time of distribution.

*Net Capital Proceeds* – the proceeds received by the Company in connection with a Capital Transaction after the payment of costs and expenses incurred by the Company in connection with such Capital Transaction, including brokers' commissions, loan fees, loan payments, other closing costs and the cost of any alteration, improvement, restoration or repair of any Company property necessitated by or incurred in connection with such Capital Transaction and, if the Capital Transaction is a financing or refinancing, after the payment of any Company indebtedness that is repaid in connection with such financing or refinancing.

*Net Cash Flow* – all cash funds derived from operations of the Company (including interest received on reserves), without reduction for any non-cash charges, but less cash funds used to pay current operating expenses and to pay or establish reasonable reserves for future expenses, debt payments, and capital improvements. Net Cash Flow shall not include proceeds or costs included in the determination of Net Capital Proceeds but shall be increased by the reduction of any reserve previously established.

*Nonrecourse Deductions* – the meaning assigned that term in Treasury Regulation Section 1.704-2(b)(1).

*Nonrecourse Liability* – the meaning assigned that term in Treasury Regulation Section 1.704-2(d).

*Officer* – any Person appointed as an officer of the Company, but such term does not include any Person who has ceased to be an officer of the Company.

*Person* – the meaning assigned that term in Article 1.02(A)(4) of the Act and also includes a governmental authority and any other entity.

*Proceeding* – Section 10.01.

*Profit and Loss* – For each fiscal year of the Company (or other period for which Profit or Loss must be computed), the Company's taxable income (not including income allocated pursuant to Section 5) or loss (not including loss or deduction allocated



pursuant to Section 5) determined in accordance with Code Section 703(a), with the following adjustments:

- (a) all items of income, gain, loss and deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in computing taxable income or loss;
- (b) any tax-exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing taxable income or loss;
- (c) any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Profit or Loss, shall be subtracted from taxable income or loss;
- (d) gain or loss resulting from any disposition of Company property shall be computed by reference to the Book Value of the property;
- (e) in lieu of the depreciation, amortization or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account Book Depreciation; and
- (f) if the Book Value of an asset of the Company is adjusted pursuant to Section 8.06, any increase or decrease in the Book Value of the asset as a result of the adjustment shall be treated as gain or loss, respectively, from the disposition of the asset and shall be taken into account in computing Profits or Losses.

*Related Person* -- with respect to any Member, any Person who is related to such Member within the meaning of Treasury Regulation Section 1.752-4(b).

*Securities Act* – Securities Act of 1933, as amended.

*Separate Series Agreement* – Section 3.01(b)

*Series* – a designated Series of Members and Membership Interests established in accordance with the Texas Business Organizations Code and this Agreement having the separate rights, powers or duties with respect to assets and properties specifically identified with such Series, and/or separate business operations specifically identified with such Series, and the separate obligations, profits and losses associated with such assets, property and business operations as set forth in the Separate Series Agreement (as defined in Section 3.01(b)) for such Series. Each Series shall have a separate business purpose or objective consistent with Section 2.08 of this Agreement and, as designated in the Separate Series agreement for such series, a separate Manager or Managers.

*Series Manager* – those Members and/or other persons who are appointed in accordance with this Agreement to exercise the authority of Manager under this Agreement and the Texas Business Corporations Act with respect to a Series. One or more Series Managers will be designated in a Separate Series Agreement for each Series.

*Series Member* – those persons and/or entities who are Members of a Series established under this Agreement.

*Series Property* – all of the real, personal and intangible property owned by any Series of the Company. The Series Property initially allocated to each Series shall be listed in the Separate Series agreement for such Series.

*Sharing Ratio* – subject in each case to adjustments on account of Dispositions of Membership Rights permitted by this Agreement, (a) in the case of a Member executing this Agreement as of the date of this Agreement or a Person acquiring those Membership Rights, the percentage specified for that Member as its Sharing Ratio on the signature pages hereof, and (b) in the case of membership rights issued pursuant to Section 3.03, the Sharing Ratio established pursuant thereto.

*Tax Matters Member* – Section 11.03.

*Terminating Capital Transaction* – any Capital Transaction that is entered into in connection with or will result in the dissolution, winding up and termination of the Company.

*Treasury Regulations* – the regulations promulgated by the United States Department of the Treasury pursuant to and in respect of provisions of the Code. All references herein to sections of the Treasury Regulations shall include any corresponding provision or provisions of succeeding, similar, substitute proposed or final Treasury Regulations.

*Voting Ratio* – with respect to any Member, a Member's respective percentage of the total voting power of the Company that is equal to such Member's Sharing Ratio; provided however, that, if a Member shall have Disposed of all or any portion of its Interest but shall have retained its other Membership Rights, such member shall be deemed, solely for purposes of determining such Member's Voting Ratio, to continue to hold the Sharing Ratio attributable to the Interest that was the subject of such Disposition.

*Withdraw, Withdrawing or Withdrawal* – the withdrawal, resignation or retirement of a Member from the Company as a member. Such terms shall not include any Dispositions of Membership Rights (which are governed by Section 3.04), even though the Member making a Disposition may cease to be a Member as a result of such Disposition.

Other terms defined herein have the meanings so given them.



1.02 *Construction.* Unless the context requires otherwise; (a) the gender (or lack of gender) of all words used in this Agreement includes the masculine, feminine, and neuter; (b) references to Articles and Sections refer to Articles and Sections of this Agreement; and (c) references to Exhibits are to the Exhibits attached to this Agreement, each of which is made a part hereof for all purposes.

## ARTICLE 2 ORGANIZATION

2.01 *Formation.* The Company has been organized as a Texas limited liability company by the filing of Certificate of Formation ("Certificate") under and pursuant to the Act and the issuance of a Certificate of Filing for the Company dated December 23, 2013 by the Secretary of State of Texas.

2.02 *Series Limited Liability Company.* The Company shall be a Series Limited Liability Company, established and operated subject to the provisions of Subchapter M of the Texas Business Organizations Code. Accordingly:

- (a) The Operating Agreement of the Company may establish or provide for the establishment of one or more designated series of members, managers, membership interests or assets that:
  - (i) Has separate rights, powers, or duties with respect to specified property or obligations of the Company or profits and losses associated with specified property or obligations; or
  - (ii) Has a separate business purpose of investment objective.
- (b) A series established in accordance with Subsection (a) of this Section 2.02 may carry on any business, purpose or activity, whether or not for profit, that is not prohibited by Section 2.003 of the Texas Business Organizations Code.
- (c) Notwithstanding any provision of the Texas Business Organization Code or other provision of law, but subject to the provisions of Section 2.02(c)(ii) below:
  - (i) The debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only, and shall not be enforceable against the assets of the Company generally or any other series; and
  - (ii) None of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the Company



generally or any other series shall be enforceable against the assets of a particular series.

2.03 *Registered Office; Registered Principal Office; Other Offices.* The Registered Office of the Company required by the Act to be maintained in the State of Texas shall be the office identified in the Certificate and the Company shall maintain records there as required by Article 2.22 of the Act. The Company may have such other offices as the Members may designate.

2.04 *Purposes.* The purposes of the Company are those set forth in the Certificate.

2.05 *Foreign Qualifications.* Prior to the Company's conducting business in any jurisdiction other than Texas, the Members shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Members, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. The Members shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Agreement that is necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

2.06 *Term.* The Company commenced on the date the Secretary of State of Texas issued a certificate of formation for the Company and shall continue in existence for the period fixed in the Certificate for the duration of the Company, or such earlier time as this Agreement may specify.

2.07 *No State-Law Partnership.* The Members intend that the Company not be a partnership (including a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than federal and state tax purposes, and this Agreement may not be construed to suggest otherwise. The Members hereby agree and acknowledge that the Company and each separate Series may be treated as a separate partnership for federal income tax and other pertinent purposes.

2.08 *Series Creation.* The Members hereby agree that the rights, duties and liabilities of the Members shall be as provided for in this Agreement and the Texas Business Organizations Code. Additionally, pursuant to Chapter M of the Texas Business Organizations Code the Manager shall have authority to establish separate Series of membership interests. The number of Series and provisions applicable to each Series shall be determined by the Manager as set forth herein and in the Separate series agreements approved by the Members of each Series. Without the need for the consent of any Person, the Manager may, from time to time, establish additional Series as the Manager may determine in its sole discretion. As established from time to time in accordance with this Agreement, the additional Series shall have separate rights, power or duties with respect to specified business location, business purpose, property and profits and losses associated with specified business location and operations. A Member may become a Series Member associated with one or more Series.



2.09 *Series Assets and Liabilities/Series Property.* The assets and liabilities of each Series are separate unless otherwise indicated herein. The Series Property, or other assets of each Series, together with all income, earnings, profits and proceeds thereof, including all proceeds derived from the business operation, or the sale, exchange or liquidation of the Series Property held by such Series, and any funds or assets derived from any reinvestment of such proceeds, shall be deemed to be Series Property, held by and belonging to such Series. The foregoing notwithstanding, the Company may acquire in its name from time to time limited partnership interests in one or more Texas limited partnerships and such limited partnership interests (including all voting rights) shall pursuant to Section 101.003 of the BOC be held by the Company, provided that, the Company shall allocate or attribute to one or more Series the profits, losses, distributions, and allocations associated with such limited partnership interests if and when determined or received (as applicable), and such profits, losses, distributions, and allocations shall, when determined or received (as applicable), be the Series Property of such series. Each Series shall be identified by a separate Series name and shall have a corresponding series of limited liability company membership interests corresponding to and evidencing membership in such Series. The names and addresses of each Series Member and the ownership interest in each Series shall be set forth in the Separate Series Agreement for such Series. The Series Property belonging to a particular Series shall belong to that Series for all purposes and to no other Series, and such Series Property shall be subject only to the rights of the creditors of that Series. The assets belonging to a particular Series shall be recorded upon the books of the Series as maintained by the Series Manger, and to the extent such Series Property is deemed to be held by the Company, it shall be held by the Company and the Manager in trust for the benefit of the Series Members. The assets belonging to each particular Series shall be charged with the liabilities of that Series. Except as expressly otherwise provided herein, no debt, liability or obligation of a Series shall be a debt, liability or obligation of any other Series. The debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a Series shall be enforceable against the assets of such Series only, and not against any other assets of the Company generally or any other Series. Separate and distinct records shall be maintained for each Series, and the assets associated with any such Series shall be accounted for separately from the other assets of the Company, or any other Series of the Company. The Manager and Members shall not commingle the assets of one Series with the assets of any other Series. All assets, income, proceeds, payments, liabilities and other obligations that are not allocated to or readily identifiable as belonging to or being attributable to a particular Series, including administrative costs and expenses of the Company as a whole, shall be allocated by the Company to the Series by the Manager in such manner as is deemed fair and equitable. Each such allocation by the Manager shall be conclusive and binding on all Members and all Series Members, for all purposes. Subject to the rights of the Manager in its discretion to allocate general and administrative liabilities, expenses, costs and charges or reserves as herein provided, the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular Series shall be enforceable against the assets of such Series only, and not against the assets of the Company generally or of any other Series. Any Person extending credit to, contracting with, or having any claim against any Series may look only to the assets of that Series to satisfy or enforce any debt, liability, obligation or expense incurred, contracted for otherwise existing with respect to that Series.



