

UNOFFICIAL COPY



Doc#: 1116422030 Fee: \$56.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 06/13/2011 02:30 PM Pg: 1 of 11

This instrument prepared by,
and after recording return to:

Susan D. Kennedy, Esq.
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017

AMENDMENT NO. 3 TO SENIOR
LEASEHOLD MORTGAGE,
ASSIGNMENT OF LEASES AND
RENTS, SECURITY AGREEMENT
AND FINANCING STATEMENT
(Facility Nos. 4-637, 671, & 690)

Space above for recorder only

THIS AMENDMENT NO. 3 TO SENIOR LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT (this "**Amendment**") is made as of the 14th day of March, 2011 between KINDRED HEALTHCARE, INC. (formerly known as Vencor, Inc.) ("**Healthcare**") and KINDRED HEALTHCARE OPERATING, INC. (formerly known as Vencor Operating, Inc.) ("**Operating**"; together with Healthcare, the "**Mortgagor**"), with a mailing address of 680 South Fourth Avenue, Louisville, Kentucky 40202, and JPMORGAN CHASE BANK, N.A., a national banking association, as Collateral Agent for the Lenders, with a mailing address of 383 Madison Avenue, 24th Floor, New York, New York 10179 (the "**Mortgagee**").

WITNESSETH:

WHEREAS, in order to secure the obligations under that certain \$120,000,000 Credit Agreement dated as of April 20, 2001 (the "**Original Credit Agreement**"), among Operating, as borrower, Healthcare, as guarantor, the Lenders party thereto, the Swingline Bank party thereto, the LC Issuing Banks party thereto, and Morgan Guaranty Trust Company of New York (predecessor to Mortgagee) ("**MGT**"), as Administrative Agent and Collateral Agent, the Mortgagor executed and delivered to MGT that certain Senior Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement dated as of April 20, 2001 (as amended, modified, amended and

UNOFFICIAL COPY

restated or subordinated from time to time, the "**Original Mortgage**"), which Original Mortgage was recorded on April 24, 2001, as Instrument No. 0010335171, in Cook County, Illinois, and encumbers certain real property more particularly described on the attached Exhibit A, which is attached hereto and incorporated herein by this reference;

WHEREAS, in order to confirm and continue the lien of the Original Mortgage in connection with that certain Amended and Restated Credit Agreement, dated as of June 28, 2004 (the "**Amended and Restated Credit Agreement**"), among Healthcare, as borrower, the various financial institutions as are or may from time to time become parties thereto as the Lenders, and JPMorgan Chase Bank, N.A. (formerly The Chase Manhattan Bank, successor by merger to MGT) ("**JPM**"), as administrative agent and collateral agent for the Lenders, the Mortgagor and JPM executed and delivered Amendment No. 1 to Senior Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement, which amendment was recorded on October 18, 2004, as Document No. 0429239056, in Cook County, Illinois and re-recorded on March 21, 2005, as Document No. 0508012162, in Cook County, Illinois;

WHEREAS, in order to confirm and continue the lien of the Original Mortgage in connection with that certain Second Amended and Restated Credit Agreement dated as of July 18, 2007 (as amended by Amendment No. 1 dated as of September 23, 2010, the "**Existing Credit Agreement**"), among Healthcare, as borrower, the various financial institutions as are or may from time to time become parties thereto as the Lenders, and JPM, as administrative agent and collateral agent for the Lenders, the Mortgagor and JPM executed and delivered Amendment No. 2 to Senior Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement, which amendment was recorded on December 13, 2007, as Document No. 0734722034, in Cook County, Illinois;

WHEREAS, Healthcare, as Borrower, the Lenders party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent (the "**Agent**") amended the Existing Credit Agreement pursuant to that certain Amendment No. 2 and Joinder Agreement dated as of December 10, 2010 (as the Existing Credit Agreement may be further amended, modified, replaced or amended and restated from time to time, the "**Credit Agreement**"), pursuant to which, among other things, the Lenders have agreed to increase the maximum principal amount of Loans available thereunder by \$100,000,000 (the "**Additional Availability**");

WHEREAS, pursuant to Section 5.14 of the Credit Agreement, Mortgagor and Mortgagee are executing and delivering this Amendment to confirm the continuance of the lien of the Original Mortgage;

UNOFFICIAL COPY

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. *Amendment of Recitals and Definitions.* The Recitals of the Original Mortgage, as amended, shall be deemed amended to include the recitals set forth in this Amendment and any reference in such Recitals to a maximum principal amount secured shall be amended to read in full as follows:

“This Mortgage secures a maximum principal amount of \$600,000,000, plus accrued unpaid interest and costs.”

