STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

UNFAIR PRACTICE CHARGE

DO NOT WRITE IN THIS SPACE: Case No: Date Filed:

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES ☐ If so, Case No. NO ☑

1. CHARGING PARTY: EMPLOYEE ☐ EMPLOYEE ORGANIZATION ☑ EMPLOYER ☐ PUBLIC[1] ☐

a. Full name: American Federation of State, county & Municipal Employees, Local 3299

b. Mailing address: 1330 Broadway, Suite 1450
Oakland, CA 94612

c. Telephone number: (510) 272-0169

d. Name and title of person filing charge: Mollie Simons, Attorney
E-mail Address: msimons@leonardcarder.com
Telephone number: (510) 272-0169
Fax No.: (510) 272-0174

e. Bargaining unit(s) involved: Patient Technical Care Unit ("EX Unit")

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION ☐ EMPLOYER ☑

a. Full name: Regents of the University of California

b. Mailing address: 1111 Franklin Street
Oakland, CA 94607

c. Telephone number: (510) 987-9800

d. Name and title of agent to contact: Allison Woodall,
Deputy General Counsel
E-mail Address: allison.woodall@ucop.edu
Telephone number: (510) 987-9800
Fax No.: (510) 987-9757

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:

b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Gov. Code, § 18524.)

a. Full name:

b. Mailing address:

c. Agent:

[1] An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.

5. GRIEVANCE PROCEDURE

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes ☐ No ☑

6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

☐ Educational Employment Relations Act (EERA) (Gov. Code, § 3540 et seq.)

☐ Ralph C. Dills Act (Gov. Code, § 3512 et seq.)

☑ Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, § 3560 et seq.)

☐ Meyers-Milias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.)

☐ Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code, § 99560 et seq.)

☐ Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)

☐ Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)

b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are:

Government Code Section 3571(a), (b) and (c)

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (***a copy of the applicable local rule(s) MUST be attached to the charge***):

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (*Use and attach additional sheets of paper if necessary.*)

Please see the attached.

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on April 23, 2019 (Date)

at Oakland, CA (City and State).

Mollie Simons (Type or Print Name) — Mollie Simons (Signature)

Title, if any: Attorney

Mailing address: Leonard Carder, LLP, 1330 Broadway, Suite 1450, Oakland, CA 94612

Telephone Number: (510) 272-0169 E-Mail Address: msimons@leonardcarder.com

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda, State of California. I am over the age of 18 years. The name and address of my residence or business is Leonard Carder, LLP, 1330 Broadway, Suite 1450, Oakland, CA 94612.

On April 23, 2019 (Date), I served the Unfair Practice Charge (Description of document(s))

(Description of document(s) continued)

on the parties listed below (include name, address and, where applicable, fax number) by (check the applicable method or methods):

X placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;

X personal delivery;

___ facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

(Include here the name, address and, where applicable, fax number of the Respondent and any other parties served.)

Allison Woodall, Deputy General Counsel
UC Regents
Office of the General Counsel
1111 Franklin St., 8th Floor
Oakland, CA 94607

Via U.S. Mail only

UC Davis
Chancellor Gary S. May

Via Hand Delivery Only

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 23, 2019 (Date), at Oakland (City) CA (State).

Carol Edgerton
(Type or print name)

(Signature)

ATTACHMENT TO UNFAIR PRACTICE CHARGE

I. INTRODUCTION

Charging Party, American Federation of State, County, and Municipal Employees, Local 3299 ("AFSCME" or "the Union") brings this charge against Respondent Regents of the University of California ("UC" or "the University") for refusing to bargain, in violation of Government Code § 3571(a), (b) and (c). UC has violated HEERA in three main ways: (1) by refusing to bargain with AFSCME over contracting out union work, (2) by unilaterally changing the terms and conditions of employment by contracting out middle class union-represented jobs into private sector non-union jobs, and (3) by interfering with employee rights.

UC has violated its duty to bargain in good faith with AFSCME by refusing to bargain over its decision to contract out bargaining unit work to an entity it is in the process of creating – a joint venture with Kindred Development 13, LLC of which UC is a founder and co-owner – to perform services long performed directly by University employees. UC plans to lay off Union-represented University employees who provide inpatient rehabilitation services and replace them with private sector workers to perform the same services at the new rehabilitation facility that will bear the UC Davis name. Kindred Development is a subsidiary of Kindred Healthcare, a nationwide chain of rehabilitation facilities known for paying poverty wages and using contract labor to depress wages and suppress wage growth.

To the extent that UC is committed to partnering with Kindred – a questionable decision at best – UC has no legitimate reason to outsource the work at issue to itself and a private sector partner nor to refuse bargaining over the employment status of those who will perform ongoing services. Indeed, elsewhere, UC has arranged for UC employees to retain their employment status and associated wages and benefits while working at a location outside of the UC system. There is ample time to make a similar arrangement here. PERB should compel the University to bargain in good faith and if UC proceeds, to restore the status quo ante and make whole all adversely affected employees and the union itself.

II. STATEMENT OF FACTS

A. Background

AFSCME 3299 represents approximately 26,000 employees within the University of California system, including over 4,500 people at the UC Davis campus and medical center. The Union represents a wide range of UC employees, including those in the Patient Technical Care Unit ("EX Unit"). Currently 12 AFSCME EX Unit members work at the UC Davis Medical Center's Adult Rehabilitation Unit ("Rehab Unit"), assisting with UC Davis patients' occupational therapy, physical therapy and other rehabilitation services. The most recent collective bargaining agreement between UC and AFSCME covering the EX Unit expired on December 31, 2017 and with it any contractual waivers of the right to contract out. Since then, AFSCME has insisted that UC refrain from contracting out bargaining unit work and insisted on

its rights to notice and a genuine opportunity to bargain before the University or any University location or department contracts out bargaining unit work to non-unit employees.[1]

In May 2018, Julia Johnson, Labor Relations Manager for the University, informed AFSCME that due to seismic concerns at the UC Davis Rehab Unit's current site in the main hospital of the UC Davis Medical Center, the area would be decommissioned by 2030. (A true and correct copy of the May 24, 2018 letter is attached hereto as Exhibit A.) In the same letter, UC stated that it had "begun discussing" plans for the Rehab Unit with nursing, therapy, and HUSC staff and that it was moving forward in a "joint venture" with an unidentified "reputable" private rehab company. (Exh. A, p. 1.) The letter stated that there were "still a lot of approvals and decisions that need[ed] to be made to solidify this venture" and that the process would take "at least 36 months." (*Id*.) The letter further indicated that although many decisions remained to be made, UC Davis did not plan to transfer existing Rehab Unit positions. Instead, UC's letter proposed that employees who wanted to continue their work would have to "apply" for positions at the jointly owned facility. (*Id*.)

Needless to say, AFSCME did not agree that UC employees should be laid off and required to "apply" for their own jobs that UC was in the process of recreating at a new facility. AFSCME promptly demanded bargaining and requested information in order to understand the University's goals and be able to negotiate the matter intelligently. (See Exhibit B (demand to bargain dated May 24, 2018.) Although the University did not, initially, refuse to bargain, it was slow to provide information that the Union needed, and even slower in setting up a first meeting. Initially, the University refused to identify its partner in the joint venture that it was – and still is – in the process of creating. Over several months, the University has slowly provided partial responses to AFSCME's requests for information.

UC was, and is, in the process of developing a location referred to as "Aggie Square," a UC property, that will include a new inpatient rehabilitation facility. Through its information requests, AFSCME learned that in developing the facility, UC recruited a private sector partner, Kindred Development 13 LLC ("Kindred")[2] to create a joint venture with UC Davis called Sacramento Sierra Rehabilitation Hospital LLC ("joint venture" or "SSRH"), in order to continue its rehabilitation services previously performed by UC. (A true and correct copy of the SSRH Operating Agreement ("Operating Agreement" or "OA") is attached hereto as Exhibit C.) Under that OA, Kindred would have a 51% interest in SSRH, and UC Davis would have a 49%

[1] For its part, UC seeks to include Article 5 of the old MOU ("Contracting Out") in a successor agreement precisely because, in its view, Article 5 provided it with limited but nonetheless significant management rights to contract out bargaining unit work during the life of the agreement. The parties have a longstanding dispute as to whether or to what extent Article 5 may have waived the Union's rights during the term of the agreement, but as a matter of law, any purported waiver of the right to bargain has been expired since December 31, 2017. (*See Regents of the University of California* (2004) PERB Decision No. 1689-H, at 24-26 (citing *Blue Circle Cement Company* (1995) 319 NLRB 954) (recognizing that waivers of the right to bargain or a contractual reservation of management rights expire with the expiration of the collective bargaining agreement).)

[2] Kindred is a wholly-owned subsidiary of its parent company, Kindred Healthcare, LLC.

interest in the facility. (A true and correct copy of the SSRH Contribution Agreement ("Contribution Agreement") is attached hereto as Exhibit D.) UC would license its name to the new facility, which would be called "UC Davis Rehabilitation Hospital." (Exh. C, p. 12.)

The University plans, then, intend to foster the public's perception that the new facility will be part and parcel of the UC Davis Medical Center much like its existing Rehab Unit. The Union has also learned that UC intends to continue to employ the physicians who will treat UC patients at the new facility. For reasons UC has yet to explain, however, it refuses to make similar arrangements for AFSCME members.

B. The Union Requests to Bargain over the Decision to Contract Out Rehab Unit Work that will be Performed at the New Rehab Center

On the same day that UC Davis provided AFSCME with vague notice of its still-nascent plans, May 24, 2018, AFSCME Lead Organizer Zach Freels emailed Johnson and demanded bargaining regarding the decision to contract out bargaining unit work. (Exh. B.) Specifically, Freels stated that the Union wanted to meet with the University, and that some of the union's main priorities included finding out the date of implementation for any changes, obtaining a copy of the request for proposal (RFP) for the subcontracted company, and how Union members might be reassigned. (Exh. B, p. 2.)

On May 25, Johnson replied via email that management was "still in the approval process" and that she did not have any timeline other than the approximate 36-month timeline referenced in the May 24 letter. (Exh. B, p. 1.) She also stated that the identity of the partner in the joint venture was subject to a non-disclosure agreement, and therefore did not disclose the partner's name. (*Id*.) She stated that management would be available for a meeting "after the project is approved and more info is available." (*Id*.)

Over the next several months, in order to be able to bargain, AFSCME attempted to gather more information about the joint venture by submitting requests for information (RFI) and California Public Records Act (CPRA) requests to UC. On July 25, 2018, Freels emailed Johnson indicating that UC had failed to respond to the Union's initial RFI and also failed to provide an opportunity to negotiate regarding the continued work and UC's decision to contract out the work. He attached a more comprehensive request for information. (A true and correct copy of Freels' July 25, 2018 email and accompanying RFI are attached hereto as Exhibit E.) Johnson responded the same day, stating, "I have provided all of the info there is we [sic] at this time, as the project is three years out and in first stages." (A true and correct copy of Johnson's July 25, 2018 email is attached hereto as Exhibit F.) The Union subsequently submitted a CPRA request, and the UC Davis public records office eventually provided, *inter alia*, a copy of the Operating Agreement and the Contribution Agreement.

In October 2018, UC agreed to meet with AFSCME, University Professional &Technical Employees-Communications Workers of America (UPTE) and the California Nurses Association (CNA) – the unions that represent affected employees at the Rehab Center. Throughout the end of October and into November the parties attempted to schedule a first meeting regarding what UC referred to as the "Rehab Unit Closure." (See Exhibit G, a true and correct copy of the

October and November 2018 email correspondence, p. 3.) On November 15, 2018, Freels emailed UC and stated that the union was eager to meet because it had originally requested bargaining in May. (Exh. G, p. 1.) On December 3, 2018 UC sent an email stating that it had been difficult scheduling a meeting around everyone's schedules, but that a meeting with UC leadership and Labor Relations was set for December 12, 2018. (A true and correct copy of the December 3, 2018 email is attached hereto as Exhibit H.)

Freels and Jasmine Tobin, a Certified Occupational Therapy Assistant II who works at the Rehab Center, represented AFSCME at the December 12, 2018 meeting. During the meeting, Johnson indicated that in UC's view the meeting was intended to be informational, and that because the new, jointly-owned facility would not even come into existence for a few years, there was nothing to bargain at that point. Freels stated that AFSCME wanted to bargain over whether the Rehab Center jobs would remain UC positions at the new facility. UC flatly refused. UC expressly refused to bargain over the decision to contract out the work, but claimed that there would be plenty of time to bargain over the effects of UC's decision which it did not plan to implement for a couple of years.

In response, on January 17, 2019, AFSCME sent a letter to UC, reiterating its demand to bargain and its request for information about the University's plans for the new Rehab facility. (A true and correct copy of the January 17, 2019 letter is attached hereto as Exhibit I.) Although UC has continued to respond to CPRA requests since January, it has not agreed to meet further with the Union regarding the decision to contract out Rehab Unit work to the entity it is creating with Kindred.

C. UC has Chosen a Partner that is Known for Paying Poverty Wages, and Contracts Out Work to Suppress Wage Growth.

Kindred Healthcare is known for paying poverty wages to its employees. Indeed, in California, some Kindred facilities pay as little as 50% of what UC Davis pays its employees in rehab services classifications. Across the corporation, in 2017, annual median compensation for Kindred employees (excluding the CEO) was $22,100, and approximately 45% of the company's employees were *per diem* workers. (A true and correct copy of Kindred's 2017 Annual Report is attached hereto as Exhibit J, p. 41.) Kindred is almost entirely non-union– indeed, in 2017 only 2.8% ("approximately 2,400" of its 85,300 employees) across 12 facilities – have union representation. (See Exhibit K, a true and correct copy of Kindred's 2017 10K filing, p. 62.) Moreover, Kindred has stated publicly that it turns to contract labor as a strategy to suppress wage growth. Its 2018 10-K filing, states,

> "We, like other healthcare providers, have experienced difficulties in attracting and retaining qualified healthcare personnel in a highly competitive market, including nurses, therapists, home health and hospice employees, physicians, and other healthcare professionals. . . . Our difficulty in hiring and retaining qualified personnel has increased our average wage rates *and may force us to increase our use of contract personnel.* We expect to continue to experience increases in our labor costs primarily due to higher wages and

> greater benefits required to attract and retain qualified healthcare personnel. … *Our ability to manage labor costs will significantly affect our future operating results."*

(Exh. K, p. 62 (emphasis added).) AFSCME has significant concerns that in partnering with Kindred, UC too will be focused on the bottom line – on short term profitability – rather than ensuring the continuous, high-quality care to which UC Davis patients in the Rehab Unit have become accustomed. As far as the Union can tell, the University's sole motive in planning to outsource the ongoing work to a joint venture that it will co-own and operate with Kindred, is to save money on wages and benefits.

D. UC Can Continue to Employ Rehab Workers at the Future UC Davis Rehabilitation Hospital; Indeed, The University Has Made Such Arrangements at Several Other Facilities and Plans to Employ UC Physicians at the New Site

UC Davis is not going out of the business of providing rehabilitation services. It is simply arranging, through a series of contractual agreements, to have another entity – one of its own creation – provide those ongoing services. Nothing about a joint venture or affiliation *requires* UC to sever its employment relationship with those who provide Rehab Services to UC patients. Indeed, AFSCME has learned that UC plans to continue to employ UC physicians who will treat the same patients at UC Davis Rehabilitation Hospital. There is no reason that UC could not do the same with AFSCME-represented employees when the new UC Davis Rehabilitation Hospital opens.

Notably, even if the University proceeds with its joint venture with Kindred – a questionable partner at best – there is no reason UC could not remain the employer of those who assist with rehabilitation services. UC already has arrangements at several other medical facilities where it provides specified employees to work at the non-UC location. The Zuckerberg San Francisco General Hospital, for example, is affiliated with UC but is independently owned and does not bear the UC name. There, UC is the employer of AFSCME-represented Patient Care Technical and other employees who staff several units. Those workers who go to work at the SF General every day participate in UC's health and retirement benefit programs and remain on the same wage scales as their colleagues who work at facilities owned and operated solely by the University. UC has a similar arrangement to provide AFSCME-represented employees to perform specified Patient Care Technical work at the independent community-owned MLK hospital in Los Angeles. There too, UC employees work at the non-UC facility while retaining their status as UC employees with UC wages, benefits, job security and union representation.

III. ARGUMENT

HEERA, at Government Code Section 3571(c) makes it unlawful for the University to refuse or fail to meet and confer with the Union on all matters within the scope of representation and to implement changes to terms and conditions of employment unilaterally. Section 3571(a) and (b) furthermore makes it unlawful for the University to interfere with or discriminate against employees or unions exercising rights under HEERA. By failing to meet and confer with the

Union on matters within the scope of representation and by interfering with employee rights under HEERA, the University has violated these provisions of state law.

A. The Parties' MOU and All Purported Contractual Waivers of the Right to Bargain Have Expired

The University asserts that Article 5 of the parties' expired MOU somehow waived the union's rights to notice and the opportunity to bargain over contracting out. UC believes that during the life of the MOU, it had a "management right" to use its discretion to contract out work, and it now argues that it should be afforded similar discretion to do so after the MOU expired. AFSCME disputes the University's interpretation of Article 5, but *even if UC's interpretation of Article 5 were to be credited by PERB*, it would not justify decisions to contract out work *after* expiration of the agreement.

As a matter of law, any and all contractual waivers of the right to bargain expired with the parties MOU. In *Regents of the University of California* (2004) PERB Decision No. 1689-H, at 24-26 ("*UC-AFT*"), the Board recognized that waivers of the right to bargain or a contractual reservation of management rights expire with the end of the collective bargaining agreement. (*Id.,* citing with approval *Blue Circle Cement Company* (1995) 319 NLRB 954.)

The status quo against which an employer's conduct is evaluated must take into account the regular and consistent past patterns of changes in the conditions of employment, and non-discretionary changes in policy that consistent with such a pattern are not violations of the status quo. (*Pajaro Valley Unified School District* (1978) PERB Decision No. 51, p. 6 (*Pajaro*); *Regents of the University of California* (2004) PERB Decision No. 1689-H, p. 25 ("*UC-AFT*").) The Board has declined to recognize a dynamic status quo defense where the employer makes discretionary changes after expiration of a collective bargaining agreement. (*UC-AFT* p. 29.) Such decisions are within the scope of representation and may not be implemented unilaterally.

In *UC-AFT*, the parties' expired collective bargaining agreement contained a provision that granted the University the right to unilaterally alter health benefits. PERB rejected the University's argument that, pursuant to the dynamic status quo doctrine, such changes were permitted after the expiration of the contract. PERB held that because there was no fixed formula or criteria for the change, UC's decision was discretionary and thus unlawful. (*Id.* at 24-26, 32-42.) Similarly, in *Regents of the University of California* (1983) PERB Decision No. 365-H, PERB held that the University committed a unilateral change during the status quo period where it unilaterally increased parking fees pursuant to its own discretion as to how to extract increased costs and the extent to which each type of parking facility and each group of customers would bear the increased burden.

Here, the decision to contract out ongoing work to be performed at the new UC Davis Rehabilitation Hospital is purely discretionary and not based on any preexisting formula or standard. Therefore, the University cannot establish that this change is in any way consistent with the dynamic status quo doctrine. (*See Regents*, PERB Decision No. 356-H, at 17-18.) As

such, UC is obligated to bargain with the Union over changes to terms and conditions of employment.

B. UC's Refusal to Bargain Over the Continued Employment of Its Rehab Unit Employees Violates HEERA

HEERA Section 3571(c) requires higher education employers to meet and confer in good faith with employee organizations about matters "regarding wages, hours, and other terms and conditions of employment." The duty to bargain collectively requires the employer to maintain the status quo without taking unilateral action as to wages, working conditions, or benefits until negotiations reach an impasse. (*San Joaquin County Employees Assn. v. City of Stockton* (1984) 161 Cal.App.3d 813, 818-19 [citing *Producers Dairy Delivery v. Western Conference* (9th Cir. 1981) 654 F.2d 625, 627; *Peerless Roofing Co., Ltd. v. NLRB* (9th Cir. 1981) 641 F.2d 734, 736; *Clear Pine Mouldings, Inc. v. NLRB* (9th Cir. 1980) 632 F.2d 721, 729; *NLRB v. Sky Wolf Sales* (9th Cir. 1972) 470 F.2d 827, 980]; *County of Alameda* (2006) PERB Dec. No. 1824-M [citing *San Joaquin*, *supra*, at 819].)

As stated on December 12, 2018 and at all times since that date, UC is refusing to bargain over the decision to contract out bargaining unit work to an entity that UC itself is in the process of creating with Kindred. UC has taken the position that it is not required to bargain its decision to enter into the joint venture, indicating that the decision has already been made. But the decision to partner with Kindred – however problematic that may be – does not mandate any change in the employment relationship. As described above in section II.D., UC could easily arrange to have current UC employees assigned to work at the new facility that UC will jointly own and that will operate under UC's name. By refusing to engage with the Union regarding its decision to have private sector employees perform ongoing services, UC violated, and continues to violate, its duty to bargain in good faith.

C. UC's Decision to Have Ongoing Services Long Performed Directly by AFSCME-Represented University Employees Performed by A Joint Venture of its Own Creation Constitutes an Unlawful Unilateral Change

In determining whether a party has violated its duty to meet and confer in good faith with employee organizations regarding wages, hours, and other terms and conditions of employment, PERB utilizes either the "*per se*" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (*Trustees of the California State University* (2009) PERB Decision No. 1876a-H, at 8 ("*Trustees*").) Unilateral changes are inherently destructive of employee rights and considered a *per se* violation of the duty to negotiate in good faith. (*Id.* at 8-9; *California State University* (1990) PERB Decision No. 799-H, at 25; *California State Employees Assn. v PERB* (1996) 51 Cal.App.4th 923.)

To prevail on a unilateral change allegation, the charging party must prove that: (1) the employer took action to change policy or made a firm decision to do so; (2) the change in policy concerns a matter within the scope of representation; (3) the action was taken without giving the exclusive representative notice or opportunity to bargain over the change; (4) the action had a generalized effect or continuing impact on terms and conditions of employment. (*Regents of the*

University of California (YMP) (2018) PERB Dec. No. 2610-H, p. 32 ("*YMP*") [pending judicial review], citing *Pasadena Area Community College District* (2015) PERB Decision No. 2444, p. 12 (Pasadena Area CCD); *County of Kern* (2018) PERB Decision No. 2615M citing *County of Monterey* (2018) PERB Decision No. 2579-M, pp. 9-10; *City of Sacramento* (2013) PERB Decision No. 2351-M, p. 13; *County of Santa Clara* (2013) PERB Decision No. 2321-M, p. 13.) Certain actions "have such a potential to frustrate negotiations that they are held unlawful without any determination of subjective bad faith on the part of the actor." (*Pajaro*, p. 253.) Such *per se* violations of the duty to bargain in good faith are most often applied to situations in which one of the parties refuses outright to negotiate or an employer unilaterally changes conditions of employment.

Furthermore, when an employer decides to replace bargaining unit employees with employees of a private entity while ensuring that there is little change in the services provided to the public, that decision is subject to bargaining. (*Lucia Mar Unified School District* (2001) PERB Dec. 1440E (employer simply replaced its employees with those of a contractor to perform the same services under similar circumstances, thus no need to apply any further test about labor costs as decision is subject to statutory duty to bargain); *Oakland Unified School District* (2005) PERB Dec. 1770 (contracting out services that could have been performed by in-house employees subject to bargaining)).

Here, the University made and implemented a decision to contract out bargaining unit work without the Union's agreement and without proper notice or *any* opportunity to bargain; indeed, during the parties' first meeting about the subject, UC flatly refused to bargain. UC's decision to contract out bargaining work to be performed at the new UC Davis Rehabilitation Hospital is strikingly similar to the facts in *Regents of the University of California (YMP)* (2018) PERB Dec. No. 2610-H *("YMP")* [pending judicial review].) In *YMP*, UC Berkeley secretly developed plans to contract out union work with the Young Musicians' Program ("YMP") to a private entity called the Young Musicians' Choral Orchestra ("YMCO"). The University concealed its plans to transfer operations to YMCO while notifying the Union only of its plans to close YMP, thereby failing to provide the union with meaningful notice or opportunity to bargain its decision. (*Id*.) UC Berkeley's Vice Chancellor for the Division of Equity and Inclusion ("E&I"), which oversaw YMP, testified that the University was "closing" YMP for budgetary and programmatic reasons, and that it was exercising its managerial right to no longer operate a program like YMP. (*Id*.)[3] In that case, by engaging YMCO, the University opted to replace bargaining unit employees with employees of a private entity – while ensuring that there was little change in the services provided to the public and which continued to be financially supported by UC. PERB appropriately found that the decision was subject to bargaining.

Here, as in *YMP* and the long line of decisions on which *YMP* relies, UC's conduct meets the criteria required to establish an unlawful unilateral change. With respect to the **first** factor, whether the employer took action to change policy or made a firm decision to do so, it is clear that the University is still in the process of piecing together its plans. The University has not acted on its decision to contract out the work to itself and Kindred at UC Davis

[3] Eventually, however, emails, testimony, and other evidence showed that YMP's Director expressly sought to get out from under the UC-AFT MOU. (*Id*.)

Rehabilitation Hospital, as the facility is not yet operational. It has stated that it does not plan to contract out work to itself and Kindred, as co-owners of the new UC Davis Rehabilitation Hospital until that facilities opens approximately over two years from now. But on December 12, 2018, UC Davis refused to bargain over its plans to contract out the work rather than even discuss making arrangements for existing employees to perform ongoing work at the new facility and retain their employment-based rights. This came as an exceedingly frustrating surprise, as UC had indicated that its plans were a work in progress and had agreed to bargain with the Union. Indeed, the Union had many questions and spent considerable time investigating the facts in order to be able to bargain as requested. Prior to December 12, UC Davis did not disabuse the Union of the impression that it would bargain, but at the meeting, it abruptly refused to do so.

There can be no question that UC's decisions to have the work of AFSCME-represented workers in the Rehab Unit, performed by non-UC employees instead is a change of policy. Absent UC's decision to contract out these positions, AFSCME members would continue to perform the work at issue.

As to the **second** factor, it is well settled that decisions to contract out work fall squarely within the scope of representation. In *Lucia Mar*, PERB Dec. 1440, PERB found that the employer's decision to contract out student transportation services was a negotiable subject, because the employer continued to provide transportation services but performed the work by simply substituting contractors for its employees. PERB has stated explicitly that contracting out is negotiable in either of two circumstances: "(1) where the employer simply replaces its employees with those of a contractor to perform the same services under similar circumstances; or (2) where the decision was motivated substantially by potential savings in labor costs." (*State of Cal. (Dept. of Veterans Affairs), supra*, PERB Dec. 2110-S at p. 6; See also *Bldg. Material & Constr. Teamsters' Union v. Farrell*, 41 Cal. 3d 651, 659 ("a bargaining unit is adversely affected when a work transfer results in layoffs or the failure to rehire bargaining-unit workers who would otherwise have been rehired.").)

Here, the University is setting up a joint venture with Kindred in order to provide its patients with the very same services that are currently provided by AFSCME represented employees at UC Davis. The entirety of the Adult Inpatient Rehab unit's work will be transferred to the new UC Davis Rehabilitation Hospital. There is every indication that the patient care duties covered by the contract, currently performed by the 12 AFSCME members listed in the same letter, will be replicated at the new facility.

Third, the University made its decision to contract out the work performed at the new facility without providing proper notice to the union or an opportunity to bargain. An employer must provide "reasonable" notice to make such a change, which must be "clear and unequivocal" and "clearly inform[s] the employee organization of the nature and scope of the proposed change." (*Lost Hills Union Elementary School District* (2004) PERB Decision No. 1652, Proposed Decision at p. 6; *Santee Elementary School District* (2006) PERB Decision No. 1822 (*Santee*); *Victor Valley Union High School District* (1986) PERB Decision No. 565 (*Victor Valley*).) Here, although the UC provided an initial notice about creating a joint venture on May 24, 2018, it did not describe the University's ongoing role. Rather, UC's correspondence

explicitly stated that "there [were] still lots of approvals and decisions that need to be made to solidify this venture." (Exh. B, p. 1.) Over the next eight months, the University indicated that it would be willing to meet and confer with AFSCME regarding the its plans. However, at the parties first meeting, on December 12, 2018, UC flatly refused to bargain about its decision to staff the joint venture facility with non-UC, and therefore unrepresented workers. Since then, UC has refused to meet about its decision, clearly denying AFSCME the opportunity to bargain.

Fourth, the decision to contract out the work to be performed at the joint venture has a generalized effect as well as a continuing impact on terms and conditions of employment. (*Lucia Mar,* PERB Dec. 1440E, *supra,* p. 26). Indeed, PERB recognizes that transferring work to a contract employee that would normally have been assigned to the bargaining unit has the potential to significantly erode the bargaining unit thereby affecting its viability. (*Rialto Unified School District* (1982) PERB Dec. No. 209, p. 7.) In a recent contracting-out case, the PERB ALJ concluded that the loss of work opportunities for even a single bargaining unit member on a single shift constituted a change in policy with a generalized and continuing impact. (*County of Santa Clara*, Proposed Decision (May 21, 2018) SF-CE-1428-M at p. 10-11 ["The installation of a deputy sheriff at VHCD (in lieu of a bargaining unit security officer) constituted a change in policy with a generalized and continuing impact on the bargaining unit due to the loss of work opportunities there."].) There, the ALJ also recognized that stunting the growth of a bargaining unit as the work extends to new locations has a cognizable impact on the unit as a whole.

Here, unless the University redirects its intentions and bargains in good faith, at least 12 unrepresented, non-UC, positions will be created at the new rehab facility to perform work previously done by EX members, thereby diluting the bargaining unit and affecting its viability. This is a further change of policy because it is entirely feasible for work performed at an affiliate UC site to be performed by current employees and not contracted out; indeed, it has done so repeatedly in other instances. At San Francisco General Hospital and at MLK Community Hospital in Los Angeles, and in its affiliations, UC enabled existing employees to retained their positions and continue to work for the employer who preceded the UC affiliation thereby retaining their employment rights. That UC categorically refused to bargain and now insists on severing employment with its own staff here is another change in policy.

Evaluation of each factor indicates that UC's decision to contract out bargaining work to the joint venture with Kindred meets the criteria required to establish an unlawful unilateral change, in violation of HEERA section 3571(c).

IV. The University has also Unlawfully Failed to Bargain Over the Effects of its Decision to Enter into a Joint Venture with Kindred, Including the UC Employment Status of Those Who Will Continue to Perform It

Arguably, the continued employment opportunities available to Rehab Unit workers – whether at the new facility or in alternative positions elsewhere – are among the various effects of the University's decision to enter into a joint venture with Kindred. Even if the University were to refuse to bargain over the joint venture itself, then, there is no reason at all that it should be shielded from bargaining over the issues near and dear to the union and its members – retention of ongoing work, ongoing jobs, and associated wages and benefits.

A public employer may implement a decision before completion of effects bargaining and impasse resolution *only* if three criteria are met. First, the union must be provided with reasonable notice and a meaningful opportunity to negotiate. (*See Compton Community College District* (1989) PERB Decision No. 720, pages 6-7.) Second, the employer must face either an immutable deadline imposed by law or an important managerial interest that would be negated by delay in implementation. (*Id.*) Third, the employer must negotiate in good faith both before and after implementation, to the extent implementation has not resolved matters. (*Id.*) As shown above, the University has not yet implemented a decision to lay people off from their positions in the Rehab Unit and does not plan to do so for quite some time. Nor should it. Rather, UC should be required to bargain, whether the matter is considered a decision within the scope of representation (i.e. a decision to contract out work) or the effects of a related decision (i.e. to enter into a joint venture).

Here, the University cannot establish any of the *Compton* criteria. Since December 12, 2018, UC has refused to bargain with AFSCME over the future of the work and the employment status of those performing it. UC does not face any immutable deadline imposed by law, nor that there is an important managerial interest that would be negated by delay in implementation.

V. The University's Plan to Contract out Bargaining Unit Work to a New Entity of its Own Creation Unlawfully Interferes with the Exercise of Employee Rights Under HEERA, and Seeks to Suppress Wages

Section 3571(a) of HEERA makes it unlawful for the University to interfere with the rights of bargaining unit employees. (Gov. Code § 3571(a).) A prima facie case of interference is established by allegations that an employer's conduct tends to or does result in some harm to employee rights. (*Jurupa Unified School District* (2012) PERB Decision No. 2283, p. 7, citing *Carlsbad Unified School District* (1979) PERB Decision No. 89 (*Carlsbad*).) If the harm to protected rights is slight and the employer offers justification based on operational necessity, the competing interests are balanced. (*Cabrillo Community College District* (2015) PERB Decision No. 2453, pp. 13-14.) However, if the harm to employee rights outweighs the asserted business justification, a violation will be found. (*Id.*) Where the employer's conduct is inherently destructive of protected rights, it will be excused only on proof that it was caused by circumstances beyond the employer's control and that no alternative course of action was available. (*County of Santa Clara* (2018) PERB Decision No. 2613-M citing *County of San Bernardino (Office of the Public Defender)* (2015) PERB Decision No. 2423-M, pp. 36-37.)

Here, UC's decision to contract out work to itself and Kindred will undoubtedly result in harm to employee rights: the right to union representation, union-negotiated wages and benefits, indeed the right to have a job at all. This arrangement effectively outsources AFSCME positions to a private sector employer beholden to its investors – significantly harming union and worker rights. The elimination of bargaining-unit work in order to hand it over to a 51% privately owned entity employing non-bargaining-unit employees is arguably the most "inherently destructive" course of action an employer could take with respect to collective bargaining rights. It is not only a status quo violation, but a violation of the very concept of collective bargaining itself.