2.10 *Defects As to Formalities.* The failure to observe any formalities or requirements of this Agreement of the Texas Business Organizations Code shall not be grounds for imposing personal liability on the Members or Managers for liabilities of the Company or any Series of the Company.

**ARTICLE 3**  
**MEMBERSHIP; SERIES OF INTERESTS; SERIES COMPANIES**

3.01(a) The Company is authorized to issue up to 100 shares of Membership Interests (the "Company Interests").

(b) Additionally, pursuant to the Company's Certificate of Formation, the provisions of the Texas Business Organizations Code and the other provisions of this Agreement, the Company hereby establishes the following Series Membership Interests and series companies, each of which shall issue such Series Membership Interests as shall be authorized in their respective series operating agreements (each a "Separate Series Agreement"):

3.02 Series 100-Bellaire. The Company hereby creates a separate Series of membership interests to be designated as "Series 100-Bellaire." The Separate Series Agreement of Series 100-Bellaire is attached to this Agreement as Schedule 3.02. The Series Members, Series Manager, Series Property and business purpose of series 100-Bellaire are set forth in the Separate Series Agreement.

3.03 Series 101-Kingwood. The Company hereby creates a separate Series of membership interests to be designated as "Series 101-Kingwood." The Separate Series Agreement of Series 101-Kingwood is attached to this Agreement as Schedule 3.03. The Series Members, Series Manager, Series Property and business purpose of Series 101-Kingwood are set forth in the Separate Series Agreement.

3.04 Series 101.1-Kingwood Asset Holdings. The Company hereby creates a separate Series of membership interests to be designated as "Series 101.1-Kingwood Asset Holdings." The Separate Series Agreement of Series 101.1-Kingwood Asset Holdings is attached to this Agreement as Schedule 3.04. The Series Members, Series Manager, Series Property and business purpose of Series 101.1-Kingwood Asset Holdings are set forth in the Separate Series Agreement.

3.05 Series 102-Baytown. The Company hereby creates a separate Series of membership interests to be designated as "Series 102-Baytown." The Separate Series Agreement of Series 102-Baytown is attached to this Agreement as Schedule 3.05. The Series Members, Series Manager, Series Property and business purpose of Series 102-Baytown are set forth in the Separate Series Agreement.

3.06 Series 102.1-Baytown Asset Holdings. The Company hereby creates a separate Series of membership interests to be designated as "Series 102.1-Baytown Asset Holdings." The Separate Series Agreement of Series 102.1-Baytown Asset Holdings is attached to this



Agreement as Schedule 3.06. The Series Members, Series Manager, Series Property and business purpose of Series 102.1-Baytown Asset Holdings are set forth in the Separate Series Agreement.

3.07 Series 103-Pasadena. The Company hereby creates a separate Series of membership interests to be designated as "Series 103-Pasadena." The Separate Series Agreement of Series 103-Pasadena is attached to this Agreement as Schedule 3.07. The Series Members, Series Manager, Series Property and business purpose of Series 103-Pasadena are set forth in the Separate Series Agreement.

3.08 Series 104-Pearland. The Company hereby creates a separate Series of membership interests to be designated as "Series 104-Pearland." The Separate Series Agreement of Series 104-Pearland is attached to this Agreement as Schedule 3.08. The Series Members, Series Manager, Series Property and business purpose of Series 104-Pearland are set forth in the Separate Series Agreement.

3.09 Series 104.1-Pearland Asset Holdings. The Company hereby creates a separate Series of membership interests to be designated as "Series 104.1-Pearland Asset Holdings." The Separate Series Agreement of Series 104.1-Pearland Asset Holdings is attached to this Agreement as Schedule 3.09. The Series Members, Series Manager, Series Property and business purpose of Series 104.1-Pearland Asset Holdings are set forth in the Separate Series Agreement.

3.10 Series 105-Mueller. The Company hereby creates a separate Series of membership interests to be designated as "Series 105-Mueller." The Separate Series Agreement of Series 105-Mueller is attached to this Agreement as Schedule 3.10. The Series Members, Series Manager, Series Property and business purpose of Series 105-Mueller are set forth in the Separate Series Agreement.

3.11 Series 106-Beaumont. The Company hereby creates a separate Series of membership interests to be designated as "Series 106-Beaumont." The Separate Series Agreement of Series 106-Beaumont is attached to this Agreement as Schedule 3.11. The Series Members, Series Manager, Series Property and business purpose of Series 106-Beaumont are set forth in the Separate Series Agreement.

3.12 Series 106.1-Beaumont Asset Holdings. The Company hereby creates a separate Series of membership interests to be designated as "Series 106.1-Beaumont Asset Holdings." The Separate Series Agreement of Series 106.1-Beaumont Asset Holdings is attached to this Agreement as Schedule 3.12. The Series Members, Series Manager, Series Property and business purpose of Series 106.1-Beaumont Asset Holdings are set forth in the Separate Series Agreement.

3.13 Series 107-Lakeline. The Company hereby creates a separate Series of membership interests to be designated as "Series 107-Lakeline." The Separate Series Agreement of Series 107-Lakeline is attached to this Agreement as Schedule 3.13. The Series Members, Series

Manager, Series Property and business purpose of Series 107-Lakeline are set forth in the Separate Series Agreement.

3.14 *Representations and Warranties.* Each of the Members, and each of the Series Members who become parties hereto and to the Separate Series Agreements, hereby represent and warrant to the Company as follows:

- (a) that Member has duly executed and delivered this Agreement, and it constitutes the legal, valid and binding obligation of that Member enforceable against it in accordance with its terms (except as may be limited by bankruptcy, insolvency or similar laws of general application and by the effect of general principles of equity that permit the exercise of judicial discretion, regardless of whether considered at law or in equity, and except that any indemnification provisions may be limited by applicable securities laws and public policy);
- (b) that Member's authorization, execution, delivery, and performance of this Agreement do not and will not (i) conflict with, or result in a breach, default or violation of, (A) any contract or agreement to which that Member is a party or is otherwise subject, or (B) any Law, order, judgment, decree, writ, injunction or arbitral award to which that Member is subject; or (ii) require any consent, approval or authorization from, filing or registration with, or notice to, any governmental authority or other Person, unless such requirement has already been satisfied;
- (c) that Member is acquiring his or her Membership Rights for investment, solely for the Member's own beneficial account and not with a view to or any present intention or directly or indirectly selling, transferring, offering to sell or transfer, participating in any distribution or otherwise Disposing of all or a portion of its Membership Rights; and such Member acknowledges that the Membership Rights have not been registered under the Securities Act or any other applicable federal or state securities laws, and that the Company has no intention, and shall not have any obligation, to register or to obtain an exemption from registration for the Membership Rights or to take action so as to permit sales pursuant to the Securities Act (including Rules 144 and 144A thereunder).
- (d) that, with regard to each Member that is a partnership, corporation, limited liability company, trust or other form of entity (an "Entity Member") the execution and delivery of this Agreement by the Entity Member's undersigned representative has been duly authorized by all necessary corporate action.

3.15 *Creation of Additional Membership Rights.* Additional Membership Rights may be created and issued to existing Members or to other Persons, and such other Persons may be admitted to the Company as Members, at the direction of the Board of Directors, on such terms



and conditions as the Board of Directors may determine at the time of admission. The terms of admission or issuance must specify the Sharing Ratios applicable thereto and may provide for the creation of different classes or groups of members and having different rights, powers, and duties. The Members may reflect the creation of any new class or group in an amendment to this Agreement indicating the different rights, powers, and duties, and such amendment need be executed only by the Members. Any such admission is effective only after the new Member has executed and delivered to the Members an instrument containing the notice address of the new Member, the Assignee's ratification of this Agreement and agreement to be bound by it, and its confirmation that the representations and warranties in Section 3.02 are true and correct with respect to it.

3.16 *Creation of Additional Series.* As set forth in Section 2.08 of this Agreement and the terms of the Texas Business Organizations Code, the Manager of the Company shall have the right to create additional Series of membership and to establish the rights, obligations, terms of membership, designations and Series Property of each such Series of membership interests and to designate one or more Series Managers for such Series.

3.17 *Withdrawal.* A Member does not have the right to Withdraw; provided, however, a Member shall have the power to withdraw at any time in violation of this Agreement. If a Member exercises such power in violation of this Agreement, such Withdrawing Member shall be liable to the Company and the other Members for all monetary damages suffered by them as a result of such Withdrawal. In no event shall the Company or any Member have the right, through specific performance or otherwise, to prevent a Member from Withdrawing in violation of this Agreement.