2. *Reaffirmation of Lien and Grant of Lien.* The Mortgagor agrees as follows:

For and in consideration of the premises, and of the mutual covenants herein contained in the Original Mortgage, as previously amended and as amended by this Amendment, and in order to induce the Secured Parties to maintain and continue to make credit extensions to the Borrower, for the benefit of the Mortgagee and the other Secured Parties, and in order to secure the full, timely and proper payment, performance of and compliance with each and every one of the Secured Obligations, the Mortgagor hereby irrevocably (x) confirms the grants, bargains, sales, conveyances, mortgages, assignments, transfers and warranties previously made by the Mortgagor to the Mortgagee pursuant to the Original Mortgage, as previously amended, and confirms that such grants, bargains, sales, conveyances, mortgages, assignments, transfers and warranties are in full force and effect in favor of the Mortgagee, and (y) not in limitation of such grants, bargains, sales, conveyances, mortgages, assignments, transfers and warranties but as a supplement thereto, grants, bargains, sells, conveys, mortgages, assigns, transfers and warrants to the Mortgagee, and its successors and/or assigns, forever, with POWER OF SALE, if applicable, and right of entry as hereinafter provided, all of the Mortgaged Property described in the Original Mortgage, as previously amended.

3. *References to Credit Agreement.* All references in the Original Mortgage, as previously amended and as amended by this Amendment, to the “Credit Agreement” shall be deemed to refer to the Second Amended and Restated Credit Agreement dated as of July 18, 2007, as amended by Amendment No. 1 dated as of September 23, 2010, and by Amendment No. 2 and Joinder Agreement dated as of December 10, 2010, and as the same may be amended, amended and restated or otherwise modified from time to time.

UNOFFICIAL COPY

4. *Ratification; No Offsets.* Except as modified hereby, the terms and conditions of the Original Mortgage, as previously amended, remain unchanged and in full force and effect and are hereby ratified and confirmed. The Mortgagor affirms and agrees that the Original Mortgage, as previously amended and as amended hereby, extends to and fully secures all of the Secured Obligations, including the Additional Availability. The Mortgagor hereby confirms that it has no defenses or offsets with respect to its obligations under the Original Mortgage, as previously amended and as amended hereby.

5. *Future Advances.* Section 6 of Appendix A to the Original Mortgage is deleted and replaced with the following:

This Mortgage secures future advances and future obligations, and is governed by 765 ILCS 5/39 and 735 ILCS 5/15-1302. The total amount outstanding at any one time which is secured by this Mortgage, excluding any interest and any amounts advanced by Lenders in accordance with the terms of this Mortgage to (i) preserve or restore the Mortgaged Property, (ii) preserve the lien of the Mortgage or the priority thereof, or (iii) enforce this Mortgage, shall not exceed SIX HUNDRED MILLION AND NO/100 Dollars (\$600,000,000.00). In addition, to the extent applicable, the Credit Facility constitutes a "revolving credit" within the meaning of 805 ILCS 205/4.1 and shall secure not only the existing indebtedness, but also future advances, whether such advances are obligatory or to be made at the option of the Lenders, or otherwise, as are made within twenty (20) years from the date of the Mortgage, to the same extent as if such future advances were made on the date of the Mortgage, all in accordance with 205 ILCS 5/5d.

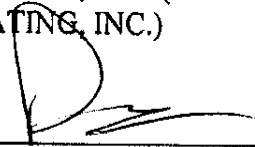
6. *Miscellaneous.* This Amendment may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute the same instrument.

UNOFFICIAL COPY

IN WITNESS WHEREOF, this instrument has been executed by the parties hereto as of the day first set forth above.