VI. CONCLUSION AND REMEDIES REQUESTED

Because UC has violated its duty to bargain in good faith with AFSCME over the decision as well as the effects of contracting out work at the rehab center joint venture and to lay off those university employees in the process, the Union seeks an order requiring that UC and its representatives shall (1) cease and desist from all of its bad faith conduct; (2) meet and confer with the Union regarding the ongoing Rehab Services work and UC employment status of those who perform it; (3) continue the employment of UC workers who work at the new UC Davis Rehabilitation Hospital (similar to the way UC workers perform services at San Francisco General Hospital and MLK Community Hospital or as UC plans to employ the physicians at the new facility); and (4) to the extent that this matter is not heard and decided until after UC Davis Rehabilitation Hospital opens, restore the value of any and all lost work to the bargaining unit, with interest. Given the University's manifest bad faith, AFSCME further seeks any additional remedies that PERB deems just and proper including attorneys' fees and costs.

EXHIBIT A

UNIVERSITY OF CALIFORNIA, DAVIS

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO • SANTA BARBARA • SANTA CRUZ

HUMAN RESOURCES
EMPLOYEE & LABOR RELATIONS
ONE SHIELDS AVENUE
DAVIS, CALIFORNIA 95616
Tel: (530) 754-8892
Fax: (530) 752-1289

May 24, 2018

Zach Freels
AFSCME Local 3299
2400 O Street
Sacramento, CA 95816

Sent via email to zfreels@afscme3299.org

Re: Rehab Unit Closure

Dear Mr. Freels,

This courtesy notice is to inform you that the University has begun discussions with nursing, therapy, and HUSC staff, regarding the plans for Rehab moving forward. The seismic challenge the University is facing requires our current footprint to no longer exist on E5 and the basement, as those areas will be decommissioned by 2030. Executive leadership has invested countless hours and resources to complete an extensive assessment on options for our Adult Inpatient Rehab unit. UC Davis has decided to move forward in a joint venture with another reputable rehab company in the community. This process will take at least 36 months, and there are still lots of approvals and decisions that need to be made to solidify this venture.

Current workflow will remain the same. When the new facility opens, UC Davis positions will not be transferred to the new facility but those who wish to work at the new facility can apply to do so. Employees who wish to remain working for UC Davis will be found positions such that no layoffs will be associated with this venture. The planned location is on campus on Broadway, between Broadway building and Stockton Boulevard. This venture does not include Pediatric rehab.

The employees represented by AFSCME who will be affected by this change are listed below:

Name	Bargaining Unit	Job Code	Job Title
Tisha V. Arzaluz	EX	8948	Occupational Ther Cert Ast 2
Sharee L. Burgess	EX	8945	Phys Ther Ast 2
Megan E. Cassady	EX	8945	Phys Ther Ast 2
Mary P. Cross	EX	8949	Occupational Ther Cert Ast 1
Russell A. Dela Rosa	EX	9041	Prosthetist Orthotist Sr
Anthony J. Demario	EX	8973	Hosp Lab Technician 4

Justin T. Filkins	EX	8945	Phys Ther Ast 2
Michael S. Ginzburg	EX	9041	Prosthetist Orthotist Sr
Eunice P. Lemos-Adair	EX	9252	Hosp Blank Ast 2
Carol L.C. Studer	EX	9252	Hosp Blank Ast 2
Jasmine M. Tobin	EX	8948	Occupational Ther Cert Ast 2
Rachel E. White	EX	9041	Prosthetist Orthotist Sr

If you have any questions or concerns or would like to meet to discuss this please email me at jmjohnson@ucdavis.edu.

Sincerely,

Julia Johnson

Julia Johnson
Labor Relations Manager
Employee and Labor Relations

EXHIBIT B

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

---------- Forwarded message ----------
From: **Julia M Johnson** <jmjohnson@ucdavis.edu>
Date: Fri, May 25, 2018 at 1:23 PM
Subject: RE: Courtesy notice re Rehab
To: Zachary Freels <zfreels@afscme3299.org>

Hi Zach,

Thanks for your reply. It might make the most sense to wait and meet as we get closer as all of the available info at this time is in the notice. I was informed that at this time management is still in the approval process with the Regents regarding the joint venture and there are no other timelines at the moment (in response to #1 below).

Also, management is bound by a non-disclosure agreement at this time and cannot disclose the partner name (in response to #2 below).

Management indicated that they would be happy to meet after the project is approved and more info is available.

[redacted]

Hope you have a nice long weekend,

Julia

From: Zachary Freels <zfreels@afscme3299.org>
Sent: Thursday, May 24, 2018 9:55 AM
To: Julia M Johnson <jmjohnson@UCDAVIS.EDU>
Subject: Re: Courtesy notice re Rehab

Hello,

We have a number of questions and will want a sit down regarding this change.

Some of our top priorities:

1) Date of implementation

2) The RFP for the subcontracted company

3) The mechanism for reassignment. Are you using Article 15 layoff priority reassignment?

On Thu, May 24, 2018 at 9:50 AM, Julia M Johnson <jmjohnson@ucdavis.edu> wrote:

> Hi Zach,
>
> Attached please find a courtesy notice regarding the Rebab unit. Please let me know if you have any questions or concerns.

Thanks,

Julia

Julia M. Johnson, J.D.

Labor Relations Manager

Employee and Labor Relations

Telephone: (530) 752-1951

E-mail: jmjohnson@ucdavis.edu

Web: http://www.hr.ucdavis.edu/

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Zach Freels

Lead Organizer

AFSCME 3299

(415) 580-1683

zfreels@afscme3299.org

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Zach Freels
Lead Organizer
AFSCME 3299
(415) 580-1683
zfreels@afscme3299.org

EXHIBIT C

FINAL

LIMITED LIABILITY COMPANY AGREEMENT

OF

SACRAMENTO SIERRA REHABILITATION HOSPITAL, LLC

Dated as of July 31, 2018

THE UNITS EVIDENCED BY THIS LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR SIMILAR APPLICABLE STATE SECURITIES LAWS, IN RELIANCE UPON EXEMPTIONS THEREUNDER. THE SALE OR OTHER DISPOSITION OF THE UNITS (AS THAT TERM IS DEFINED IN THIS LIMITED LIABILITY COMPANY AGREEMENT) IS RESTRICTED AS SET FORTH IN THIS LIMITED LIABILITY COMPANY AGREEMENT AND IS PROHIBITED UNLESS SACRAMENTO SIERRA REHABILITATION HOSPITAL, LLC, IF IT SO REQUESTS, RECEIVES AN OPINION OF COUNSEL SATISFACTORY TO SACREMENTO SIERRA REHABILITATION HOSPITAL, LLC THAT SUCH SALE OR OTHER DISPOSITION WILL BE MADE IN COMPLIANCE WITH THE SECURITIES ACT OF 1933, AS AMENDED, AND ANY APPLICABLE STATE SECURITIES LAWS. IN ACCORDANCE WITH SECTIONS 2.11 AND 6.02 OF THIS LIMITED LIABILITY AGREEMENT, BY THE EXECUTION OF THIS AGREEMENT AND THE ACQUISITION OF THE UNITS EVIDENCED HEREBY, EACH MEMBER REPRESENTS, AMONG OTHER THINGS, THAT SUCH MEMBER IS ACQUIRING SUCH MEMBER'S UNITS FOR INVESTMENT AND NOT WITH A VIEW TO DISTRIBUTION AND THAT SUCH MEMBER WILL NOT SELL OR OTHERWISE DISPOSE OF SUCH MEMBER'S UNITS WITHOUT REGISTRATION OR OTHER COMPLIANCE WITH SUCH LAWS AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER.

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LIMITED LIABILITY COMPANY AGREEMENT

This Limited Liability Company Agreement of SACRAMENTO SIERRA REHABILITATION HOSPITAL, LLC, a California limited liability company (the "***Company***"), is entered into as of the Effective Date (as defined below) by and between KINDRED DEVELOPMENT 13, L.L.C., a Delaware limited liability company ("***Kindred***"), and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation ("***The Regents***"), on behalf of its UC Davis Medical Center ("***UCD***"), as Members (as defined below). Kindred is a wholly-owned subsidiary of Kindred Healthcare, LLC, a Delaware limited liability company ("***Parent***").

RECITALS

WHEREAS, the Company was formed on July 25, 2018, as a limited liability company pursuant to the Act (as defined below);

WHEREAS, Kindred is purchasing 51 Units representing a membership interest of 51% of the Company, and UCD is purchasing 49 Units representing a membership interest of 49~~1~~% in the Company;

WHEREAS, Kindred and UCD desire to enter into this Agreement to govern the affairs of the Company and its business under which Kindred and UCD will participate in the ownership and operation of the Company in accordance with the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Members hereby agree as follows:

ARTICLE I
DEFINITIONS; USAGE; INTERPRETATION

Section 1.01 Defined Terms. As used herein, the following terms shall have the following meanings:

"***Act***" means the California Revised Uniform Limited Liability Company Act (Cal. Corp. Code 17701.01 et. seq.) and any successor statute, as amended from time to time.

"***Adjusted K-1 Election***" means an election made by the Company in accordance with Section 6226 of the IRC.

"***Adverse Consequences***" means all actions, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, Court Orders, dues, penalties, fines, costs, amounts paid in settlement, liabilities, obligations, taxes, encumbrances, losses, damages, deficiencies, costs of investigation, court costs and other expenses (including interest, penalties and reasonable attorneys' fees and expenses), whether in connection with third-party claims or claims among the Members related to the enforcement of the provisions of this Agreement.

"***Affiliate***" means, with respect to any Person, any Persons directly or indirectly controlling, controlled by, or under common control with, such other Person at any time during the period for which the determination of affiliation is being made. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"***Agreement***" means this Limited Liability Company Agreement (including all exhibits hereto), as amended, supplemented or restated from time to time.

"***Breach Notice***" shall have the meaning set forth in Section 7.01(a).

"***Budget***" means the written statement of estimated revenues, estimated expenses, estimated capital expenditures and estimated cash flows for the Company, as the case may be, for any Fiscal Year, which will be presented by the Manager to the Members. If the Budget submitted by the Manager to the Members for approval is not approved by the Members on or before the 1st day of any Fiscal Year of the Company, the prior year's Budget will carry over to that Fiscal Year until the Budget for the current Fiscal Year is approved.

"Business" means the construction and development, after receiving all necessary Certificate of Need and other governmental approvals and through a REIT mutually acceptable to the Members, of a standalone inpatient rehabilitation facility consisting of 40 beds (or such other number as determined by the Members) (the "***IRF***") on the Real Property and thereafter, upon receipt of all required governmental approvals and the opening of the IRF, the ownership and operation of the IRF and any other lines of business entered into by the Company pursuant to, and only as permitted by, this Agreement.

"***Business Day***" means any day, other than a Saturday, Sunday or other legal holiday, on which banks in California are open for business.

"***Buying Member***" shall have the meaning set forth in Section 7.01.

"***Call Right***" shall have the meaning set forth in Section 7.02.

"***Call Units***" shall have the meaning set forth in Section 7.02.

"***Capital Account***" shall have the meaning set forth in Section 4.05.

"***Capital Call***" shall have the meaning set forth in Section 4.02(c).

"***Capital Call Notice***" shall have the meaning set forth in Section 4.02(c).

"***Capital Contribution***" means, with respect to any Member, the amount of money and the initial value of any other asset contributed to the Company with respect to the Units held or purchased by such Member, including any Mandatory Capital Contributions.

"***Cash Available for Distribution***" means all cash receipts of the Company less (i) all accounts payable and other current liabilities of the Company, and (ii) such reserves established by the Members for such time period as the Members deem appropriate for improvements, replacements, or repairs to Company properties or for anticipated Company expenses or debt repayments. Cash Available for Distribution shall also include any other Company funds, including, without limitation, any amounts previously set aside as reserves, no longer deemed by the Members necessary for the conduct of the Company's business.

"***CEO***" means the chief executive officer of the Company.

"***Change in Control***" means, with respect to Kindred, the occurrence of any of the following: (i) any consolidation or merger of Kindred with or into any other entity or Person, or any other reorganization, in which the equity holders of Kindred or Affiliates of said equity holders immediately prior to such consolidation, merger or reorganization, retain or receive on account of their securities of Kindred less than fifty percent (50%) of the surviving entity's voting power immediately after such consolidation, merger or reorganization; (ii) any transaction or series of related transactions in which in excess of fifty percent (50%) of Kindred's voting power is acquired, directly or indirectly, by a Person or a group of Persons that are not Affiliates of Kindred immediately prior to such acquisition; (iii) the granting to any Person, other than an Affiliate of Kindred, for monetary consideration or otherwise, of the right to solely appoint or have sole approval of the selection or election in excess of fifty percent (50%) of Kindred's voting power; (iv) a sale or other disposition of all or substantially all of the assets of Kindred or the equity holders of Kindred, or more than fifty percent (50%) of the operating assets of the Kindred or the equity holders of Kindred, to an entity that is not an Affiliate of Kindred immediately prior to the sale or other disposition; (v) the approval of the governing body of Kindred of a plan of complete or substantial liquidation of Kindred; or (vi) the entry into a management contract or agreement with a third party that is not an Affiliate of Kindred providing for joint operation or the operation by such third party of all or substantially all of the assets of Kindred or Kindred's equity holders. Notwithstanding the foregoing, a Change in Control with respect to Kindred will not occur by reason of any of the transactions approved by the shareholders of Kindred on April 5, 2018, which are currently scheduled to become effective on or about July 1, 2018.

"***Change in Control***" means, with respect to The Regents, the occurrence of any of the following: (i) any consolidation or merger of The Regents with or into any other entity or Person with respect to which The Regents is not the surviving entity or in which fifty percent (50%) or less of the voting interests in the surviving entity are controlled by The Regents; (ii) a sale or other disposition of all or substantially all of the assets of UCD, or more than fifty percent (50%) of the operating assets of UCD, to an entity that is not an Affiliate of The Regents immediately prior to the sale or other disposition; (iii) the approval of the governing body of The Regents of a plan of complete or substantial liquidation of UCD; or (iv) the entry into a management contract or agreement with a third party that is not an Affiliate of UCD providing for joint operation or the operation by such third party of all or substantially all of UCD's assets. Notwithstanding anything in this Agreement to the contrary, any restructuring organization in which UC Davis Medical Center continues to be controlled by The Regents or an Affiliate of The Regents shall not constitute a Change in Control with respect to UCD.

"***Charity Policy***" means the charity care policy which is referenced as part of the

Community Benefit Standard, as the same may be revised from time to time as provided herein.

"***CIC Member***" shall have the meaning set forth in Section 7.02.

"***Closing***" shall have the meaning set forth in Section 7.06.

"***Community Benefit Activities***" means the Community Benefit Standard activities that are conducted by the Company.

"***Community Benefit Standard***" means a standard pursuant to which the Company is operated in furtherance of UCD's charitable purposes, and pursuant to which:

1. The Company adopts and implements the charity care policy which is attached hereto as **Exhibit C** (the "***Charity Policy***"). The Charity Policy shall be subject to change in accordance with Section 2.05(b)(iii);

2. The Company becomes and remains certified by the U.S. Department of Health and Human Services to provide services to all beneficiaries of Medicare, Medicaid, and other government payment programs, and provides services in a nondiscriminatory manner to such beneficiaries;

3. The Company maintains an open medical staff;

4. The Company provides public health programs of educational benefit to the communities it serves; and

5. The Company generally promotes the health, wellness, and welfare of the communities it serves by providing quality healthcare services at reasonable cost.

"***Company***" shall have the meaning set forth in the Preamble.

"***Company ROFO Transaction***" shall have the meaning set forth in Section 9.04(a).

"***Company ROFO Transaction Notice***" shall have the meaning set forth in Section 9.04(b).

"***Confidential Information***" means any and all proprietary information, including, without limitation, trade secrets concerning the business and affairs of the disclosing Person, ideas, know-how, processes and techniques, market data, customer and supplier lists, referral sources, pricing and cost information, contracting information, strategic plans, business and marketing plans and proposals, policies and strategies and operations methods and information concerning the business and affairs of the disclosing Person (which includes historical financial statements, financial projections and budgets, historical and projected revenues, capital spending budgets and plans, cost information, and personnel training techniques and materials), that have been or may hereafter be provided or shown by the disclosing Person to the receiving Person; provided, however, that Confidential Information shall not include information that (a) was in the possession of or known by the receiving Person or its representatives at the time of disclosure; (b) was or becomes

generally available to the public other than as a result of a disclosure by the receiving Person or its representatives; (c) was or becomes available to the receiving Person on a non-confidential basis from a source other than the disclosing Person or its representatives (unless such source is known to the receiving Person to be bound by a confidentiality agreement with, or any other legal or fiduciary obligation to, the disclosing Person); or (d) was developed by the receiving Person without using the disclosing Person's Confidential Information.

"***Conflicted Member***" shall have the meaning set forth in Section 9.02.

"***Contribution Agreement***" means the agreement among the Company, Kindred and UCD, dated as of the Effective Date, pursuant to which UCD agrees to contribute to the Company its inpatient rehabilitation facility (the "***Contributed Beds***") (which as of the Effective Date contains 19 beds) and Kindred agrees to contribute to the Company cash. The amount of Kindred's contributed cash will be the amount necessary to achieve the desired 51% Kindred – 49% UCD Percentage Interests[2] taking into account the Fair Market Value of the Contributed Beds.

"***Court Order***" means any judgment, order, award, writ, subpoena, decree or verdict entered, issued, made or rendered by any federal, state, local or other court or judicial or quasi-judicial tribunal or any other Governmental Authority.

"***Declined Company ROFO Transaction***" shall have the meaning set forth in Section 9.04(b).

"***Default Interest Rate***" shall have the meaning set forth in Section 4.03(c).

"***Depreciation***" means, for a Fiscal Year or other period, an amount equal to the federal income tax depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such Fiscal Year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year or other period, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such Fiscal Year or other period bears to such beginning adjusted tax basis; provided, however, that if the federal income tax depreciation, amortization or other cost recovery deduction for such Fiscal Year or other period is zero, then Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Partnership Representative.

"***Disinterested Member***" shall have the meaning set forth in Section 9.02.

"***Disqualifying Event***" means, with respect to a Member, the occurrence of any one or more of the following: (a) the Member is adjudicated as bankrupt or makes an assignment for the benefit of its creditors; (b) the Member files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, or similar relief under any Law or files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against such Member in a proceeding of such nature; (c) the Member seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member or all or any substantial part of the Member's property; (d) the Member is unable to get dismissed, within one hundred twenty (120) days after its commencement, any proceeding against the

Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any Law; (e) the Member is unable to stay or vacate, within ninety (90) days after its commencement, the appointment without the Member's consent or acquiescence of a trustee, receiver or liquidator of the Member or of all or any substantial part of the Member's property and if the appointment is stayed as hereinabove provided, the appointment is not vacated within ninety (90) days after the expiration of any such stay; (f) the Member Transfers, or attempts to Transfer, all or any portion of the Member's Units in the Company in violation of this Agreement; or (g) the Member is excluded from participation in any Government Health Care Program pursuant to a final determination by the Secretary of Health and Human Services pursuant to 42 U.S.C. § 1320a-7, as amended from time to time, or the corresponding Government Authority in the State of California.

"***Dissolution Event***" shall have the meaning set forth in Section 8.01.

"***Effective Date***" shall mean July 31, 2018.

"***Encumbrance***" means any mortgage, pledge, assessment, security interest, lease, sublease, lien, adverse claim, levy, right of way, easement, encroachment, covenant, charge or other encumbrance of any kind, or any conditional sale contract, title retention contract or other agreement or arrangement to give or to refrain from giving any of the foregoing.

"***Excluded UC Affiliates***" shall have the meaning set forth in Section 3.04(b).

"***Fair Market Value***" of any property shall mean the fair market value of such property as determined by an Independent Appraiser as mutually agreed by the transferor and the transferee or, if they do not agree on such Independent Appraiser, then as determined under Section 7.05.

"***Fiscal Quarter***" means any of the quarterly accounting periods of the Company, ending March 31, June 30, September 30 and December 31, of each year.

"***Fiscal Year***" means (a) the period from the formation of the Company through December 31, 2018, and (b) any subsequent twelve (12)-month period commencing on January 1 and ending on December 31.

"***Funding Member***" shall have the meaning set forth in Section 4.03(a).

"***Funding Shortfall***" shall have the meaning set forth in Section 4.03(a).

"***GAAP***" means generally accepted accounting principles in the United States as set forth in pronouncements of the Financial Accounting Standards Board (and its predecessors) and the American Institute of Certified Public Accountants.

"***Government Health Care Program(s)***" means and includes the Medicare and Medi-Cal programs and any other health care program under 42 U.S.C. § 1320a-7, or any analogous Law of the State of California, as amended from time to time.

"***Governmental Authority***" means any federal, state (including the State of California) or local government; any political subdivision thereof; any other governmental, quasi-governmental,

judicial, public or statutory instrumentality, authority, body, agency, department (including the California Department of Health Care Services), bureau, commission or entity; or any entity that contracts with a governmental entity to administer or assist in the administration of a government program (including any Medicare or Medicaid administrative contractors and the Medicare Advantage Program).

"***Gross Asset Value***" means, with respect to any asset, such asset's adjusted basis for federal income tax purposes, except as follows:

(a) the initial Gross Asset Value of any asset contributed by a Member to the Company shall be the Fair Market Value of such asset, as determined by an Independent Appraiser as mutually agreed by the Member and the Company or, if they do not agree on such Independent Appraiser, then as determined under Section 7.05;

(b) the Gross Asset Values of all Company assets shall be adjusted to equal their Fair Market Values, as of: (i) the acquisition of an additional interest in the Company by any existing Member or additional Member in exchange for more than a de minimis Capital Contribution; (ii) the distribution by the Company to a Member of more than a de minimis amount of assets of the Company as consideration for an interest in the Company; and (iii) the liquidation of the Company within the meaning of IRC Regulation §1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clause (i) and clause (ii) of this sentence shall be made only if the Company reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company; and

(c) the Gross Asset Value of any Company asset distributed to any Member shall be the Fair Market Value of such asset on the date of distribution; provided, however, if the Gross Asset Value of an asset has been determined or adjusted pursuant to subsection (a) or subsection (b) above, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Income and Net Loss.

"***Indemnitees***" shall have the meaning set forth in Section 3.02(a).

"***Independent Appraiser***" means a Person (a) that is a member of a recognized professional organization for appraisers having at least five years' experience in appraising or valuing assets similar to the asset that is being valued; (b) that performed a majority of its assignments during the immediately preceding three (3) year period for Persons other than the Company, Kindred, UCD or any of their respective Affiliates; (c) that does not have any material direct or indirect financial ownership interest in the Company, Kindred or UCD or any of their respective Affiliates; and (d) that will provide the Members a written "reasoned opinion" as that term is defined in IRC Regulation §53.4958-1(d)(4)(iii), including the certification required by IRC Regulation §53.4958-1(d)(4)(iii)(C).

"***Independent Third Person***" means any Person that is not the Company, UCD, Kindred

or an Affiliate of the Company, UCD or Kindred.

"***Initial Appraisal***" shall have the meaning set forth in Section 7.05(a).

"***Initial Capital Contributions***" shall have the meaning set forth in Section 4.02(a).

"***Interested Member***" shall have the meaning set forth in Section 9.04(b).

"***IRC***" means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding federal tax statute enacted after the Effective Date. Any reference in this Agreement to a specific section of the IRC shall include any IRC Regulations promulgated under that section of the IRC.

"***IRC Regulations***" means the income tax regulations and temporary regulations promulgated by the Internal Revenue Service, Department of Treasury, pursuant to the IRC.

"***Kindred***" shall have the meaning set forth in the Preamble.

"***Kindred Representatives***" shall have the meaning set forth in Section 3.01(b).

"***Law***" means any federal, state or local law, statute, code, ordinance, regulation, rule, consent agreement, constitution or treaty of any Governmental Authority, including the Act and common law.

"***Liquidator***" shall have the meaning set forth in Section 8.02(a).

"***Lobbying Activities***" are those activities that would constitute propaganda, or otherwise attempting, to influence legislation within the meaning of IRC §501(c)(3).

"***Management Agreement***" means that certain Management & Administrative Services Agreement by and between the Manager and the Company dated as of even date herewith.

"***Manager***" means CHC Management Services, LLC, a Missouri limited liability company.

"***Mandatory Capital Contribution***" shall have the meaning set forth in Section 4.02(b).

"***Member Approval***" means, except as otherwise specifically provided herein, the approval of greater than fifty percent (50%) of the Percentage Interests; provided, however, that if a Member is prevented from voting on a matter pursuant to Section 9.02 or Section 9.04, "Member Approval" shall mean the approval of the other Member. With respect to each matter to be acted upon by the Members (a "***Member Action***"), the Kindred Representatives shall vote as a block and together have that number of votes equal to the product of one thousand (1,000) multiplied by the total Kindred Percentage Interest at the time of the Member Action, and the UCD Representatives shall vote as a block and together have that number of votes equal to the product of one thousand (1,000) multiplied by the total UCD Percentage Interest at the time of the Member Action. If any Member Representative is not present at a meeting of the Members, the voting power attributable to such absent Member Representatives shall automatically be allocated to the other Member

Representatives appointed by the same Member who appointed the absent Member Representative.

"***Member Representatives***" means the Persons selected by a Member to serve as representatives of such Member in accordance with Section 3.01(b)(i).

"***Members***" means Kindred and UCD and such other Persons as are later admitted as members of the Company pursuant to the terms of this Agreement.

"***Net Income***" or "***Net Loss***" means, for each fiscal period, an amount equal to the Company's taxable income or loss, as the case may be, for such period determined in accordance with Section 703(a) of the IRC (including for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the IRC), as adjusted as follows:

(a) any income of the Company exempt from federal income tax and not otherwise taken into account in computing Net Income or Net Loss pursuant to this definition shall be added to such taxable income or loss;

(b) any expenditures of the Company described in §705(a)(2)(B) of the IRC (or treated as expenditures described in §705(a)(2)(B) of the IRC pursuant to Regulation §1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Net Income or Net Loss pursuant to this definition shall be subtracted from such taxable income or loss;

(c) in the event the Gross Asset Value of any asset of the Company is adjusted in accordance with subsection (b) or subsection (c) of the definition of "Gross Asset Value" above, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Income or Net Loss;

(d) gain or loss resulting from any disposition of any asset of the Company with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of such asset, notwithstanding that the adjusted tax basis of such asset differs from its Gross Asset Value; and

(e) in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year or other period, computed in accordance with the definition of "Depreciation" above.

"***Non-CIC Member***" shall have the meaning set forth in Section 7.02.

"***Non-Funding Member***" shall have the meaning set forth in Section 4.03(a).

"***Offeree***" shall have the meaning set forth in Section 7.04.

"***Offering Notice***" shall have the meaning set forth in Section 7.04.

"***Percentage Interest***" means with respect to any Member the percentage obtained by dividing the capital account balance of a Member by the total capital account balances of all Members.

"***Permitted Transfer***" means a Transfer of all, but not less than all, of the Units of the Company: (a) by a Member to a wholly-owned subsidiary, (b) by a Member to the Company, (c) by a Member to another Member, or (d) by a Member to any Person after the Member making the Transfer (i) has obtained the consent of the non-Transferring Members to admit the proposed Transferee as a Member under Section 3.01(c) and (ii) has complied with the right of first refusal provisions of Section 7.04 of this Agreement.

"***Permitted Transferee***" means any Person to which a Member is entitled to make a Permitted Transfer under this Agreement who complies with the terms and conditions set forth under this Agreement.

"***Person***" means any individual, for-profit or nonprofit corporation, association, partnership (general, limited or limited liability), joint venture, trust, estate, limited liability company or other legal entity or organization.

"***Purchase Event***" shall have the meaning set forth in Section 7.01.

"***Purchase Event Notice***" shall have the meaning set forth in Section 7.01(b).

"***Purchase Option Election Notice***" shall have the meaning set forth in Section 7.01(c).

"***Put/Call Closing***" shall have the meaning set forth in Section 7.02(b).

"***Put/Call Exercise Period***" shall have the meaning set forth in Section 7.02(a).

"***Put/Call Notice***" shall have the meaning set forth in Section 7.02(a).

"***Put Right***" shall have the meaning set forth in Section 7.02.

"***Put Units***" shall have the meaning set forth in Section 7.02.

"***Real Property***" means the real property mutually selected by the Members upon which the IRF will be located. If such Real Property is owned by a Member, that Real Property will be leased to a REIT mutually agreed to by the Members pursuant to a long-term ground lease between that REIT and the Member owning the Real Property.

"***Reasonable Compensation***" as applied to the value of services shall mean the amount that would ordinarily be paid for like services by like enterprises (whether taxable or tax-exempt) under like circumstances. The standards set forth at IRC §162, § 501(c)(3) and § 4958 shall apply in determining reasonableness of compensation, taking into account the aggregate benefits provided to a Person and the rate at which any deferred compensation accrues.

"***Region***" is defined as the following: Sacramento, Yolo, Placer, Colusa, Sutter/Yuba, El Dorado, San Joaquin and Solano Counties.

"***Related Party Transaction***" shall have the meaning set forth in Section 9.01(b).

"***Restricted Period***" shall have the meaning set forth in Section 9.03.

"***Securities Act"*** means the Securities Act of 1933, as amended.

"***Selling Member***" shall have the meaning set forth in Section 7.01.

"***Small Partnership Election***" means an election made by the Company in accordance with Section 6221(b) of the IRC.

"***Tax***" or "***Taxes***" means any federal, state, local or foreign income, gross receipts, license, payroll, employment, business and occupation, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, hospital provider, unclaimed/abandoned property, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not.

"***Tax Impediment***" means any Law passed, adopted or implemented by any Governmental Authority, or any decision, finding, interpretation or action by any Governmental Authority which, in the written reasoned opinion of independent tax counsel engaged by UCD for such purpose and approved by Kindred, which approval shall not be unreasonably withheld, as a result or consequence, in whole or in part, of the arrangement between the Members set forth in this Agreement, or UCD's ownership interest in the Company, could reasonably be expected: (a) to result in or present a material risk of revocation of the federal tax-exempt status of UCD, The Regents or any Affiliate of The Regents or UCD or their respective tax-exempt financial obligations; (b) to result in distributions from the Company being subject to unrelated business income tax under IRC §511(a) and which may reasonably be expected to result in a material adverse effect on the tax-exempt status of UCD, The Regents or their respective Affiliate; or (c) to prohibit or restrict the ability of UCD, The Regents or their respective Affiliate to issue or have issued for their benefit tax-exempt bonds, certificates of participation, or other tax-exempt financial obligations.

"***Tax Impediment Call Right***" shall have the meaning set forth in Section 7.03(a).

"***Tax Impediment Put Right***" shall have the meaning set forth in Section 7.03(a).

"***Tax Impediment Negotiation Period***" shall have the meaning set forth in Section 2.08.

"***Tax Impediment Sale Units***" shall have the meaning set forth in Section 7.03(b).

"***The Regents***" shall have the meaning set forth in the Preamble.

"***Third Appraisal***" shall have the meaning set forth in Section 7.05(b).

"***Third-Party Purchaser***" means a Person unaffiliated with the seller of Units or assets that is a prospective purchaser of Units or assets from such seller.

"***Transfer***" means, in respect of any Units, property or other asset, any direct or indirect sale, assignment, pledge, hypothecation, transfer, distribution or other disposition thereof or of a participation therein, or other conveyance of legal or beneficial interest therein, or any short position in a Unit or any other action or position otherwise reducing risk related to ownership through hedging or other derivative instruments, whether voluntarily or by operation of law or any agreement or commitment to do any of the foregoing. "***Transferred***" and "***Transferring***" shall have the correlative meanings.

"***Transfer Instrument***" shall have the meaning set forth in Section 6.03.

"***Transferee***" means a Person that is Transferred Units in the Company from a Member in accordance with this Agreement.

"***UCD***" shall have the meaning set forth in the Preamble.

"***UCD Representatives***" shall have the meaning set forth in Section 3.01(b).

"***Units***" shall have the meaning set forth in Section 2.12.

Section 1.02 Usage Generally; Interpretation. Whenever the context may require, any pronoun includes the corresponding masculine, feminine and neuter forms. All references herein to Articles, Sections, subsections or paragraphs shall be deemed to be references to Articles, Sections, subsections or paragraphs of this Agreement unless the context otherwise requires. All references herein to "***days***" shall be calendar days unless explicitly stated otherwise.

ARTICLE II
FORMATION OF THE COMPANY; REPRESENTATION AND WARRANTIES OF THE MEMBERS; PURCHASE OF UNITS; CLOSING

Section 2.01 Formation Filing. The Company has been formed as a California limited liability company pursuant to the Act by filing Articles of Organization with the Secretary of State of the State of California, and the rights and liabilities of the Members shall be as provided in the Act except as herein otherwise provided. In the event of any inconsistency between any terms and conditions contained in this Agreement and any non-mandatory provisions of the Act, the terms and conditions contained in this Agreement shall govern. The Company shall execute such further documents and take such further actions as shall be appropriate to comply with the requirements of the Act for the operation of a limited liability company.

Section 2.02 Name. The name of the Company shall be "Sacramento Sierra Rehabilitation Hospital, LLC" or such other name as from time to time may be determined by the Members. The name of the IRF shall be "UC Davis Rehabilitation Hospital", subject to the execution by the Company and UCD of a license agreement effective as of the Effective Date.