3.18 *Information.*

- (a) In addition to the other rights specifically set forth in this Agreement, each Member and each Assignee is entitled to all information to which that Member or Assignee is entitled to have access pursuant to the BOC, under the circumstances and subject to the conditions therein stated. The Members (on behalf of themselves and their Assignees) agree, however, that the Members may determine, due to contractual obligations, business concerns, or other considerations, that certain information regarding the business, affairs, properties, and financial condition of the Company should be kept confidential and not provided to some or all other Members or Assignees, and that it is not just or reasonable for those Members or Assignees (or representatives thereof) to examine or copy that information. An Assignee shall not have any of the rights to require information or account of transactions of the Company or to make inspection of the books and records of the Company, except to the extent such rights are also conferred on Assignees pursuant to the BOC.
- (b) The Members (on behalf of themselves and their Assignees) acknowledge that they may receive information from or regarding the Company in the nature of trade secrets or that otherwise is confidential, the release of



which may be damaging to the Company or Persons with which it does business. Each Member and Assignee shall hold in strict confidence any information it receives regarding the Company that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any Person other than another Member, except for disclosures (i) compelled by Law (but the Member or Assignee must notify the Members promptly of any request for that information, before disclosing it if practicable), (ii) to advisers or representatives of the Member or Assignee, but only if the recipients have agreed to be bound by the provisions of this Section 3.05(b), or (iii) of information that a Member or Assignee also has received from a source independent of the Company that the Member or Assignee reasonably believes obtained that information without breach of any obligation of confidentiality. The Members (on behalf of themselves and their Assignees) agree that breach of the provisions of this Section 3.05(b) may cause irreparable injury to the Company for which monetary damages (or other remedy at law) are inadequate in view of (i) the complexities and uncertainties in measuring the actual damages that would be sustained by reason of the failure of a Member or Assignee to comply with such provisions, (ii) the uniqueness of the Company business and the confidential nature of the information described in this Section 3.05(b). Accordingly, the Members (on behalf of themselves and their Assignees) agree that the provisions of this Section 3.05(b) may be enforced by specific performance.

- (c) Each Member shall reimburse the Company for all costs and expenses incurred by the Company in connection with the Member's inspection and copying of the Company's books and records.

3.19 *Liability to Third Parties.* No Member shall be liable for the debts, obligations or liabilities of the Company, including under a judgment decree or order of a court.

3.20 *Spouses of Members.* Spouses of the Members do not become Members as a result of such marital relationship.

#### ARTICLE 4 MEMBERSHIP INTERESTS

4.01 *Capital Contributions in Exchange for Interests in the Company.* Initially, Persons making (or agreeing to make) Capital Contributions to the Company shall, upon the execution of this Agreement by such Persons and the receipt by the Company of said Capital Contributions, become Members of the Company with the Membership Rights provided for in this Agreement.

4.02 *Issuance of Certificates.* The Members hereby acknowledge and agree that all Membership Rights and Interests are "securities" governed by Article 8 of the Uniform Commercial Code as in effect from time to time in the State of Texas. Certificates evidencing

the Membership Rights and Interest (and certificates reflecting transfers of, re-issuance of, or other events affecting such Membership Rights and Interest) shall be issued by the Company. Any Member may direct a new certificate to be issued in place of any certificate theretofore issued by the Company alleged to have been lost or destroyed. Upon surrender to the Company or the transfer agent of the Company of a certificate representing Membership Rights and Interest duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, a new certificate shall be issued to the person entitled thereto, and the old certificate shall be cancelled and the transaction shall be recorded upon the books of the Company. So long as any Membership Rights and Interest are pledged by a Member, the Company, or any other Person (each a "*Secured Obligation*"), neither the Company nor any Member will take any action to 'opt-out' of Article 8 of the Uniform Commercial Code with respect to the Membership Rights and Interest, or otherwise take any action inconsistent with the treatment of the Membership Rights and Interest as "securities" thereunder.

4.03 *Certain Dispositions of Membership Rights and Interests.* In the event any Membership Rights and Interest are pledged by a Member to any Person (the "*Secured Party*") as collateral security for any Secured Obligation and the Secured Party disposes, pursuant to Part 6 of Article 9 of the Texas Uniform Commercial Code, of any such Membership Rights and Interest after default by the obligor with respect to the Secured Obligation, the Person that acquires such Membership Rights and Interest as a result of such disposition (the "*Foreclosure Transferee*") shall immediately and automatically be admitted as a Member with the number of shares of membership interest or percentage of Membership Rights and Interest acquired by the Foreclosure Transferee as a result of such disposition, without any consent or other action of the Company or any Member. Upon request, the Company shall cancel the certificates representing the Membership Rights and Interest so transferred and shall issue a new certificate to the Foreclosure Transferee for the number of shares of membership interest or percentage of Membership Rights and Interest so acquired by the Foreclosure Transferee.

4.04 *Certain Restrictions.* During any period that any Membership Rights and Interest are pledged by a Member as collateral security for any Secured Obligation, unless the Secured Party gives its prior written consent, (i) this Agreement may not be amended, (ii) no additional Membership Rights may be created or issued, (iii) such Member shall not have the right to assign or transfer its right to receive future distributions (except to the Secured Party), and (iv) such Member may not grant to any Person the right to exercise any power to vote with respect to such Membership Rights and Interest or otherwise manage the business or affairs of the Company if such grant would survive the disposition, pursuant to Part 6 of Article 9 of the Texas Uniform Commercial Code, of such Membership Rights and Interest by the Secured Party after default by the obligor with respect to the Secured Obligation.

## ARTICLE 5 RIGHTS OF MEMBERSHIP INTERESTS

### 5.01 *Rights of Membership Interests*

- (a) *Voting.* The Members owning Membership Interests shall have proportionate voting rights of the Company with regard to any matter permitted to be voted on by Law or under the terms of this Agreement,



each Member's Voting Ratio to be identical to such Member's Sharing Ratio.

- (b) *Distributions.* Distributions from the Net Cash Flow of the Company or Net Proceeds of any Refinancing may be declared and paid to holders of Membership Interests to the extent that funds are available therefore.
- (c) *Series Limited Liability Companies.* The rights, designations and privileges of the Membership Interests of the Series Limited Liability Companies shall be established by the Manager and shall be set forth in the Separate Series Agreement of each such company.

#### ARTICLE 6 CAPITAL CONTRIBUTIONS

6.01 *Initial Contributions.* Contemporaneously with the execution by such Member of this Agreement, the Company has received initial Capital Contributions which, in the aggregate, shall not exceed \$1,000.00 (One Thousand Dollars).

6.02 *Capital Accounts.* A Capital Account shall be established and maintained for each Member.

#### ARTICLE 7 ALLOCATIONS AND DISTRIBUTIONS

7.01 *Distributions on Dissolution and Winding Up.* Upon the dissolution and winding up of the Company, all available proceeds distributable to the Members as determined under Section 15.02 shall be distributed to all Members.

7.02 *Allocations of Profit and Loss.* Profit and Loss of the Company shall be allocated as follows:

- (a) Loss shall be allocated to the Members in their Sharing Ratios.
- (b) Profit shall be allocated to the Members in their Sharing Ratios.

7.03 *Allocation of Net Gains or Net Losses from the Dissolution and Winding Up of the Company.*

- (a) *Net Gains.* Net gain resulting from a sale of the Company's property upon the dissolution and winding up of the Company shall be allocated to the Members in their Respective Liquidation Sharing Ratios.
- (b) *Net Loss.* After adjusting the Capital Accounts for distributions and allocations, net loss resulting from a sale of the Company's assets upon



the dissolution and winding up of the company shall be allocated to the Members in their respective Liquidation Sharing Ratios.

**7.04 Adjustment of Book Value.** Book Value with respect to any asset of the Company for any purpose shall be the asset's adjusted tax basis for federal income tax purposes. The Book Value of each asset will be increased or decreased to reflect any adjustment to the adjusted basis of the asset under Code Section 734(b) or 743(b), but only to the extent that the adjustment is taken into account in determining Capital Accounts under Treasury Regulation Section 1.704-1(b)(2)(iv)(m). Book Value will be adjusted by Book Depreciation, and gain or loss on a disposition of any asset shall be determined by reference to such assets Book Value as adjusted herein. The determination of the fair market value of property as required under this Section 7.04 shall be determined by the Members using any reasonable method of valuation.

**7.05 Tax Allocations.**

- (a) Except as otherwise provided in this Section 7.05, each item of income, gain, loss, deduction and credit determined for federal income tax purposes shall be allocated among the Members in the same manner as each correlative item of income, gain, loss, deduction and credit is allocated to the Members for purposes of maintaining their respective Capital Accounts.
- (b) Under Code Section 704(c) and Treasury Regulation Section 1.704-1(b)(2)(iv)(d)(3), income, gain, loss and deduction with respect to any asset contributed to the capital of the Company, solely for federal income tax purposes, shall be allocated among the Members so as to take into account any variation between the adjusted tax basis of the asset for federal income tax purposes and the initial Book Value. If the Book Value of any asset is adjusted under Section 7.04, subsequent allocations of income, gain, loss and deduction, solely for federal income tax purposes, will be allocated among the Members so as to take into account any variation between the adjusted tax basis of the asset and its Book Value as adjusted in the manner required under Treasury Regulation Section 1.704-3(a)(6). The allocations required by this Section 7.05 shall be made collectively by the Members.

**7.06 Stop Loss.** Notwithstanding any other provision hereof to the contrary, no Loss (or item of loss or deduction) of the Company shall be allocated to a Member if such allocation would result in a deficit balance in such Member's Adjusted Capital Account. Such Loss (or item of loss or deduction) shall be allocated among the Members whose Adjusted Capital Account balances are positive in proportion to such positive balances to the extent necessary to reduce the balances of such other Member's positive Adjusted Capital Accounts balances to zero, it being the intention of the Members that no Member's positive Adjusted Capital Account balance shall fall below zero while any other Member's positive Adjusted Capital Account balance has a positive balance.

7.07 *Nonrecourse Deductions.* All Nonrecourse Deductions shall be allocated among the Members in their Sharing Ratios.