MORTGAGOR:

KINDRED HEALTHCARE
OPERATING, INC. (f/k/a VENCOR
OPERATING, INC.)

By: 

Name: _____
Title: Douglas L. Curnutte
Vice President of
Facilities & Real Estate
Development

KINDRED HEALTHCARE INC. (f/k/a
VENCOR, INC.)

By: 

Name: Douglas L. Curnutte
Title: Vice President of
Facilities & Real Estate
Development

MORTGAGEE:

JPMORGAN CHASE BANK, N.A., as
Collateral Agent

By: _____

Name: Dawn L. Lee Lynn
Title: Executive Director

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, this instrument has been executed by the parties hereto as of the day first set forth above.

MORTGAGOR:

KINDRED HEALTHCARE
OPERATING, INC. (f/k/a VENCOR
OPERATING, INC.)

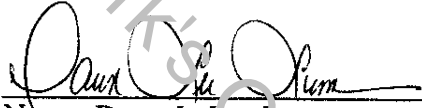
By: _____
Name:
Title:

KINDRED HEALTHCARE, INC. (f/k/a
VENCOR, INC.)

By: _____
Name:
Title:

MORTGAGEE:

JPMORGAN CHASE BANK, N.A., as
Collateral Agent

By: 
Name: Dawn L. Lee Lum
Title: Executive Director

UNOFFICIAL COPY

COMMONWEALTH OF KENTUCKY)
) ss
COUNTY OF JEFFERSON)

On this 15 day of March, 2011 before me, the undersigned, a Notary Public in and of the Commonwealth of Kentucky, personally appeared Douglas L. Carnate, who, being by me duly sworn, did say that, ~~(s)~~ he is the VP & FAC & RE DEV of KINDRED HEALTHCARE OPERATING, INC. (f/k/a VENCOR OPERATING, INC.), a Delaware corporation, that the instrument was signed and sealed on behalf of the corporation by authority of the corporation's Board of Directors; and that the foregoing officer acknowledged execution of the instrument to be the voluntary act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal in the County and Commonwealth aforesaid, the day and year first above written.

Jenny McBarney
Notary Public
(Seal)

My commission expires 2/16/2012

COMMONWEALTH OF KENTUCKY)
) ss
COUNTY OF JEFFERSON)

On this 15 day of March, 2011 before me, the undersigned, a Notary Public in and of the Commonwealth of Kentucky, personally appeared Douglas L. Carnate, who, being by me duly sworn, did say that, ~~(s)~~ he is the VP & FAC & RE DEV of KINDRED HEALTHCARE, INC. (f/k/a VENCOR, INC.), a Delaware corporation, that the instrument was signed and sealed on behalf of the corporation by authority of the corporation's Board of Directors, and that the foregoing officer acknowledged execution of the instrument to be the voluntary act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal in the County and Commonwealth aforesaid, the day and year first above written.

Jenny McBarney
Notary Public
(Seal)

My commission expires 2/16/2012

UNOFFICIAL COPY

STATE OF NEW YORK)
) ss
COUNTY OF NEW YORK)

On this 14th day of March, 2011 before me, the undersigned, a Notary Public in and of the State of Kentucky, personally appeared Dawn L. Lee Lum, who, being by me duly sworn, did say that, she is the Executive Director of JPMORGAN CHASE BANK, N.A., as Collateral Agent, a national banking association, that the instrument was signed and sealed on behalf of the association by authority of the corporation's Board of Directors; and that the foregoing officer acknowledged execution of the instrument to be the voluntary act and deed of said association.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Edeline C. Adderley

Notary Public
(Seal)

My commission expires September 3, 2014

EDELINE C. ADDERLEY
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01AD6079940 QUALIFIED IN BRONX COUNTY
CERTIFICATE FILED IN NEW YORK COUNTY
MY COMMISSION EXPIRES SEPT. 3, 2014

UNOFFICIAL COPY

Exhibit A

Legal Description and Parcel ID Number(s):