Section 2.03 Principal Place of Business. The Company's principal place of business will be at such place as the Members shall designate from time to time.

Section 2.04 Term. The term of this Agreement shall commence on the Effective Date and shall continue until terminated as described herein.

Section 2.05 Purposes of the Company. The Company shall be operated and managed in accordance with the following:

(a) Purposes. The purposes of the Company shall be (i) to operate the Business; (ii) to operate the Company to promote health and provide healthcare services in a non-discriminatory manner to individuals without regard to race, creed, national origin, gender, payor source or the ability to pay for the services; (iii) to provide quality health care services in a manner that is consistent with the charitable purposes of UCD by promoting the health, wellness and welfare for a broad cross-section of the communities served by the Company; (iv) to operate the Company in accordance with the Community Benefit Standard; and (v) to generally engage in such other business and activities and to do any and all other acts and things permitted under the Act and in furtherance of the purposes of the Company as set forth in this paragraph (subject to the provisions of this Agreement).

(b) Operations in a Manner Consistent With UCD's Exempt Purposes.

(i) The Company's operations shall be conducted and managed in a manner that will not (v) cause UCD to act in a manner inconsistent with its tax-exempt purpose, or (w) adversely affect UCD's tax-exempt status under Section 501(c)(3) of the IRC. Other than distributions to Members with respect to their membership interests and withdrawals or returns of capital as permitted or contemplated by this Agreement, no part of the net earnings of the Company shall inure to the benefit of, or be distributable to, its members, directors, trustees, officers, or other private persons, except that the Company is expressly authorized and empowered to pay Reasonable Compensation for services rendered and to make payments and distributions in the furtherance of the purposes set forth herein. The Company shall ensure that all transactions involving payment for services are within the range of Reasonable Compensation for the services involved and that all transactions involving payment for property or the right to use property are within the range of Fair Market Value for the property or right to use property involved in the transaction and reasonably calculated to ensure that neither UCD nor the Company participates in an excess benefit transaction as defined in IRC §4958. In no event may the Company (x) make any direct or indirect financial contribution to, or otherwise directly or indirectly endorse or oppose, any candidate for public office, (y) carry on any Lobbying Activities, or (z) engage in any other activities not permitted to be carried on by UCD as an organization exempt from federal income tax under Section 501(c)(3) of the IRC.

(ii) The Members shall not cause the Company to engage in any activities or take any action which is materially inconsistent with the tax-exempt status of UCD or would create material unrelated business taxable income to UCD. All Members are aware of the limitations on the activities of the Company under this Section 2.05 and agree that the decision of the Members to forego an action or activity which would be inconsistent with the tax-exempt status of UCD shall not be a breach of the duty of loyalty or any other duty of the Members.

(iii) Notwithstanding any other provision of this Agreement to the contrary, UCD shall have the right to make decisions regarding the administration of the Charity

Policy, to direct the administration of the Charity Policy, and to initiate and enforce matters regarding the same. Furthermore, notwithstanding any other provisions of this Agreement to the contrary, UCD shall have the right to initiate, modify, amend, supplement and approve the Charity Policy and the Community Benefit Activities that UCD believes are necessary or appropriate to further the Community Benefit Standard, and such decision shall be within the exclusive control of UCD. Prior to taking any action pursuant to this Section, UCD will consult with and seek advice from Kindred with respect to any contemplated activities or actions, and will provide reasonably detailed information to Kindred regarding the proposed activities or actions, and the reasons such actions or activities are to be implemented.

(iv) The Members will assure that UCD will be able to utilize and will cause the Company to allow UCD to utilize, the IRF to conduct inpatient rehabilitation training for UCD medical students and residents, including without limitation, by permitting medical residents to round through the IRF, all in a manner that (a) is permitted by applicable law, (b) prioritizes the care of the patients of the IRF and (c) is in accordance with written agreements to be entered into between the Company and UCD as soon as reasonably practicable after the Effective date but in any event before the opening of the IRF.

(v) The Members will assure that the Company will support, and will cause the Company to support, UCD's research efforts through the engagement of IRF patients in research collaborations with UCD, to include human subjects research, and will utilize their collective best efforts to cause the Company to provide research space to UCD to the extent the IRF's physical space so permits, each in a manner that (a) is permitted by applicable law, (b) prioritizes the care of patients of the IRF and (c) is in accordance with written agreements to be entered into between the Company and UCD as soon as reasonably practicable after the Effective Date.

(c) The Members will cause the Company to be operated in accordance with the Community Benefit Standard and the provisions of this Section 2.05.

Section 2.06 Qualification and Registration. The Company shall execute and cause to be filed original or amended certificates and shall take any and all other actions as may be reasonably necessary to perfect and maintain the status of the Company as a limited liability company or similar type of entity under the Laws of the State of California and to qualify to do business in the State of California and any other jurisdictions in which the Company does business.

Section 2.07 Registered Office / Registered Agent. The Company's registered office and the name of the Company's registered agent shall be as determined by the Members from time to time.

Section 2.08 Tax Exemption Considerations. In the event of any Tax Impediment, the Members shall meet and confer in good faith as soon as reasonably practicable after an actual or potential Tax Impediment is identified in order to discuss the reasonable alternatives and solutions to resolve such Tax Impediment in a manner that will: (a) allow UCD and its Affiliates to retain their respective federal, state or local tax-exempt status; (b) ensure that UCD's distributions from the Company are not subject to unrelated business income tax under IRC §511(a) to such extent that may impair the tax-exempt status of UCD or its Affiliates; and (c)

allow UCD and its Affiliates to maintain and issue or have issued for their benefit tax-exempt bonds, certificates of participation or other tax-exempt financial obligations. The Members shall negotiate in good faith with respect to alternatives and solutions to resolve such Tax Impediment, including any modifications or amendments to this Agreement that may be necessary or appropriate to resolve such Tax Impediment. If the Members are unable to resolve a Tax Impediment in a manner that satisfies clauses (a), (b) and (c) above to their mutual satisfaction in accordance with this Section 2.08 within sixty (60) days after UCD provides notice to Kindred of an actual or potential Tax Impediment (the "***Tax Impediment Negotiation Period***"), then UCD may exercise the Tax Impediment Put Right or the Tax Impediment Call Right pursuant to Section 7.03.

Section 2.09 Title to Property. All property owned by the Company shall be owned by the Company as an entity and no Member shall have any ownership interest in such property in its individual name. The Company shall hold title to all of its property in the name of the Company and not in the name of any Member. Each Member's Units in the Company shall be personal property of such Member for all purposes.

Section 2.10 Entity Classification. The Members agree that the Company shall be classified as a partnership for United States federal and state tax purposes, and the Members and the Company agree that they shall refrain from making any elections under the Regulations, and from filing any returns or reports, that are inconsistent with such classification unless and until the Members consent to a change in the United States federal and state tax classification of the Company.

Section 2.11 Representations and Warranties of Members. Each Member represents and warrants to the Company and the other Member as follows:

(a) Organization and Authority. Such Member is duly incorporated or organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization and has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder and to perform the actions contemplated hereby. The execution and delivery of this Agreement by such Member and the performance by such Member of its obligations hereunder and the performance by such Member of the actions contemplated hereby have been duly authorized by all requisite action on the part of such Member and no other corporate approval is needed for such execution, delivery and performance. This Agreement has been duly executed and delivered by such Member, and (assuming due authorization, execution and delivery by the other Persons signatory hereto) this Agreement constitutes a legal, valid and binding obligation of such Member enforceable against it in accordance with its terms, subject to the effect of any applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at Law).

(b) No Conflict. The execution and delivery by such Member of, and performance by such Member of its obligations under, this Agreement do not and will not (i) violate, conflict with or result in the breach of any provision of such Member's charter or bylaws (or similar organizational documents) or (ii) either (A) conflict with or violate any Law,

governmental regulation or governmental order applicable to such Member or any of its assets, properties or businesses or (B) conflict with, result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to other Persons any rights pursuant to, any contract, agreement or arrangement by which such Member is bound, except to the extent that any conflict, violation, breach, default, failure to obtain consent or surrender of rights under this clause (B) would not prevent or materially hinder the performance of the actions contemplated by this Agreement.

(c) Governmental Consents and Approvals. The execution, delivery and performance of this Agreement by such Member do not and will not require any consent, approval, authorization or other order of, action by, filing with or notification to, any Governmental Authority.

(d) Securities Laws.

(i) All Units acquired by or for such Member are and will be acquired solely for such Member's own account for investment purposes only and not with a present view toward the distribution thereof or with any present intention of distributing or reselling any such Units in violation of the Securities Act or any state securities Laws. Irrespective of any other provisions of this Agreement, any Transfer of any of the Units acquired by such Member will be made only in compliance with all applicable federal and state securities Laws, including the Securities Act.

(ii) Such Member has had the opportunity to ask questions and receive answers concerning the Units acquired by or for such Member. Such Member has had full access to such information and materials concerning the Company as such Member has requested. The Company has answered all inquiries that such Member has made to the Company relating to the Company or the Units acquired by such Member.

(iii) Such Member has sufficient knowledge and experience in financial and business matters so that such Member is capable of evaluating the merits and risks of an investment in the Units and of making an informed investment decision with respect thereto, or such Member has consulted with advisors who possess such knowledge and experience.

(iv) Such Member is able to bear the economic risk of its investment in the Units for an indefinite period of time. Such Member understands that the Units have not been registered under the Securities Act and therefore cannot be sold unless subsequently registered under the Securities Act or unless an exemption from such registration is available.

(e) No Proxy or Voting Agreement. Such Member has not and will not grant any proxy or enter into or agree to be bound by any voting trust with respect to the Units nor will such Member enter into any Member agreements or arrangements of any kind with any Person with respect to the Units on terms which conflict with or violate any provision of this Agreement, including, without limitation, agreements or arrangements with respect to the acquisition, disposition or voting of Units inconsistent with this Agreement.

(f) Government Health Care Program. Neither such Member nor any of its Affiliates (nor any of their respective managers, directors, officers, or employees) or material

third party vendors or independent contractors who furnish services or supplies that may be reimbursed in whole or in part under any Government Health Care Program) is excluded, suspended or debarred from participation (or is otherwise ineligible to participate) in any Government Health Care Program, and no such Person has been convicted of or charged with any violation of any Laws related to any Government Health Care Program which conviction or charge is reasonably likely to serve as the basis for any exclusion, suspension, or debarment or ineligibility under Section 42 U.S.C. § 1320a–7, or any analogous exclusionary Law of the State of California.

(g) Compliance with Laws. The Members acknowledge that the Company's operations are subject to various state and federal laws regulating permissible relationships between the Members and entities such as the Company, including without limitation 42 U.S.C. 1320a-7b(b) (the "***Fraud and Abuse Statute***"), U.S.C. 1395nn (the "***Stark Act***"), and similar California laws. It is the intent of the parties that the Company operate in a manner consistent and in compliance with the foregoing statutes. Accordingly, each Member represents and warrants that (i) such Member has not entered into this Agreement, and has not provided remuneration or been provided remuneration with the intent to induce the referral of Medicare or Medicaid items or services to any other Person, including a Member or the Company, (ii) no Person has requested information from the Member regarding the Member's ability to refer Medicare and Medicaid items or services, and (iii) the Member has not been encouraged to invest or not invest based on his or her ability to direct referrals to the Company or other Members. The Members also acknowledge that the Stark Act may restrict the Company (as presently formed) from providing Designated Health Services (as defined by the Stark Act) to patients referred by Members.

Section 2.12 Purchase of Units.

(a) UCD Purchase of Units. As set forth on **Exhibit A**, UCD hereby purchases and the Company hereby issues and sells to UCD forty-nine (49) units ("***Units***") at a purchase price of One Hundred Dollars ($100) per unit, for a total purchase price of Four Thousand Nine Hundred Dollars ($4,900).

(b) Kindred Purchase of Units. As set forth on **Exhibit A**, Kindred hereby purchases and the Company hereby issues and sells to Kindred fifty-one (51) Units at a purchase price of One Hundred Dollars ($100) per unit, for a total purchase price of Five Thousand One Hundred Dollars ($5,100).

(c) Closing. The purchase and sale of the Units set forth in this Section 2.12 shall occur simultaneously with the execution of this Agreement by the parties hereto.

ARTICLE III
MANAGEMENT AND OPERATIONS OF THE COMPANY

Section 3.01 Management of the Company.

(a) Management by Members.

(i) The management and the exercise of powers of the Company is fully vested in the Members acting in their membership capacities. Decisions and actions of the Members will be made through the Member Representatives. Except for matters requiring approval under this Agreement or under applicable law, the day-to-day operational responsibilities for the Company shall be delegated by the Members to the Manager, and the Manager shall manage such day-to-day operations pursuant to the Management Agreement.

(ii) No Member acting individually without the express authority of the other Member shall be an agent of the Company or shall have authority to bind the Company or incur a debt or liability on behalf of the Company. Any Member who binds or obligates the Company for any debt or liability or causes the Company to act, except in accordance with this Agreement, shall be liable to the Company and to the other Members for any such debt, liability or act.

(b) Member Representatives.

(i) Purpose, Authority and Actions of the Member Representatives. To facilitate the orderly and efficient management of the Company, each Member shall select Member Representatives, whose decisions shall inform the decision of such Member. Such Member Representatives shall not be deemed "managers" under the Act.

(ii) Number: Appointment. The Member Representatives shall consist of six (6) members, three (3) of whom shall be appointed by Kindred (the "***Kindred Representatives***") and three (3) of whom shall be appointed by UCD (the "***UCD Representatives***"). UCD's appointment shall be made by the Chief Executive Officer of UCD. The initial Member Representatives are listed on **Exhibit B** attached hereto. Each Member Representative shall serve until his or her removal, resignation, death or incapacity to serve. Each Member shall have the right to remove (with or without cause) any Member Representative designated by such Member at any time. In addition, a Member Representative appointed by a Member may be removed upon the reasonable request of the other Member in case of fraudulent or dishonest acts of the Member Representative. In the event of such removal or in the event of any vacancies created by the resignation, death or incapacity of any Member Representative, the appointing Member may designate a replacement Member Representative.

(c) Approvals Required. Company actions shall require Member Approval, except as otherwise expressly set forth in this Agreement; provided, however, that notwithstanding anything to the contrary in this Agreement, and subject any applicable restrictions set forth in Section 9.01, 9.02 or 9.04, with respect to any of the following actions, the Company shall not take any of the following actions, unless approved by the consent of both Members:

(i) Merger, consolidation or other reorganization of the Company with or into any other entity, or the sale, exchange, transfer or other disposition of all or substantially all of the assets of the Company;

(ii) Changing or reorganizing the Company from a limited liability company to another legal form;

(iii) Amendment, addition, deletion, repeal or restatement, in whole or in part, of the Articles of Organization or this Agreement;

(iv) The removal, addition or substitution of any Member of the Company, the issuance of any Units or other interests in the Company, the repurchasing or redeeming of Percentage Interests of a Member, or the Transfer of an ownership interest in the Company (except in the case of a Transfer by a Member, in which case only the approval of the non-Transferring Member shall be required)

(v) Any extension of the term of the Company;

(vi) Selecting or changing the name of the Company, the IRF or the Business;

(vii) Approval of the Company's Budget or any modification thereto;

(viii) Approval of all strategic plans for the Company and any proposed actions that are inconsistent with such strategic plans, or any material modification thereto;

(ix) Any non-budgeted capital expense outside the course of day-to-day operations in excess of $250,000 cumulative per year;

(x) Non-budgeted purchases of equipment in excess of $250,000 cumulative per year;

(xi) The approval of (A) all non-budgeted contracts, leases (whether operating or capital), or other agreements or transactions of the Company for which $250,000 or more will be expended over the life of the contract, lease or other agreement, or any material modification thereof, (B) any material contract of the Company with a term that (1) exceeds two (2) years (including renewal periods) and that is not terminable by the Company without cause upon one hundred eighty (180) days or less prior notice or (2) includes any exclusivity or other restrictive covenants on the operation or activities of the Company or any Member;

(xii) Any non-budgeted loan, debt or other borrowing by the Company of $250,000 or more (excluding accounts payable);

(xiii) Any loan by the Company of any of its funds to any Person or entity, including any Member or its Affiliates, or the provision of any guarantees by the Company;

(xiv) Any contract between the Company and any of its Members or their respective Affiliates (or any material modification thereof), subject, however, to Article IX;

(xv) Any contract between the Company and any third party for professional medical services or management services;

(xvi) Selecting the location of the Business and entering into any development agreement, lease or other agreement, arrangement or business dealing of any type related to the development, construction or occupation of the physical facility in which the

Business will be located, any modifications or amendments to any such agreement, arrangement, business dealing, and the approval of any development or construction budgets or any other material decisions, determinations or actions related to the development, construction or occupation of such physical facility or any modifications or amendments thereto, including, without limitation, the approval of any change orders or other deviations from the approved development or construction budgets that exceed $250,000 (even if such change orders or deviations are within the contingency budget for the project);

(xvii) Determining the number of beds comprising the IRF;

(xviii) The non-participation by the Company in any health care program paid for, in whole or in part, by any federal, state, country or local government;

(xix) The participation in or discontinuation of participation in any ACO or clinically integrated network or any decisions relating to the termination or modification of the IRF's accreditation by the Joint Commission;

(xx) The entry by the Company into any new line of business or business purpose other than as described herein;

(xxi) The discontinuation of the Company's Business or any change in the general character of the business anticipated to be conducted by the Company on the date hereof;

(xxii) The approval to pursue a Company ROFO Opportunity;

(xxiii) The commencement, prosecution, defense, settlement, compromise or dismissal of any lawsuit or other judicial or administrative proceedings (including investigations) affecting the Company or the Members which has an amount in controversy or settlement value of $250,000 or more, or where such action may implicate the Company's compliance with applicable Laws, subject, however, to Section 9.02;

(xxiv) The distribution of any assets of the Company to the Members, other than as contemplated hereby;

(xxv) Any decision to call for capital contributions from the Members;

(xxvi) The selection or removal of the independent accountants and attorneys for the Company;

(xxvii) The selection or removal of the CEO or Medical Director of the IRF; or

(xxviii) The dissolution of the Company, the filing of a petition with respect to the Company requesting or consenting to an order for relief under the federal bankruptcy laws, or other actions with respect to the Company as a result of insolvency or the inability to pay debts generally as such debts become due.

(d) Meetings of Members.

(i) Regular meetings of the Members, through the Member Representatives, shall be held at such times and places as shall be designated from time to time by the Members, provided that such meetings shall be held no less frequently than quarterly.

(ii) Special meetings of the Members, through the Member Representatives, shall be held whenever called, on at least five (5) days' notice to each Member Representative by the Chairman, Vice Chairman, any Member, or any Member Representative at such times and places as may be specified in the respective notices thereof. Notice of any such special meeting may be delivered verbally, electronically or in writing. Any Member Representative may waive notice of any meeting. The attendance at a meeting of a Member Representative shall constitute a waiver of notice of such meeting, except where the Member Representative attends a meeting for the express purpose of objecting to the transaction of any business at such meeting on the basis that such meeting is not lawfully called or convened.

(iii) Quorum. A quorum shall exist for the transaction of business at a meeting of the Members if a minimum of at least one Kindred Representative and at least one UCD Representative are present in person, excluding any Kindred Representative or UCD Representative who is not eligible to vote on a matter due to the existence of a conflict of interest, including, those described in or arising under Section 9.01, Section 9.02, or Section 9.04.

(iv) Chair and Vice Chair. The Chair shall preside at all meetings of the Member Representatives attended by the Chair. For any meeting of the Member Representatives in which the Chair is absent, the Vice Chair shall preside. The position of Chair and Vice Chair shall be rotated between UCD Representatives and Kindred Representatives (as selected by UCD and Kindred, respectively) at two-year intervals, and the Member that does not designate the individual to serve as Chair during such two-year period shall designate the Vice-Chair for such two-year period. The initial Chair shall be a UCD Representative as selected by UCD. The initial Vice Chair shall be a Kindred Representative as selected by Kindred.

(v) Action Without Meeting. Any action that may be taken by the Members at a meeting may be taken without a meeting of the Members if a consent in writing, setting forth the action to be so taken, shall be signed by Members holding the required Percentage Interest for such action.

(vi) Participation. A Member Representative may attend a meeting of the Member Representatives by means of a conference telephone or other communications equipment through which all Persons participating in such meeting can hear each other and such participation shall constitute being present in person.

(e) Use of Agents; Officers.

(i) The Members may, from time to time, retain any Person to provide services to the Company or the Members, and the Members are entitled to rely in good faith upon the recommendations, reports, advice or other services provided by any such Person.

(ii) Subject to Section 3.01(xxvii), the Members may from time to time appoint such officers of the Company as they deem necessary, each such officer to have the authority and responsibility and serve for the term designated by the Members or as agreed to by such officer and the Company in a separate written agreement signed thereby that receives Member Approval. None of such officers shall be deemed "managers" as such term is used in the Act. Unless otherwise agreed by such officer and the Company in a separate written agreement signed thereby and approved by the Members, and subject to Section 3.01(xxvii), the Members in their sole discretion can remove such officer at any time and such officer may resign upon prior written notice to the Company. The Members may fill any vacancies in officers of the Company.

(iii) The Company may reimburse the officers of the Company for any actual and reasonable expenses incurred by such officers for their service on behalf of the Company, including, without limitation, travel and lodging, provided that such officers comply with the Company's reimbursement policies and procedures in effect at such time.

Section 3.02 Indemnity

(a) No Member, in its capacity as such, or Member Representatives (hereinafter collectively referred to as "***Indemnitees***") shall have any liability, responsibility or accountability in damages or otherwise to any Members or the Company for any Adverse Consequences suffered by the Company which arises out of any act or omission performed or omitted by such Indemnitee, except for, and only to the extent of, liability for gross negligence, or acts or omissions not in good faith or which involve willful misconduct or a knowing violation of Law and (iii) solely with respect to any Member, any acts or omissions of any Member under this Agreement constituting a breach of this Agreement. Each Indemnitee shall be indemnified by the Company, and the Company hereby agrees to indemnify, defend, pay, protect and hold harmless the Indemnitee (on the demand of and to the reasonable satisfaction of such Indemnitee), from and against any and all Adverse Consequences arising from such Indemnitee's involvement with the affairs, or the management of the affairs, of the Company, provided that such Adverse Consequences were not the result of gross negligence or acts or omissions not in good faith or which involve willful misconduct or a knowing violation of Law by such Indemnitee. If any action, suit or proceeding shall be pending against the Company and an Indemnitee, such Indemnitee shall have the right to employ, at the expense of the Company, separate counsel of its, his or her choice in such action, suit or proceeding. The satisfaction of the obligations of the Company under this Section 3.02 shall be from and limited to the assets of the Company and no Member shall have any liability on account thereof.

(b) The Company shall indemnify any Person that was or is a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding by reason of the fact that such Person is or was an officer, employee or agent of the Company or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise; provided, however, that the Company shall not indemnify such Person for any act or omission that constitutes gross negligence or acts or omissions not in good faith or which involve willful misconduct or a knowing violation of Law.

(c) Any actual and reasonable expenses (including actual and reasonable attorneys' fees) incurred by any indemnitee under Section 3.02 in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Company in advance of the final disposition of such action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of such indemnitee to repay such amount if it shall ultimately be determined that such indemnitee is not entitled to be indemnified by the Company pursuant to Section 3.02(a) or 3.02(b).

Section 3.03 Other Activities.

(a) Subject to the covenants of the Members set forth in Article IX hereof, except as may otherwise be agreed by Members from time to time: (i) each of the Members may, notwithstanding the existence of this Agreement or any fiduciary relationship created hereby, engage in whatever activities such Member chooses in any area located outside the Region, regardless of whether such activities are competitive with the service offerings of the Company or otherwise, without having or incurring any obligation to offer any interest in such activities to the Company or any Member and (ii) neither this Agreement nor any activity undertaken pursuant to this Agreement shall prevent any Member from independently engaging in similar activities or require a Member to permit the Company or any other Member to participate in any such activities in any area outside the Region.

(b) As a material part of the consideration for the execution hereof by the Members, each Member hereby waives, relinquishes and renounces any right or claim of participation in any of the foregoing.

Section 3.04 Rights and Obligations of Members.

(a) Rights and Obligations of a Member. A Member as such shall not be personally liable for any of the debts of the Company or any of the losses thereof, whether arising in tort or contract or otherwise, beyond the Capital Contribution made by such Member to the Company; provided, however, that a Member may be required to repay distributions made thereto as provided in Section 17704.06 or other sections of the Act. The Member Representatives shall not have any personal liability for the repayment of any Capital Contribution of any Member.

(b) Regents. Each Member acknowledges that The Regents of the University of California ("***The Regents***") has entered into this Agreement solely on behalf of and with respect to UCD, and any medical center, hospital, clinic, medical group, physician, or health or medical plan or program, business or operating unit, enterprise, or facility, that is or may be owned or controlled by, UCD. The Regents has not entered into this Agreement on behalf of or with respect to any other division, business or operating unit, enterprise, facility, group, plan or program that is or may be owned, controlled, governed or operated by, or affiliated with, The Regents, including, without limitation, any other university, campus, health system, medical center, hospital, clinic, medical group, physician, or health or medical plan or program (collectively, the "***Excluded UC Affiliates***"). In light of the foregoing, each Member further acknowledges and agrees that, notwithstanding any other provision contained in this Agreement:

(i) All obligations of UCD under this Agreement shall be limited to The Regents as and when acting solely on behalf of or with respect to UCD and shall in no way obligate, be binding on or restrict the business or operating activities (whether conducted inside or outside of the Region) of any of the Excluded UC Affiliates or The Regents as and when acting on behalf of or with respect to any of such Excluded UC Affiliates;

(ii) None of the Excluded UC Affiliates shall constitute or be deemed to constitute an "Affiliate" of UCD for any purpose under this Agreement, and none of the Excluded UC Affiliates shall be subject to any limitations set forth herein that may otherwise be applicable to Affiliates; and

(iii) UCD, through The Regents or otherwise, shall have the right to participate in, provide services under, contract as part of, and otherwise be involved in the management or operation of, any health or medical insurance or benefit plan, program, service or product that is sponsored or offered in whole or in part by The Regents on a system-wide basis.

(c) Withdrawal / Resignation. Except as otherwise provided in Article VIII, no Member shall demand or receive a return of its Capital Contributions, or resign or withdraw from the Company, without the approval of the other Member.

(d) Partition. While the Company remains in effect or is continued, each Member waives its rights to have any of the Company's property or assets partitioned, or to file a complaint or to institute any suit, action or proceeding at Law or in equity to have any of the Company's property or assets partitioned. Each Member, on behalf of itself and its successors and assigns, hereby specifically waives any such direct or indirect right it now has or may hereafter acquire to cause any assets of the Company now or hereafter acquired to be partitioned.

Section 3.05 New Members. Except for a Transferee that receives Units in a Permitted Transfer, a new Member of the Company may be admitted only upon approval of the Members pursuant to Section 3.01(c). Such new Member shall make such Capital Contribution (if any) and shall receive Units and shall otherwise be admitted upon such terms and conditions required by this Agreement. Admission of a new Member is conditioned upon the execution of a joinder agreement to this Agreement. Upon such admission of a new Member of the Company, the Company shall amend **Exhibit A** to reflect the Capital Contribution, Percentage Interest and Units of such new Member. The terms and conditions of this Agreement shall be amended at such time of the admission of any new Members to reflect the rights and obligations of such additional Members.

ARTICLE IV
CAPITALIZATION OF THE COMPANY

Section 4.01 Capitalization. **Exhibit A** attached hereto sets forth each Member's Initial Capital Contributions to the Company, as applicable, in the amount shown opposite each such Member's name thereon. **Exhibit A** shall be amended from time to time by the Company to reflect the Percentage Interests of the Members. Ownership of Units shall not be certificated and shall be evidenced solely by the books and records of the Company as governed

by this Agreement. Units may not be subdivided, combined, reclassified or consolidated. Each of the Members and other Persons that may, from time to time, become Members has or shall have contributed to the capital of the Company the amount listed on **Exhibit A** hereto, as amended from time to time, to reflect the admission of new Members of the Company, Permitted Transferees or other Transferees in accordance with Article VI.

Section 4.02 Funding for the Company.

(a) The Members shall make initial Capital Contributions (the "***Initial Capital Contributions***") as described on **Exhibit A**.

(b) If the Members determine that (i) funds are required for any expenditure of the Company necessary for the operation of the Company and (ii) the amount of such required funds exceeds the cash generated by the operations of the Company, the Company shall, after receiving approval of the Members pursuant to Section 3.01(c), request that the Members make Capital Contributions to the Company in accordance with this Section 4.02(b) and Section 4.02(c), in proportion to their respective Percentage Interests, equal to the amount of the required funds ("***Mandatory Capital Contributions***"). If a request for Mandatory Capital Contributions is made pursuant to this Section 4.02(b) and Section 4.02(c), each Member shall be obligated to make such Mandatory Capital Contributions. If both Members contribute the Mandatory Capital Contributions in proportion to their Percentage Interest, no Member shall be issued additional Units in connection with any Mandatory Capital Contributions made pursuant to this Section 4.02(b), nor shall the Members' respective Percentage Interests be adjusted in connection therewith.

(c) If the Members authorize any Mandatory Capital Contributions to the Company (a "***Capital Call***"), the Company shall deliver a written notice (the "***Capital Call Notice***") to each Member stating:

(i) the aggregate amount of Mandatory Capital Contributions requested at such time and the intended uses therefor;

(ii) the amount of the Mandatory Capital Contribution to be provided by each Member, which amount shall be equal to (A) the aggregate amount of the Capital Call made *multiplied by* (B) the Percentage Interest of such Member;

(iii) the due date for such Mandatory Capital Contributions, which due date shall be at least fifteen (15) days (or such other longer period mutually agreed upon by the Members) from the date of the Capital Call Notice;

(iv) wiring instructions for the wire transfer to the Company's bank account; and

(v) any other information the Company reasonably determines be included in the Capital Call Notice.

(d) All Mandatory Capital Contributions made by the Members shall be made by wire transfer of immediately available funds to the bank account designated by the Company

in such Capital Call Notice prior to the close of business on the due date specified in such Capital Call Notice.

Section 4.03 Failure to Fund.

(a) If a Member does not make a Mandatory Capital Contribution within fifteen (15) days after the due date (such failure being referred to herein as the "***Funding Shortfall***"), such Member shall be designated as a "***Non-Funding Member***," and the Company shall promptly notify the Funding Member (as defined below) of the Funding Shortfall. If the other Member has made its Mandatory Capital Contribution in accordance with the terms hereof, such Member is hereafter referred to as the "***Funding Member***."

(b) In the event of a Funding Shortfall, the Funding Member shall have fifteen (15) Business Days after the date of receipt of the notice of the Funding Shortfall to provide written election to the Company to (i) terminate the Capital Call and return all Capital Contributions received pursuant to such Capital Call, (ii) ratify the Mandatory Capital Call and have each Member's Capital Account immediately adjusted accordingly (with the Funding Member having the option – but not the obligation – to simultaneously make a further Capital Contribution covering part or all of the Funding Shortfall in return for further adjustment of such Member's Capital Account), or (iii) advance the Company all or a portion of the Funding Shortfall to be treated as a loan to the Non-Funding Member.

(i) If the Funding Member elects to ratify the Mandatory Capital Call, then the Company shall issue Units to the Funding Member such that the relative Units held by the Members reflects the relative capital account of each Member. The Company shall make appropriate adjustments to the Capital Accounts of the Members and the Units held by the Members in the books and records of the Company and on **Exhibit A** hereto.

(ii) If the Funding Member advances a portion or all of the shortfall to the Company in the form of a loan to the Non-Funding Member, then the Funding Shortfall shall be treated as a loan to such Non-Funding Member (according to the terms set forth in Section 4.03(c)) for a period to be determined by the Funding Member in its sole discretion, and such loan shall terminate upon the earlier of (x) the payment of the Funding Shortfall (including accrued interest at the Default Interest Rate) by such Non-Funding Member and (y) the date on which the loan period, as determined by the Funding Member, expires (the "***Due Date***"), in which case the terms of Section 4.03(d) shall then be applicable.

(c) Any payment by a Funding Member of all or a portion of a Funding Shortfall that is treated as a loan pursuant to Section 4.03(b) shall, during all periods in which such payment is treated as a loan, have the following terms: (i) the principal balance of such loan and all accrued and unpaid interest thereon shall be due and payable in whole on the Due Date; (ii) such loan shall bear interest ("***Default Interest Rate***") at the Prime Rate as published in *The Wall Street Journal* on the date of funding plus 2% (not to exceed the highest rate permitted by applicable Law) from the date that such loan was made until the date that such loan, together with all interest accrued thereon, is repaid; and (iii) all distributions from the Company that would otherwise be made to the Non-Funding Member shall be paid by the Company to the Funding Member providing the loan (whether before or after dissolution of the Company) until such loan

and all interest accrued thereon shall have been repaid in full to the Funding Member (with all such payments (x) deemed to have been distributed to the Non-Funding Member and (y) applied first to interest accrued and unpaid and then to principal).

(d) If the Funding Member advances a portion or all of the shortfall to the Company in the form of a loan to the Non-Funding Member, and if such Non-Funding Member has not repaid the loan (including accrued interest at the Default Interest Rate) on or before the Due Date, the Company shall treat the balance due to the Funding Member as a Capital Contribution by the Funding Member to the Company. The Company shall issue Units to the Funding Member such that the relative Units held by the Members reflects the relative capital account of each Member. The Company shall make appropriate adjustments to the Capital Accounts of the Members and the Units held by the Members in the books and records of the Company and on **Exhibit A** hereto.