## ARTICLE 8 MANAGEMENT

8.01 *Management by Manager.* Day to day management of the Company is reserved to a Manager. The Company will enter into a written Management Agreement subject to the approval of the Members. The operations of the Company will be conducted by the Manager in accordance with the Management and Administrative Services Agreement between the Company and the Manager, and the Manager's salary, if any, shall be set by the Members. The initial Manager will be Neighbors Health System, Inc. The Manager shall have the exclusive right and power to manage, operate and control the general business and operations of the Company which is not attributable to the business of a particular Series, provided that the separate Series Managers of each Series, as designated in the Separate Series Agreement for such Series, shall have the right and power to manage, operate and control the business of such Series of the Company and to do all things and make all decisions necessary or appropriate to carry on the business and affairs of the Series of the Company.

## ARTICLE 9 RESTRICTIVE COVENANTS

### 9.01 *Restrictive Covenants.*

- (a) Each Member agrees that, for the time during which the Member is a Member of the Company and for a period of twenty-four (24) months thereafter (the "Restricted Period"), the Member shall not participate as a manager, medical director or owner, in any company or practice group that provides emergency medicine services at an "Excluded Location" (as defined below). For purposes of this Agreement, the term "Excluded Location" means any free standing emergency medical facility located within twenty-five (25) miles in any direction of any emergency department operated or managed by the Company or any affiliate of the Manager.
- (b) Each Member agrees that such Member shall not disclose to any Person any "Confidential Information" (as defined below) of the Company except upon the Company's advance written consent. For purposes of this Agreement, Confidential Information means any information intended by the Manager to remain confidential relating to the Company's professional staff, business plans, facilities, equipment, financial results, assets, liabilities, business plans, practice management plans, agreements and business operations.
- (c) Each Member agrees that, during the Restricted Period, to refrain from soliciting any officer, director, employee, contractor, manager, patient or



other person affiliated with or representing the Company or the Manager to terminate or modify their respective existing business/medical relationships with the Company or the Manager.

9.02 *Series Members.* The restrictive covenants, if any, binding upon the Series Members of any Series Limited Liability Company established by the Company, shall be set forth in the Separate Series Agreement of such Series Limited Liability Company.

## ARTICLE 10 INDEMNIFICATION

10.01 *Right to Indemnification.* Subject to the limitations and conditions as provided in this Article 10, each Person who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (hereinafter a "Proceeding"), or any appeal in such a Proceeding or any inquiry or investigation that could lead to such a Proceeding, by reason of the fact that he or she, or a Person of whom he or she is the legal representative, is or was a Member or Manager of the Company shall be indemnified by the Company to the fullest extent permitted by the BOC, as the same exist or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the company to provide broader indemnification rights than said Law permitted the Company to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including attorneys' fees) actually incurred by such Person in connection with such Proceeding, and indemnification under this Article 10 shall continue as to a person who has ceased to serve in the capacity which initially entitled such Person to indemnity hereunder. The rights granted pursuant to this Article 10 shall be deemed contract rights, and no amendment, modification or repeal of this Article 10 shall have the effect limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article 10 could involve indemnification for negligence or under theories of strict liability.

10.02 *Indemnification of Officers, Employees and Agents.* The Company may indemnify and advance expenses to an Officer, employee or agent of the Company to the same extent and subject to the same conditions under which it may indemnify and advance expenses to the Members under this Article 10.

10.03 *Appearance as a Witness.* Notwithstanding any other provision of this Article 10, the Company may pay or reimburse expenses incurred by any of the Members or the Manager in connection with their appearance as a witness or other participation in a Proceeding at a time when it is not a named defendant or respondent in the Proceeding.

10.04 *Nonexclusivity of Rights.* The right to indemnification and the advancement and payment of expenses conferred in this Article 10 shall not be exclusive of any other right which the Manager, Members or other Person indemnified pursuant to Section 10.02 may have or



hereafter acquire under any Law, provision of the Certificate or this Agreement, or vote of Members.

10.05 *Insurance.* The Company may purchase and maintain insurance, at its expense, to protect itself and any Person who is or was serving as one of the Members, Manager, Officer, employee or agent of the Company or is or was serving at the request of the Company as a member, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic limited liability company, Company, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such Person against such expense, liability or loss under this Article 10.

## ARTICLE 11 TAXES

11.01 *Tax Returns.* The Company shall prepare and timely file all federal, state and local tax returns required to be filed by the Company. Each Member shall furnish to the Company all pertinent information in its possession relating to the Company's operations that is necessary to enable the Company's tax returns to be timely prepared and filed. The Company shall deliver a copy of each such return to the Members on or before ten (10) business days prior to the due date of any such return, together with such additional information as may be required by the Members in order for the Members to file their individual returns reflecting the Company's operations. The Company shall bear the costs of the preparation and filing of its returns.

11.02 *Tax Elections.* The Company shall make the following elections on the appropriate tax returns:

- (a) to adopt the calendar year as the Company's fiscal year;
- (b) to adopt the accrual method of accounting and to keep the Company's books and records on the income-tax method;
- (c) if a distribution of the Company's property as described in Code Section 734 occurs or upon a transfer of Membership Rights as described in Code Section 743 occurs, on request by notice from any Member, to elect, pursuant to Code Section 754, to adjust the basis of Company's properties;
- (d) to elect to amortize the organizational expenses of the Company ratably over a period of 60 months as permitted by Section 709(b) of the Code; and
- (e) any other election the Members may deem appropriate and in the best interests of the Members.

Neither the Company nor the Members or any other Member may make an election for the Company to be excluded from the application of the provisions of subchapter K of chapter 1 of subtitle A of the Code or any similar provisions of applicable state law and no provision of this Agreement shall be construed to sanction or approve such an election.

11.03 *Tax Matters Member.*

- (a) The Manager shall serve as the “tax matters member” (hereinafter referred to as the “Tax Matters Member”) of the Company pursuant to Section 6231(a)(7) of the Code. The Tax Matters Member shall take such action as may be necessary to cause to the extent possible each other Member to become a “notice partner” within the meaning of Section 6223 of the Code. The Tax matters Member shall inform each other Member of all significant matters that may come to its attention in its capacity as Tax Matters Member by giving notice thereof on or before the fifth Business Day after becoming aware thereof and, within that time, shall forward to each other Member copies of all significant written communications it may receive in that capacity.
- (b) The Tax Matters Member shall take no action without the authorization of the Members, other than such action as may be required by Law. Any cost or expense incurred by the Tax Matters Member in connection with its duties, including the preparation for or pursuance of administrative or judicial proceedings, shall be paid by the Company.
- (c) The Tax Matters Member shall not enter into any extension of the period of limitations for making assessments on behalf of the Members without first obtaining the consent of the Members. The Tax Matters Member shall not bind any Member to a settlement agreement without obtaining the consent of such members. Any Member that enters into a settlement agreement with respect to any Company item (within the meaning of Code Section 6231(a)(3)) shall notify the other Members of such settlement agreement and its terms within 90 Days from the date of the settlement.
- (d) No Member shall file a request pursuant to Code Section 6227 for an administrative adjustment of Company items for any taxable year without first notifying the other Members. If the other Members consent to the requested adjustment, the Tax Matters Member shall file the request for the administrative adjustment on behalf of the Members. If such consent is not obtained within 30 Days from such notice, or within the period required to timely file the request for administrative adjustment, if shorter, any Member, including the Tax Matters Member, may file a request for administrative adjustment on its own behalf. Any Member intending to file petition under Code Sections 6226, 6228 or other Code Section with respect to any item involving the Company shall notify the other Members of such intention and the nature of the contemplated proceeding. In the



case where the Tax Matters Member is the Member intending to file such petition on behalf of the Company, such notice shall be given within a reasonable period of time to allow the other Members to participate in the choosing of the forum in which such petition will be filed.

- (e) If any Member intends to file a notice of inconsistent treatment under Code Section 6222(b), such Member shall give reasonable notice under the circumstances to the other Members of such intent and the manner in which the Members' intended treatment of an item is (or may be) inconsistent with the treatment of that item by the other Members.

11.04 *Series Limited Liability Companies.* The Series Manager of each Series Limited Liability Company established by the Company under the terms of this Agreement shall administer the tax compliance and return programs of the Series Limited Company.

## ARTICLE 12 BOOKS, RECORDS, REPORTS, AND BANK ACCOUNTS

12.01 *Maintenance of Books.* The Manager shall keep or cause to be kept at the principal office of the Company complete and accurate books and records of the Company, supporting documentation of the transactions with respect to the conduct of the Company's business and minutes of the proceedings of its Members. The records shall include, but not be limited to, complete and accurate information regarding the state of the business and financial condition of the Company; a copy of the Articles and this Agreement and all amendments thereto; a current list of the names and last known business, residence, or mailing addresses of all Members; each Member's Interest; and the Company's federal, state, and local tax returns.

12.02 *Accounts.* The Manager shall establish one or more separate bank and investment accounts for the Company, which shall be maintained in the Company's name with financial institutions and firms that the Manager determines. The Manager may not commingle the Company's funds with the funds of any Member; provided, however, that the Company funds may be invested in a manner the same as or similar to any Member's investment of its own funds.

12.03 *Series Limited Liability Companies.* The Series Manager of each Series Limited Liability Company shall be responsible for the creation and maintenance of books of account for such Series Limited Liability Company that shall be limited to the transactions of the Series Limited Liability Company.

## ARTICLE 13 ARBITRATION

13.01 *Submission of Disputes to Arbitration.*

- (a) This Article 13 shall apply to any of the following types of disputes (each a "Dispute"):



- (i) any dispute as to any accounting or tax issue under this Agreement; or
- (ii) except for disputes described in the foregoing paragraph (A) any dispute regarding the construction, interpretation, performance, validity or enforceability of any provision of the Certificate or this Agreement, or whether any Person is in compliance with, or breach of, any provisions of the Articles or this Agreement, or (B) any other dispute of a legal nature arising under the Certificate or this Agreement, it being intended that this Section 13.01(a)(ii) shall not include any disputes of a purely business nature, such as disputes as to business strategy.

With respect to a particular Dispute, each Person that is a party to such Dispute (whether a Member or other Person) is referred to herein as a "Disputing Party."

- (b) If the disputing Parties are unable to resolve a dispute within a reasonable period of time after the commencement of the Dispute, any Disputing Party may submit such Dispute to binding arbitration under this Article 13 by notifying the other Disputing Parties (an "Arbitration Notice"). Arbitration pursuant to this Article 13 shall be the exclusive method of resolving Disputes other than through agreement of the Disputing Parties.