- Attached -

Property of Cook County Clerk's Office



UNOFFICIAL COPY

LEGAL DESCRIPTION:**TRACT A (FACILITY IL#4-690):****PARCEL 1:**

LOTS 6, 7, 8 (EXCEPT THE EAST 26 FEET THEREOF) IN BLOCK 1; ALSO LOTS 1, 2, 3, 4 AND 15 IN BLOCK 2, IN TOWN MANOR, A SUBDIVISION OF THE NORTH 100 ACRES OF THE NORTH EAST 1/4 OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 OVER THE FOLLOWING:

A STRIP OF LAND OF VARIOUS WIDTHS OVER THAT PART OF LOT 14 IN BLOCK 2 IN TOWN MANOR, A SUBDIVISION OF THE NORTH 100 ACRES OF THE NORTH EAST 1/4 OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH WEST CORNER OF SAID LOT 14; THENCE NORTH 0 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE WEST LINE OF SAID LOT 133.57 FEET TO THE NORTH WEST CORNER OF SAID LOT; THENCE NORTH 83 DEGREES 15 MINUTES 38 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 32.02 FEET TO A LINE 42.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID LOT; THENCE SOUTH 0 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID PARALLEL LINE A DISTANCE OF 32.00 FEET; THENCE SOUTH 35 DEGREES 19 MINUTES 49 SECONDS WEST 20.76 FEET TO A POINT ON A LINE 30.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID LOT; THENCE SOUTH 0 DEGREES 00 MINUTES SECONDS EAST ALONG SAID PARALLEL LINE A DISTANCE OF 85.00 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF SAID LOT; THENCE SOUTH 88 DEGREES 15 MINUTES 37 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT 30.01 FEET TO THE POINT OF BEGINNING OF THE STRIP OF LAND HEREIN DESCRIBED, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 OVER THE FOLLOWING:

THE NORTH 30.00 FEET OF LOT 9 IN BLOCK 1, (AS MEASURED PERPENDICULARLY TO THE NORTH LINE OF SAID LOT) IN TOWN MANOR, A SUBDIVISION OF THE NORTH 100 ACRES OF THE NORTH EAST 1/4 OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

UNOFFICIAL COPY**TRACT B (FACILITY IL#4-637):****PARCEL 1:**

LOTS 16 TO 25 IN BLOCK 16 IN NORTHWEST LAND ASSOCIATION SUBDIVISION OF THAT PART OF THE WEST 1/2 OF THE EAST 1/2 OF THE NORTHEAST 1/4 (EXCEPT THE EAST 33 FEET LYING SOUTH OF THE NORTHWESTERN ELEVATED RAILROAD CO'S RIGHT OF WAY) OF SECTION 13, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 16 TO 25 IN BLOCK 17 IN NORTHWEST LAND ASSOCIATION SUBDIVISION OF THAT PART OF THE WEST 1/2 OF THE EAST 1/2 OF THE NORTHEAST 1/4 (EXCEPT THE EAST 33 FEET LYING SOUTH OF THE NORTHWESTERN ELEVATED RAILROAD CO'S RIGHT OF WAY) OF SECTION 13, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOTS 5, 7, 8, 9, 10, 11, 12, 13, 14 AND 15 IN A. S. TERRILL'S SUBDIVISION OF BLOCK 6 IN SUPERIOR COURT PARTITION OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

TRACT C (FACILITY IL#4-671)**PARCEL 1:**

LOTS 21, 23, 24 AND 25 IN BLOCK 10 OF COCHRAN'S SECOND ADDITION TO EDGEWATER IN THE EAST FRACTIONAL 1/2 OF SECTION 5, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 2:

LOTS 4, 5, 6, 7, 8, 9, 10 AND THE NORTH 22 FEET OF LOT 11 IN BLOCK 10 IN COCHRAN'S SECOND ADDITION TO EDGEWATER IN THE EAST FRACTIONAL 1/2 OF SECTION 5, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS.

15-05-211-006, -007, -008

15-05-212-001, -002, -003, -004, -008

13-13-232-027, -028, -029, -032

13-13-231-030, -031, -032, -033

13-13-401-005, -006, -007, -010, -012

14-05-210-004, -005, -006, -008, -016, -015, -022

365 East North Avenue, North Lake, IL

2544 West Montrose Avenue Chicago, IL

6130 North Sheridan Road Chicago, IL