(e) A Member shall no longer be a Non-Funding Member upon (i) payment of by the Funding Member of the loan (including accrued interest at the Default Interest Rate) to the Funding Member prior to the issuance of Units under Section 4.03(d), or (ii) the issuance of Units under Section 4.03(d).

(f) Notwithstanding any provision in the foregoing to the contrary, if a Member fails to timely make Mandatory Capital Contribution(s) three (3) times during the term of this Agreement, the Funding Member shall have the right to buy the interest of the Non-Funding Member in accordance with the terms of Section 7.01(a)(ii).

Section 4.04 Debt Financing. Upon approval of the Members, (a) the Company may obtain secured or unsecured debt financing for operations, capital expenditures or any other approved purpose, and (b) the Company may obtain debt financing from one or more Members of the Company or any Affiliate of a Member, provided that such debt financing must be on terms that are at least as favorable to the Company as would be available to the Company in an arm's-length transaction with an Independent Third Person providing debt financing. The Members acknowledge and agree that no Member shall be required to provide debt financing, loans or guarantees for loans to the Company except to the extent such Member consents.

Section 4.05 Capital Accounts. The Company shall establish and maintain a capital account for each Member in accordance with IRC Regulations Section 1.704-1(b)(2)(iv) (each, a "***Capital Account***"). Accordingly, a Member's Capital Account shall be increased by (a) the amount of money the Member contributes to the Company, (b) the Fair Market Value of property the Member contributes to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under IRC Section 752) and (c) allocations to the Member of Net Income (or items thereof), including income and gain exempt from tax and gain as computed for book purposes in accordance with IRC Regulations Section 1.704-1(b)(2)(iv)(g) but excluding any gain separately computed for tax purposes as described in IRC Regulations Section 1.704-1(b)(4)(i). A Member's Capital Account shall be decreased by (i) the amount of money the Company distributes to the Member, (ii) the Fair Market Value of property the Company distributes to the Member (net of any liabilities secured by such distributed property that the Member is considered to take subject to under IRC Section 752), (iii) allocations to the Member of the Company's nondeductible, noncapital

expenditures and (iv) allocations to the Member of Net Losses (or items thereof), including loss and deduction as computed for book purposes in accordance with IRC Regulations Section 1.704-1(b)(2)(iv)(g) but excluding nondeductible, noncapital expenditures and loss and deduction separately computed for tax purposes as described in IRC Regulations Section 1.704-1(b)(4)(i). A Member's Capital Account in all events shall be adjusted in accordance with the additional rules set forth in IRC Regulations Section 1.704-1(b)(2)(iv).

Section 4.06 Effect of Transfer of Units. Upon the Transfer by any Member of any or all of its Units that receives approval of the other Member pursuant to Section 6.01(a) and is otherwise effected in accordance with the provisions of this Agreement, the proportionate amount of such Member's Capital Account balance shall be transferred to the Transferee of such Units.

ARTICLE V
DISTRIBUTIONS AND ALLOCATIONS

Section 5.01 Ownership of Company. All economic, voting and other interests in the Company shall be in accordance with the Members' Percentage Interest set forth on **Exhibit A**, as it may be amended from time to time in accordance with this Agreement.

Section 5.02 Allocation of Net Profits and Net Losses.

(a) General Allocations.

(i) All Net Income and Net Losses of the Company shall be allocated to the Members in accordance with the Members' respective Percentage Interests.

(ii) Notwithstanding anything in this Agreement to the contrary, prior to any distribution to the Members following dissolution of the Company, each Member's Capital Account will be allocated an amount of the realized gain or loss on the liquidation of the Company's assets in a manner such that the ratio of the Capital Account of each Member to the total of all Member's Capital Accounts is the same as, or as close as possible to, each Member's Percentage Interest. The intent of this provision is to ensure that each Member's Capital Account, to the extent possible, is reduced to zero by the distributions following dissolution of the Company made in proportion to each Member's Percentage Interest.

(b) Special Allocations.

(i) Minimum Gain Chargeback. Notwithstanding any provision hereof to the contrary, any item of Company income or gain for any Fiscal Year (or any portion of any such item) that is required to be allocated to the Members under IRC Regulations Sections 1.704-2(f) or 1.704-2(i)(4) shall be allocated to the Members for such fiscal year in the manner so required by such Treasury Regulations, including IRC Regulations Section 1.704-2(j)(2).

(ii) Qualified Income Offset. Notwithstanding any provision hereof to the contrary, if a Member unexpectedly receives in any Fiscal Year any adjustment, allocation or distribution described in IRC Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6), items of Company income and gain for such Fiscal Year (and, if necessary, for subsequent Fiscal Years)

shall be allocated to such Member in an amount and manner necessary to eliminate any Adjusted Capital Account Deficit of such Member as quickly as possible; provided, however, that an allocation pursuant to this Section 5.02(b)(ii) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Agreement have been tentatively made as if this Section 5.02(b)(ii) were not contained herein.

(iii) Gross Income Allocation. Notwithstanding any provision hereof to the contrary, if a Member has an Adjusted Capital Account Deficit as of the last day of any Fiscal Year, then all items of income and gain of the Company (consisting of a pro rata portion of each item of Company income and gain, including gross income) for such Fiscal Year shall be allocated to such Member in the amount and in the manner necessary to eliminate such Adjusted Capital Account Deficit as quickly as possible; provided, however, that an allocation pursuant to this Section 5.02(b)(iii) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Agreement have been tentatively made as if this Section 5.02(b)(iii) were not contained herein.

(iv) Member Nonrecourse Deductions. Notwithstanding any provision hereof to the contrary, any item of Company loss, deduction or expenditure described in Section 705(a)(2)(B) of the IRC for any Fiscal Year (or any portion of any such item) that is required to be allocated to the Members under Treasury Regulations Section 1.704-2(i)(l) shall be allocated to the Members for such Fiscal Year in the manner so required by such Regulation.

(v) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company property pursuant to Sections 1.704-1(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4) of the IRC Regulations is to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of its membership interest, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their respective Percentage Interests in the event that Section 1.704-1(b)(2)(iv)(m)(2) of the IRC Regulations applies, or to the Members to whom such distribution was made in the event that Section 1.704-1(b)(2)(iv)(m)(4) of the IRC Regulations applies.

(vi) Allocations Relating to Taxable Issuance of Membership Interests. Any income, gain, loss, or deduction realized as a direct or indirect result of the issuance of membership interests shall be allocated among the Members so that, to the extent possible, the net amount of such items, together with all other allocations under this Agreement to each Member, shall be equal to the net amount that would have been allocated to each such Member if the items had not been realized.

(c) Curative Allocations. The allocations set forth in Section 5.02(b), (d) and (e) (the "***Regulatory Allocations***") are intended to comply with certain requirements of the IRC Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 5.02(c). Therefore, notwithstanding any other provision of this Article V (other than the Regulatory Allocations), the

Company shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Section 5.02(a)(i).

(d) Limitation on Loss Allocation. Notwithstanding the provisions of Section 5.02 hereof, if the amount of loss that would otherwise be allocated to a Member in any Fiscal Year under Section 5.02 hereof would cause or increase a Member's Adjusted Capital Account Deficit as of the last day of such fiscal year, then a proportionate part of such Loss equal to such excess shall be allocated to the other Members to the extent such allocation can be made without violating the provisions of this Section 5.02 with respect to such other Members. Notwithstanding anything to the contrary in Section 5.02, any profit for any subsequent Fiscal Year that would have been allocated to a Member to which Loss would have been allocated but for the effect of the first sentence of this Section 5.02(d) shall be allocated to the other Members to the extent of the aggregate amount of loss allocated to such other Members pursuant to the first sentence of this Section 5.02(d).

(e) Section 704(c) Allocation. In accordance with IRC Section 704(c) and the IRC Regulations thereunder and with Section 1.704-1(b)(2)(iv)(f)(4) and 1.704-1(b)(4)(i) of the IRC Regulations, income, gain, loss and deduction with respect to any property contributed to the capital of the Company or property revalued on the Company's books and in the Capital Accounts shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value under any method selected by the Members.

(f) Other Allocation Rules.

(i) For purposes of determining the profits, losses, or any other items allocable to any period, profits, losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Members using any permissible method under section 706 of the IRC and the IRC Regulations thereunder.

(ii) The Members are aware of the income tax consequences of the allocations made by this Article V and hereby agree to be bound by the provisions of this Article V in reporting their shares of Company income and loss for income tax purposes

(iii) Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Section 1.752-3(a)(3) of the IRC Regulations, the Members' interests in Company profits are in proportion to their respective Percentage Interests.

Section 5.03 Distributions to Members. No later than forty-five (45) days after the end of each Fiscal Quarter of the Company, (i) the Company shall prepare in accordance with GAAP a statement of cash flows for the immediately preceding Fiscal Quarter; and (ii) subject to applicable law, the Company shall make a cash distribution in the aggregate amount of its Cash Available for Distribution to the Members in accordance with their respective Percentage Interests.

In addition, each of UCD and Kindred acknowledges and agrees that, under the Contribution Agreement, in addition to Kindred's obligation to contribute cash to the Company, Kindred is required to pay cash to UCD. If Kindred fails to timely pay any such cash to UCD in accordance with the Contribution Agreement, then all distributions from the Company that would otherwise be made to Kindred hereunder shall be paid by the Company to UCD until the amount that is due and unpaid (and all applicable interest accrued thereon) under the Contribution Agreement shall have been paid in full to UCD (with all such payments (i) deemed to have been distributed to Kindred and (ii) applied first to interest accrued and unpaid and then to principal).

Section 5.04 Required Withholding. The Company is authorized to withhold from distributions to a Member and to pay over to a federal, state, local or foreign government any amounts required to be withheld pursuant to the IRC or any provision of any other federal, state, local or foreign Law. All amounts withheld pursuant to this Section 5.04 shall be treated as amounts distributed to such Member for all purposes of this Agreement.

ARTICLE VI
TRANSFERS

Section 6.01 Restrictions on Transfer.

(a) No Transfer of Units by a Member may be effected without the prior written approval of the other Member except for (i) a Permitted Transfer (which Permitted Transfer shall not be effective unless and until the Transferee of Units executes and delivers to the Company a joinder to this Agreement, if such Transferee is not already a Member) or (ii) a Transfer pursuant to the exercise of a Member's rights or performance of a Member's obligations under Article VII. The Members agree that (1) no Permitted Transfer shall be made for the purpose of circumventing the general prohibition on Transfers to Third-Party Purchasers in this Article VI, and (2) no Transfer (other than as described in clauses (a), (b) and (c) of the definition of Permitted Transfer) shall be made by either Member until the eighth (8^{th}) anniversary of the Effective Date.

(b) Any attempt in contravention of this Agreement to make any Transfer with respect to Units shall be null and void and of no force and effect, the Transferee in such purported Transfer shall have no rights or privileges in or with respect to the Company and the Company shall not give effect in the Company's records to any such purported Transfer. The Member engaging or attempting to engage in such purported Transfer shall indemnify and hold harmless the Company and each of the other Members from all claims, suits, judgments, losses, damages, fines and costs (including reasonable legal fees and expenses) that the Company and such other Members may incur (including, without limitation, incremental Tax liability) in enforcing this Section 6.01.

Section 6.02 Securities Law Transfer Restrictions. Each Member acknowledges that the Units have not been registered under the Securities Act or applicable state securities Laws in reliance on applicable exemptions. Prior to any Transfer subsequent to the Effective Date of any Units in the Company not registered under an effective registration statement under the Securities Act and applicable state securities Laws, a transferring Member will give written notice to the Company of such Member's intention to effect such Transfer and to comply in all other respects with this Article VI. As an additional condition to such Transfer, the Company

may require an opinion of such transferring Member's counsel satisfactory to the Company that such Transfer will be made in compliance with the Securities Act and applicable state securities Laws. Upon acceptance by the Company of such notice and opinion and such other documents as may be reasonably requested by the Company, such Member shall thereupon be entitled to make or solicit the Transfer of such Units in accordance with the terms of such notice delivered to the Company and otherwise in accordance with, and subject to the conditions contained in, this Agreement.

Section 6.03 Joinder Agreement; Transfer Instrument. No Person shall become a Member or owner of any Units through a Transfer from another Member until the Company shall have received a joinder to this Agreement signed by such Person (unless the Transferee is already a Member), and no Transfer of Units subsequent to the Effective Date shall be effective for any purpose unless and until a transfer instrument in form reasonably satisfactory to the non-Transferring Member and executed by such Transferring Member (the "***Transfer Instrument***") is delivered evidencing the Transfer of such Units. From and after such receipt of a joinder from such Person and the delivery of the Transfer Instrument evidencing the Transfer of such Units, and subject to compliance with all other provisions of this Agreement, such Person shall be entitled to the rights and privileges of a Member set forth in this Agreement and shall be bound and obligated by the provisions of this Agreement, effective as of the first day of the month following the Transfer unless agreed otherwise by the Company.

Section 6.04 Effect of Transfer. A Person shall cease to be a Member, and shall not be entitled to exercise any rights or powers of a Member, upon a Transfer of all of such Person's Units. The Company shall amend **Exhibit A**, attached hereto to reflect the ownership of Units among Members immediately after any such Transfer.

ARTICLE VII
MEMBER PURCHASE AND SALE RIGHTS

Section 7.01 Purchase Option. Upon the occurrence of any one or more of the events (each, a "***Purchase Event***") set forth in Section 7.01(a) below with respect to a Member (such Member, the "***Selling Member***"), the other Member (the "***Buying Member***") shall have the right, but not the obligation, to purchase all (but not less than all) of the Units then owned by the Selling Member upon the terms and subject to the conditions set forth in this Section 7.01 and otherwise in accordance with this Article VII (the "***Purchase Option***").

(a) Purchase Events. The following shall constitute Purchase Events for purposes of this Agreement:

(i) any Disqualifying Event with respect to the Selling Member;

(ii) upon the failure of the Selling Member to timely make Mandatory Capital Contributions three (3) times during the term of this Agreement;

(iii) any material breach by the Selling Member of its obligations under this Agreement, any agreement between the Selling Member and the Company, and any agreement between the Selling Member and the Buying Member, which material breach is not cured within

any applicable notice and cured period. In the event of such a material breach, the Buying Member shall deliver to the Selling Member a notice stating the specific nature of the material breach and, at the Buying Member's option, stating what the Buying Member proposes to be an effective cure or cures in connection therewith (which proposed cure or cures would not be binding upon the Selling Member) (the "***Breach Notice***"). For purposes of a breach under this Agreement, this Section 7.01(a)(iii) shall be triggered if the Selling Member fails to cure the breach within thirty (30) days after receipt of the Breach Notice. Notwithstanding any provision in this Section 7.01(a)(iii) to the contrary, a Member's failure to timely make a Mandatory Contribution shall not be deemed to be a material breach of this Agreement for purposes of this Section 7.01(a)(iii); and

(iv) upon the termination of the Management Agreement, in which case UCD shall be the Buying Member.

(b) Notice of Purchase Event. Upon the occurrence of any Purchase Event, the Buying Member shall give written notice of the Purchase Event (the "***Purchase Event Notice***") to the Selling Member within ten (10) days after (i) the Buying Member has knowledge of the occurrence of an event described in Section 7.01(a)(i) with respect to the Selling Member, or (ii) the occurrence of a Purchase Event described in Section 7.01(a)(ii) or (iii).

(c) Exercise of Purchase Option. Following the occurrence of a Purchase Event, the Buying Member shall have ninety (90) days after the date of the Selling Member's receipt of the Purchase Event Notice in which to give notice to the Selling Member of its election to exercise the Purchase Option (the "***Purchase Option Election Notice***").

(d) Closing; Purchase Price. If the Buying Member exercises the Purchase Option, Kindred and UCD shall take all actions reasonably necessary to cause the consummation of the purchase and sale of the Selling Member's Units to occur within ninety (90) days following receipt by the Selling Member of the Purchase Option Election Notice. At the Closing, the Buying Member shall pay to the Selling Member an amount equal to the Fair Market Value of the Selling Member's Units as determined by an Independent Appraiser as mutually agreed by UCD and Kindred. If UCD and Kindred do not agree on an Independent Appraiser within thirty (30) days after receipt by the Selling Member of the Purchase Option Election Notice, then the Fair Market Value of the Selling Member's Units shall be determined in accordance with Section 7.05 below.

(e) Rights Non-Exclusive. The rights of a Buying Member under this Section 7.01 shall not be the exclusive remedy of the Buying Member, but shall be in addition to all other rights and remedies available to the Buying Member at Law or in equity resulting from any breach of this Agreement by the Selling Member, including, without limitation, the right of the Buying Member or the Company to institute suit to collect any amounts owed to the Buying Member or the Company by the Selling Member or to be compensated for any damages resulting from any breach of this Agreement by the Selling Member.

Section 7.02 Put/Call Rights in Event of Change In Control. In the event of a Change in Control with respect to a Member (the "***CIC Member***"), the other Member (the "***Non-CIC Member***") shall have the right, at its election, to (a) sell to the CIC Member (the "***Put Right***"), and the CIC Member shall have the obligation, if the Put Right is exercised, to purchase from the Non-CIC Member, all (but not less than all) of the Units (the "***Put Units***") then owned by the Non-

CIC Member, or (b) to purchase from the CIC Member (the "***Call Right***"), and the CIC Member shall have the obligation, if the Call Right is exercised, to sell to the Non-CIC Member, all (but not less than all) of the Units ("***Call Units***") then owned by the CIC Member.

(a) Exercise of Right. If the Non-CIC Member wishes to exercise the Put Right or the Call Right, as the case may be, it shall provide notice thereof (the "***Put/Call Notice***") to the CIC Member at any time following receipt of notice from the CIC Member regarding the Change In Control transaction as required under Section 7.02(c)(i) below and throughout the ninety (90) day period after the occurrence of the Change in Control (the "***Put/Call Exercise Period***"). The Put/Call Notice shall specify the Non-CIC Member's election to exercise the Put Right or the Call Right, as the case may be.

(b) Closing; Purchase Price. If the Put/Call Notice is received by CIC Member within the Put/Call Exercise Period, Kindred and UCD shall take all actions reasonably necessary to cause the consummation of the purchase and sale of the Put Units or Call Units (the "***Put/Call Closing***") to occur within ninety (90) days following receipt by the CIC Member of the Put/Call Notice. The purchase price for the Put Units or Call Units, as the case may be, shall be equal to the Fair Market Value of such Units as determined by an Independent Appraiser as mutually agreed by UCD and Kindred. If UCD and Kindred do not agree on such Independent Appraiser within thirty (30) days of receipt by the CIC Member of the Put/Call Notice, then the Fair Market Value of the Put Units or Call Units shall be determined in accordance with Section 7.05 below.

(c) Notice of Change in Control. In the event of a Change in Control, the CIC Member shall provide the Non-CIC Member with (i) preliminary written notice of such Change in Control at least sixty (60) days before the close of the Change In Control transaction and (ii) written confirmation of such Change in Control no later than five (5) days after the close of the Change In Control transaction.

Section 7.03 Tax Impediment Purchase and Sale Rights.

(a) Tax Impediment Rights. As referenced in Section 2.08, if the Members are unable to resolve a Tax Impediment in a manner that satisfies clauses (a), (b) and (c) of Section 2.08 during the Tax Impediment Negotiation Period, then UCD shall have the right, but not the obligation, in its sole and absolute discretion, to (i) sell to Kindred, and Kindred shall be obligated to buy from UCD, all (but not less than all) of the Units then owned by UCD (the "***Tax Impediment Put Right***"), or (ii) buy from Kindred, and Kindred shall be obligated to sell to UCD, all (but not less than all) of the Units then owned by Kindred (the "***Tax Impediment Call Right***"). Such right may be exercised by UCD by providing notice thereof to Kindred within thirty (30) days after the Tax Impediment Negotiation Period.

(b) Closing; Purchase Price. The purchase price for the Units (the ("***Tax Impediment Sale Units***") to be sold pursuant to Section 7.03(a) shall be equal to the Fair Market Value of such Units as determined by an Independent Appraiser as mutually agreed by UCD and Kindred. If UCD and Kindred do not agree on such Independent Appraiser within thirty (30) days from the date of delivery of the exercise notice described in Section 7.03(a), then the Fair Market Value of the Tax Impediment Sale Units shall be determined in accordance with Section 7.05(a) below. Kindred and UCD shall take all actions reasonably necessary to cause the

consummation of the purchase and sale of the Tax Impediment Sale Units to occur within ninety (90) days from the date of delivery of the exercise notice described in Section 7.03(a).

Section 7.04 Right of First Refusal. If a Member wishes to Transfer Units to any third party, the Member shall first give thirty (30) days' notice (the "***Offering Notice***") to the other Member (the "***Offeree***") so that it may have the first right to purchase all, but not less than all, of the Member's Units. The Offering Notice shall identify the proposed purchaser and shall contain the price and a complete description of the terms on which the Member proposes to Transfer the Units. Within thirty (30) days following the giving of the Offering Notice, the Offeree shall either accept or reject, in writing, the offer to purchase the Units of the Member on the terms specified in the Offering Notice. Failure by the Offeree to accept in writing within such period shall be deemed a rejection of the offer by Offeree. If the Offeree accepts, the Offeree shall purchase the Units in accordance with the terms set forth in the Offering Notice. If the Offeree does not accept the offer, and if the Offeree consents to the Transfer pursuant to Section 3.01(c), the Member may Transfer the Units within ninety (90) days after the termination of the thirty (30) day offer period, provided such Transfer is consummated on the terms described in the Offering Notice, and the Units, as transferred, shall remain subject to this Article VII. If any material terms of the proposed Transfer changes, or if the Member wishes to Transfer the Units after expiration of the ninety (90) day period, the Transfer shall again be subject to the provision of this Section,

Section 7.05 Determination of Fair Market Value. In the event the buyer and the seller are unable to agree upon an Independent Appraiser, Fair Market Value of the Company, securities, property or other assets, or Units, as the case may be, shall be determined according to the following process:

(a) Each party shall select one Independent Appraiser to determine the Fair Market Value and shall send written notice of the identity of its selected Independent Appraiser to the other party and to the Company within five (5) days of receipt of the application of the provisions of this Section 7.05. For example, in the case of a purchase and sale under Section 7.01, the five (5) day period referenced in the preceding sentence shall begin upon the expiration of the thirty (30) days after receipt by the Selling Member of the Purchase Option Election Notice. Each Independent Appraiser shall prepare a written appraisal (each, an "***Initial Appraisal***") of the Fair Market Value within thirty (30) days after its selection.

(b) If the Fair Market Value set forth in each of the Initial Appraisals are within ten percent (10%) of one another (as measured against the higher of the two numbers), then the Fair Market Value shall equal the average of the values set forth in the Initial Appraisals. If the Fair Market Value set forth in the Initial Appraisals are not within ten percent (10%) of one another, then the Independent Appraisers shall appoint a third Independent Appraiser. The third Independent Appraiser shall prepare a written appraisal (the "***Third Appraisal***") to determine the Fair Market Value within twenty (20) days after its appointment. The final Fair Market Value shall equal the average of the Fair Market Values set forth in the two appraisals that are nearest in amount; provided, however, that if the Fair Market Value in the Third Appraisal is within five percent (5%) of the average of the Initial Appraisals, the Third Appraisal shall be the Fair Market Value. The final Fair Market Value determined pursuant to the foregoing shall be final and binding on the parties.

(c) Each party shall pay the fees of its own Independent Appraiser. The fees of any third Independent Appraiser or any mutually agreed single Independent Appraiser shall be shared equally between the parties. The Company shall provide each Independent Appraiser with reasonable access during normal business hours to such Persons, books and records and other information of the Company as the Independent Appraisers may reasonably request.

Section 7.06 Closing. The closing ("***Closing***") of the purchase and sale of any Units pursuant to this Article VII shall be consummated within the time-periods specified in this Article VII unless, in each case, such purchase or sale is delayed in order to obtain necessary governmental approvals, in which case such time period shall be automatically extended by ninety (90) days; provided, however, that, in the event the Closing has not occurred upon the expiration of such 90-day extension period, the party electing such purchase or sale shall thereafter be entitled to reimbursement for any Adverse Consequences incurred by such electing party in connection with such delay to the extent caused by the other Member so long as such electing party has not contributed to such delay in Closing. The purchase price for a Member's Units will be payable by the purchasing Member at the Closing in cash or immediately available funds. At any Closing under this Article VII, the selling Member shall execute and deliver such written documents and transfer instruments as the purchasing Member may reasonably request.

Section 7.07 Cooperation in Seeking Governmental and Third-Party Consents and Approvals. Each Member shall use its reasonable efforts to obtain all governmental and third-party consents necessary for the consummation of any of the transactions contemplated by this Article VII.

ARTICLE VIII
DISSOLUTION AND LIQUIDATION

Section 8.01 Dissolution. The Company shall be dissolved solely upon the occurrence of any one of the following events (each a "***Dissolution Event***"):

(a) the approval of the Members to dissolve pursuant to Section 3.01;

(b) if it is determined pursuant to a permanent, non-appealable Court Order that the Company is excluded from participation in any Government Health Care Program;

(c) the entry of a decree of judicial dissolution pursuant to the Act; or

(d) the inability of the Members to agree on any matter listed in Section 3.01(c), and the vote of the Members for any such matter (as required under Section 3.01(c)) is deadlocked after a period of sixty (60) days in which each Member has participated in good faith negotiations to resolve the matter;

provided, however, that no dissolution of the Company shall affect the right of any Member to recover damages or collect indemnification for any breach of the covenants herein that occurred prior to such dissolution.

Section 8.02 Dissolution Procedure.

(a) Winding Up, Liquidation and Distribution of Assets. Upon dissolution of the Company, a representative designated by the Members (the "***Liquidator***") shall immediately proceed to wind up the affairs of the Company. The Liquidator shall have full power and authority to sell, assign and encumber any or all of the Company's assets and to wind up and liquidate the affairs of the Company in an orderly and businesslike manner in accordance with this Agreement, and on such other terms and conditions as it deems necessary or advisable, without the consent of the Members.

(b) Sale of Assets to UCD. Upon dissolution of the Company, UCD shall have the right to buy, and upon UCD's exercise, the Company shall sell to UCD, all or substantially all of the assets of the Company, including the Business (collectively, the "***Company Business***"). If UCD exercises its right under this Section 8.02(b), which exercise shall be made by written notice to the Company, the Company, Kindred, and UCD shall take all actions reasonably necessary to cause the consummation of the purchase and sale to occur within one hundred eighty (180) days following UCD's exercise. At the closing, UCD shall pay to the Company an amount equal to the Fair Market Value of the Company Business as determined by an Independent Appraiser as mutually agreed by the Company and UCD. If the Company and UCD do not agree on an Independent Appraiser within thirty (30) days after receipt by the Company of UCD's exercise notice, then the Fair Market Value of the Company Business shall be determined in accordance with Section 7.05.

(c) Upon liquidation of the Company, the assets of the Company shall be applied in the following manner and order of priority:

(i) First, to the payment and discharge of all debts and liabilities of the Company to creditors (including debts and liabilities of the Company to Members) in the order of priority as provided by Law and of the costs and expenses of liquidation;

(ii) Second, to the extent of remaining assets, to establish such reserves as the Liquidator deems reasonably necessary or advisable, or as required by the Act, to provide for the contingent liabilities of the Company in connection with the liquidation of the Company; and

(iii) Third, to the Members in proportion to their respective Percentage Interests.

(d) Complete Distribution. The distribution of cash or assets to a Member in accordance with the provisions of this Section 8.02 shall constitute a complete return to the Member of its Capital Contributions and a complete distribution to the Member of its interest in the Company and the Company's assets.

(e) Deficit Balance in Capital Account. No Member shall have any obligation to make any Capital Contribution for the purposes of eliminating or diminishing any negative Capital Account balance and such negative Capital Account balance shall not be considered a debt owed by such Member to the Company or to any other Person for any purpose whatsoever.

(f) Dissolution Documents. Upon completion of the winding up, liquidation and distribution of the assets as described in Section 8.02(c), the Company shall be deemed

terminated. The Liquidator shall execute and file, in a timely manner, any documents in the State of California and any other jurisdictions which may be required in connection with the dissolution of the Company.

Section 8.03 Return of Contribution. Except as provided by the Act or other Law or as specifically set forth in this Agreement, upon dissolution each Member shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company's assets remaining after the payment or discharge of the debts and liabilities of the Company are insufficient to return the Capital Contributions of one or more Members, such Member or Members shall have no recourse against any other Member or the members of the Member Representatives.

ARTICLE IX
COVENANTS OF THE MEMBERS AND CONFIDENTIALITY

Section 9.01 Related Party Transactions.

(a) The Company shall adopt and operate pursuant to a conflict of interest policy that shall incorporate the provisions of the Internal Revenue Service's "sample" conflict of interest policy for health care organizations which is attached as Appendix A to IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

(b) Any lease, contract or agreement or any other transaction or arrangement involving payments or remuneration between the Company and any Member or an Affiliate of a Member (each, a "***Related Party Transaction***") must receive approval of the Members pursuant to Section 3.01.

Section 9.02 Enforcement of Related Party Transactions.

(a) If a Member or its Affiliate (the "***Conflicted Member***") has breached the applicable agreement in a Related Party Transaction, and if the non-Conflicted other Member (the "***Disinterested Member***") determines in good faith that the Conflicted Member has not cured the breach in accordance with the express terms of the Related Party Transaction, then the Disinterested Member is hereby granted the right to act on behalf of the Company in these limited instances by exercising the Company's rights, including, without limitation, the right to terminate the Related Party Transaction in accordance with the terms of the agreement therefor.

(b) Without limiting the generality of the foregoing, in the event of any actual or potential dispute between the Conflicted Member and the Company relating to any Related Party Transaction, the Conflicted Member and the Member Representatives appointed by such Conflicted Member shall not participate in any vote, approval or decision with respect to such dispute, and the Disinterested Member and the Member Representatives designated by such Disinterested Member shall have, notwithstanding Section 3.01, the sole and exclusive right, power and authority to initiate, prosecute and defend, in the name and on behalf of the Company, any claim, suit, proceeding or other legal action that the Company has or may have against such Conflicted Member (such claim, suit, proceeding or other legal action, a "***Related Party Conflict***"). For the purposes of any actions or decisions requiring the approval, vote or consent

with respect to any such dispute or Related Party Conflict, the affirmative approval, vote or consent of the Member Representatives appointed by the Disinterested Member or the Disinterested Member, as applicable, shall be sufficient to approve any such action or decision. Notwithstanding any provision in the foregoing to the contrary, the approval, vote, consent, action or decision of the Member Representatives appointed by the Disinterested Member, or the Disinterested Member, with respect to a Related Party Conflict, including the decision to initiate, prosecute or defend a Related Party Conflict, shall in all instances be made in good faith, and for the benefit of the Company, and not the benefit of such Disinterested Member.

Section 9.03 Exclusivity.

(a) Each Member agrees that while a Member and for a period of three (3) years following the termination of such Member's membership in the Company (with respect to such Member, the "***Restricted Period***") such Member will not, and shall cause its Affiliates not to, in any manner, directly or indirectly (whether as a principal, officer, director, agent, proprietor, shareholder, owner, partner, consultant, landlord, manager or employee), by itself or in conjunction with any other Person, engage or otherwise participate in, establish, develop, own, manage, operate, control, perform services for or own any financial, beneficial or other interest in any Person that conducts activities that constitute a Business of the Company in the Region. For purposes of this Article, the "***Business of the Company***" shall mean engaging or participating in, establishing, developing, owning, managing, controlling, operating, performing services for or owning any financial or other interest in a standalone adult inpatient acute rehabilitation facility. For clarity, the restrictions under this Section 9.03(a) shall not apply to physicians employed by UCD.

(b) Notwithstanding the foregoing, with respect to the Region, nothing in this Agreement shall be interpreted to, whether during or following the Restricted Period, prohibit a Member from:

(i) owning, as a passive investment, debt or equity interests in publicly-held companies that engage in the Business of the Company (so long as such interest is no greater than one percent (1%) of a class of publicly traded securities in such public company);

(ii) (A) providing medical director services to a standalone adult inpatient acute rehabilitation facility, (B) the exercise of a physician's medical judgment concerning the medical treatment of his or her patients in any manner whatsoever in any location (including within Region), which judgment shall include a physician's advice to his or her patients regarding assessments of quality of care or the best interests of such patient, (C) referring of any patients for any service provided by, or to any facility owned or operated by itself or by any third party, or (D) providing medical care for patients at other facilities;

(iii) affiliating with or acquiring an acute care hospital facility within the Region even if such acquired or affiliated acute care hospital facility is in the Business of the Company at the time of such acquisition or affiliation, so long as its activities in the Business of the Company comprise less than 10% of such facility's annual revenue;

(iv) establishing, developing, managing, owning, operating or otherwise participating in (A) a Long Term Acute Care Hospital (LTACH), (B) a skilled nursing facility (SNF), (C) an in-hospital adult inpatient acute rehabilitation facility, or (D) the provision of home health services, subject, however, in each of the foregoing instances, to Section 9.04 below;

(v) establishing, developing, managing, owning, operating or otherwise participating in any pediatric rehabilitation facility or outpatient clinic;

(vi) conducting research and other activities of an academic nature, providing consulting services, including but not limited to, consultations on quality improvement, infection control, and other specialized knowledge that may be imparted by an academic medical institution, or providing speeches, panel sessions or other lectures;

(vii) patient transfer agreements, residency and medical student rotation agreements, clinical trial agreements, teaching and research collaboration agreements, physician coverage agreements, physician or non-physician staffing arrangements, medical director agreements, telemedicine agreements, and continuing medical education agreements; or

(viii) in the case of UCD, UCD's engaging or participating in, ownership, management, operation, or control of the Contributed Beds, or provision of inpatient rehabilitation services with respect to the Contributed Beds, until the latest to occur of (A) UCD's contribution of the Contributed Beds to the Company under the Contribution Agreement, or (B) such time as UCD has discharged any Contributed Beds patients admitted on or before the date of such contribution, or (C) such time as UCD has wound down the operations of the Contributed Beds.