**13.02 *Conduct of Arbitration.*** Any arbitration conducted hereunder shall be conducted before a sole arbitrator selected by the agreement of the Disputing Parties. Absent such agreement, the Arbitrator shall be designated by the American Arbitration Association. The Arbitrator shall expeditiously (and, if possible, within 60 Days after the Arbitrator's selection) hear and decide all matters concerning the Dispute. Any arbitration hearing shall be held in the City of Houston, Texas. The Arbitration shall be conducted in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association (excluding rules governing the payment of arbitration, administrative or other fees or expenses to the Arbitrator or such Association), to the extent that such Rules do not conflict with the terms of this Agreement. Except as expressly provided to the contrary in this Agreement, the Arbitrator shall have the power (a) to gather such materials, information, testimony and evidence as it deems relevant to the dispute before it (and each Member will provide such materials, information, testimony and evidence requested by the Arbitrator, except to the extent any information so requested is proprietary, subject to a third-party confidentiality restriction or to an attorney-client or other privilege) and (b) to grant injunctive relief and enforce specific performance. The responsibility for paying the costs and expenses of the arbitration, including compensation to the Arbitrator, shall be allocated among the Disputing Parties in a manner determined by the Arbitrator to be fair and reasonable under the circumstances. Each Disputing Party shall be responsible for the fees and expenses of its respective counsel, consultants and witnesses, unless the Arbitrator determines that compelling reasons exist for allocating all or a portion of such costs and expenses to one or more other Disputing Parties.

**ARTICLE 14**  
**DISSOLUTION, WINDING-UP AND TERMINATION**

**14.01 Dissolution.**

- (a) Subject to Section 14.01(b), the Company shall dissolve and its affairs shall be wound up on the first to occur of the following events (each a "Dissolution Event"):
  - (i) the expiration of the period fixed for the duration of the Company in the Certificate;
  - (ii) the death, Expulsion, Withdrawal, dissolution or Bankruptcy of any Member, or the occurrence of any other event that terminates the continued membership of any Member in the Company;
  - (iii) entry of a decree of judicial dissolution of the Company; and
  - (iv) the affirmative vote of a Majority in Interest of the Members.
- (b) If a Dissolution Event described in subparagraphs (i), (ii) or (iv) of Section 14.01(a) shall occur and there shall be at least one other Member remaining, the Company shall not be dissolved, and the business of the Company shall be continued, if a Majority in Interest (calculated without reference to any Member with respect to whom a Dissolution Event described in subparagraph (iii) has occurred) so agree within 90 Days of the occurrence of such Dissolution Event (such agreement is referred to herein as a "Continuation Election").

**14.02 Winding-Up and Termination.** On the occurrence of a Dissolution Event, unless a Continuation Election is made, the Manager shall act as liquidator, or in the absence of a Manager, the Members may appoint one or more Members as liquidator; provided, however that (i) no Member with respect to whom a Dissolution Event described in subparagraph (iii) of Section 14.01(a) has occurred shall serve as a liquidator, either in its capacity as a Member. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act. The costs of winding up shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of all of the Members. The steps to be accomplished by the liquidator are as follows:

- (a) as promptly as possible after dissolution and again after final winding up, the liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities, and operations through the last calendar day of the month in which the dissolution occurs or the final winding up is completed, as applicable;



- (b) the liquidator shall cause notice to be mailed to each known creditor of and claimant against the Company;
- (c) the liquidator shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company or otherwise make adequate provision for payment and discharge thereof (including the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine); and
- (d) all remaining assets of the Company shall be distributed to the Members as follows:
  - (i) the liquidator may sell any or all Company property, including to Members, and any resulting gain or loss from each sale shall be computed and allocated to the Capital Accounts of the Members in accordance with the provisions of Article 7;
  - (ii) with respect to all Company property that has not been sold the fair market value of that property shall be determined and the Capital Accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the Capital Accounts previously would be allocated among the Members if there were a taxable disposition of that property for the fair market value of that property on the date of distribution; and
  - (iii) Company property, including the proceeds of accounts receivable, shall be distributed among the Members in accordance with their respective Liquidation Sharing Ratios (as defined below) and those distributions shall be made by the end of the taxable year of the Company during which the liquidation of the Company occurs (or, if later, 90 Days after the date of the liquidation).

All distributions in kind to the Members shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed prior to the date of termination and those costs, expenses, and liabilities shall be allocated to the distributee pursuant to this Section 14.02. The distribution of cash and/or property to a Member in accordance with the provisions of this Section 14.02 constitutes a complete return to the Member of its Capital Contributions and a complete distribution to the Member of its Membership Rights and all the Company's property and constitutes a compromise to which all Members have consented. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.



14.03 *Deficit Capital Accounts.* No Member will be required to pay to the Company, to any other Member or to any third party any deficit balance which may exist from time to time in the Member's Capital Account.

14.04 *Articles of Dissolution.* On completion of the distribution of Company assets as provided herein, the Members (or such other Person or Persons as the BOC may require or permit) shall file Articles of Dissolution with the Secretary of State of Texas, cancel any other filings made pursuant to Section 2.05, and take such other actions as may be necessary to terminate the existence of the Company. Upon the issuance of a certificate of dissolution by the Secretary of State of Texas, the existence of the Company shall cease, except as may be otherwise provided by the BOC or other applicable Law.

## ARTICLE 15 GENERAL PROVISIONS

15.01 *Offset.* Whenever the Company is to pay any sum to any Member, any amounts that Member owes the Company may be deducted from that sum before payment.

15.02 *Notices.* Except as expressly set forth to the contrary in this Agreement; all notices, requests or consents provided for or permitted to be given hereunder must be in writing and must be delivered to the recipient in person, by courier or mail or by facsimile, telegram, telex, cablegram or similar transmission; and a notice, request or consent given under this Agreement is effective on receipt by the Person to receive it. Whenever any notice is required to be given by Law, the Certificate or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

15.03 *Entire Agreement; Supersedure.* This Agreement constitutes the entire agreement of the Members and their Affiliates relating to the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

15.04 *Effect of Waiver or Consent.* A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

15.05 *Amendment or Restatement.* This Agreement shall be amended or restated only by a written instrument adopted and executed by the Members.

15.06 *Binding Effect.* Subject to the restrictions on Dispositions set forth in this Agreement, this Agreement is binding on and shall inure to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns.

15.07 *Governing Law; Severability.* THIS AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION.

15.08 *Further Assurances.* In connection with this Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

15.09 *Indemnification.* To the fullest extent permitted by Law, each Member shall indemnify the Company and each other Member and hold them harmless from and against all losses, costs, liabilities, damages, and expenses (including costs of suit and attorney's fees) they may incur on account of any breach by that Member of this Agreement.

15.10 *Counterparts.* This Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

*[Signature Pages to Follow]*

IN WITNESS WHEREOF, the undersigned Members of NHS EMERGENCY CENTERS, LLC has executed the Operating Agreement, intending thereby to be bound in all respects by its terms, as of the effective date first set forth above.

NEIGHBORS HEALTH SYSTEM, INC., Sole Member

By: \_\_\_\_\_  
Setul Patel, President



**FIRST AMENDMENT TO OPERATING AGREEMENT  
OF  
NHS EMERGENCY CENTERS, LLC**

THIS FIRST AMENDMENT TO OPERATING AGREEMENT OF NHS EMERGENCY CENTERS, LLC (this "Amendment"), executed on July 6, 2015 and dated to be effective as of January 1, 2014, is adopted, executed and agreed to, for good and valuable consideration, by the sole Member of NHS Emergency Centers, LLC, a Texas series limited liability company (the "Company").

**Recitals:**

WHEREAS, the sole Member previously entered into one certain Operating Agreement, dated to be effective as of January 1, 2014 (the "Agreement");

WHEREAS, the sole Member desires to amend Article 3 of the Agreement;

NOW THEREFORE, in consideration of the sole Member's obligations and undertakings hereunder and under the terms of the Agreement, and other good and valuable consideration, the receipt and sufficiency of which is duly acknowledged, the sole Member agrees as follows:

**1. Amendment to Article 3 of the Agreement**

The sole Member hereby agrees that Article 3 of the Agreement is hereby deleted in its entirety and amended and restated to read as follows:

3.01 *Representations and Warranties.* Each of the Members, and each of the Series Members who become parties hereto and to the Separate Series Agreements, hereby represent and warrant to the Company as follows:

- (a) that Member has duly executed and delivered this Agreement, and it constitutes the legal, valid and binding obligation of that Member enforceable against it in accordance with its terms (except as may be limited by bankruptcy, insolvency or similar laws of general application and by the effect of general principles of equity that permit the exercise of judicial discretion, regardless of whether considered at law or in equity, and except that any indemnification provisions may be limited by applicable securities laws and public policy);
- (b) that Member's authorization, execution, delivery, and performance of this Agreement do not and will not (i) conflict with, or result in a breach, default or violation of, (A) any contract or agreement to which that Member is a party or is otherwise subject, or (B) any Law, order, judgment, decree, writ, injunction or arbitral award to which that Member is subject; or (ii) require any consent, approval or authorization from,

filing or registration with, or notice to, any governmental authority or other Person, unless such requirement has already been satisfied;

- (c) that Member is acquiring his or her Membership Rights for investment, solely for the Member's own beneficial account and not with a view to or any present intention or directly or indirectly selling, transferring, offering to sell or transfer, participating in any distribution or otherwise Disposing of all or a portion of its Membership Rights; and such Member acknowledges that the Membership Rights have not been registered under the Securities Act or any other applicable federal or state securities laws, and that the Company has no intention, and shall not have any obligation, to register or to obtain an exemption from registration for the Membership Rights or to take action so as to permit sales pursuant to the Securities Act (including Rules 144 and 144A thereunder).
- (d) that, with regard to each Member that is a partnership, corporation, limited liability company, trust or other form of entity (an "Entity Member") the execution and delivery of this Agreement by the Entity Member's undersigned representative has been duly authorized by all necessary corporate action.

3.02 ***Creation of Additional Membership Rights.*** Additional Membership Rights may be created and issued to existing Members or to other Persons, and such other Persons may be admitted to the Company as Members, at the direction of the Members, on such terms and conditions as the Members may determine at the time of admission. The terms of admission or issuance must specify the Sharing Ratios applicable thereto and may provide for the creation of different classes or groups of members and having different rights, powers, and duties. The Members may reflect the creation of any new class or group in an amendment to this Agreement indicating the different rights, powers, and duties, and such amendment need be executed only by the Members. Any such admission is effective only after the new Member has executed and delivered to the Members an instrument containing the notice address of the new Member, the Assignee's ratification of this Agreement and agreement to be bound by it, and its confirmation that the representations and warranties in Section 3.01 are true and correct with respect to it.

3.03 ***Creation of Additional Series.*** As set forth in Section 2.08 of this Agreement and the terms of the Texas Business Organizations Code, the Manager of the Company shall have the right to create additional Series of membership and to establish the rights, obligations, terms of membership, designations and Series Property of each such Series of membership interests and to designate one or more Series Managers for such Series.

3.04 ***Withdrawal.*** A Member does not have the right to Withdraw; provided, however, a Member shall have the power to withdraw at any time in violation of this Agreement. If a Member exercises such power in violation of this Agreement, such Withdrawing Member shall be liable to the Company and the other Members for all monetary damages suffered by them as a result of such Withdrawal. In no event shall the Company or any Member have the right,



through specific performance or otherwise, to prevent a Member from Withdrawing in violation of this Agreement.

3.05 *Information.*

- (a) In addition to the other rights specifically set forth in this Agreement, each Member and each Assignee is entitled to all information to which that Member or Assignee is entitled to have access pursuant to the BOC, under the circumstances and subject to the conditions therein stated. The Members (on behalf of themselves and their Assignees) agree, however, that the Members may determine, due to contractual obligations, business concerns, or other considerations, that certain information regarding the business, affairs, properties, and financial condition of the Company should be kept confidential and not provided to some or all other Members or Assignees, and that it is not just or reasonable for those Members or Assignees (or representatives thereof) to examine or copy that information. An Assignee shall not have any of the rights to require information or account of transactions of the Company or to make inspection of the books and records of the Company, except to the extent such rights are also conferred on Assignees pursuant to the BOC.
  
- (b) The Members (on behalf of themselves and their Assignees) acknowledge that they may receive information from or regarding the Company in the nature of trade secrets or that otherwise is confidential, the release of which may be damaging to the Company or Persons with which it does business. Each Member and Assignee shall hold in strict confidence any information it receives regarding the Company that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any Person other than another Member, except for disclosures (i) compelled by Law (but the Member or Assignee must notify the Members promptly of any request for that information, before disclosing it if practicable), (ii) to advisers or representatives of the Member or Assignee, but only if the recipients have agreed to be bound by the provisions of this Section 3.05(b), or (iii) of information that a Member or Assignee also has received from a source independent of the Company that the Member or Assignee reasonably believes obtained that information without breach of any obligation of confidentiality. The Members (on behalf of themselves and their Assignees) agree that breach of the provisions of this Section 3.05(b) may cause irreparable injury to the Company for which monetary damages (or other remedy at law) are inadequate in view of (i) the complexities and uncertainties in measuring the actual damages that would be sustained by reason of the failure of a Member or Assignee to comply with such provisions, (ii) the uniqueness of the Company business and the confidential nature of the information described in this Section 3.05(b). Accordingly, the Members (on behalf of



themselves and their Assignees) agree that the provisions of this Section 3.05(b) may be enforced by specific performance.

- (c) Each Member shall reimburse the Company for all costs and expenses incurred by the Company in connection with the Member's inspection and copying of the Company's books and records.

3.06 *Liability to Third Parties.* No Member shall be liable for the debts, obligations or liabilities of the Company, including under a judgment decree or order of a court.

3.07 *Spouses of Members.* Spouses of the Members do not become Members as a result of such marital relationship.

3.08(a) The Company is authorized to issue up to 100 shares of Membership Interests (the "Company Interests").

- (b) Additionally, pursuant to the Company's Certificate of Formation, the provisions of the Texas Business Organizations Code and the other provisions of this Agreement, the Company hereby establishes the following Series Membership Interests and series companies, each of which shall issue such Series Membership Interests as shall be authorized in their respective series operating agreements (each a "Separate Series Agreement"):

3.09 *Series 100-Bellaire.* The Company hereby creates a separate Series of membership interests to be designated as "Series 100-Bellaire." The Separate Series Agreement of Series 100-Bellaire is attached to this Agreement as Schedule 3.09. The Series Members, Series Manager, Series Property and business purpose of series 100-Bellaire are set forth in the Separate Series Agreement.

3.10 *Series 101-Kingwood.* The Company hereby creates a separate Series of membership interests to be designated as "Series 101-Kingwood." The Separate Series Agreement of Series 101-Kingwood is attached to this Agreement as Schedule 3.10. The Series Members, Series Manager, Series Property and business purpose of Series 101-Kingwood are set forth in the Separate Series Agreement.

3.11 *Series 101.1-Kingwood Asset Holdings.* The Company hereby creates a separate Series of membership interests to be designated as "Series 101.1-Kingwood Asset Holdings." The Separate Series Agreement of Series 101.1-Kingwood Asset Holdings is attached to this Agreement as Schedule 3.11. The Series Members, Series Manager, Series Property and business purpose of Series 101.1-Kingwood Asset Holdings are set forth in the Separate Series Agreement.

3.12 *Series 102-Baytown.* The Company hereby creates a separate Series of membership interests to be designated as "Series 102-Baytown." The Separate Series Agreement of Series 102-Baytown is attached to this Agreement as Schedule 3.12. The Series

Members, Series Manager, Series Property and business purpose of Series 102-Baytown are set forth in the Separate Series Agreement.

3.13 Series 102.1-Baytown Asset Holdings. The Company hereby creates a separate Series of membership interests to be designated as "Series 102.1-Baytown Asset Holdings." The Separate Series Agreement of Series 102.1-Baytown Asset Holdings is attached to this Agreement as Schedule 3.13. The Series Members, Series Manager, Series Property and business purpose of Series 102.1-Baytown Asset Holdings are set forth in the Separate Series Agreement.

3.14 Series 103-Pasadena. The Company hereby creates a separate Series of membership interests to be designated as "Series 103-Pasadena." The Separate Series Agreement of Series 103-Pasadena is attached to this Agreement as Schedule 3.14. The Series Members, Series Manager, Series Property and business purpose of Series 103-Pasadena are set forth in the Separate Series Agreement.

3.15 Series 104-Pearland. The Company hereby creates a separate Series of membership interests to be designated as "Series 104-Pearland." The Separate Series Agreement of Series 104-Pearland is attached to this Agreement as Schedule 3.15. The Series Members, Series Manager, Series Property and business purpose of Series 104-Pearland are set forth in the Separate Series Agreement.

3.16 Series 104.1-Pearland Asset Holdings. The Company hereby creates a separate Series of membership interests to be designated as "Series 104.1-Pearland Asset Holdings." The Separate Series Agreement of Series 104.1-Pearland Asset Holdings is attached to this Agreement as Schedule 3.16. The Series Members, Series Manager, Series Property and business purpose of Series 104.1-Pearland Asset Holdings are set forth in the Separate Series Agreement.

3.17 Series 105-Mueller. The Company hereby creates a separate Series of membership interests to be designated as "Series 105-Mueller." The Separate Series Agreement of Series 105-Mueller is attached to this Agreement as Schedule 3.17. The Series Members, Series Manager, Series Property and business purpose of Series 105-Mueller are set forth in the Separate Series Agreement.

3.18 Series 106-Beaumont. The Company hereby creates a separate Series of membership interests to be designated as "Series 106-Beaumont." The Separate Series Agreement of Series 106-Beaumont is attached to this Agreement as Schedule 3.18. The Series Members, Series Manager, Series Property and business purpose of Series 106-Beaumont are set forth in the Separate Series Agreement.

3.19 Series 106.1-Beaumont Asset Holdings. The Company hereby creates a separate Series of membership interests to be designated as "Series 106.1-Beaumont Asset Holdings." The Separate Series Agreement of Series 106.1-Beaumont Asset Holdings is attached to this Agreement as Schedule 3.19. The Series Members, Series Manager, Series Property and



business purpose of Series 106.1-Beaumont Asset Holdings are set forth in the Separate Series Agreement.

3.20 Series 107-Lakeline. The Company hereby creates a separate Series of membership interests to be designated as "Series 107-Lakeline." The Separate Series Agreement of Series 107-Lakeline is attached to this Agreement as Schedule 3.20. The Series Members, Series Manager, Series Property and business purpose of Series 107-Lakeline are set forth in the Separate Series Agreement.

3.21 Series 108-Yorktown. The Company hereby creates a separate Series of membership interests to be designated as "Series 108-Yorktown." The Separate Series Agreement of Series 108-Yorktown is attached to this Agreement as Schedule 3.21. The Series Members, Series Manager, Series Property and business purpose of Series 108-Yorktown are set forth in the Separate Series Agreement.

3.22 Series 109-Harlingen. The Company hereby creates a separate Series of membership interests to be designated as "Series 109-Harlingen." The Separate Series Agreement of Series 109-Harlingen is attached to this Agreement as Schedule 3.22. The Series Members, Series Manager, Series Property and business purpose of Series 109-Harlingen are set forth in the Separate Series Agreement.

3.23 Series 109.1-Harlingen Asset Holdings. The Company hereby creates a separate Series of membership interests to be designated as "Series 109.1-Harlingen Asset Holdings." The Separate Series Agreement of Series 109.1-Harlingen Asset Holdings is attached to this Agreement as Schedule 3.23. The Series Members, Series Manager, Series Property and business purpose of Series 109.1-Harlingen Asset Holdings are set forth in the Separate Series Agreement.