Section 9.04 Company ROFO Transactions.

(a) Right of First Opportunity. Each Member agrees, on behalf of itself and its Affiliates, that so long as it is a Member of the Company such Member shall not, and shall cause its Affiliates not to, directly or indirectly, other than through the Company, within the Region: engage, participate or invest in, establish, develop, own, manage, control, operate, acquire, or otherwise participate in (i) a Long Term Acute Care Hospital (LTACH), (ii) a skilled nursing facility (SNF), (iii) an in-hospital adult inpatient acute rehabilitation facility, or (iv) home health services (each, a "***Company ROFO Transaction***"). For clarification, the Members acknowledge and agree that a Company ROFO Transaction is subject to this Section 9.04(a) only to the extent such transaction is within the Region, and only to the extent to be entered into after the date of this Agreement. For further clarification, the Members acknowledge that the following do not, in their own right, give rise to a Company ROFO Transaction: physical therapy, outpatient clinics, patient transfer agreements, residency and medical student rotation agreements, clinical trial agreements, teaching and research collaboration agreements, physician coverage agreements, physician or non-physician staffing arrangements, medical director agreements, telemedicine agreements, and continuing medical education agreements.

(b) Procedure For Addressing Company ROFO Transaction.

(i) If a Member (the "***Interested Member***") wishes to enter into a Company ROFO Transaction within the Region, such Interested Member shall first provide the

Company written notice of the Company ROFO Transaction (the "***Company ROFO Transaction Notice***"), which notice shall include the material terms and conditions of the Company ROFO Transaction, including the business plan for such Company ROFO Transaction, if available, and the results of any due diligence conducted by the Interested Member. The Members (other than the Interested Member) shall review and take action with respect to such Company ROFO Transaction no later than thirty (30) days after the receipt of the Company ROFO Transaction Notice. If the Members (other than the Interested Member) vote to pursue the Company ROFO Transaction, then no Member or any of its Affiliates shall independently pursue the Company ROFO Transaction. If the Members (other than the Interested Member) take action not to pursue the Company ROFO Transaction or if the Members (other than the Interested Member) fail to take action within the thirty (30) day period (in either case, a "***Declined Company ROFO Transaction***"), then the Interested Member and/or its Affiliates may independently pursue any Declined Company ROFO Transaction.

(A) In light of the Interested Member's obligation to provide the Company with a Company ROFO Transaction Notice and to provide to the Company with information described above with respect to the Company ROFO Transaction, the Interested Member shall use commercially reasonable efforts to be permitted by the applicable Independent Third Person to disclose confidential information to the Company in any nondisclosure agreement entered into by the Interested Member with respect to such Company ROFO Transaction.

(ii) If the Interested Member has not completed the closing of a Declined Company ROFO Transaction for any reason as of the twelve (12)-month anniversary of the delivery of the Company ROFO Transaction Notice with respect to such Declined Company ROFO Transaction, or if any material terms of the Declined Company ROFO Transaction change, then the Company ROFO Transaction shall again be subject to this Section and the Interested Member shall not enter into such Declined Company ROFO Transaction unless and until the Interested Member delivers a new Company ROFO Transaction Notice and otherwise complies with all the terms and conditions of this Section 9.04.

Section 9.05 [Reserved]

Section 9.06 Non-Solicitation. Each Member hereby agrees, on behalf of itself and its Affiliates, that so long as it is a Member of the Company and for a period of eighteen (18) months following the termination of such Member's membership in the Company, such Member will not, and such Member shall cause its Affiliates not to, directly or indirectly (i) recruit, solicit or otherwise seek to induce any Person who is an employee of the Company to terminate his or her employment with the Company or (ii) solicit or otherwise seek to induce any Person who is an employee of the Company to violate any agreement with the Company. Notwithstanding the foregoing, a Member shall not be liable to the other Member or the Company under this Section if employment results from such individual's response to a general solicitation not directed at such individual, or if employment results because such individual approached the Member.

Section 9.07 Confidentiality. The Members acknowledge that each Member has received and will receive Confidential Information of the Company and/or with respect to the other Member in connection with this Agreement and related documents. Each Member shall protect the Confidential Information to the same extent it protects its own

confidential and proprietary information; provided, however, that such protection shall meet or exceed industry standards. A Member shall not disclose Confidential Information to any third party, provided, however, that a Member may disclose Confidential Information to its employees, directors, members, investors, Affiliates and legal counsel, accountants and other advisors to the extent it reasonably deems necessary to perform its obligations under this Agreement, for the purposes of overseeing the Member's interest in the Company, or for internal purposes, and such Member receives an agreement from such party to be bound by this provision or such party is otherwise bound by a confidentiality obligation to such Member. Notwithstanding the foregoing, no Member shall be deemed to have breached this Section 9.07 if it is required to disclose any Confidential Information by Law or judicial order; provided that in any such event, the disclosing Member shall (i) to the extent allowed by law, first notify the other Member and Company of such proposed disclosure, (ii) provide such other Member (at the other Member's expense) or the Company (at the Company's expense) a reasonable opportunity to secure a judicial order limiting or negating the required disclosure, and (iii) thereafter use commercially reasonable efforts to limit disclosure and obtain confidential treatment or a protective order, as applicable.

Section 9.08 Intellectual Property. Neither the Company nor any Member shall use the name, logo, trademark, trade name or other intellectual property of the other party hereto or the Company without the prior written consent of such other party hereto or the Company, as applicable.

Section 9.09 Compliance with Laws. If either UCD or Kindred determines, in good faith after consulting and confirming with its nationally recognized healthcare counsel, that this Agreement or any material provision of this Agreement may violate applicable Law due to changes in applicable Law after the Effective Date, regulation, judicial decision or interpretation poses a substantial or material risk to any of the Members of noncompliance with applicable Law (but, in each case, excluding Laws related to tax-exemption addressed in Section 2.08), it shall provide written notice thereof to the other Member. The Members agree to negotiate in good faith to amend this Agreement, and/or to reform and restructure the Company's business, as applicable, to satisfy such Law, regulation, judicial decision or interpretation.

Section 9.10 Other Remedies. Nothing herein shall limit the availability of injunctive relief to prevent or enjoin any breach of this Article IX or any Member's liability for monetary damages resulting from any breach by such Member or its Affiliates of its obligations under this Article IX.

Section 9.11 Enforceability of Covenants. If any provision of this Article IX is declared unenforceable in any judicial proceeding due to an unreasonable duration or covering too large a geographic area, then such provision shall still be enforceable for such maximum period of time and within such geographic area as will make such provision enforceable.

ARTICLE X
BOOKS, RECORDS, ACCOUNTING AND TAX AUDITS

Section 10.01 Books and Records

(a) The Company shall keep or cause to be kept complete and accurate books and records as required under the Act as well as supporting documentation of transactions, with respect to the conduct of the Company's business. The books of account of the Company shall be kept and maintained at all times at the principal office of the Company and/or at such other location as mutually agreed upon by the Members. Such books of account shall be maintained on an accrual basis in accordance with GAAP, consistently applied, and shall show all items of income and expense.

(b) The Company will afford to authorized representatives and agents of the Members reasonable access to and the right reasonably to inspect the Company's premises, facilities and books and records, including its financial and operating information. The foregoing will not be deemed or construed in any way to limit or restrict any rights or entitlements which the Members may have under applicable law to inspect, review and/or have access to the premises, facilities, books, records and employees of the Company.

Section 10.02 Financial Information. The Company shall cause the Manager to prepare and furnish to each Member (i) within forty-five (45) days after the close of each of the first three (3) Fiscal Quarters of each Fiscal Year, (A) an unaudited income statement reflecting the operations of the Company for such Fiscal Quarter and (B) an unaudited balance sheet of the Company as of the end of such Fiscal Quarter, (ii) within one hundred twenty (120) days after the close of each Fiscal Year, annual audited consolidated financial statements of the Company audited by certified public accountants, and (iii) all other information reasonably requested by a Member. The Members shall mutually agree on the Company's accounting and auditing firms.

Section 10.03 Tax Information. The Company shall cause the Manager to prepare and timely file all tax returns and statements, if any, which must be filed on behalf of the Company and to, within one hundred twenty (120) days after the close of each Fiscal Year, supply to each Person who was a Member at any time during such Fiscal Year, all information reasonably necessary for the preparation of the Members' respective federal income tax returns.

Section 10.04. UCD Benefit Report. Upon UCD's reasonable request, the Company shall provide periodic reports of activities in furtherance of the Community Benefit Standard accomplished by the Company.

Section 10.05 Bank Accounts. Funds of the Company shall be deposited in an account or accounts established by the Company, through the Manager, with banking institutions designated by the Members.

Section 10.06 Tax Matters. The Partnership Representative, for purposes of IRC Section 6223 shall be Kindred, provided, however, that if Kindred no longer qualifies or resigns as a Partnership Representative, then the Members, upon unanimous consent, shall make an alternative designation of a Partnership Representative

(a) The Partnership Representative may not (i) enter into any agreement with the Internal Revenue Service ("***IRS***") extending the statute of limitations for making an assessment of federal income taxes or the time periods relating to submitting administrative

adjustment requests for the Company, (ii) commence a judicial action or appeal an adverse determination of a judicial tribunal with respect to a federal income tax matter, or (iii) enter into any settlement agreement which affects the amount, deductibility or credit of any Company item, in each case without the prior unanimous consent of the Members. In the event of any pending tax action, investigation, claim or controversy involving the Company which proposes an adjustment with respect to any item reported on a federal income tax return of a Member, the Partnership Representative shall provide the Members all notices and other written communications received by the Partnership Representative from the IRS or sent by the Partnership Representative to the IRS, relating to the Company. Furthermore, the Partnership Representative shall provide the Members with reasonable opportunity to review and comment on any written communications to the IRS. The Partnership Representative shall provide Members with prompt written notice of all meetings or conferences with the IRS and, to the extent permitted by applicable law, the Members shall have the right to attend all such meetings and conferences at their expense, provided that if required by applicable Law to allow a Member to attend and jointly participate in any meeting or conference, such participation shall be facilitated through causing the Company to grant a representative of a Member a power of attorney. The Partnership Representative is entitled to reimbursement by the Company for all expenses reasonably incurred by it in representing the Company in any administrative or judicial proceeding relating to the tax treatment of Company items.

(b) The Company shall make Small Partnership Elections (to the extent permitted to be made under applicable Law) for each taxable year. By execution of this Agreement, the Members hereby consent to Small Partnership Elections (to the extent permitted to be made under applicable Law).

(c) If a Small Partnership Election cannot be made under applicable Law, the Members agree that, if the Company receives a notice of final partnership administrative adjustment that would, with the passing of time, result in an "imputed underpayment" imposed on the Company as that term is defined in Section 6225 of the IRC, then, (i) the Partnership Representative shall request any applicable modifications to such imputed underpayment pursuant to Section 6225(c) of the IRC, (ii) each Member shall take all actions requested by the Partnership Representative to facilitate any applicable modification to such imputed underpayment pursuant to Section 6225(c) of the IRC (including the filing of amended returns or complying with the alternative procedure pursuant to Section 6225(c)(2) of the IRC) and (iii) the Company shall make an Adjusted K-1 Election and comply with all of the requirements and procedures required in connection with such election to make inapplicable to the Company the requirement in Section 6225 of the Code that the Company pay such "imputed underpayment" as that term is used in that section; provided, however, that the Members may determine by unanimous consent not to make such Adjusted K-1 Election.

(d) In all situations, without regard to the specific elections made, each Member agrees to reasonably cooperate with the Partnership Representative, the Company, and other Members by providing such information and taking such actions as may be reasonably necessary to mitigate, to the fullest extent possible, the potential tax exposure of the Company as well as the potential tax exposure of the other Member or Members relating to the Company. This Section 10.06 shall survive the dissolution of the Company, the withdrawal of any Member from the Company and the Transfer of any Member's interest in the Company.

Any taxes, penalties, and interest payable by the Company or any entity disregarded for United States income tax purposes in which the Company owns an interest under Subchapter C of Chapter 63 of Subtitle F of the IRC and the IRC Regulations pursuant thereto ("***Partnership Audit Procedures***") shall be treated as specifically attributable to the Members, and the Partnership Representative and the Company shall allocate the burden of (or any diminution in distributable proceeds resulting from) any such taxes, penalties or interest to those Members to whom such amounts are specifically attributable (whether as a result of their status, actions, inactions or otherwise), as determined by the Partnership Representative. Notwithstanding the foregoing, such apportionment of liability shall also take into account the extent to which the Company's imputed underpayment was modified by adjustments under IRC Section 6225(c) (to the extent approved by the IRS) and attributable to (x) a particular Member's tax classification, tax rates, tax attributes, the character of tax items to which the adjustment relates, and similar factors, or (y) the Member's filing of an amended return for the Member's taxable year that includes the end of the Company's reviewed year and payment of required tax liability in a manner that complies with IRC Section 6225(c)(2). In connection with the foregoing, to the extent that the Company is assessed amounts under the Partnership Audit Procedures, each current or former Member to which the assessment relates shall remit to the Company, within 30 days' written notice by the Partnership Representative, an amount equal to such Member's allocable share of the assessment, including such Member's allocable share of any interest imposed on the Company. The foregoing sentence shall survive the dissolution of the Company, the withdrawal of any Member from the Company and the Transfer of any Member's membership interests.

ARTICLE XI
GENERAL

Section 11.01 Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered in person, when delivered by fax or other electronic means or by a nationally recognized overnight courier, or if mailed, five (5) days after being deposited in the United States mail, certified or registered mail, first-class postage prepaid, return receipt requested, to the Members at the following addresses or facsimile numbers:

If to Kindred: Kindred Development 13, L.L.C.
c/o Kindred Healthcare, Inc.
680 South 4th Street
Louisville, KY 40202
Attn: General Counsel

If to UCD: UC Davis Medical Center
2315 Stockton Boulevard
Sacramento, CA 95817
Attn: Chief Executive Officer

with a copy to: UC Davis Health

Legal Affairs Department
2315 Stockton Blvd
(Sherman Building #3100)
Sacramento, CA 95817
Attn: Chief Counsel

or if to other Members, to the respective addresses on file with the Company.

Any Member from time to time may change its address for the purpose of receipt of notices to such Member by giving a similar notice specifying a new address to the other Members listed above in accordance with the provisions of this Section 11.01.

Section 11.02 Remedies. The Members agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that any Member or the Company may in its sole discretion, apply to any court of Law or equity of competent jurisdiction for specific performance and injunctive relief in order to enforce or prevent any violation of the provisions of this Agreement.

Section 11.03 Public Statements. The timing and content of any announcements, press releases or public statements concerning this Agreement or the terms hereof shall be determined by mutual agreement of Kindred and UCD.

Section 11.04 Expenses. Except as otherwise provided in this Agreement, each Member will pay its own costs and expenses incurred in connection with the negotiation, execution and performance of this Agreement and the transactions contemplated hereby.

Section 11.05 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the Members.

Section 11.06 No Waiver. The failure of any Member to enforce any of the provisions of this Agreement will in no way be construed as a waiver of such provisions and will not affect the right of such Member thereafter to enforce each and every provision of this Agreement in accordance with its terms.

Section 11.07 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same instrument. Executed counterparts of this Agreement exchanged by facsimile or electronic transmission shall be fully enforceable. Transmission by fax or by electronic mail of an executed version of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart. Electronic signature of this Agreement constitutes legal and binding signature. This Agreement, and any amendment or modification thereto, may not be denied legal effect or enforceability solely because it is in electronic form, or because an electronic signature or electronic record was used in its formation.

Section 11.08 Headings. The headings of the various sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Agreement.

Section 11.09 Severability. If any provision of this Agreement shall be determined to be illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect and this Agreement shall be construed as if the illegal or unenforceable provision were not a part hereof so long as the remaining provisions of this Agreement shall be sufficient to carry out the overall intent of the Members as expressed herein.

Section 11.10 Third-Party Beneficiary. Nothing set forth in this Agreement shall be construed to confer any benefit to any Person that is not a Member.

Section 11.11 Governing Law. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of California. No action, claim, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be initiated or maintained by any party other than in the state or federal courts sitting in Sacramento, California, and each party hereto hereby irrevocably submits to the exclusive jurisdiction of such courts for such purpose.

Section 11.12 Electronic Transmission. Subject to applicable Law and any guidelines and procedures that the Company may adopt from time to time, the terms "written" and "in writing" as used in this Agreement include any form of recorded message in the English language capable of comprehension by ordinary visual means and may include electronic transmissions. "***Electronic transmission***" *by* the Company means a communication delivered by (a) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the Company, (b) posting on an electronic message board or network that the Company has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (c) Other Electronic Communication (as defined below). "***Electronic transmission***" *to* the Company means a communication delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, that the Company has provided from time to time to the Member for sending communications to the Company, (2) posting on an electronic message board or network that the Company has designated for those communications, which transmission shall be validly delivered upon posting, or (3) Other Electronic Communication. "***Other Electronic Communication***" means (i) for transmissions *from* the Company, the Company has obtained an unrevoked written consent from the recipient to the use of such means of electronic communication; (ii) for electronic transmissions *to* the Company, the Company has in effect reasonable measures to verify that the sender is the individual purporting to have sent such transmission; and (iii) the transmission creates a record that can be retained, retrieved, reviewed, and rendered into clearly legible tangible form.

Section 11.13 Amendments. Except as otherwise specifically provided for herein, including, without limitation, amendments to **Exhibit A** for Capital Contributions and distributions in accordance with Article IV, and the admission of Permitted Transferees and other Transferees in accordance with Article VI, and any amendment of this Agreement or the Articles of Organization of the Company must be in writing and approved by both Kindred and UCD. All amendments to this Agreement will be sent to each Member promptly after the effectiveness thereof.

Section 11.14 No Referrals or Related Services. The parties hereto acknowledge and agree that no Member is obligated to refer any patient to the Company for healthcare or other services nor is the Company obligated to refer any patient to any Member for healthcare or related service and neither the Company nor any Member (or their respective Affiliates) will receive any payment or other compensation of any kind.

Section 11.15 Guaranty. Kindred shall cause Parent to deliver to UCD on the Effective Date a guaranty under which Parent shall guaranty the obligations of Kindred under this Agreement.

* * * * *

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned Members have executed this Limited Liability Company Agreement as of the Effective Date.

MEMBERS:

KINDRED DEVELOPMENT 13, L.L.C.

By: _____
Douglas Curnutte
Senior Vice President, Corporate Development

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,
On behalf of its UC Davis Medical Center

By: _____
John D. Stobo, MD
Executive Vice President, UC Health

IN WITNESS WHEREOF, the undersigned Members have executed this Limited Liability Company Agreement as of the Effective Date.

MEMBERS:

KINDRED DEVELOPMENT 13, L.L.C.

By: _____
Douglas Curnutte
Senior Vice President, Corporate Development

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,
On behalf of its UC Davis Medical Center

By: _____
John D. Stobo, MD
Executive Vice President, UC Health

EXHIBIT A

MEMBERS AND UNITS

(as of the Effective Date)

Member Name	Initial Capital Contribution	Units	Percentage Interest
Kindred Development 13, L.L.C.	**$5,100**	**51**	**51%**
The Regents of the University of California, on behalf of UC Davis Medical Center	**$4,900**	**49**	**49%**
Total	**$10,000**	**100**	**100%**

EXHIBIT B

INITIAL MEMBER REPRESENTATIVES

UCD DESIGNATED REPRESENTATIVES:

Bradley Simmons (Initial Chair)
J. Douglas Kirk
Timothy Maurice

KINDRED DESIGNATED REPRESENTATIVES:

Russ Bailey (Initial Vice-Chair)
Jason Zachariah
Cleve Haralson

EXHIBIT C

CHARITY POLICY

I. PURPOSE

The UC Davis Rehabilitation Hospital (Hospital) strives to provide quality patient care for the communities we serve, and this policy demonstrates Hospital's commitment to helping to meet the needs of low income, uninsured and underinsured patients. This policy is not intended to waive or alter any contractual provisions or rates negotiated by and between the Hospital and a third party payer, nor is this policy intended to provide discounts to a non-contracted third party payer or other entities that are legally responsible to make payment on behalf of a beneficiary, covered person or insured.

This policy provides guidelines for identifying patients who may qualify for financial assistance and establishes the financial screening criteria to determine which patients qualify for charity care.

II. SETTING

UC Davis Rehabilitation Hospital

III. POLICY

A. This policy is designed to provide 100% charity care discounts to patients who:

1. Have Family incomes at or below 200% FPL;

2. Require emergent care;

3. Reside in the Hospital's service area as defined in Attachment 2; and

4. Are uninsured, are ineligible for third party assistance (e.g., County indigent care benefits) or have high medical cost.

This policy also provides for partial charity care discounts in other situations described below to patients who have a Family income at or below 350% FPL.

B. Patients with demonstrated financial need may be eligible if they satisfy the definition of a Charity Care Patient or High Medical Cost Patient as defined in section IV, below.

C. This policy and the financial screening criteria must be consistently applied to all cases throughout the Hospital. If application of this policy conflicts with payer contracting or coverage requirements consult with Hospital legal counsel.

D. This policy excludes services that are not medically necessary or separately billed physician services.

E. This policy will not apply if the patient/responsible party provides false information about financial eligibility or if the patient/responsible party fails to make every reasonable effort to apply for and receive government-sponsored benefits for which they may be eligible.

IV. DEFINITIONS

A. Amounts Generally Billed (AGB) – The maximum amount billed by Hospital to individuals eligible for financial assistance under this policy. Hospital determines AGB using a method allowed by federal regulations, namely the "Medicare Prospective" method, which requires the Hospital to estimate the amount it would be paid by Medicare for the medically necessary care as if the patient were a Medicare fee-for-service beneficiary. The term "Medicare fee-for-service" includes only health insurance available under Medicare parts A and B of Title XVII of the Social Security Act (42 U.S.C. 1395c through 1395w-5) and not health insurance plans administered under Medicare Advantage.

B. Charity Care Patient – A financially eligible Self-Pay patient or a High Medical Cost Patient.

C Extraordinary Collection Action (ECA) — A list of collection activities, as defined by the IRS and Treasury, that healthcare organizations may only take against an individual to obtain payment for care after reasonable efforts have been made to determine whether the individual is eligible for financial assistance. ECAs include:

1. Placing a lien on an individual's property (other than a lien that the Hospital is entitled to assert under state law on the proceeds of a judgment, settlement or compromise owed to an individual (or his or her representative) as a result of personal injuries for which a Hospital provided care).

2. Foreclosing on real property.

3. Attaching or seizing an individual's bank account or other personal property.

4. Commencing a civil action against an individual or writ of body attachment for civil contempt.

5. Causing an individual's arrest.

6. Garnishing wages.

7. Reporting adverse information to a credit agency.

8. Deferring or denying medically necessary service because of nonpayment of a bill for previously provided care under Hospital's Financial Assistance/Charity Care Policy.

9. Requiring a payment before providing medically necessary service because of outstanding bills for previously provided care.

D. Federal Poverty Level (FPL) – Poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services, published at http://aspe.hhs.gov/poverty

E. High Medical Cost Patient – A financially eligible High Medical Cost patient is defined as follows:

1. Not Self-Pay (i.e., has third party coverage);

2. Family income at or below 350% of the FPL;

3. Out-of-pocket medical expenses in prior twelve (12) months (whether incurred in or out of any hospital) exceed 10% of Family income; and

4. Patient does not otherwise receive a discount as a result of third party coverage for the services to be billed.

F. Medically Necessary Service – Hospital services and supplies and other health care services needed to diagnose or treat an illness, injury, condition, disease or its symptoms and that meet accepted practice standards. Medically necessary service does not include care relating to cosmetic procedures that are intended only to improve the aesthetic appeal of a normally functioning body part.

G. Patient's Family (Family) – For patients 18 years of age and older, Patient's Family is defined as their spouse, domestic partner and dependent children under 21 years of age, whether living at home or not. For persons under 18 years of age, Patient's Family is defined as a parent, caretaker relatives and other children under 21 years of age of the parent or caretaker relative.

H. Reasonable Payment Plan – Monthly payments that are not more than 10 percent of a Patient's Family income for a month, excluding deductions for essential living expenses. "Essential living expenses" means, for purposes of this subdivision, expenses for any of the following: rent or house payment and maintenance, food and household supplies, utilities and telephone, clothing, medical and dental payments, insurance, school or child care, child or spousal support, transportation and auto expenses, including insurance, gas, and repairs, installment payments, laundry and cleaning, and other extraordinary expenses.

I. Self-Pay Patient – A financially eligible Self-Pay Patient is defined as follows:

1. No third party coverage;

2. No Medi-Cal/Medicaid coverage, or patient qualifies but does not receive coverage for all services or for the entire stay;

3. No compensable injury for purposes of government programs, workers' compensation, automobile insurance, other insurance, or third party liability as determined and documented by Hospital; and

4. Patient's Family income is at or below 350% of FPL.

V. COMMUNICATION OF CHARITY CARE AND DISCOUNT POLICIES

Patients will be provided a written notice with their bill that contains information regarding this policy, including information about eligibility, as well as contact information for a Hospital employee or office from which the patient may obtain further information. Notices are to be given, at the time of service, to patients who do not appear to have third party coverage. Notices will also be posted in conspicuous places throughout the Hospital, and on the Hospital's website. Notices should be provided in English and in languages as determined by Hospital's geographical area. (See Attachment 2).

VI. ELIGIBILITY PROCEDURES

A. Every effort will be made to screen all patients identified as uninsured or in need of financial assistance for the ability to pay and/or eligibility for payment programs, including those offered through Hospital. Screened patients' financial information will be monitored as appropriate. Screened patients will be provided assistance in assessing patient eligibility for Medi-Cal or any other third party coverage.

B. Patients without third party coverage will be financially screened for eligibility for state and federal governmental programs as well as charity care funding at the time of service or as near to the time of service as possible. If the patient does not indicate coverage by a third-party payer, or requests a discounted price or charity care, the patient should be provided with information on how to obtain an application for the Medi-Cal program, or state funded governmental program before the patient leaves the Hospital. Request for charity care may be made at any point before, during, or up to 240 days from the receipt of the first post-discharge billing statement after the provision of care. Non-urgent care patients are required to apply prior to receiving services. The approved charity care level may be effective for a period of up to three (3) months.

C. Patients with third party coverage will be screened to determine whether they qualify for charity care under this policy. Upon patient request for a charity care discount, the patient will be informed of the criteria to qualify as a High Medical Cost Patient and the need to provide receipts if claiming services rendered by other providers in the past twelve (12) months. It is the patient's decision as to whether they believe that they may be eligible for charity care and wish to apply.

D. All potentially eligible patients must apply for assistance through State, County and other programs before charity care funds are considered. If such assistance is denied, Hospital must receive a copy of denial. Failure to comply with the application process or provide required documents can be considered in the Hospital's charity care determination. Willful failure by the patient to cooperate will result in a denial of charity care.

E. The Patient Financial Information Form (see Attachment 1) is used to determine a patient's ability to pay for services at Hospital and/or to determine a patient's possible eligibility for public assistance and for review of charity care funding.

F. All uninsured patients will be offered an opportunity to complete a Patient Financial Information Form, which is available in English and in languages as determined by Hospital's geographical area. (See Attachment 2).

G. Patient-specific information will be provided to the County and State in accordance with County and State guidelines for eligibility determinations.

H. This policy applies to Hospital and Hospital physicians. Hospital maintains a list of physicians at http://www._____

VII. ELIGIBILITY FOR 100% CHARITY CARE

A. Patients who:

1. Have Family incomes at or below 200% FPL;

2. Require emergent care;

3. Reside in the Hospital's primary service area as defined in Attachment 2; and

4. Are uninsured, are ineligible for third party assistance or are a High Medical Cost Patient will be extended a 100% charity care discount on services rendered.

B. Criteria and process to determine a patient's eligibility for a 100% charity care discount are as follows:

1. Patient's Family income is verified based upon the most recent filed Federal tax return or recent paycheck stubs.

2. First $10,000 of monetary assets (liquid assets) is excluded.

3. 50% of all monetary assets (liquid assets) above $10,000 are excluded.

4. Retirement accounts and Internal Revenue Service (IRS) defined deferred-compensation plans (both qualified and non-qualified) are not considered

monetary assets and are excluded from consideration.

5. Assets above the statutorily excluded amounts may result in denial of charity care discounts.

6. High Medical Cost Patients with third party coverage who are below 200% of FPL with medical costs in excess of 10 percent of the Patient's Family income, and who have not received a discount as a result of third party coverage for the services to be billed, will be extended a 100% charity care discount on services rendered.

7. High Medical Cost Patients that qualify will be approved retroactive for up to twelve (12) months from the last date of service.

8. Patient Financial Services may, under unusual circumstances, extend charity care to individuals who would not otherwise qualify for charity care under this policy. When such an award is made, the unusual circumstances justifying the award of charity care will be documented in writing and maintained in a segregated file in Patient Financial Services.

VIII. ELIGIBILITY FOR PARTIAL CHARITY CARE DISCOUNT FOR PATIENTS WITH NO THIRD PARTY COVERAGE

A. Patients who have Patient's Family incomes at or below 200% FPL but who do not qualify for 100% charity care under Part VII of this Policy will nonetheless qualify for a partial charity care discount so long as they are uninsured, are ineligible for third party assistance, or are a High Medical Cost Patient and reside in Hospital's primary service area as defined in Attachment 2.

B. Patients with no third party coverage with Patient's Family income between 201% and 350% of FPL are eligible for a partial charity care discount.

C. The Patient Financial Assistance Form should be completed for all patients requesting a charity care discount.

D. Patient's Family income will be verified with either the most recent filed Federal tax return or recent paycheck stubs.

E. Once it is determined that a Patient's Family income is between 201% and 350% of FPL, monetary assets that are readily convertible to cash (e.g., bank accounts and publicly-traded stock) will be considered in the eligibility determination.

F. For patients with income between 201% and 350% of FPL, discounted payments will be calculated using the AGB Medicare Prospective method.

IX. ELIGIBILITY FOR PARTIAL CHARITY CARE DISCOUNT FOR HIGH MEDICAL COST PATIENTS WITH THIRD PARTY COVERAGE

A. High Medical Cost Patients with third party coverage whose Patient's Family incomes are between 201% and 350% of FPL are eligible for a partial charity care discount. High medical costs are 10 percent of annual Family income paid for medical costs in the last twelve (12) months.

B. Patient is required to provide proof of payment of medical costs. Proof of payment may be verified.

C. The Patient Financial Information Form should be completed for all patients requesting a charity care discount. High Medical Cost patients need to be evaluated monthly to accurately account for medical cost for the last twelve (12) months.

D. Patient's Family income will be verified with either the most recent filed Federal tax return or recent paycheck stubs.

E. Once it is determined that income is between 201% and 350% of the poverty level, no assets will be considered in the determination for a charity care discount. Eligibility will be based on the Patient's Family income qualification only.

F. Discounted payments will be calculated using the AGB Medicare Prospective method.

G. If a non-contracted third-party payer (that has not otherwise negotiated a discount off of Hospital standard rates) has paid an amount equal to or more than the maximum governmental program payment, Hospital may accept that payment as payment in full and write off the remainder. If payment from a non-contracted payor is less than the maximum governmental program payment, Hospital may collect from the patient the difference between the third-party payment and the maximum governmental program payment. However, this policy does not waive or alter any contractual provisions or rates negotiated by and between Hospital and a third party payer, and will not provide discounts to a non-contracted third party payer or other entities that are legally responsible to make payment on behalf of a beneficiary, covered person or insured.

H. Patients are not eligible for a partial charity care discount if they have otherwise received a discount as a result of third party coverage, as in the case of a payer contracted with the Hospital.

I. A payment plan shall be negotiated by Hospital and the patient, and shall take into consideration the Patient's Family income and essential living expenses. If Hospital and the patient cannot agree on a payment plan, Hospital shall use the formula described in the definition of "Reasonable Payment Plan." Standard payment plan length will be twelve (12) months. Longer payment plans, which will be interest-free, may be granted on an exception basis.

X. REVIEW PROCESS

A. Information collected in the Patient Financial Assistance Form may be verified by

Hospital. A waiver or release may be required authorizing the Hospital to obtain account information from a financial or commercial institution or other entity that holds or maintains the monetary assets to verify their value. The patient's signature on the Patient Financial Assistance Form will certify that the information contained in the form is accurate and complete.

B. The Patient Financial Information Form will be required each time the patient is admitted and is valid for the current admission plus any other outstanding patient liability at Hospital at time of determination. The inpatient application can be used in the determination of charity care discount for outpatient services. The financial screening application for outpatient services is valid for three (3) months starting with the month of eligibility determination and any other patient financial liability at Hospital at the time of determination.

C. Patients will be notified in writing of approval or reason for denial of charity care eligibility in languages as determined by Hospital's geographical area. (See Attachment 2).

D. Specific payment liability for partial charity care discounts will require the episode of care or treatment plan to be determined and priced to enable accuracy of federal healthcare program reimbursement reporting. For High Medical Cost Patients with third party coverage, it may be necessary to wait until a payer has adjudicated the claim to determine patient financial liability.