3.24 Series 110-Crosby. The Company hereby creates a separate Series of membership interests to be designated as "Series 110-Crosby." The Separate Series Agreement of Series 110-Crosby is attached to this Agreement as Schedule 3.24. The Series Members, Series Manager, Series Property and business purpose of Series 110-Crosby are set forth in the Separate Series Agreement.

3.25 Series 111-Orange. The Company hereby creates a separate Series of membership interests to be designated as "Series 111-Orange." The Separate Series Agreement of Series 111-Orange is attached to this Agreement as Schedule 3.25. The Series Members, Series Manager, Series Property and business purpose of Series 111-Orange are set forth in the Separate Series Agreement.

3.26 Series 112-Midland. The Company hereby creates a separate Series of membership interests to be designated as "Series 112-Midland." The Separate Series Agreement of Series 112-Midland is attached to this Agreement as Schedule 3.26. The Series Members,



Series Manager, Series Property and business purpose of Series 112-Midland are set forth in the Separate Series Agreement.

3.27 Series 113-Odessa. The Company hereby creates a separate Series of membership interests to be designated as "Series 113-Odessa." The Separate Series Agreement of Series 113-Odessa is attached to this Agreement as Schedule 3.27. The Series Members, Series Manager, Series Property and business purpose of Series 113-Odessa are set forth in the Separate Series Agreement.

3.28 Series 114-Eastside. The Company hereby creates a separate Series of membership interests to be designated as "Series 114-Eastside." The Separate Series Agreement of Series 114-Eastside is attached to this Agreement as Schedule 3.28. The Series Members, Series Manager, Series Property and business purpose of Series 114-Eastside are set forth in the Separate Series Agreement.

3.29 Series 115-Zaragoza. The Company hereby creates a separate Series of membership interests to be designated as "Series 115-Zaragoza." The Separate Series Agreement of Series 115-Zaragoza is attached to this Agreement as Schedule 3.29. The Series Members, Series Manager, Series Property and business purpose of Series 115-Zaragoza are set forth in the Separate Series Agreement.

3.30 Series 116-College Station. The Company hereby creates a separate Series of membership interests to be designated as "Series 116-College Station." The Separate Series Agreement of Series 116-College Station is attached to this Agreement as Schedule 3.30. The Series Members, Series Manager, Series Property and business purpose of Series 116-College Station are set forth in the Separate Series Agreement.

3.31 Series 117-Texas City. The Company hereby creates a separate Series of membership interests to be designated as "Series 117-Texas City." The Separate Series Agreement of Series 117-Texas City is attached to this Agreement as Schedule 3.31. The Series Members, Series Manager, Series Property and business purpose of Series 117-Texas City are set forth in the Separate Series Agreement.

3.32 Series 118-Port Arthur. The Company hereby creates a separate Series of membership interests to be designated as "Series 118-Port Arthur." The Separate Series Agreement of Series 118-Port Arthur is attached to this Agreement as Schedule 3.32. The Series Members, Series Manager, Series Property and business purpose of Series 118-Port Arthur are set forth in the Separate Series Agreement.

3.33 Series 119-Tyler. The Company hereby creates a separate Series of membership interests to be designated as "Series 119-Tyler." The Separate Series Agreement of Series 119-Tyler is attached to this Agreement as Schedule 3.33. The Series Members, Series Manager,

Series Property and business purpose of Series 119-Tyler are set forth in the Separate Series Agreement.

3.34 Series 119.1-Tyler Asset Holdings. The Company hereby creates a separate Series of membership interests to be designated as "Series 119.1-Tyler Asset Holdings." The Separate Series Agreement of Series 119.1-Tyler Asset Holdings is attached to this Agreement as Schedule 3.24. The Series Members, Series Manager, Series Property and business purpose of Series 119.1-Tyler Asset Holdings are set forth in the Separate Series Agreement.

3.35 Series 120-Texarkana. The Company hereby creates a separate Series of membership interests to be designated as "Series 120-Texarkana." The Separate Series Agreement of Series 120-Texarkana is attached to this Agreement as Schedule 3.35. The Series Members, Series Manager, Series Property and business purpose of Series 120-Texarkana are set forth in the Separate Series Agreement.

3.36 Series 121-Amarillo. The Company hereby creates a separate Series of membership interests to be designated as "Series 121-Amarillo." The Separate Series Agreement of Series 121-Amarillo is attached to this Agreement as Schedule 3.36. The Series Members, Series Manager, Series Property and business purpose of Series 121-Amarillo are set forth in the Separate Series Agreement.

3.37 Series 122-Brownsville. The Company hereby creates a separate Series of membership interests to be designated as "Series 122-Brownsville." The Separate Series Agreement of Series 122-Brownsville is attached to this Agreement as Schedule 3.37. The Series Members, Series Manager, Series Property and business purpose of Series 122-Brownsville are set forth in the Separate Series Agreement.

3.38 Series 123-McAllen. The Company hereby creates a separate Series of membership interests to be designated as "Series 123-McAllen." The Separate Series Agreement of Series 123-McAllen is attached to this Agreement as Schedule 3.38. The Series Members, Series Manager, Series Property and business purpose of Series 123-McAllen are set forth in the Separate Series Agreement.

3.39 Series 124-Porter. The Company hereby creates a separate Series of membership interests to be designated as "Series 124-Porter." The Separate Series Agreement of Series 124-Porter is attached to this Agreement as Schedule 3.39. The Series Members, Series Manager, Series Property and business purpose of Series 124-Porter are set forth in the Separate Series Agreement.

**2. Construction**

All references to "this Agreement," "herein," "hereof" and all similar internal references contained in the Agreement hereafter shall be construed and shall operate to mean the Agreement as amended by this Amendment.

**3. Survival**

Except as amended under the terms of this Amendment, all provisions, terms and conditions of the Agreement shall remain in full force and effect as originally written.

*[Signature page to follow]*



IN WITNESS WHEREOF, the undersigned sole Member of NHS EMERGENCY CENTERS, LLC has executed the Amendment, intending thereby to be bound in all respects by its terms, as of the effective date first set forth above.

**NEIGHBORS HEALTH SYSTEM, INC., Sole Member**

By: \_\_\_\_\_  
**Setul Patel, President and Chief Executive Officer**

**SECOND AMENDMENT TO OPERATING AGREEMENT  
OF  
NHS EMERGENCY CENTERS, LLC**

THIS SECOND AMENDMENT TO OPERATING AGREEMENT OF NHS EMERGENCY CENTERS, LLC (this "Amendment"), executed on August 11, 2015 and dated to be effective as of January 1, 2014, is adopted, executed and agreed to, for good and valuable consideration, by the sole Member of NHS Emergency Centers, LLC, a Texas series limited liability company (the "Company").

**Recitals:**

WHEREAS, the sole Member previously entered into one certain Operating Agreement, dated to be effective as of January 1, 2014, as amended by that certain First Amendment to Operating Agreement, dated July 6, 2015 (the "Agreement");

WHEREAS, the sole Member desires to amend Article 3 of the Agreement;

NOW THEREFORE, in consideration of the sole Member's obligations and undertakings hereunder and under the terms of the Agreement, and other good and valuable consideration, the receipt and sufficiency of which is duly acknowledged, the sole Member agrees as follows:

**1. Amendment to Article 3 of the Agreement**

The sole Member hereby agrees that Article 3 of the Agreement is hereby amended to insert the following provisions:

3.40 Series 125-Longview. The Company hereby creates a separate Series of membership interests to be designated as "Series 125-Longview." The Separate Series Agreement of Series 125-Longview is attached to this Agreement as Schedule 3.40. The Series Members, Series Manager, Series Property and business purpose of Series 125-Longview are set forth in the Separate Series Agreement.

3.41 Series 126-Pharr. The Company hereby creates a separate Series of membership interests to be designated as "Series 126-Pharr." The Separate Series Agreement of Series 126-Pharr is attached to this Agreement as Schedule 3.41. The Series Members, Series Manager, Series Property and business purpose of Series 126-Pharr are set forth in the Separate Series Agreement.

3.42 Series 127-San Angelo. The Company hereby creates a separate Series of membership interests to be designated as "Series 127-San Angelo." The Separate Series Agreement of Series 127-San Angelo is attached to this Agreement as Schedule 3.42. The Series

Members, Series Manager, Series Property and business purpose of Series 127-San Angelo are set forth in the Separate Series Agreement.

3.43 Series 128-Wichita Falls. The Company hereby creates a separate Series of membership interests to be designated as "Series 128-Wichita Falls." The Separate Series Agreement of Series 128-Wichita Falls is attached to this Agreement as Schedule 3.43. The Series Members, Series Manager, Series Property and business purpose of Series 128-Wichita Falls are set forth in the Separate Series Agreement.

3.44 Series 129-Pueblo. The Company hereby creates a separate Series of membership interests to be designated as "Series 129-Pueblo." The Separate Series Agreement of Series 129-Pueblo is attached to this Agreement as Schedule 3.44. The Series Members, Series Manager, Series Property and business purpose of Series 129-Pueblo are set forth in the Separate Series Agreement.

3.45 Series 130-Wheat Ridge. The Company hereby creates a separate Series of membership interests to be designated as "Series 130-Wheat Ridge." The Separate Series Agreement of Series 130-Wheat Ridge is attached to this Agreement as Schedule 3.45. The Series Members, Series Manager, Series Property and business purpose of Series 130-Wheat Ridge are set forth in the Separate Series Agreement.

3.46 Series 131-Greeley. The Company hereby creates a separate Series of membership interests to be designated as "Series 131-Greeley." The Separate Series Agreement of Series 131-Greeley is attached to this Agreement as Schedule 3.46. The Series Members, Series Manager, Series Property and business purpose of Series 131-Greeley are set forth in the Separate Series Agreement.

3.47 Series 132-West Warwick. The Company hereby creates a separate Series of membership interests to be designated as "Series 132-West Warwick." The Separate Series Agreement of Series 132-West Warwick is attached to this Agreement as Schedule 3.47. The Series Members, Series Manager, Series Property and business purpose of Series 132-West Warwick are set forth in the Separate Series Agreement.