XI. PATIENT BILLING AND COLLECTION PRACTICES

Responsibility: Patient Financial Services

A. Patients who have not provided proof of coverage by a third party at or before care is provided will receive a statement of charges for services rendered at the Hospital. Included in that statement will be a request to provide the Hospital with health insurance or third party coverage information. An additional statement will be provided on the bill that informs the patient that if they do not have health insurance coverage, the patient may be eligible for Medi-Cal or charity care.

B. Patient's request for charity care may be communicated verbally or in writing and a Patient Financial Information Form will be given/mailed to patient's/guarantor's address. Written correspondence to the patient shall also be in the languages as determined by Hospital's geographical area. (See Attachment 2).

C. If a patient is attempting to qualify for eligibility under the Hospital's charity care policy, and is attempting in good faith to settle the outstanding bill, the Hospital shall not send the unpaid bill to any collection agency or other assignee unless that entity has agreed to comply with this policy and has signed a written agreement pursuant to XI.I.

D. Patients are required to report to Hospital any change in their financial information promptly.

E. For financially eligible charity care patients, prior to commencing collection activities against a patient, the Hospital and its agents will provide a notice containing a statement that non-profit credit counseling may be available, and containing a summary of the patient's rights.

F. Bills that are not paid 120 days after the first post-discharge billing statement may be placed with a collection agency. The patient or the patient's guarantor may apply for help with their bill up to 240 days from the receipt of the first post-discharge billing statement and/or any time during the collection process.

G. It is the policy of Hospital to not engage in ECA except as provided below. If in the future Hospital were to change its policy Hospital will comply with the guidelines under 501(r) of the Internal Revenue Code. This requirement does not preclude Hospital from pursuing reimbursement from third party liability settlements or other legally responsible parties.

H. Hospital or its contracted collection agencies will undertake reasonable collection efforts to collect amounts due from patients. These efforts will include assistance with application for possible government program coverage, evaluation for charity care, offers of no-interest payment plans, and offers of discounts for prompt payment.

I. Contracted collection agencies must sign a written agreement that it will adhere to the Hospital's standards and collection practices. The agency must also agree to:

1. Not report adverse information to a consumer credit reporting agency or commence civil action against the patient for nonpayment at any time prior to 150 days after initial billing.

2. Not use wage garnishments, except by order of the court upon noticed motion, supported by a declaration filed by the movant identifying the basis for which it believes that the patient has the ability to make payments on the judgment under the wage garnishment, which the court shall consider in light of the size of the judgment and additional information provided by the patient prior to, or at, the hearing concerning the patient's ability to pay, including information about probable future medical expenses based on the current condition of the patient and other obligations of the patient.

3. Not place liens on primary residences.

4. Comply with applicable law.

5. Adhere to all notification requirements of section 501(r) of the Internal Revenue Code.

J. In the event that a patient is overcharged, the Hospital shall reimburse the patient the overcharged amount with 10 percent annual interest (pursuant to Health and

Safety Code section 127440 and Code of Civil Procedure section 685.010), calculated from the date the Hospital received the overpayment.

XII. APPEALS/REPORTING PROCEDURES

A. In the event of a dispute or denial, a patient may seek review from - _____. The _____ will review a second level appeal.

B. This Charity Care and Discount Screening policy and Patient Financial Assistance Form shall be provided to the Office of Statewide Health Planning and Development (OSHPD) at least biennially on January 1, or with significant revision. If no significant revision has been made by Hospital since the policies and Patient Financial Assistance Forma s previously provided, OSPHD will be notified that there has been no significant revision.

XIII. RESPONSIBILITY

Questions about the implementation of this policy should be directed to _____. Questions about Financial Assistance eligibility should be directed to _____.

Hospital reserves the right to make exceptions to this policy on a case by case basis.

UC Davis Rehabilitation Hospital
Charity Care and Discount Screening

Patient's Name: _____

Account Number: _____

SECTION I FAMILY/GUARANTOR INFORMATION

Total Number in Family: _____
# of Dependents Under 21: _____
Name and Guarantor & Relationship to Patient:
_____
Citizenship Status of Patient: _____
Section #: _____ Dates of Status: _____ Amnesty #: _____

Nursing Home Residents:	Yes_____	No _____
Disabled:	Yes_____	No _____
Pregnant:	Yes_____	No _____
Legally Blind:	Yes_____	No _____
Disabled:	Yes_____	No _____
Social Security Disability SSI/SSP		
Application Pending:	Yes_____	No _____
Victim of Crime:	Yes	No

SECTION II GROSS MONTHLY INCOME

EARNED INCOME (SALARY, WAGES, TIPS, ETC.)
Circle one or more
Patient/Father $ _____
Spouse/Mother/Other (Specify_____ $ _____

UNEARNED INCOME
Check all appropriate
☐ Disability Income $ _____
☐ Retirement $ _____
☐ General Assistance $ _____
☐ Other (circle all appropriate) $ _____

Unemployment Insurance	Veterans Benefits
Social Security	Workers' Compensation
Contributions	Alimony
Dividends	Interest
Loans	Income from Property

TOTAL INCOME $ _____
Are you supplied room & board by family/friends? Yes___ No___

SECTION III LIQUID ASSTETS

Checking Account Number: _____ $ _____
Bank/Credit Union Name: _____ $ _____
Branch: _____ $ _____
Savings Account Number: _____ $ _____
Bank/Credit Union Name: _____ $ _____
Branch: _____ $ _____
Securities/Stocks/Bonds/Cash Value of Insurance/Tax Refunds/etc.
Specify _____ $ _____
TOTAL LIQUID ASSETS $ _____

SECTION IV NON-LIQUID ASSETS

All Vehicles Owned (Circle All Appropriate)

	Make	Year	Amt Owed	Mo Pmt	Value
1st Car	_____	_____	$_____	$_____	$_____
2nd Car	_____	_____	$_____	$_____	$_____
Truck/Motorcycle	_____	_____	$_____	$_____	$_____
Boat/Camper/RV	_____	_____	$_____	$_____	$_____
Other	_____	_____	$_____	$_____	$_____
Total (exclude 1st vehicle)			$_____	$_____	$_____

Do you own or rent residence? Own ____ Rent ____
Do you own property other than residence? Yes ____ No ____
Address/Location _____

Other Property	Value	Amount Owed	Equity
	$_____	$_____	$_____

Add total of vehicle value
plus other property equity =
TOTAL NON-LIQUID ASSETS $ _____

SECTION V

	MONTHLY EXPENSE TOTAL AMT DUE	MONTHLY PMT or EXPENSE
Alimony and/or Child Support (if a child is not claimed as a Dependent)	$_____	$_____
Day Care Costs for Children (for working parents)	$_____	$_____
Cost of Health Insurance Premiums	$_____	$_____
Work Expenses ($75/per working person)	$_____	$_____
Subtotal Expenses	$_____	$_____
Total Vehicle Payments from Section IV	$_____	$_____
Total Medical/Dental Expenses (Including UC Davis Rehabilitation Hospital)	$_____	$_____
Charge Accounts/Loans/Credit Cards:		
Name: _____	$_____	$_____
Name: _____	$_____	$_____
Name: _____	$_____	$_____
Mastercard Limit $ _____	$_____	$_____
Visa Limit $ _____	$_____	$_____
Subtotal	$_____	$_____
TOTAL EXPENSES	$_____	$_____

Remarks

PURPOSE: The purpose of this information is to determine your ability to pay for services or your possible eligibility for a medical assistance program. This information is NOT an application for Medi-Cal, Sacramento County Medically Indigent Services Program or any other county's assistance program. YOU MUST CONTACT THE DEPARTMENT OF SOCIAL SERVICES IN YOUR COUNTY OF RESIDENCE TO APPLY FOR ASSISTANCE PROGRAMS.

I certify the above information to be accurate and complete. I understand that the hospital reserves the right to verify all information supplied. I agree to notify the Billing Customer Service Department (XXX)XXX-XXXX of any change in my financial information within 10 days of change. I UNDERSTND THAT I AM STILL RESPONSIBLE FOR THE FULL AMOUNT OF MY CHARGES.

_____ _____
Signature of Patient / Responsible Party Date

UC DAVIS REHABILITATION HOSPITAL PRIMARY SERVICE AREA

Sacramento County
El Dorado County
Placer County
San Joaquin County
Sutter County
Yolo County
Yuba County

EXHIBIT D

CONTRIBUTION AGREEMENT

This CONTRIBUTION AGREEMENT (this "***Agreement***") is entered into as of July 31, 2018 ("***Effective Date***"), by and between **The Regents of the University of California**, a California corporation ("***The Regents***"), on behalf of UC Davis Medical Center ("***UC Davis***"), **Kindred Development 13, L.L.C.**, a Delaware limited liability company ("***KND***"), and **Sacramento Sierra Rehabilitation Hospital, LLC**, a California limited liability company (the "***Company***") (each a "***Party***" and collectively the "***Parties***"). Capitalized terms used herein but not otherwise defined have the meaning ascribed to such terms in the Company's Operating Agreement dated as of the Effective Date, as amended from time to time (the "***Operating Agreement***").

RECITALS

1. UC Davis owns and operates a 19-bed acute rehabilitation unit (the "***Business***") located at 2315 Stockton Boulevard, Sacramento, California.

2. As of the Effective Date, KND has a 51% Percentage Interest in the Company, and UC Davis has a 49% Percentage Interest in the Company.

3. On the terms and conditions set forth in this Agreement, on the Closing Date (as defined in Section 2.02 herein) (i) UC Davis will contribute to the capital of the Company the assets of the Business as described on **Exhibit A** (the "***Business Assets***"), (ii) KND will contribute to the capital of the Company cash in an amount of $5,750,000 (the "***KND Cash***"), and (iii) KND will make a cash payment to UC Davis in the amount of approximately $760,000 (the "***KND Payment***"), as determined under Section 1.05 below. As set forth in Section 1.06, KND will make periodic payments to UC Davis following the Closing based on a reset of the Fair Market Value ("***FMV***") of the Business Assets as periodically determined under Section 1.06. Such contributions and payments will maintain UC Davis's and KND's 49% and 51% Percentage Interests, respectively, in the Company.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

ARTICLE 1—CONTRIBUTIONS

Section 1.01 **Contribution of Business Assets by UC Davis**. On the Closing Date, UC Davis will contribute, convey, transfer, assign, and deliver to the Company, as a capital

contribution (the "***UC Davis Contribution***"), and the Company will accept from UC Davis, free and clear of any and all claims, liens, pledges, security interests, and other encumbrances of any kind ("***Encumbrances***") (except such Encumbrances as may be permitted by KND, which permission shall not be unreasonably withheld ("***Permitted Encumbrances***")), all right, title, and interest in, to, and under the Business Assets.

Section 1.02. **Excluded Assets**. Notwithstanding Section 1.01, the UC Davis Contribution does not include any assets other than the Business Assets, which UC Davis will retain as of the Effective Time ("***Excluded Assets***"). Without limiting the generality of the foregoing, Excluded Assets shall include:

(a) All accounts receivable, notes, notes receivable, and other receivables held by, owned by and due to UC Davis with respect to the Business as of, and relating to the period prior to, the Effective Time, including the current portion thereof and including reimbursements from Medicare, Medicaid and any other Government Health Care Programs (collectively, the "***Accounts Receivable***");

(b) All agreements with third parties and contract rights;

(c) All licenses and Permits related to the Business;

(d) All fixed assets, including all equipment, machinery, furniture, furnishings, and other tangible personal property of every type, whether owned or leased;

(e) All real property, including the property located at 2315 Stockton Boulevard, Sacramento, California;

(f) All inventory, UC Davis' Medicare and Medicaid provider numbers, and patient lists, files, records, and documents; and

(g) All copyrights, trademarks, and patents, trade secrets, know-how, and other intellectual property rights, including the UC Davis name, trade dress and other marks and the names, trade dress and marks of all affiliates of UC Davis or The Regents.

Section 1.03 **All Liabilities Excluded**. Notwithstanding any other provision of this Agreement, the Company will not assume, be liable to pay, perform, or discharge or otherwise be responsible for, and UC Davis agrees to indemnify and hold harmless the Company and KND with respect to, any obligation or liability of UC Davis in connection with the Business of any kind or nature (whether express or implied, absolute, fixed or contingent, liquidated or unliquidated, known or unknown, or accrued, due, or to become due, or otherwise) whether arising prior to, at, or after the date hereof (collectively, the "***Excluded Liabilities***"). UC Davis must indemnify, defend, and hold KND and the Company harmless from any such obligations or liabilities and agrees to, as of the Closing Date, cause the Business Assets to not be subject to or encumbered by any Excluded Liabilities.

Section 1.04 **KND's Contribution and KND Payment**. On the Closing Date, KND will

contribute to the Company as a capital contribution, and the Company will accept from KND, the KND Cash and KND will pay to UC Davis the KND Payment.

Section 1.05 **Initial Fair Market Value of Business Assets**. The initial FMV of the Business Assets shall be deemed to be $17,537,000; provided, however, that for purposes of determining the value of UC Davis' contribution of the Business Assets as of the Closing Date, the parties agree to apply a 60% discount (i.e., assume a payout rate of 40%), thereby resulting in a contributed value of $7,014,800 ("***Initial Value***"). For clarification, for purposes of determining UC Davis' capital account, the value of the Business Assets as of the Closing Date, taking into account the agreed payout rate, shall be deemed to be $7,014,800. The parties acknowledge and agree that such contributed value, taking into account the KND Cash and other contributions to the Company by UC Davis and KND, results in a Percentage Interest for UC Davis that is higher than the 49% that UC Davis is intended to have (such excess Percentage Interest, the "***Excess Percentage Interest***"). Accordingly, UC Davis shall sell to KND, and KND shall purchase from UC Davis, the Excess Percentage Interest in exchange for the KND Payment, which amount shall be calculated as the product of (i) the total capital contributions of the Members to the Company, times (ii) the Excess Percentage Interest. Such purchase and sale shall be deemed to occur immediately upon UC Davis' contribution of the Business Assets on the Closing Date.

(a) The parties acknowledge and agree that the initial FMV of the Business Assets was calculated using the Sensitivity Table in Tab A of the Spreadsheet (as defined in Section 1.06(a)) by inputting the commercial payor revenue per patient day, net of bad debt and contractual allowances ("***CPRPPD***") and the Medi-cal revenue per patient day, net of bad debt and contractual allowances ("***MRPPD***") anticipated by the parties to be applicable as of the first day of the IRF's operations, i.e., 85% CPRPPD and 65% MRPPD. For all purposes of this Agreement, and the Spreadsheet, CPRPPD specifically excludes governmental payor and self-payor amounts.

Section 1.06 **Reset of Business Assets Value and KND Payments**. The FMV of the Business Assets, the resulting value of UC Davis' contribution, and therefore the amount of the KND Payment, will be reset over the first four years of the operations of the IRF based on the commercial and Medi-cal rates actually achieved by the Company for those years with respect to the IRF's operations. That will result in a new KND Payment at the end of years 1, 2 and 4 of IRF operations (each, a "***Reset Kindred Payment***"). For purposes of resetting the amounts under this Section 1.06, (i) the first year shall mean that year commencing on the Effective Time (as defined in Section 2.02) and ending on December 31 of that year; provided, however, that if such period is less than six (6) full calendar months, then the first year shall mean the next calendar year; (ii) the second year shall be the calendar year after the first year, as determined in clause (i); and (iii) the fourth year shall mean the calendar year that is two calendar years after the second year.

(a) **Reset of Business Assets Value**. UC Davis and KND have agreed upon a final Excel spreadsheet (the "***Spreadsheet***") that, through application of Tab A of the Spreadsheet, resets the value of the Business Assets (the "***Reset Value***") by inputting the CPRPPD and MRPPD amounts experienced by the Company during specified years of the IRF's operations. The Spreadsheet (including Tab A and Tab B) is attached hereto as **Exhibit B**. KND and UC Davis agree that the Spreadsheet will be maintained on a shared website with the internet link

"https://ucdavis.app.box.com/folder/51852697083?utm_source=trans&utm_medium=email&utm_campaign=collab%2Bauto%20accept%20user" accessible to both of them, and no other party without the prior written consent of both KND and UC Davis, through the use of a shared password. Any amendment of the Spreadsheet shall be made only with the consent of KND and UC Davis. Within ninety (90) days after the last day of each of the first, second and fourth years of the IRF's operations, KND and UC Davis will each input those commercial payor revenue per patient day and the Medi-cal revenue per patient day amounts, for the first year, for the second year and for the fourth year, respectively, into the Spreadsheet. If both parties arrive at the same Reset Value through the application of the Spreadsheet, that Reset Value shall be deemed final. If the parties do not arrive at the same Reset Value, then during the next thirty (30) days (the "***Discussion Period***") after such 90-day period, their respective representatives will engage in good faith discussions in an attempt to resolve the value issue with the goal of arriving upon an agreed final Reset Value for the applicable year. If the parties are unable to arrive at an agreed final Reset Value by the end of the Discussion Period, during the following fifteen (15) days they will select an agreed upon qualified independent third party to determine the final Reset Value and the Reset Value so determined shall be deemed final. The independent third party will deliver its final Reset Value within thirty (30) days of its engagement. The costs of the independent third party will be borne by the Company. Notwithstanding any provision in this Agreement to the contrary, the parties acknowledge and agree that (1) the initial capital contributions of KND and UC Davis are not reflected in Tab B, and (2) such initial capital contributions shall be taken into account in calculating the Reset Value and the resulting Reset Kindred Payment.

(b) **Reset Kindred Payments**. The amount of the Reset Kindred Payment to be made by KND to UC Davis following the end of the first, second and fourth years of the IRF's operations will be calculated in a manner similar to the method discussed in Section 1.05 above; provided, however, that (i) the discount to be applied during the end of the first, second, and fourth years shall be 40% (i.e., a payout rate of 60%), 25% (i.e., a payout rate of 75%), and 0% (i.e., a payout rate of 100%), respectively, (ii) the amount of the Reset Kindred Payment shall take into account its contribution of the KND Cash, KND Payment, and Reset Kindred Payments previously paid by KND, all as illustrated in Tab B of the Spreadsheet; and (iii) the amount of the Reset Kindred Payment shall take into account all other contributions of KND and UC Davis to the Company, including their respective initial capital contributions upon the formation of the Company. The Reset Kindred Payment shall be deemed to be KND's payment to UC Davis for the purchase of UC Davis' Excess Percentage Interest, which purchase shall be deemed to occur immediately upon the resetting of FMV of the Business Assets. The amounts payable to UC Davis shall be paid to UC Davis within thirty (30) days after the determination of the final Reset Value for each year under Section 1.06(a). **Exhibit C** hereto delineates the calculations embodied in Tab B of the Spreadsheet; provided, however, that the parties acknowledge and agree that (1) the initial capital contributions of KND and UC Davis are not reflected in **Exhibit C**, and (2) such initial capital contributions shall be taken into account in calculating the Reset Kindred Payment.

(c) **Minimum Value for Business Assets**. Notwithstanding any provision in this Agreement (including the Exhibits) to the contrary, (i) in no event shall UC Davis be required to make any payment to KND as a result of the reset of the FMV of the Business Assets, and (ii) in no event shall the value of the Business Assets be less than the Initial Value.

ARTICLE 2—CONSIDERATION; CLOSING

Section 2.01 **Consideration**. In consideration for (i) UC Davis's and KND's respective contributions to the capital of the Company as set forth herein and (ii) the KND Payment and Reset Kindred Payments, KND and UC Davis will maintain their respective Percentage Interests of Fifty-One percent (51%) and Forty-Nine percent (49%), respectively.

Section 2.02 **The Closing Date and the Effective Time**. The "***Closing Date***" shall be the day following the date of the issuance of the IRF's Certificate of Occupancy, or such other date as the parties may unanimously agree. The "***Effective Time***" shall mean 12:00:01 a.m. Pacific Time on the day immediately following the Closing Date.

Section 2.03. **UC Davis's Closing Deliverables.** On the Closing Date, effective as of the Effective Time, UC Davis will execute and deliver (or cause to be executed and delivered) (a) to the Company (i) all instruments and documents that the Parties have determined to be appropriate to effect UC Davis's Contribution of the Business Assets including, but not limited to, (i) a Bill of Sale substantially in the form attached hereto as **Exhibit D**, and (ii) upon the Company's request, evidence of the release of all Liens (except the Permitted Encumbrances) against the Business Assets, and (b) to the Company and KND a written statement certifying that the representations and warranties contained in Article 3(A) are true and correct in all material respects as of the Closing Date.

Section 2.04 **KND's Closing Deliverables.** On the Closing Date, effective as of the Effective Time, KND will deliver (a) to the Company the KND Cash, and (b) to UC Davis and the Company, a written statement certifying that the representations and warranties contained in Article 3(B) are true and correct in all material respects as of the Closing Date. At that time, KND will also deliver the KND Payment to UC Davis.

Section 2.05 **Company's Closing Deliverables**. On the Closing Date, effective as of the Effective Time, the Company will execute and deliver to UC Davis and KND (or cause to be executed and delivered) (a) all instruments and documents that the Parties have determined to be appropriate to evidence the Percentage Interests of UC Davis and KND, and (b) a written statement certifying that the representations and warranties contained in Article 4 are true and correct in all material respects as of the Closing Date.

Section 2.06 **Waiver of Closing Deliverables and Actions**. Any Party may waive the performance of any of the obligations or other acts required of any other Parties hereunder. In addition, any Party may waive any inaccuracies in the representations and warranties of any other Party contained herein or in any document delivered pursuant hereto and may waive compliance by any other Party with any of the agreements or conditions contained herein. Any such waiver must be set forth in writing signed by all of the Parties.

ARTICLE 3—REPRESENTATIONS AND WARRANTIES OF UC DAVIS AND KND

(A) As a material inducement to the Company and KND to enter into this Agreement and consummate the transactions contemplated hereby, UC Davis hereby makes to the Company and

KND the representations and warranties contained in this Article 3(A) as of the date of this Agreement. "***Knowledge of UC Davis***" means the actual knowledge of Ann Madden Rice.

Section 3.01 **Organization; Authority**. UC Davis is a corporation duly organized and validly existing and in good standing under the Laws of the state of California, with full power and authority to own or lease its assets and to conduct the Business in the manner and in the places where such assets are owned or leased or the Business is currently conducted. UC Davis is duly licensed or qualified to conduct business or own property and is in good standing in each jurisdiction where the assets owned or leased by it or the nature of the Business makes such licensing or qualification necessary.

Section 3.02 **Authority; Binding Effect; Noncontravention**. UC Davis has the full and unrestricted right, authority, capacity, and power to enter into this Agreement and each ancillary agreement, document, and instrument hereto (collectively, the "***Related Agreements***") and to carry out the transactions contemplated hereby and thereby. The execution, delivery, and performance by UC Davis of this Agreement and each Related Agreement have been duly authorized by all necessary action of UC Davis and no other action on the part of UC Davis is required in connection therewith. This Agreement and each Related Agreement, when executed and delivered by the applicable counterparty(ies), constitutes valid and binding obligations of UC Davis, enforceable in accordance with its terms, except as enforcement may be limited by equitable principles limiting the right to obtain specific performance or other equitable remedies, or by applicable bankruptcy or insolvency Law and related laws affecting creditors' rights generally. The execution, delivery, and performance by UC Davis of this Agreement and each Related Agreement and the transactions contemplated hereby and thereby:

(a) does not and will not violate any provision of the articles of incorporation of UC Davis or any resolution adopted by UC Davis or its management;

(b) does not and will not (i) violate any Laws applicable to UC Davis, or orders, writs, or injunctions of the United States, or any state or other jurisdiction or any judgment, decree or order of any court or other judicial body specifically naming UC Davis, except to the extent any such violation would not materially interfere with the transactions contemplated in this Agreement, or (ii) require UC Davis to obtain any approval, consent, or waiver of, or make any registration, declaration or filing with, or provide notice to, any Person, other than the notice required to be provided by UC Davis to the California Department of Public Health and the Centers for Medicare and Medicaid Services; and

(c) does not and will not (i) result in a breach of, constitute a default under, accelerate any obligation under, require a consent under, or give rise to a right of termination or revocation of, any indenture or loan or credit agreement or any other contract, instrument, mortgage, lien, lease, permit, authorization, order, writ, judgment, injunction, decree, determination, or arbitration award to which UC Davis is a party or by which its property is bound or affected, except to the extent any such breach, default, acceleration, lack of consent, termination or revocation would not materially interfere with the transactions contemplated in this Agreement, or (ii) result in the creation or imposition of any Liens (other than Permitted Encumbrances) on any of the Business Assets.

Section 3.03 **Financial Status**. UC Davis is solvent, has not made a general assignment for the benefit of its creditors, and has not admitted in writing an inability to pay its debts as they become due. UC Davis has not filed, and does not contemplate filing, any bankruptcy, reorganization, arrangement, insolvency, or liquidation proceeding, or any other proceeding for the relief of debtors in general. No such proceeding has been instituted by or against UC Davis, and, to the Knowledge of UC Davis, no such proceeding is threatened or contemplated.

Section 3.04 **Business Assets**.

(a) UC Davis has good, marketable and exclusive beneficial and legal title to, or a valid leasehold interest in or a valid license to use, all of the Business Assets. All liens, mortgages, claims, voting agreements, voting trusts, proxies, puts, calls, security interests, restrictions, prior assignments, easements, covenants, conditions, or claims of any kind or nature whatsoever (collectively, the "***Liens***") on the Business Assets, other than Permitted Encumbrances, will be released on or prior to the Closing Date.

(b) The Business Assets are in such repair and condition that materially complies with all applicable Laws and that is consistent with the requirements and normal conduct of the Business.

Section 3.05 **Intentionally omitted.**

Section 3.06 **Ordinary Course**. Since January 1, 2017, UC Davis has conducted the Business in the ordinary course, consistent with its past practices.

Section 3.07 **Insurance**. As of the Closing Date, the physical properties, Business Assets and employees of the Business are insured in a manner customary for a business similar to the Business, and all insurance policies and arrangements of UC Davis with respect to the Business (which include general liability, professional liability, property, casualty, fire, and workers' compensation insurance policies and arrangements) are in full force and effect, all premiums due with respect thereto are currently paid, and UC Davis is in compliance in all material respects with the terms thereof. Said insurance is adequate and customary for the Business and is sufficient for compliance by UC Davis with all requirements of Law and all material contracts to which UC Davis is a party. Each such insurance policy shall continue to be in full force and effect immediately prior to the Effective Time.

Section 3.08 **Finder's Fee**. UC Davis has not incurred any broker's commission or finder's fee relating to or in connection with the transactions contemplated by this Agreement.

Section 3.09 **Disclosure**. The representations, warranties, and statements contained in this Agreement and in each other agreement executed and delivered pursuant hereto and in the certificates, Exhibits and Schedules delivered to the Company or KND by UC Davis pursuant to this Agreement do not contain any untrue statement of a material fact, and, when taken together, do not omit to state a material fact required to be stated therein in order to make such

representations, warranties, or statements not misleading in light of the circumstances under which they were made.

Section 3.10 **Non-Sanctioned Entity**. UC Davis represents and warrants that it is not a Sanctioned Person or Entity. For purposes of this Agreement, the term "***Sanctioned Person or Entity***" means a person or entity who (a) has been excluded by the Office of the Inspector General of the Department of Health and Human Services from participation in Medicare, Medi-cal or any state health care program (defined at 42 C.F.R. § 1001.2) pursuant to 42 C.F. R. Part 1001 or (b) has been excluded by the State of California's Department of Health Care Services from participation in California's Medi-cal program pursuant to 42 C.F.R. Part 1002. UC Davis shall notify the other Parties within ten (10) days after it receives notice that it is a Sanctioned Person or Entity; provided, however, that this obligation shall terminate as of the Effective Time.

(B) As a material inducement to the Company and UC Davis to enter into this Agreement and consummate the transactions contemplated hereby, KND hereby makes to the Company and UC Davis the representations and warranties contained in this Article 3(B) as of the date of this Agreement. "***Knowledge of KND***" means the actual knowledge of the senior management and officers of KND.

Section 3.11 **Organization; Authority**. KND is a limited liability company duly organized and validly existing and in good standing under the Laws of the state of Delaware, with full power and authority to own or lease its assets and to conduct its business in the manner and in the places where such assets are owned or leased or its business is currently conducted. KND is duly licensed or qualified to conduct business or own property and is in good standing in each jurisdiction where the assets owned or leased by it or the nature of its business makes such licensing or qualification necessary.

Section 3.12 **Authority; Binding Effect; Noncontravention**. KND has the full and unrestricted right, authority, capacity, and power to enter into this Agreement and the Related Agreements and to carry out the transactions contemplated hereby and thereby. The execution, delivery, and performance by KND of this Agreement and each Related Agreement have been duly authorized by all necessary action of KND and no other action on the part of KND is required in connection therewith. This Agreement and each Related Agreement, when executed and delivered by the applicable counterparty(ies), constitutes valid and binding obligations of KND, enforceable in accordance with its terms, except as enforcement may be limited by equitable principles limiting the right to obtain specific performance or other equitable remedies, or by applicable bankruptcy or insolvency Law and related laws affecting creditors' rights generally. The execution, delivery, and performance by KND of this Agreement and each Related Agreement and the transactions contemplated hereby and thereby:

(a) does not and will not violate any provision of the articles of organization of KND or any resolution adopted by KND or its officers, directors or members;

(b) does not and will not (i) violate any Laws applicable to KND, or orders, writs, or injunctions of the United States, or any state or other jurisdiction or any judgment, decree or order of any court or other judicial body specifically naming KND, except to the extent any such

violation would not materially interfere with the transactions contemplated in this Agreement, or (ii) require KND to obtain any approval, consent, or waiver of, or make any registration, declaration or filing with, or provide notice to, any Person; and

(c) does not and will not result in a breach of, constitute a default under, accelerate any obligation under, require a consent under, or give rise to a right of termination or revocation of, any indenture or loan or credit agreement or any other contract, instrument, mortgage, lien, lease, permit, authorization, order, writ, judgment, injunction, decree, determination, or arbitration award to which KND is a party or by which its property is bound or affected, except to the extent any such breach, default, acceleration, lack of consent, termination or revocation would not materially interfere with the transactions contemplated in this Agreement.

Section 3.13 **Financial Status**. KND is solvent, has not made a general assignment for the benefit of its creditors, and has not admitted in writing an inability to pay its debts as they become due. KND has not filed, and does not contemplate filing, any bankruptcy, reorganization, arrangement, insolvency, or liquidation proceeding, or any other proceeding for the relief of debtors in general. No such proceeding has been instituted by or against KND, and, to the Knowledge of KND, no such is proceeding threatened or contemplated.

Section 3.14 **Finder's Fee**. KND has not incurred any broker's commission or finder's fee relating to or in connection with the transactions contemplated by this Agreement.

Section 3.15 **Disclosure**. The representations, warranties, and statements contained in this Agreement and in each other agreement executed and delivered pursuant hereto and in the certificates, Exhibits and Schedules delivered to the Company or UC Davis by KND pursuant to this Agreement do not contain any untrue statement of a material fact, and, when taken together, do not omit to state a material fact required to be stated therein in order to make such representations, warranties, or statements not misleading in light of the circumstances under which they were made.

Section 3.16 **Non-Sanctioned Entity**. KND represents and warrants that it is not a Sanctioned Person or Entity. KND shall notify the other Parties within (10) days after it receives notice that it is a Sanctioned Person or Entity; provided, however, that this obligation shall terminate as of the Effective Time.

ARTICLE 4—REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to UC Davis and KND as set forth below, as of the date of this Agreement:

Section 4.01 **Organization; Authority**.

(a) The Company is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of California.

(b) The Company has all the necessary limited liability company power and authority to enter into and perform its obligations under this Agreement.

Section 4.02 **Due Authorization; Binding Agreement**. The Company has the full and unrestricted right, authority, capacity, and power to enter into this Agreement and the Related Agreements and to carry out the transactions contemplated hereby and thereby. The execution, delivery, and performance of this Agreement and the Related Agreements by the Company have been duly and validly authorized by all necessary action. This Agreement and the Related Agreements have been duly executed and delivered by the Company and, when executed and delivered by the applicable counterparty(ies), constitutes a legal, valid, and binding obligation of the Company, enforceable against the Company in accordance with the terms hereof and thereof (except as enforcement may be limited by bankruptcy, insolvency or other laws affecting enforcement of creditors' rights generally and general equitable principles).

Section 4.03 **No Violation**. Neither the execution, delivery, nor performance of this Agreement or the Related Agreements by the Company does or will, with or without the giving of notice, lapse of time or both, violate, conflict with, or constitute a default under any term or condition of (a) the organizational documents of the Company, or (b) any term or provision of any judgment, decree, order, statute, injunction, rule or regulation of a governmental unit applicable to the Company. The execution, delivery, and performance of this Agreement or the Related Agreements by the Company does not and will not result in a breach of, constitute a default under, accelerate any obligation under, require a consent under, or give rise to a right of termination or revocation of, any indenture or loan or credit agreement or any other contract, instrument, mortgage, lien, lease, permit, authorization, order, writ, judgment, injunction, decree, determination, or arbitration award to which the Company is a party or by which its property is bound or affected, except to the extent any such breach, default, acceleration, lack of consent, termination or revocation would not materially interfere with the transactions contemplated in this Agreement

Section 4.04 **Non-Sanctioned Entity**. The Company represents and warrants that it is not a Sanctioned Person or Entity. The Company shall notify the other Parties within (10) days after it receives notice that it is a Sanctioned Person or Entity; provided, however, that this obligation shall terminate as of the Effective Time.

ARTICLE 5—COVENANTS

Section 5.01 **Further Assurances**. The Parties hereto will in good faith and with reasonable diligence do all such commercially reasonable things and provide all such reasonable assurances as may be required to consummate the transactions contemplated hereby and each Party agrees to provide such further documents or instruments required by the requesting Party as may be reasonably necessary or desirable to effect the purposes of this Agreement and carry out its provisions both on and after the Closing. Without limiting the generality of the foregoing, UC Davis agrees, from time to time after the Closing at the request of Company and without further consideration, to execute and deliver further instruments of transfer and assignment and take such other action as Company may reasonably require to more effectively transfer and assign to, and vest in, Company the Business Assets. Nothing herein may be construed as a waiver by Company

of its right to receive at the Closing an effective assignment of each of the Business Assets as otherwise set forth in this Agreement.

Section 5.02 **Employees**.

(a) Any employees of UC Davis who are hired by the Manager effective after the Closing are referred to herein as "***Transferred Employees***." UC Davis retains the liability for and must promptly discharge all claims which are incurred under any employee compensation or benefit program maintained by UC Davis prior to the Closing, and the Manager has no responsibility or liability for the payment of any benefits relating thereto. More specifically and without reducing the scope of the foregoing, to the extent obligated under any employee compensation or benefit program maintained by UC Davis or by applicable law on or prior to the Closing, UC Davis retains liability for (i) all benefits of any kind for former or current employees of UC Davis, including those who are not Transferred Employees, and their dependents, spouses and beneficiaries, notwithstanding Treas. Reg. § 54.4980B-9, Q&A 8; (ii) life insurance claims incurred and not yet reported or claims made and not yet paid; (iii) long term disability claims incurred and not yet reported or claims made and not paid; (iv) medical and dental claims incurred and not yet reported or claims made and not yet paid; (v) all earned, accrued or unpaid bonuses or other payouts due to any employee, consultant or independent contractor of UC Davis, (vi) all earned, accrued, used or unused personal leave, personal time off, or sick or vacation leave (including floating holidays) for any current or former employee, consultant, or independent contractor of UC Davis, including any Transferred Employees, and (vii) benefits to all individuals entitled to benefits required to be provided by the continuation health care coverage requirements of Section 4980B of the IRC and Sections 601 through 607 of ERISA as of the Closing, including, but not limited to, any current or former employee of UC Davis who is entitled to such coverage as a result of the transactions contemplated by this Agreement. UC Davis is liable for any obligations or liabilities under the WARN Act with respect to its terminated employees.

(b) Neither the Manager nor the Company is liable to UC Davis for any amounts due and payable to any Transferred Employee arising out of the termination of such employee's employment relationship with UC Davis, including, without limitation, any wages, salary, bonuses, compensation, accrued vacation, benefits, or severance payments. At such time as may be required by applicable state law, but in no event later than fourteen (14) days after the Closing Date, UC Davis must have paid any and all amounts due and payable to any Transferred Employee up to and through the Closing Date or otherwise arising out of the termination of such Transferred Employee's employment relationship with UC Davis, including without limitation all wages, salary, bonuses, compensation, accrued vacation (including floating holidays), benefits, and severance payments, if any.

(c) UC Davis has the continuing obligation to maintain and support each its 401(k) or similar employee benefit plans as in effect as of the Closing Date as may be required by applicable law.

Section 5.03 **UC Davis' Exempt Purposes**. The Parties acknowledge and agree that a material inducement to UC Davis to enter into this Agreement and consummate the transactions contemplated hereby is the Company's and KND's agreement to operate the Company consistent

with the tax-exempt purpose(s) of UC Davis and/or its affiliated entities, as set forth in the Company's Operating Agreement as part of (but not limited by) the Community Benefit Standard (as that term is defined in the Company's Operating Agreement) (the "***Exempt Purpose Factor***"). The Company hereby agrees to conduct its operations, and KND hereby agrees to cause the Company to conduct the Company's operations, in accordance with the Exempt Purpose Factor.

ARTICLE 6—SURVIVAL; INDEMNIFICATION

Section 6.01 **Survival of Representations and Warranties**. Each of the representations and warranties herein or in any Schedule, Exhibit, or signed instrument delivered by any Party incident to the transactions contemplated hereby are material, are deemed to have been relied upon by the other Parties and will survive until the 18-month anniversary of the Closing Date.

Section 6.02 **Indemnification by UC Davis**. UC Davis agrees to indemnify, defend, and hold harmless the Company and KND, the respective direct and indirect subsidiaries thereof, their Affiliates, and Persons serving as officers, managers, directors, employees, consultants, agents, and representatives thereof (individually a "***KND/Company Indemnified Party***" and collectively the "***KND/Company Indemnified Parties***") from and against any and all damages, liabilities, diminution in value, losses, settlements, fines, penalties, proceedings, suits, deficiencies, costs, and expenses (including, without limitation, reasonable out-of-pocket legal, accounting, and other professional fees) of any kind or nature whatsoever (whether or not arising out of third-party claims and including all amounts paid in investigation, defense, or settlement of the foregoing), (collectively, "***Losses***"), that may be sustained or suffered by any of them arising out of or in connection with any of the following matters:

(a) a breach by UC Davis of any representation or warranty contained in this Agreement, the Related Agreements or in any certificate, schedule or other document delivered to the Company or KND hereunder or thereunder;

(b) a breach by UC Davis of any covenant, restriction, or agreement made by or applicable to UC Davis and contained in this Agreement, the Related Agreements or in any certificate, schedule, or document delivered to the Company or KND hereunder or thereunder;

(c) any failure to pay, perform, or discharge any of the Excluded Liabilities; and

(d) UC Davis's operation of the Business or use of the Business Assets prior to the Closing.

6.03 **Limitations on Indemnification by UC Davis**. Notwithstanding the foregoing, the indemnification obligations of UC Davis are subject to the following limitations, conditions and restrictions:

(a) The maximum amount payable in the aggregate by UC Davis to all KND/Company Indemnified Parties with respect to claims for indemnification made pursuant to Section 6.02 above shall not exceed $1,000,000 (the "***Indemnity Cap***"); provided, however, that

the foregoing Indemnity Cap shall not apply to Losses that arise from UC Davis' fraud or a breach of the representations or warranties contained in Section 3.01 (Organization; Authority); Section 3.02 (Authority; Binding Effect; Noncontravention); Section 3.08 (Finder's Fee); or Section 3.10 (Non-Sanctioned Entity).

(b) All claims by a KND/Company Indemnified Party for indemnification must be made before the date that the survival period expires with respect to the applicable representation, warranty, covenant, obligation, or agreement.

(c) UC Davis has no obligation to indemnify KND/Company Indemnified Parties from and against any Loss claimed under Section 6.02 unless and until such claim or claims for all such Losses exceeds $50,000 (the "***Deductible***").

Section 6.04 **Indemnification by KND**. KND agrees to indemnify, defend, and hold harmless (1) UC Davis, its direct and indirect subsidiaries, Affiliates, and Persons serving as officers, managers, directors, employees, consultants, agents, and representatives thereof (individually a "***UC Davis Indemnified Party***" and collectively the "***UC Davis Indemnified Parties***"), and (2) the Company, its direct and indirect subsidiaries, Affiliates, and Persons serving as officers, managers, directors, employees, consultants, agents, and representatives thereof (individually a "***Company Indemnified Party***" and collectively the "***Company Indemnified Parties***"), in each case from and against any Losses, that may be sustained or suffered by any of them arising out of or in connection with any of the following matters:

(a) a breach by KND of any representation or warranty contained in this Agreement, the Related Agreements or in any certificate, schedule or other document delivered to the Company or UC Davis hereunder or thereunder; and

(b) a breach by KND of any covenant, restriction, or agreement made by or applicable to KND and contained in this Agreement, the Related Agreements or in any certificate, schedule, or document delivered to the Company or UC Davis hereunder or thereunder.

Section 6.05 **Limitations on Indemnification by KND**. Notwithstanding the foregoing, the indemnification obligations of KND are subject to the following limitations, conditions and restrictions:

(a) (i) The maximum amount payable in the aggregate by KND to all UC Davis Indemnified Parties with respect to claims for indemnification made pursuant to Section 6.04(a) above shall not exceed the Indemnity Cap, and (ii) the maximum amount payable in the aggregate by KND to all Company Indemnified Parties with respect to claims for indemnification made pursuant to Section 6.04(a) above shall not exceed the Indemnity Cap; provided, however, that the foregoing Indemnity Cap shall not apply to Losses that arise from KND's fraud or a breach of the representations or warranties contained in Section 3.11 (Organization; Authority); Section 3.12 (Authority; Binding Effect; Noncontravention); Section 3.14 (Finder's Fee); or Section 3.16 (Non-Sanctioned Entity).

(b) All claims by a UC Davis Indemnified Party or a Company Indemnified Party for indemnification must be made before the date that the survival period expires with respect to the applicable representation, warranty, covenant, obligation, or agreement.

(c) KND has no obligation to indemnify the UC Davis Indemnified Parties or the Company Indemnified Parties from and against any Loss claimed under Section 6.04 unless and until such claim or claims for all such Losses exceeds the Deductible.

Section 6.06 **Indemnification by the Company**. The Company agrees to indemnify, defend, and hold harmless KND, and its direct and indirect subsidiaries, Affiliates, and Persons serving as officers, managers, directors, employees, consultants, agents, and representatives thereof (individually, a "***KND Indemnified Party***" and, collectively, the "***KND Indemnified Parties***"), and the UC Davis Indemnified Parties, in each case from and against any Losses which may be sustained or suffered by any of them arising out of or in connection with any of the following matters:

(a) a breach by the Company of any representation or warranty made by the Company and contained in this Agreement, the Related Agreements or in any certificate or schedule delivered by the Company to UC Davis or KND hereunder or thereunder;

(b) a breach by the Company of any covenant, restriction or agreement made by or applicable to the Company and contained in this Agreement, the Related Agreements or in any certificate or other document delivered by the Company to UC Davis or KND hereunder or thereunder; or

(c) the Company's operation of the Business or use of the Business Assets subsequent to the Closing.

Section 6.07 **Limits on Indemnification by the Company**.

(a) (i) The maximum amount payable in the aggregate by the Company to all UC Davis Indemnified Parties with respect to claims for indemnification made pursuant to Section 6.06 shall be an amount equal to the fair market value of the Business Assets, and (ii) the maximum amount payable in the aggregate by the Company to all KND Indemnified Parties with respect to claims for indemnification made pursuant to Section 6.06 shall not exceed the Indemnity Cap; provided, however, that the foregoing Indemnity Cap shall not apply to Losses that arise from the Company's fraud or a breach of the representations or warranties contained in Section 4.01 (Organization; Authority); Section 4.02 (Due Authorization; Binding Agreement); Section 4.03 (No Violation); or Section 4.04 (Non-Sanctioned Entity).

(b) All claims by a UC Davis Indemnified Party or a KND Indemnified Party for indemnification must be made before the date that the survival period expires with respect to the applicable representation, warranty, covenant, obligation, or agreement.

(c) The Company has no obligation to indemnify the UC Davis Indemnified Parties or the KND Indemnified Parties from and against any Loss claimed under Section 6.06 unless and until such claim or claims for all such Losses exceeds the Deductible.

Section 6.08 **Notice; Defense of Claims**.

(a) A Party entitled to indemnification hereunder (the "***Indemnified Party***") may make claims for indemnification hereunder by giving written notice thereof to the Party required to indemnify (the "***Indemnifying Party***") within the period in which indemnification claims can be made hereunder. If indemnification is sought for a claim or liability asserted by a third party (an "***Indemnification Claim***"), the Indemnified Party must give written notice of the third-party claim to the Indemnifying Party promptly after it receives notice of the claim or liability being asserted; but the failure to do so, or any delay in doing so, does not relieve the Indemnifying Party from any liability unless, and only to the extent that, the rights and remedies of the Indemnifying Party are prejudiced as a result of the failure to give, or delay in giving, such notice. Such notice must include a copy of any complaint, correspondence, or claim received by the Indemnified Party and must in good faith summarize the bases for the claim for indemnification and any claim or liability being asserted by a third party. Within thirty (30) days after receiving such notice, the Indemnifying Party must give written notice to the Indemnified Party stating whether (i) it acknowledges the Indemnification Claim as a claim that is indemnifiable hereunder, which does not in itself constitute an agreement or disagreement with the substance of the underlying claim (an "***Indemnifiable Claim***"), and (ii) if it acknowledges that the claim is an Indemnifiable Claim, whether it in good faith disputes the underlying claim, and (iii) if so, whether it will defend against any third-party claim or liability at its own cost and expense. If the Indemnifying Party fails to provide written notice within said thirty (30) day period, then the Indemnifying Party is deemed to have acknowledged that the claim is an Indemnifiable Claim and waived the right to dispute the claim.

(b) In the event that the Indemnifying Party acknowledges that a third-party claim is an Indemnifiable Claim and elects to undertake the defense, it is entitled to participate in any pending or threatened claim, action, suit, or proceeding in respect of the Indemnifiable Claim and, to the extent that it wishes, the Indemnifying Party may assume the defense thereof with counsel reasonably satisfactory to the Indemnified Party. After written notice from the Indemnifying Party to the Indemnified Party of its election to assume the defense of such Indemnifiable Claim, Indemnifying Party will not be liable to the Indemnified Party for any legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof, subject to the remainder of this subsection (b) and to subsection (c) below. The Indemnifying Party may not, in the defense of such third-party claim or any litigation resulting therefrom, consent to entry of any judgment (other than a judgment of dismissal on the merits without costs) or admit liability on behalf of the Indemnified Party except with the written consent of the Indemnified Party, or enter into any settlement or compromise (except with the written consent of the Indemnified Party) that does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party a full release from all liability with respect to such claim, action, suit, proceeding, or litigation. The Indemnified Party has at all times the right to fully participate in the defense of a third-party claim or liability at its own expense, either directly or through counsel; provided, however, that if the named parties to the action or

proceeding include both the Indemnifying Party and the Indemnified Party and the Indemnified Party is advised by counsel appointed by the Indemnifying Party (and reasonably acceptable to the Indemnified Party) that representation of both parties by the same counsel would be inappropriate under applicable standards of professional conduct, the Indemnified Party may engage one separate counsel at the expense of the Indemnifying Party. Nothing set forth herein is intended to or does impair the right of any Indemnified Party to retain separate counsel at its own expense.

(c) Notwithstanding the foregoing, if the remedy sought in any third-party litigation, lawsuit, investigation, proceeding, or other action underlying any Indemnification Claim could restrict in any way the Company's operations of the Business or any of its other operations, then the Indemnifying Party shall consult with the Company in the defense, resolution or settlement of such litigation, lawsuit, investigation, proceeding, or other action.

(d) In the event that (i) the Indemnifying Party provides written notice within the applicable 30-day period denying that the claim is an Indemnifiable Claim, (ii) the Indemnifying Party does not state in its written notice that it will defend against the claim at its sole cost and expense, or (iii) the Indemnifying Party fails to provide written notice within said thirty (30) day period, then the Indemnified Party has the right to undertake the defense of such claim or liability in such manner as it deems appropriate (with counsel selected by the Indemnified Party and reasonably acceptable to the Indemnifying Party), and to compromise or settle such claim or litigation on such terms as it deems appropriate. Nothing in the foregoing shall relieve the Indemnifying Party of its obligations under this Article 6.

(e) The Indemnified Party must make available such information and assistance in connection with the defense by the Indemnifying Party, as the Indemnifying Party reasonably requests and must cooperate with the Indemnifying Party in such defense at the expense of the Indemnifying Party.

ARTICLE 7—MISCELLANEOUS

Section 7.01 **Proration of Income and Expense**. Without limiting the provisions hereof relating to Excluded Liabilities, all personal property Taxes and similar ad valorem property Taxes (collectively, "***Property Taxes***") levied with respect to the Business Assets for any Tax period beginning before or on and ending after the Closing Date will be apportioned between UC Davis and the Company based on the number of days of such Tax period before and including the Closing Date (the "***Pre-Closing Tax Period***") and the number of days of such Tax period after the Closing Date (the "***Post-Closing Tax Period***"). UC Davis is liable for the portion of such Property Taxes apportioned to the Pre-Closing Tax Period, and the Company is liable for the portion of such Property Taxes apportioned to the Post-Closing Tax Period.

Section 7.02 **Fees and Expenses; Transfer Taxes**. Each of the Parties will bear its own expenses in connection with the negotiation and the consummation of the transactions contemplated by this Agreement. Any sales, bulk sale, transfer, or similar taxes payable by reason of the contribution by UC Davis to the Company of the Business Assets will be borne by UC Davis.

Section 7.03 **Entire Agreement; Amendment**. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof. All prior written and verbal negotiations and agreements between the Parties with respect to the subject matter of this Agreement are superseded by this Agreement, and there are no other representations, warranties, understandings, or agreements with respect to the subject matter of this Agreement. The Recitals set forth above, as well as all Exhibits and Schedules hereto, are hereby incorporated by reference and made a material part hereof as fully as though they were herein set forth and rewritten. No change, modification, addition, or termination of this Agreement or any part hereof is valid unless in writing and signed by all Parties.

Section 7.04 **Governing Law; Venue; Consent to Jurisdiction**. This Agreement is construed and enforced in accordance with the laws of California without regard to its conflicts of laws principles to the extent they would require or permit the application of the laws of any other jurisdiction. Each of the Parties irrevocably agrees that any legal action or proceeding arising out of or in connection with this Agreement must be brought and determined in any California state or federal court located in (or nearest to) Sacramento County, California (or, if such court lacks subject matter jurisdiction, in any appropriate California state or federal court), and each of the Parties irrevocably submits to the exclusive personal jurisdiction of the aforesaid courts, generally and unconditionally, with regard to any such action or proceeding arising out of or in connection with this Agreement. Each of the Parties further agrees to accept service of process in any manner permitted by such courts. Each of the Parties hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim, or otherwise, in any action or proceeding arising out of or in connection with this Agreement, (A) any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason other than the failure to lawfully serve process, (b) that it or its property is exempt or immune from the jurisdiction of any such court or from any legal process commenced in any such court (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment, or otherwise), and (c) to the fullest extent permitted by law, that (i) the suit, action, or proceeding in any such court is brought in an inconvenient forum, (ii) the venue or forum of such suit, action, or proceeding is improper, or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by any such court.

Section 7.05 **No Waiver**. No consent or waiver, express or implied, by any Party of any breach or default by any other Party in the performance by such other Party of its obligations hereunder may be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligation hereunder. Failure on the part of any Party to complain of any act or to declare any other Party in default, irrespective of how long such failure continues, does not constitute a waiver of rights hereunder.

Section 7.06 **Notices**. Any notice, request, demand, or other communication required or permitted hereunder must be in writing and may be given by personal delivery, U.S. certified mail, return-receipt requested, or nationally recognized overnight courier. Such notice, request, demand, or other communication will be deemed to have been given (a) if by personal delivery, then upon receipt, (b) if by certified mail, then three days after deposit in United States post office facilities properly addressed with postage prepaid; or (c) if by overnight courier, then one business day after deposit with such overnight courier properly packaged as required by such courier with shipping

or postage prepaid. All notices to a Party must be sent to the addresses set forth in Section 11.01 of the Operating Agreement. Any notice given hereunder may be given on behalf of any Party by it or by its counsel or other authorized representatives.

Section 7.07 **Severability**. To the extent any provision of this Agreement (or the application thereof) is found by a court of competent jurisdiction to be invalid or unenforceable under applicable law, then such provision will be ineffective to the extent of such invalidity or unenforceability, and such invalid or unenforceable provision will not invalidate the remainder of such provision or the remaining provisions in this Agreement, unless the severed provision is essential to the rights or benefits intended by the Parties. In such event, the Parties shall use best efforts to negotiate a substitute, valid and enforceable provision or agreement which most closely effects the Parties' intent in entering into this Agreement.

Section 7.08 **Headings; Construction**. The headings in this Agreement are solely for convenience and may not be considered in the interpretation or construction of this Agreement. Wherever from context it appears appropriate, each term stated in the singular or the plural includes the singular and the plural, and pronouns stated in either the masculine, feminine, or neuter gender, include the masculine, feminine, and neuter genders.

Section 7.09 **Assignability; Binding Effect**. No Party hereto may assign or transfer any or all of its rights or obligations under this Agreement without the prior written consent of the other parties.

Section 7.10 **Counterparts; Execution**. This Agreement may be executed in any number of counterparts, each of which is deemed an original and all of which constitute one and the same instrument. This Agreement may be executed and delivered electronically and by electronic transmission in PDF format.

Section 7.11 **No Third-Party Beneficiaries**. This Agreement does not benefit or create any right, remedy, or cause of action in or on behalf of any Person other than the Parties hereto and their respective permitted successors, heirs, and assigns.

Section 7.12 **Fair Market Value**. The Parties acknowledge and agree that the value of the Business Assets ("***Business Asset Value***") was determined based upon an appraisal of the Business Assets by an independent third party experienced in the healthcare valuation industry and is consistent with fair market value. No portion of the Business Asset Value is intended to induce or reward referrals from any Party to any other Party.

Section 7.13 Each of KND and the Company acknowledges that The Regents has entered into this Agreement solely on behalf of and with respect to UC Davis. The Regents has not entered into this Agreement on behalf of or with respect to any other division, business or operating unit, enterprise, facility, group, plan or program that is or may be owned, controlled, governed or operated by, or affiliated with, The Regents, including, without limitation, any other university, campus, health system, medical center, hospital, clinic, medical group, physician, or health or medical plan or program (collectively, the "***Excluded UC Affiliates***"). In light of the foregoing, each of KND and the Company further acknowledges and agrees that, notwithstanding any other

provision contained in this Agreement: (a) all obligations of UC Davis under this Agreement shall be limited to The Regents as and when acting solely on behalf of or with respect to UC Davis; and (b) the term "UC Davis" refers only to UC Davis, and does not include any of the Excluded UC Affiliates.

Section 7.14 **Termination**. This Agreement shall terminate automatically upon the occurrence of any of the following events before the Closing Date: (a) the dissolution of the Company; or (b) at such time when either of UC Davis or KND is no longer a member of the Company.

[*Remainder of page intentionally left blank; signature page follows.*]

IN WITNESS WHEREOF, the Parties have executed this Contribution Agreement as of the date first set forth above.

KINDRED DEVELOPMENT 13, L.L.C.

By: _____
Name: Douglas Curnutte
Title: Senior Vice President, Corporate Development

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: _____
Name: John D. Stobo, MD
Title: Executive Vice President, UC Health

SACRAMENTO SIERRA REHABILITATION HOSPITAL, LLC
(Executed By Its Two Members)

KINDRED DEVELOPMENT 13, L.L.C.

By: _____
Name: Douglas Curnutte
Title: Senior Vice President, Corporate Development

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By: _____
Name: Douglas Curnutte
Title: Senior Vice President, Corporate Development

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: _____
Name: John D. Stobo, MD
Title: Executive Vice President, UC Health

EXHIBIT A

Business Assets

The term "***Business Assets***" shall the Business as a going concern, and all goodwill associated with the Business.

For clarification of the foregoing provisions of this **Exhibit A**, the transfer of the Business Assets pursuant to this Agreement shall not include the assumption of any liability or obligation related to the Business Assets or the Business, unless and to the extent such liability or obligation is expressly assumed in the Agreement.

EXHIBIT B

Spreadsheet (including Tabs A and B)

Tab A - Reset Value Calculation

$ in thousands except PPDs

		40-Bed IRF Projections					
		Year 1	Year 2	Year 3	Year 4	Year 5	
Revenue Calculation							Notes & Instructions
Net Revenue PPD							
Medicare PPS	2.0%	2,331	2,378	2,425	2,474	2,523	At the end of each measurement period, input the actual Medi-Cal and Commercial net revenue rates per day into the highlighted cells. Always input the revenue rates into the highlighted cells under "Year 1"; never change the values under Years 2 - 5.
Medi-Cal	2.0%		-	-	-	-	
Commercial	2.0%		-	-	-	-	
Paid Patient Days							
Medicare PPS		3,610	6,658	7,136	7,136	7,155	Based on UCD and KND proforma assumptions; do not change
Medi-Cal		1,444	1,518	1,551	1,551	1,556	
Commercial		2,166	3,504	3,723	3,723	3,733	
Total		7,220	11,680	12,410	12,410	12,444	
Net Patient Revenue by Payor							
Medicare PPS		8,415	15,829	17,305	17,652	18,054	Based on UCD and KND proforma assumptions; do not change
Medi-Cal		-	-	-	-	-	Will be updated based on the inputted rates
Commercial		-	-	-	-	-	
Total		8,415	15,829	17,305	17,652	18,054	
Other Revenue							
Non-Patient Revenue		48	83	90	92	94	Based on UCD and KND proforma assumptions; do not change
Non-Medicare Bad Debt	-3.0%	-	-	-	-	-	Will be updated based on the inputted rates
Total		48	83	90	92	94	
Total Net Revenue		**8,463**	**15,912**	**17,396**	**17,744**	**18,148**	
Income Statement							
Total Net Revenue		**8,463**	**15,912**	**17,396**	**17,744**	**18,148**	Will be updated based on the inputted rates
Operating Expenses		17,132	20,047	21,160	21,568	22,057	Based on UCD and KND proforma assumptions; do not change
Rent: Facility		3,309	3,382	3,457	3,533	3,611	
Rent: Equipment		37	60	65	66	67	
Management Fee	5.0%	423	796	870	887	907	Will be updated based on the inputted rates
EBITDA		(12,438)	(8,371)	(8,155)	(8,311)	(8,495)	
Depreciation		450	458	473	488	503	Based on UCD and KND proforma assumptions; do not change
Interest		229	222	153	79	11	Based on UCD and KND proforma assumptions; do not change
Pre-tax Income		(13,117)	(9,051)	(8,781)	(8,878)	(9,009)	
Taxes	25.0%	(3,279)	(2,263)	(2,195)	(2,220)	(2,252)	Will be updated based on the inputted rates
Net Income		(9,838)	(6,788)	(6,586)	(6,659)	(6,757)	
Working Capital							
Days Receivable		50	45	45	45	45	Based on UCD and KND proforma assumptions; do not change
Days Payable		30	30	30	30	30	Based on UCD and KND proforma assumptions; do not change
Accounts Receivable		1,159	1,962	2,145	2,188	2,237	Will be updated based on the inputted rates
Accounts Payable		1,718	1,996	2,100	2,141	2,190	
Δ in Net Working Capital		559	(524)	(79)	(2)	(1)	

Cash Flow		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Term Val	
Net Income		(9,838)	(6,788)	(6,586)	(6,659)	(6,757)							Will be updated based on the inputted rates
Add back: D&A		450	458	473	488	503							Based on UCD and KND proforma assumptions; do not change
Less: CapEx		(75)	(75)	(75)	(75)	(75)							Based on UCD and KND proforma assumptions; do not change
Δ in NWC		559	(524)	(79)	(2)	(1)							Will be updated based on the inputted rates
Cash Flow	2.5%	**(8,904)**	**(6,930)**	**(6,267)**	**(6,247)**	**(6,330)**	**(6,488)**	**(6,650)**	**(6,817)**	**(6,987)**	**(7,162)**	**($1,384)**	
NPV	8.8%	**($85,384)**											

Implied ARU Valuation		
NPV at Full Revenue Rates	$153,867	Resulting NPV from the above formula when full revenue rates from VMG valuation are used ($4,647 Medi-Cal; $5,031 Commercial)
Updated NPV	($85,384)	NPV as calculated in the above formula using inputted rates
Percentage Change	(155%)	
ARU FMV at Full Revenue Rates	$25,844	FMV of the ARU less normalized NWC not contributed per VMG valuation (uses low-end value recommendation)
Percentage Change	(155%)	Updated value of ARU is to change by the same percentage that the NPV changes at the inputted rates
New Implied ARU Value	($14,341)	New Implied ARU Value to be used in calculation in Tab B

Sensitivity Table

Medi-Cal Revenue PPD		Commercial Revenue PPD										
5%		100%	95%	90%	85%	80%	75%	70%	65%	60%	55%	50%
	-14,341	5,031	4,779	4,528	4,276	4,025	3,773	3,522	3,270	3,019	2,767	2,516
100%	4,647	25,844	24,405	22,965	21,526	20,086	18,647	17,207	15,768	14,329	12,889	11,450
95%	4,415	25,274	23,835	22,395	20,956	19,516	18,077	16,638	15,198	13,759	12,319	10,880
90%	4,182	24,704	23,265	21,825	20,386	18,947	17,507	16,068	14,628	13,189	11,749	10,310
85%	3,950	24,135	22,695	21,256	19,816	18,377	16,937	15,498	14,058	12,619	11,180	9,740
80%	3,718	23,565	22,125	20,686	19,246	17,807	16,368	14,928	13,489	12,049	10,610	9,170
75%	3,485	22,995	21,555	20,116	18,677	17,237	15,798	14,358	12,919	11,479	10,040	8,601
70%	3,253	22,425	20,986	19,546	18,107	16,667	15,228	13,788	12,349	10,910	9,470	8,031
65%	3,021	21,855	20,416	18,976	17,537	16,097	14,658	13,219	11,779	10,340	8,900	7,461
60%	2,788	21,285	19,846	18,407	16,967	15,528	14,088	12,649	11,209	9,770	8,330	6,891
55%	2,556	20,716	19,276	17,837	16,397	14,958	13,518	12,079	10,639	9,200	7,761	6,321
50%	2,324	20,146	18,706	17,267	15,827	14,388	12,949	11,509	10,070	8,630	7,191	5,751
45%	2,091	19,576	18,136	16,697	15,258	13,818	12,379	10,939	9,500	8,060	6,621	5,182
40%	1,859	19,006	17,567	16,127	14,688	13,248	11,809	10,369	8,930	7,491	6,051	4,612
35%	1,626	18,436	16,997	15,557	14,118	12,678	11,239	9,800	8,360	6,921	5,481	4,042
30%	1,394	17,866	16,427	14,988	13,548	12,109	10,669	9,230	7,790	6,351	4,911	3,472

Exhibit B, continued

Tab B - Reset KND Payments
$ in thousands

UC Davis Contribution Summary

UC Davis Contribution Schedule Day 1	
Initial ARU Value	$17,537
Payout Rate	40%
Contributed ARU Value	$7,015
Contributed ARU Value	7,015
Equipment Costs	2,250
Working Capital	3,500
Total Contributions	**$12,765**
UC Davis Ownership Interest	49%
UC Davis Required Contribution	**$6,255**
Contributed ARU Value	$7,015
Less: Required Contribution	(6,255)
Day 1 Cash to UC Davis	**$760**

UCD Contribution Schedule End of Year 1	
End of Year 1 Implied ARU Value	
Payout Rate	60%
Contributed ARU Value	$0
Contributed ARU Value	0
Equipment Costs	2,250
Working Capital	3,500
Total Contributions	**$5,750**
UC Davis Ownership Interest	49%
UC Davis Required Contribution	**$2,818**
Contributed ARU Value	$0
Less: Required Contribution	(2,818)
Total Cash Due to UC Davis	(2,818)
Less: Cash Already Paid	(760)
End of Year 1 Cash to UC Davis	**($3,578)**

UCD Contribution Schedule End of Year 2	
End of Year 2 Implied ARU Value	
Payout Rate	75%
Contributed ARU Value	$0
Contributed ARU Value	0
Equipment Costs	2,250
Working Capital	3,500
Total Contributions	**$5,750**
UC Davis Ownership Interest	49%
UC Davis Required Contribution	**$2,818**
Contributed ARU Value	$0
Less: Required Contribution	(2,818)
Total Cash Due to UC Davis	(2,818)
Less: Cash Already Paid	2,818
End of Year 2 Cash to UC Davis	**$0**

UCD Contribution Schedule End of Year 4	
End of Year 4 Implied ARU Value	
Payout Rate	100%
Contributed ARU Value	$0
Contributed ARU Value	0
Equipment Costs	2,250
Working Capital	3,500
Total Contributions	**$5,750**
UC Davis Ownership Interest	49%
UC Davis Required Contribution	**$2,818**
Contributed ARU Value	$0
Less: Required Contribution	(2,818)
Total Cash Due to UC Davis	(2,818)
Less: Cash Already Paid	2,818
End of Year 4 Cash to UC Davis	**$0**
Total Cash to UCD over 4 Years	**($2,818)**

Kindred Contribution Summary

Kindred Contribution Schedule Day 1	
Contributed ARU Value	$7,015
Equipment Costs	2,250
Working Capital	3,500
Total Contributions	**$12,765**
Kindred Ownership Interest	51%
Kindred Required Contribution	**$6,510**

KND Contribution Schedule End of Year 1	
Contributed ARU Value	$0
Equipment Costs	2,250
Working Capital	3,500
Total Contributions	**$5,750**
Kindred Ownership Interest	51%
Kindred Required Contribution	**$2,933**
Kindred Required Contribution	$2,933
Less: Already Contribution	(6,510)
Kindred Cash Payment to UCD	**($3,578)**

KND Contribution Schedule End of Year 2	
Contributed ARU Value	$0
Equipment Costs	2,250
Working Capital	3,500
Total Contributions	**$5,750**
Kindred Ownership Interest	51%
Kindred Required Contribution	**$2,933**
Kindred Required Contribution	$2,933
Less: Already Contribution	(2,933)
Kindred Cash Payment to UCD	**$0**

KND Contribution Schedule End of Year 4	
Contributed ARU Value	$0
Equipment Costs	2,250
Working Capital	3,500
Total Contributions	**$5,750**
Kindred Ownership Interest	51%
Kindred Required Contribution	**$2,933**
Kindred Required Contribution	$2,933
Less: Already Contribution	(2,933)
Kindred Cash Payment to UCD	**$0**

Instructions
DO NOT alter any cells aside from the three yellow highlighted cells
At the end of each measurement period, insert the new "Implied ARU Value" from Tab A into the highlighted yellow cell for that measurement perio
Prior period Implied ARU Values are to remain in place once entered and agreed upon

EXHIBIT C[1]

Calculation of Reset Kindred Payment

Reset Value	[As determined for each year under Section 1.06(a) and Tab A of the Spreadsheet]
Multiplied by:	
Applicable Percentage	[60%, 75% and 100% for years, 1, 2 and 4, respectively]
Plus:	[$2,250,000 equipment costs]
Plus:	[$3,500,000 working capital]
Equals:	**Total Contributions**

Total Contributions *Multiplied by* KND's 51% Percentage Interest

Equals:	**KND's Required Contribution**
Minus:	KND's aggregate Kindred Payments (at Closing plus at end of each of years 1, 2 and 4, as applicable)
Equals:	**Amount of Kindred Reset Payment Due to UC Davis**

[1] As noted in Section 1.06(b), (1) the initial capital contributions of KND and UC Davis are not reflected in this Exhibit C, and (2) such initial capital contributions shall be taken into account in calculating the Reset Kindred Payment. Further, the results in this Exhibit C are intended to be the same as the calculation for the purchase of UC Davis' Excess Percentage Interest under Section 1.05. To the extent of conflict between Exhibit C and Section 1.05, Section 1.05 shall control.