## **2. Construction**

All references to "this Agreement," "herein," "hereof" and all similar internal references contained in the Agreement hereafter shall be construed and shall operate to mean the Agreement as amended by this Amendment.

## **3. Survival**

Except as amended under the terms of this Amendment, all provisions, terms and conditions of the Agreement shall remain in full force and effect as originally written.



IN WITNESS WHEREOF, the undersigned sole Member of NHS EMERGENCY CENTERS, LLC has executed the Amendment, intending thereby to be bound in all respects by its terms, as of the effective date first set forth above.

**NEIGHBORS HEALTH SYSTEM, INC., Sole Member**

By: \_\_\_\_\_  
**Setul Patel, President and Chief Executive Officer**

# Exhibit 7





**CERTIFICATE OF SERVICE**

Pursuant to the Texas Rules of Civil Procedure, I hereby certify that on June 27, 2018, a true and correct copy of the foregoing instrument was served on all counsel of record by electronic service.

Simon W. Hendershot, III  
Christy L. Martin  
Beinjamin L. Hisey  
Raymond L. Panneton  
Hendershot, Cannot, Martin & Hisey, P.C.  
1800 Bering Drive, Suite 600  
Houston, Texas 77057  
[trey@hcmhlaw.com](mailto:trey@hcmhlaw.com)  
[cmartin@hcmhlaw.com](mailto:cmartin@hcmhlaw.com)  
[bhisey@hcmhlaw.com](mailto:bhisey@hcmhlaw.com)  
[rpanneton@hcmhlaw.com](mailto:rpanneton@hcmhlaw.com)

*/s/ Clay M. Steely* \_\_\_\_\_

Clay M. Steely

**DEFENDANTS' SUPPLEMENTAL ANSWERS  
TO PLAINTIFF'S INTERROGATORIES**

**INTERROGATORY NO. 3:**

Describe with specificity how you determined what Series Property of Series 114 Eastside to direct to other Series and/or business interests of NHS Emergency Centers, LLC from January 2014 to present.

**RESPONSE:**

See objections and response to Interrogatory No. 1.

**AMENDED RESPONSE:**

This was a cash management process. At each overhead transfer date, cash at each center was reviewed and centers who didn't have enough cash in the bank to cover that particular day's overhead needs were subsidized on a pro rata basis by all remaining centers who had excess cash on hand. Transfers were made from centers when there were bills that needed to be paid, not on any regular schedule. Also, no center directly subsidizes another center. It flowed to and from EDMG. Furthermore, there is no approval before the transfers are made. The process is in place and is followed by the accountant responsible for making cash transfers. This process was explained to all the series investors before. For example, a Financial Update was presented at the February 2017 Investors' Conference which gives a good explanation starting with the section on Intracompany Advances, and in particular on the slide entitled Intracompany Flow of Cash (Neighbors\_Infinity 004774).

**INTERROGATORY NO. 4:**

Describe with specificity how you determined what Series Property of Series 115 Zaragoza to direct to other Series and/or business interests of NHS Emergency Centers, LLC from January 2014 to present.

**RESPONSE:**

See objections and response to Interrogatory No. 1.

**AMENDED RESPONSE:**

This was a cash management process. At each overhead transfer date, cash at each center was reviewed and centers who didn't have enough cash in the bank to cover that particular day's overhead needs were subsidized on a pro rata basis by all remaining centers who had excess cash on hand. Transfers were made from centers when there were bills that needed to be paid, not on any regular schedule. Also, no center directly subsidizes another center. It flowed to and from EDMG. Furthermore, there is no approval before the transfers are made. The process is in place and is followed by the accountant responsible for making cash transfers. This process was explained to all the series investors before. For example, a Financial Update was presented at the

February 2017 Investors' Conference which gives a good explanation starting with the section on Intracompany Advances, and in particular on the slide entitled Intracompany Flow of Cash (Neighbors\_Infinity 004774).

**INTERROGATORY NO. 5:**

Describe with specificity how you determined what revenue of NEC Eastside Emergency Center, LP to direct to other Series and/or business interests of NHS Emergency Centers, LLC from January 2014 to present.

**RESPONSE:**

See objections and response to Interrogatory No. 1.

**AMENDED RESPONSE:**

This was a cash management process. At each overhead transfer date, cash at each center was reviewed and centers who didn't have enough cash in the bank to cover that particular day's overhead needs were subsidized on a pro rata basis by all remaining centers who had excess cash on hand. Transfers were made from centers when there were bills that needed to be paid, not on any regular schedule. Also, no center directly subsidizes another center. It flowed to and from EDMG. Furthermore, there is no approval before the transfers are made. The process is in place and is followed by the accountant responsible for making cash transfers. This process was explained to all the series investors before. For example, a Financial Update was presented at the February 2017 Investors' Conference which gives a good explanation starting with the section on Intracompany Advances, and in particular on the slide entitled Intracompany Flow of Cash (Neighbors\_Infinity 004774).

**INTERROGATORY NO. 6:**

Describe with specificity how you determined what revenue of NEC Zaragoza Emergency Center, LP to direct to other Series and/or business interests of NHS Emergency Centers, LLC from January 2014 to present.

**RESPONSE:**

See objections and response to Interrogatory No. 1.

**AMENDED RESPONSE:**

This was a cash management process. At each overhead transfer date, cash at each center was reviewed and centers who didn't have enough cash in the bank to cover that particular day's overhead needs were subsidized on a pro rata basis by all remaining centers who had excess cash on hand. Transfers were made from centers when there



were bills that needed to be paid, not on any regular schedule. Also, no center directly subsidizes another center. It flowed to and from EDMG. Furthermore, there is no approval before the transfers are made. The process is in place and is followed by the accountant responsible for making cash transfers. This process was explained to all the series investors before. For example, a Financial Update was presented at the February 2017 Investors' Conference which gives a good explanation starting with the section on Intracompany Advances, and in particular on the slide entitled Intracompany Flow of Cash (Neighbors\_Infinity 004774).



# Exhibit 8



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From: Jermaine <jb@unyglobe.com>  
Sent: Monday, June 5, 2017 9:15 AM  
To: Kellie Keeling  
Cc: Setul G. Patel; Thomas Gruenert; Francine Elliot; Cynthia Mathew  
Subject: RE: Infinity Emergency Management Group, LLC

Good Morning Thomas,

Thank you for the memo explaining the corporate structure and your analysis as to why the corporate structure permits NH the discretion to allocate the operating revenue from one center in order to support other centers, inter-company advances. However, after reviewing the provided documents, I was still unable to locate language that specifically authorizes the use of center's funds in order to support other centers, inter-company advances. As a matter of fact, the referenced section 2.D. Cash Management, Banking and Treasury, of the Management and Administrative Services Agreement states "... Manager, as agent of the Company... has the right to make deposits and withdrawals from any such bank account in connection with the operations of the Company. Manager will not have the authority to borrow money or execute any promissory notes on Company's behalf without the consent of the Company". And said Company is specifically and solely defined as the center, Series 114- Eastside. So this actually leaves me to believe that all funds must remain within the Series and should not have been used outside of the Series without consent. However, I may have missed the exact section(s), in the documents, that specifically authorizes NH, so if you could please provide the exact section(s), in these attached documents, I would appreciate it.

Looking forward to your response.

Thanks,  
Jermaine

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----- Original Message -----

Subject: Re: Infinity Emergency Management Group, LLC  
From: "Thomas Gruenert" <TGruenert@neighborshealth.com>  
Date: 6/6/17 1:57 pm  
To: "Jermaine" <jb@unyglobe.com>, "Kellie Keeling" <kkeeling@neighborshealth.com>  
Cc: "Setul G. Patel" <spatel@neighborshealth.com>, "Francine Elliot" <felliott@neighborshealth.com>, "Cynthia Mathew" <cmathew@neighborshealth.com>

Jermaine,

As you have seen, the issue of inter-company advances is not specifically addressed in the Series Agreement.

Neighbors Health, as Series Manager and under the express authority granted under the Series Agreement, manages the cash revenue of all of the emergency centers. Series 114-Eastside has either borrowed money or executed a promissory note simply based on the fact that some of the Manager's revenue management activities include short term advances for the benefit of newer centers. The Manager's discretion to manage the cash revenue is not restricted in any way.

We hope to engage all of the investor physicians as early as the next sixty days in a deeper conversation about consolidating the various series interests into a single parent company. As part of that consolidation, the short term advances will be credited as assets of the series generating same, and so the value of a series that has made short term advances will be greater than the value of a similarly situated series that has received advances that are still outstanding. TGG

Thomas Gruenert, J.D.

General Counsel

address 10800 Richmond Ave. Houston, TX 77042

office 713.436.5200 | fax 713.436.5210

cell 713.253.3036 | [NEC24.COM](http://NEC24.COM)

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----- Original Message -----

Subject: RE: Re: Infinity Emergency Management Group, LLC

From: "Jermaine" <jb@unyglobe.com>

Date: 6/12/17 2:53 pm

To: "Thomas Gruenert" <TGruenert@neighborshealth.com>, "Kellie Keeling" <kkeeling@neighborshealth.com>

Cc: "Setul G. Patel" <spatel@neighborshealth.com>, "Francine Elliot" <felliott@neighborshealth.com>, "Cynthia Mathew" <cmathew@neighborshealth.com>

Hi Thomas,

Thank you for the response.

Jermaine

---

----- Original Message -----

Subject: NEC/Infinity Emergency Medicine Group partnership- El Paso resolutions

From: "Jermaine" <jb@unyglobe.com>

Date: 7/12/17 10:58 am

To: "Setul G. Patel" <spatel@neighborshealth.com>

Hi Setul,

I understand the past year has probably been a difficult one and I'm sure you have had to deal with quite a bit over the last several months trying to manage the market changes and all the individual personalities that makes Neighbors tick. I wanted to commend you on how you have been dealing with it all. It isn't easy and requires strength and perseverance, of which, I believe you have both. So, keep up the good work.

On another note, I am fully aware of the rumors that some disgruntled investors are passing along out there, of their recent discontent with various aspects of the business. But I wanted to reach out to you personally and share just my group's thoughts on the issue surrounding the money that was borrowed from the El Paso