EXHIBIT D

FORM OF BILL OF SALE

This **BILL OF SALE**, dated as of _____, ___, is made by **The Regents of the University of California**, a California corporation, on behalf of its UC Davis Medical Center (the "***UC Davis***"), to **Sierra Rehabilitation Hospital, LLC,** a California limited liability company (the "***Company***").

UC Davis, pursuant to the terms of a Contribution Agreement dated as of _____, 2018 (the "***Agreement***"), among UC Davis, the Company, and Kindred Development 13, L.L.C., a Delaware limited liability company, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby bargain, sell, assign, transfer and convey to the Company, its successors and assigns, all of UC Davis' right, title and interest in and to the Business Assets (as defined in the Agreement), effective as of _____. Delivery of this Bill of Sale constitutes receipt by the Company of the Business Assets, to have and to hold all such Business Assets for the Company and its successors and assigns, for their own use and behalf forever. This Bill of Sale shall not transfer the Excluded Assets (as defined in the Agreement) from UC Davis to the Company.

UC Davis, for itself and its successors and assigns, further covenants and agrees with the Company, and its successors and assigns, that UC Davis will execute and deliver such other bills of sale, transfers, assignments and other instruments of conveyance prepared by the Company and will do such other acts as reasonably requested by the Company further to vest in the Company good title to the Business Assets and to fulfill and discharge UC Davis' obligations of conveyance hereunder and under the Agreement.

This Bill of Sale is executed and delivered pursuant to, and is subject to the terms of, the Agreement. Nothing contained herein is intended to amend, modify or in any way expand, limit or affect the representations and warranties made in and pursuant to the Agreement, nor is anything contained herein intended to amend, modify or in any way expand, limit or affect the rights, duties and obligations of the Parties under the Agreement.

IN WITNESS WHEREOF, UC Davis has duly executed this Bill of Sale effective as of the date first written above.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By:_____
Name: John D. Stobo, M.D.
Title: Executive Vice President, UC Health

EXHIBIT E

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

---------- Forwarded message ---------
From: **Zachary Freels** <zfreels@afscme3299.org>
Date: Wed, Jul 25, 2018, 7:37 PM
Subject: Request for Information: Adult Rehab Closure
To: HS-HR Request for Information <hs-hrrequestforinfo@ou.ad3.ucdavis.edu>
Cc: Julia M Johnson <jmjohnson@ucdavis.edu>, Karen P Maurer <kpmaurer@ucdavis.edu>

Hello,

Please see the attached request for information: AFSCME has still not received a response to it's initial RFI nor has an opportunity to negotiate been provided. This information should be provided by close of business on August 1st, 2018.

--
Zach Freels
Lead Organizer
AFSCME 3299
(415) 580-1683
zfreels@afscme3299.org

Adult Rehab at UCD draft.v2 (1).docx
17K

[redacted]

AFSCME 3299, in proper performance of its duties as the exclusive bargaining representative for UCD's EX Unit, and in conjunction with collective bargaining, requests the following information in searchable electronic format, where available, or another accessible electronic format:

Please provide us with the following records:

1. The name of the entity with whom the University of California, Davis has referenced to be in conversation with for a joint venture (referenced herein as "JV") in the May 24, 2018 letter to Zach Freels (attached).
2. All signed documents (including, but not exclusive to) agreements, MOUs, and contracts related to the aforementioned JV. Such agreements, MOUs, purchase orders, and contracts should include, but not be limited to, all corresponding addendums, exhibits, amendments and appendices.
3. All draft documents (including, but not exclusive to) agreements, MOUs, and contracts related to the aforementioned JV. Such agreements, MOUs, purchase orders, and contracts should include, but not be limited to, all corresponding addendums, exhibits, amendments and appendices.
4. All Requests for Proposals, Requests for Information, and Requests for Qualifications relating to the construction development of the new facility referenced in the May 24, 2018 letter to Zach Freels.
5. All Requests for Proposals, Requests for Information, and Requests for Qualifications relating to the relating to the JV of the new facility referenced in the May 24, 2018 letter to Zach Freels.
6. All Requests for Proposals, Requests for Information, and Requests for Qualifications relating to the relating to the study of the options for the Adult Inpatient Rehab of the new facility referenced in the May 24, 2018 letter to Zach Freels.
7. The timeline in which each function of E5 and the basement (as referenced in the May 24, 2018 letter to Zach Freels) will be decommissioned by Month and Year from present to 2030.
8. Copies of all assessments of options for the Adult Inpatient Rehab unit, as described in the May 24, 2018 letter to Zach Freels. This shall include, but will not be limited to all analysis, studies, and reports created in house, and by commission from outside vendors.

Please answer the following questions, related to the May 24, 2018 letter to Zach Freels:

9. Who will be the employer for the JV?
10. What are the scope of services to be provided at the JV? And, how do these currently differ from what UC is currently providing in its Adult Inpatient Rehab unit?

11. What kind of community needs assessment has UC conducted (or on its behalf by a third-party consultant? Provide any such studies?
12. What are the titles of employment to be created for the JV, and the job description for each title? And, how do they currently differ (if at all) from what UC is currently providing in its Adult Inpatient Rehab unit?
13. What are the expected census levels for the JV? Provide any analysis that has been done internally or by a third-party consultant that anticipates staffing for the JV the first 6-months of its opening, as well as the 1st year, the 2nd year and the 5th year of its opening?
14. What are the expected staffing levels for the JV for each job title in use at the new facility?
15. When do the EX members listed in the letter have to choose if they move to the JV or are transferred into a new unit at UCDMC?
16. Should an EX member choose to apply to work at the JV, would they then lose their seniority, lose their union contract, and/or lose their right to transfer into a UCDMC unit if they don't get hired at the JV?
17. Are there currently any units within UCDMC in which the names EX members can be currently placed?
18. Are there any employees currently represented by AFSCME 3299 that will be affected from the movement of the employees listed in the May 21, 2018 letter to Zach Freels, such as anticipated layoffs, change of appointment hours, and/or appointment type?

Please forward the information requested as it becomes available rather than responding to the entire request all at one time.

Let me know if you have any questions.

Thank you for your assistance.

Sincerely,

EXHIBIT F

[redacted]

[redacted]

[redacted]

[redacted]

---------- Forwarded message ---------
From: Julia M Johnson <jmjohnson@ucdavis.edu>
Date: Wed, Jul 25, 2018, 7:54 PM
Subject: Fwd: Courtesy notice re Rehab
To: zfreels@afscme3299.org <zfreels@afscme3299.org>
Cc: Karen P Maurer <kpmaurer@ucdavis.edu>

Hi Zach,

I just saw your email. I have provided all of the info there is we at this time, as the project is three years out and in first stages. Please see below. Hope you have a nice evening.

Thanks,
Julia

Sent from my iPhone

Begin forwarded message:

> **From:** Julia M Johnson <jmjohnson@UCDAVIS.EDU>
> **Date:** May 25, 2018 at 1:23:21 PM PDT
> **To:** Zachary Freels <zfreels@afscme3299.org>
> **Subject: RE: Courtesy notice re Rehab**
>
> Hi Zach,
>
> Thanks for your reply. It might make the most sense to wait and meet as we get closer as all of the available info at this time is in the notice. I was informed that at this time management is still in the approval process with the Regents regarding the joint venture and there are no other timelines at the moment (in response to #1 below).
>
> Also, management is bound by a non-disclosure agreement at this time and cannot disclose the partner name (in response to #2 below).
>
> Management indicated that they would be happy to meet after the project is approved and more info is available.
>
> Hope you have a nice long weekend,

Julia

From: Zachary Freels <zfreels@afscme3299.org>
Sent: Thursday, May 24, 2018 9:55 AM
To: Julia M Johnson <jmjohnson@UCDAVIS.EDU>
Subject: Re: Courtesy notice re Rehab

Hello,

We have a number of questions and will want a sit down regarding this change.

Some of our top priorities:

1) Date of implementation

2) The RFP for the subcontracted company

3) The mechanism for reassignment. Are you using Article 15 layoff priority reassignment?

On Thu, May 24, 2018 at 9:50 AM, Julia M Johnson <jmjohnson@ucdavis.edu> wrote:

> Hi Zach,
>
> Attached please find a courtesy notice regarding the Rebab unit. Please let me know if you have any questions or concerns.
>
> Thanks,
>
> Julia
>
> Description: ELR E-mail Wordmark
>
> Julia M. Johnson, J.D.
>
> Labor Relations Manager
>
> Employee and Labor Relations

Telephone: (530) 752-1951

E-mail: jmjohnson@ucdavis.edu

Web: http://www.hr.ucdavis.edu/

[Quoted text hidden]

UCDAVIS
EMPLOYEE AND LABOR RELATIONS

image001.jpg
18K

EXHIBIT G

AFSCME LOCAL 3299

Nischit Hegde <nhegde@afscme3299.org>

Fwd: Rehab Unit Closure: Case # 127620 Meeting Re-Schedule

1 me age

[redacted]

---------- Forwarded message ---------
From: **Zachary Freels** <zfreels@afscme3299.org>
Date: Thu, Nov 15, 2018 at 1:26 PM
Subject Re Rehab Unit Clo ure Ca e # 127620 Meeting Re Schedule
To: Heather A Santoro <hasantoro@ucdavis.edu>
Cc: Greg Wine UPTE <greg_wine@hotmail.com>, Bridget Hughes <bhughes@afscme3299.org>

We are eager to meet because, as you know, it was all the way back in May that we emailed to demand to bargain UCD's decision to enter into a "venture" with a private entity in order to provide rehab services, as well as to bargain over the effects (including but not limited to: layoffs, transfer of work out of the unit, change to job dutie , chedule and work location, lo of opportunitie for promotion, tran fer, new positions and overtime as operations expand)

On Wed, Nov 7, 2018 at 3:39 PM Heather A Santoro <hasantoro@ucdavis.edu> wrote:

> Hello,
>
> I appreciate your patience in scheduling at this time. We will not be able to have the meeting this week, as the COO is unavailable on the 8th and 9th. I will be sending new available dates this week once I have coordinated with his office.
>
> Thank you again for your responsiveness and patience, I will keep you all updated.
>
> Regards,
>
> ***Heather A Santoro***

Employee & Labor Relations

Grievance Scheduler/TES

From: Greg Wine [mailto:greg_wine@hotmail.com]
Sent: Thursday, November 01, 2018 4:15 PM
To: Heather A Santoro
Cc: Zach Freels; Gregory G Wine
Subject: Re: Rehab Unit Closure: Case # 127620 Meeting Re-Schedule

UPTE is available both of those dates

Thank you

Greg Wine

UPTE local Davis Vice President

Sent from my iPhone

On Nov 1, 2018, at 3:20 PM, Heather A Santoro <hasantoro@ucdavis.edu> wrote:

> Hello,
>
> We have an updated availability for CNA for the 8th and 9th of November. Would you be available on either of those days?
>
> Thank you,
>
> ***Heather A Santoro***
>
> Employee & Labor Relations
>
> Grievance Scheduler/TES

From: Heather A Santoro
Sent: Wednesday, October 24, 2018 11:06 AM
To: Bridgette Lavington; Zach Freels; Greg Wine; Gregory G Wine

Cc: Amy C. Moore
Subject: Rehab Unit Closure: Case # 127620 Meeting Re-Schedule

Hello,

We are attempting to re-schedule the meeting regarding the Rehab Unit Closure: Case # 127620. Please see the below dates and times available and let us know a range of dates/times that works for you.

- **November 5th, 2018**
  - 8am 11am
  - 4pm
- **November 6th, 2018**
  - 11am
  - 1pm , 2pm
- **November 7th, 2018**
  - 8am – 11am
  - 1pm , 2pm
- **November 8th, 2018**
  - 8am – 11am
- **November 9th, 2018**
  - 9am – 11am
- **November 13th, 2018**
  - 8am – 11am
  - 1pm , 2pm
- **November 19th, 2018**
  - 8am 11am
  - 2pm, 4pm
- **November 20th, 2018**
  - 11am
  - 4pm

Thank you,

Heather A Santoro

Employee & Labor Relations

Grievance Scheduler/TES

Zach Freels
Lead Organizer
AFSCME 3299
(415) 580 1683
zfreels@afscme3299.org

EXHIBIT H

[redacted]

[redacted]

[redacted]

Claudia Preparata <cpreparata@afscme3299.org> Mon, Dec 3, 2018 at 2:27 PM
To: Liz Perlman <lperlman@afscme3299.org>, Nischit Hegde <nhegde@afscme3299.org>
Cc: Seth Newton Patel <spatel@afscme3299.org>

FYI

Begin forwarded message:

From: Zachary Freels <zfreels@afscme3299.org>
Subject: Fwd: Rehab Unit Closure - #00127620
Date: December 3, 2018 at 2:26:01 PM PST
To: Teresa Avendano <tavendano@afscme3299.org>, Seth Patel <spatel@afscme3299.org>
Cc: Claudia Preparata <cpreparata@afscme3299.org>, Ching Lee <clee@afscme3299.org>

---------- Forwarded message ---------
From: **Amy C. Moore** <amcmoore@ucdavis.edu>
Date: Mon, Dec 3, 2018, 2:24 PM
Subject: Rehab Unit Closure - #00127620
To: Gregory G Wine <ggwine@ucdavis.edu>, upteuc.dv@upte-cwa.org <upteuc.dv@upte-cwa.org>, Mo Kashmiri <MKashmiri@calnurses.org>, Bridget Lavington <BLavington@calnurses.org>, Zachary Freels <zfreels@afscme3299.org>, Teresa Avendano <tavendano@afscme3299.org>

Good afternoon,

It has been difficult trying to coordinate the meeting on the Rehab Unit Closure with everyone's busy schedules. We have a date that will work for leadership and Labor Relations and hopefully it will work for everyone to attend, otherwise we may have to wait until after the first of the year to reconvene and coordinate the meeting. Please let me know if you can attend the meeting on December 12, 2018 from 12pm – 1pm, as soon as possible.

Thanks,

Amy C. Moore

Employee and Labor Relations Coordinator

Phone: (916) 734-3362

Fax: (916) 734-8646

E-mail: amcmoore@ucdavis.edu

Description: ELR E-mail Wordmark

[redacted]

EXHIBIT I

A F S C M E
American Federation of State, County and Municipal Employees, AFL-CIO

LOCAL 3299

Main Office
2201 Broadway Avenue
Suite 315
Oakland, CA 94612
Ph: 510.844.1160
Fax: 510.844.1170

UC Berkeley
2519 Telegraph
Ste. B
Berkeley, CA 94704
Ph: 510.486.0100
Fax: 510.486.0111

UC Davis Office
2400 O Street
Sacramento, CA 95816
Ph: 916.491.1426
Fax: 916.443.1747

UC Irvine Office
1740 West Katella Ave.
Suite I
Orange, CA 92867
Ph: 714.634.1449
Fax: 714.634.0705

UC Los Angeles Office
5839 Green Valley Circle
Suite 203
Culver City, CA 90230
Ph: 310.338.1299
Fax: 310.338.1574

UC Riverside Office
1280 Palmyrita Ave
Suite F
Riverside, CA 92507
Ph: 951.781.0679
Fax: 951.781.7034

UC San Diego Office
2828 Camino Del Rio N.
Suite 104
San Diego, CA 92108
Ph: 619.296.0342
Fax: 619.702.8311

UC San Francisco Office/ UC Hastings College of the Law Office
1360 9th Avenue
Suite 240
San Francisco, CA 94122
Ph: 415.566.6477
Fax: 415.566.6846

UC Santa Barbara Office
900 Embarcadero Del Mar
Suite E
Goleta, CA 93117
Ph: 805.685.3760
Fax: 805.685.3270

UC Santa Cruz Office
501 Mission St #4
Santa Cruz, CA 95060
Ph: 831.425.4822
Fax: 831.316.0049

1/17/2019

Julia Johnson
Labor Relations Manager (UCD/UCDH)
University of California, Davis Campus
One Shields Avenue
Davis, CA 95616

Dear Ms. Johnson,

Pursuant to Article 5, Section B of the collective bargaining agreements (CBA) between AFSCME Local 3299 and the University of California, as well as under the authority of HEERA and the California Public Records Act, Government Code Section 6250 et seq., the Union determines that the proposed layoff of AFSCME-represented employees impacted by UC Davis' decision to close down its existing Rehab Unit, and to provide those same services at a new facility through a Joint Venture with Kindred Hospital, but not hire those impacted employees at the new proposed facility as UC employees, violates the collective bargaining agreement.

The University is not only obligated to negotiate the effects of that decision with AFSCME Local 3299, but it is also obligated to negotiate the proposed decision itself. As the Union waits for the UC to pass a proposal regarding its proposed decision, the Union requests written responses to the below information.

For the purposes of this request, the "new proposed facility" or "joint venture" or "JV" or "Kindred" refers to Kindred Healthcare, LLC, and all its affiliated entities and/or subsidiaries, including but not limited to, Kindred Development 13 LLC; Sacramento Sierra Rehabilitation Hospital, LLC; and CHC Management Services, LLC.

1. <u>The Development & Opening of the Proposed "Joint Venture" Facility</u>

   a. Why is UC Davis is proposing to close its existing Rehab Unit?
   b. Why is UC Davis is proposing to outsource the work of the Rehab Unit and all represented employees in the Rehab Unit?
   c. Does UC anticipate any of the existing work at UC Davis' Rehab Unit remain at UC Davis once the joint venture (JV) is operational? If yes, describe what work will remain at UC, all the titles that will continue to perform the work, as well as their associated personnel code (EX, HX, 99, etc.).
   d. When does UC Davis expect to break ground on the new proposed facility?
   e. When does UC Davis expect doors to open to the public at the new proposed facility?
   f. Explain whether the services provided at the proposed JV will be different than the services currently being provided at UC Davis' Rehab Unit. If so, explain how and why they will be different.

g. Will UC be responsible for developing the new proposed facility? If yes, please provide the name of the entities and individuals responsible for overseeing its development. If no, please provide the name of the entities and individuals responsible for overseeing its development.
h. What is the cost to UC Davis associated with constructing the new proposed facility?
i. What is the cost to Kindred associated with constructing the new proposed facility?
j. Describe how UC Davis (and/or the Regents of the University of California) plans to finance the construction of the new proposed facility?
k. Does UC Davis (and/or the Regents of the University of California) anticipate seeking any public financing, whether a General Obligation bond or another future funding source that will require approval from a public entity, whether that entails the City of Davis, the County of Davis, and/or the California State Legislature?
l. Has UC (or any other entity on its behalf) done a cost analysis on how much it would cost to seismically retrofit the existing UC Davis Rehab Unit? If so, please provide a copy of such an analysis or analyses.
m. What entity (or entities) will apply for an operating license to operate the new joint venture?
n. Will UC suspend its existing license to operate the UC Davis Rehab Unit?
o. Will UC transfer its existing license to the joint venture or will the joint venture have to apply for an operating license independently and separately of UC Davis' current operating license?
p. Has UC and/or the new joint venture applied for the operating license through the California Department of Public Health, or any other public agency?
    a. If no, when does the Joint Venture plan to apply?
    b. If yes, is the process complete?
    c. If yes, but the process is not complete, when does UC expect the approval process to be finalized?
q. Has the new proposed facility's development been approved by Office of Statewide Health Planning and Development (OSHPD)?
    a. If no, when does UC and/or the Joint Venture plan to submit its application?
    b. If no, how long does UC and/or the Joint Venture anticipate that process to take?
    c. If yes, has UC and/or the Joint Venture been approved to construct the new facility?
    d. If yes, but it has not yet been approved, when does UC and/or the Joint Venture anticipate the approval to be finalized?

2. <u>Staffing at the Future Facility of the Proposed Joint Venture</u>
    a. What current or future UC employees (including non-represented UC employees) are anticipated to work at the new proposed facility, if any?
    b. Will UC-employed physicians provide services at the new proposed facility?
    c. Will UC-employed physicians who are expected to work at the new proposed facility work there full-time or will they also continue to work at the Davis Medical Center?
    d. Will any non-UC-employed physicians provide any services at the new proposed facility? If yes, please specify each service and the entity that will employ them.
    e. What are all the titles anticipated to be employed at this new proposed facility that are customarily performed by either EX or SX bargaining unit employees?
    f. Of the titles customarily performed by either EX or SX bargaining unit employees, provide the number of anticipated FTEs at the end of the first and second calendar year after the opening of the new proposed facility.
    g. What are all the other non-EX or SX classifications that are anticipated to be employed at the new proposed facility?
    h. Of these non-EX or -SX classifications, for each title, provide the number of anticipated FTEs at the end of the first and second calendar year after the opening of the new proposed facility.
    i. Provide a copy of all communications, including but not limited to, emails or memos, that discuss the recognition of a union for different employee classes, the process for employees to be recognized by a union, or more broadly, plans to address the issue of union-represented staff.

3. Organizational Structure
   a. Provide a full organizational structure of the new proposed entity.
   b. Who will comprise of the executive management team at the facility? i.e. CEO, CMO, CFO, etc. Provide a list of both title and name, if currently known.
   c. Will the executive management team be employed by the UC or by the new proposed entity?
   d. Provide a description of all benefits that will be provided to the JV's executive team, by title (and name, where applicable).

4. Patient Services Information
   a. How many beds will the Joint Venture be certified to operate when it opens?
   b. How many beds will be in operation when the Joint Venture opens?
   c. How many beds will be in operation by the end of the first calendar year of opening? By the end of the second calendar year of opening?
   d. What are the projected census levels in the first and second year of the facility's opening?
   e. Will all UC Davis patients admitted to the Rehab Unit be transferred to the new proposed facility when the JV becomes operational? If no, please explain why.
   f. Will non-UC Davis patient be treated at the new proposed entity? If yes, please list the medical entities that will be allowed to send their patients to the new proposed facility.

5. Hiring Process/Wages & Benefits
   a. What is the proposed process for AFSCME-represented staff at UC Davis to apply for any openings at the proposed new facility?
   b. Provide a compensation package for all titles at the new facility, including currently AFSCME and non-AFSCME represented titles.
   c. Provide a wage scale by title for all titles at the new facility, including currently AFSCME and non-AFSCME represented titles.
   d. For titles who will be impacted by the new Joint Venture, what happens if someone chooses not to apply for a position at the new facility?
   e. If a UC employee gets hired by the Joint Venture, what will happen to his/her seniority?
   f. If a UC employee gets hired by the Joint Venture, what will happen to his/her pension benefit?
   g. Provide a list of all titles and/or employee classes at any Kindred facilities in California that provide Defined Benefit pensions.

6. Long Range Development Plan
   a. Is the development of the new Rehab facility covered by UC Davis Medical Center's existing Long Range Development Plan?
   b. If not, will UC supplement the existing LRDP? And, what is the anticipated timeline for such a process?

Please forward the information requested as it becomes available rather than responding to the entire request all at one time.

Let me know if you have any questions. Thank you for your assistance

Sincerely,

Nischit Hegde
AFSCME 3299

EXHIBIT J

KINDRED HEALTHCARE, INC

FORM 10-K/A
(Amended Annual Report)

Filed 04/27/18 for the Period Ending 12/31/17

Address	680 SOUTH FOURTH STREET
	LOUISVILLE, KY, 40202
Telephone	5025967300
CIK	0001060009
SIC Code	8050 - Services-Nursing and Personal Care Facilities
Industry	Healthcare Facilities & Services
Sector	Healthcare
Fiscal Year	12/31

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 10-K/A

(Mark One)

☑ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2017

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission File Number: 001-14057

KINDRED HEALTHCARE, INC.
(Exact name of registrant as specified in its charter)

Delaware	**61-1323993**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification Number)**
680 South Fourth Street Louisville, Kentucky	**40202**
(Address of principal executive offices)	**(Zip Code)**

(502) 596-7300
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on which Registered
Common Stock, par value $0.25 per share	**New York Stock Exchange**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☑ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☑

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☑ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☑ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Annual Report on Form 10-K or any amendment of this Annual Report on Form 10-K. ☑

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☑	Accelerated filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐
		Emerging growth company	☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☑

The aggregate market value of the shares of the registrant held by non-affiliates of the registrant, based on the closing price of such stock on the New York Stock Exchange on June 30, 2017, was approximately $974,300,000. For purposes of the foregoing calculation only, all directors and executive officers of the registrant have been deemed affiliates.

As of March 31, 2018, there were 91,279,221 shares of the registrant's common stock, $0.25 par value, outstanding.

(14) These amounts represent the Company's cost to provide health, dental, life and short-term and long-term disability benefits for an 18-month period based upon such named executive officer's coverage on December 31, 2017.
(15) These amounts represent the fair value of 18 months of additional vesting of outstanding stock options, service-based restricted stock, performance-based restricted stock units, and, with respect to Mr. Causby, restricted stock units, calculated using the December 29, 2017 closing price of the Company's Common Stock on the NYSE of $9.70.
(16) This amount represents 2.99 times the sum of Mr. Wallace's base salary and target award under the short-term incentive plan in the year of termination, payable upon the effective date of termination.
(17) This amount represents 2.9 times the sum of Mr. Causby's base salary and target award under the short-term incentive plan in the year of termination, payable upon the effective date of termination.

Pay Ratio Disclosure

As required by Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and Item 402(u) of Regulation S-K, we are providing the following information about the relationship of the annual total compensation of our employees and the annual total compensation of Mr. Breier, the Company's President and Chief Executive Officer.

As of December 31, 2017, the median of the total annual compensation of all employees of the Company (except for the Chief Executive Officer) for 2017 was $22,100, calculated in accordance with the methodology for calculating the total compensation of our named executive officers as reported in the Summary Compensation Table on page 28. The total annual compensation of the Company's Chief Executive Officer for 2017 was $11,607,429, as calculated and more fully described in the Total Compensation column of the Summary Compensation Table on page 28. For 2017, the ratio of the total annual compensation of the Company's Chief Executive Officer to the median of the total annual compensation of all employees was 525 to 1. This pay ratio is an estimate calculated in a manner consistent with Item 402(u). The SEC rules for identifying the median compensated employee allow companies to adopt a variety of methodologies, to apply certain exclusions, and to make reasonable estimates and assumptions that reflect their compensation practices. As such, the pay ratio reported by other companies may not be comparable to the pay ratio reported above, as other companies may have different employment and compensation practices and may utilize different methodologies, exclusions, estimates and assumptions in determining their median employee.

This calculation includes all of the Company's employees as of December 31, 2017, whether employed on a full-time, part-time or per diem basis. For purposes of identifying the median employee from the Company's employee population, the Company compared the amount of salary, wages and tips of its employees as reflected in the Company's payroll records as reported to the Internal Revenue Service on Form W-2 for 2017. No other assumptions, adjustments or estimates were used in these calculations.

Approximately 38,400 of the Company's 83,788 employees as of December 31, 2017 are per diem employees, whose compensation is not permitted to be annualized for purposes of these calculations and thereby significantly lowers the median of the total annual compensation for all employees. As an additional point of reference, if per diem employees are excluded from this calculation, the median total annual compensation of all employees of the Company (except for the Chief Executive Officer) for 2017 increases to $47,594, and the ratio of the total annual compensation of the Company's Chief Executive Officer to the median of the total annual compensation of all employees becomes 244 to 1. Attracting and retaining qualified healthcare personnel such as nurses, therapists and home health and hospice employees in a highly competitive market is challenging, thereby driving the need for per diem employees.

EXHIBIT K

10-K 1 knd-10k_20171231.htm 10-K

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 10-K

(Mark One)

☑ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2017

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission File Number: 001-14057

KINDRED HEALTHCARE, INC.

(Exact name of registrant as specified in its charter)

Delaware	**61-1323993**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification Number)**
680 South Fourth Street Louisville, Kentucky	**40202-2412**
(Address of principal executive offices)	**(Zip Code)**

(502) 596-7300
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	**Name of Each Exchange on which Registered**
Common Stock, par value $0.25 per share	**New York Stock Exchange**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☑ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☑

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☑ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☑ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Annual Report on Form 10-K or any amendment of this Annual Report on Form 10-K. ☑

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☑ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☐ Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☑

The aggregate market value of the shares of the registrant held by non-affiliates of the registrant, based on the closing price of such stock on the New York Stock Exchange on June 30, 2017, was approximately $974,300,000. For purposes of the foregoing calculation only, all directors and executive officers of the registrant have been deemed affiliates.

As of January 31, 2018, there were 91,413,775 shares of the registrant's common stock, $0.25 par value, outstanding.

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ADDITIONAL INFORMATION

Employees

As of December 31, 2017, we had approximately 43,100 full-time and 42,200 part-time and per diem employees. We had approximately 2,400 unionized employees at 12 of our facilities as of December 31, 2017.

We, like other healthcare providers, have experienced difficulties in attracting and retaining qualified healthcare personnel in a highly competitive market, including nurses, therapists, home health and hospice employees, physicians, and other healthcare professionals. Our operations are particularly dependent on nurses, therapists, and home health and hospice employees for patient care. As the demand for our services continues to exceed the supply of available and qualified staff, our operators have been forced to offer more attractive wage and benefit packages to these professionals. Our difficulty in hiring and retaining qualified personnel has increased our average wage rates and may force us to increase our use of contract personnel. We expect to continue to experience increases in our labor costs primarily due to higher wages and greater benefits required to attract and retain qualified healthcare personnel. Salaries, wages, and benefits were approximately 67% of our consolidated revenues for the year ended December 31, 2017. Our ability to manage labor costs will significantly affect our future operating results.

Professional and General Liability Insurance

In October 2017, in connection with the review of our insurance programs as part of the SNF Divestiture, we restructured the funding and retention mechanism of recent policy years of our professional liability and workers compensation insurance programs (the "Insurance Restructuring") provided through our wholly owned limited purpose insurance subsidiary, Cornerstone Insurance Company ("Cornerstone"). As a result of the Insurance Restructuring, on a per-claim basis we maintain a self-insured retention and Cornerstone insures all losses in excess of this retention. Cornerstone maintains commercial reinsurance through unaffiliated commercial reinsurers for these losses in excess of our retention. The Insurance Restructuring had no impact upon the financial risk transfer aspect of Cornerstone's reinsurance agreements with its third party reinsurers. Cornerstone continues to insure claims in all states up to a per-occurrence limit without the benefit of any aggregate stop loss limit.

We believe that our insurance is adequate in amount and coverage. There can be no assurance that in the future such insurance will be available at a reasonable price or that we will be able to maintain adequate levels of professional and general liability insurance coverage.

Where You Can Find More Information

We file annual, quarterly, and current reports, proxy statements, and other information with the SEC under the Exchange Act.

Our filings with the SEC are available to the public free of charge on the SEC website at *www.sec.gov*, which contains reports, proxy, and information statements and other information. You also may read or obtain copies of this information in person or by mail from the SEC's Public Reference Room, 100 F Street, NE, Room 1580, Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room.

Our filings with the SEC, including our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and any amendments thereto, are available free of charge on our website, as soon as reasonably practicable after they are electronically filed with or furnished to the SEC. Our website is *www.kindredhealthcare.com*. Information made available on our website is not a part of this document.

Item 1A. *Risk Factors*

You should carefully consider all the risks described below, together with all of the information included in this Annual Report on Form 10-K, in evaluating us and our Common Stock. To facilitate your consideration of all of the risks described below, these risks are organized under headings and subheadings for your convenience. If any of the risks described in this Annual Report on Form 10-K were to occur, it could have a material adverse effect on our business, financial position, results of operations, liquidity, and stock price.

Risks Related to the Merger

The Merger is subject to various closing conditions and other risks which may cause the Merger to be delayed or not completed at all or have other adverse consequences.

The Merger is subject to various closing conditions that must be satisfied or waived to complete the Merger. There can be no assurance that these conditions will be satisfied or waived or that the Merger will be completed in a timely manner or at all. Failure to satisfy or obtain waivers of any closing condition may jeopardize or delay the completion of the Merger and result in additional

expenditures of money and resources including, but not limited to, the adverse impact of a termination fee of $29 million and reimbursement of documented out-of-pocket expenses of up to $10 million. The Merger is also subject to approval by the Company's