FORM 8-A12G

Form for registration of a class of securities pursuant to section 12(g)

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FILER

VENCOR INC /NEW/

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SIC: **8050** Nursing & personal care facilities

Mailing Address
3300 AEGON CENTER
400 WEST MARKET ST
LOUISVILLE KY 40202

Business Address
ONE VENCOR PLACE
680 S FOURTH ST
LOUISVILLE KY 40202
5025967300

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8 - A

FOR REGISTRATION OF CERTAIN CLASSES OF SECURITIES
PURSUANT TO SECTION 12(b) OR 12(g) OF THE
SECURITIES EXCHANGE ACT OF 1934

KINDRED HEALTHCARE, INC. (FORMERLY VENCOR, INC.)
(Exact name of registrant as specified in its charter)

DELAWARE	61-1323993
(State of incorporation or organization)	(I.R.S. Employer Identification No.)
680 South Fourth Street Louisville, Kentucky	40202-2412
(Address of principal executive offices)	(Zip Code)

<TABLE>
<S>
If this form relates to the registration of a class of securities pursuant to Section 12(b) of the Exchange Act and is effective pursuant to General Instruction A.(c), please check the following box.[_]

<C>
If this form relates to the registration of a class of securities pursuant to Section 12(g) of the Exchange Act and is effective pursuant to General Instruction A.(d), please check the following box.[X]
</TABLE>

Securities Act registration statement file number to which this form relates: n/a (If applicable)

Securities to be registered pursuant of Section 12(b) of the Act:

None

Securities to be registered pursuant to Section 12(g) of the Act:

Common Stock, par value $0.25 per share
Series A Warrants to Purchase Common Stock
Series B Warrants to Purchase Common Stock
(Title of Class)

Item 1. Description of Registrant's Securities to be Registered

GENERAL

On September 13, 1999, the Company and substantially all of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for protection under Chapter 11 of Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). Such proceedings were jointly administered under Case Nos. 99-3199 (MFW) through 99-3327 (MFW). The Debtors filed with the Bankruptcy Court, among other things, a Fourth Amended Joint Plan of Reorganization of Vencor, Inc. And Affiliated Debtors Under Chapter 11 of the Bankruptcy Code, dated as of December 14, 2000 (including all modifications thereof and schedules and exhibits thereto, the "Plan of Reorganization").

The Bankruptcy Court approved the Plan of Reorganization at a hearing before the Bankruptcy Court on March 1, 2001 (the "Confirmation Hearing"), as modified by the Findings of Fact, Conclusions of Law and Order Under 11 U.S.C. (S)1129 And Rule 3020 of the Federal Rules of Bankruptcy Procedure Confirming the Fourth Amended Plan of Reorganization of Vencor, Inc., et al. (the "Confirmation Order"), which Confirmation Order was signed by the Bankruptcy Court on March 16, 2001 and entered on the docket of the Bankruptcy Court on March 19, 2001 (the Plan of Reorganization as modified by the Confirmation Order being referred to herein as the "Final Plan of Reorganization").

Subsequent to receipt of the Confirmation Order, PricewaterhouseCoopers LLP ("PwC") advised the Company that certain non-audit services provided to the Company during PwC's engagement as the Company's independent accountants by a subsidiary of PwC in connection with the Company's efforts to sell an equity investment raised an issue as to PwC's independence. PwC disclosed the situation to the Securities and Exchange Commission (the "SEC"), which is currently investigating the issue. PwC has further advised the Company that, notwithstanding the provision of such non-audit services, PwC was and continues to be independent accountants with respect to the Company, and it is the present intention of PwC to sign audit opinions and consents to incorporation as necessary in connection with documents filed by the Company with the SEC and other third parties. The Company cannot predict at this time how this issue will be resolved or what impact, if any, such resolution will have on the Company's past or future filings with the SEC and other third parties.

As part of the Final Plan of Reorganization, the Company is issuing shares of common stock, par value $0.25 per share, of the Company (the "New Common Stock") and two series of warrants to purchase shares of New Common Stock (collectively, the "Warrants"). The New Common Stock and the Warrants are being issued in part to discharge claims of existing creditors and claimants against the Company. Pursuant to the Final Plan of Reorganization, and as of April 20, 2001, the Final Plan of Reorganization's effective date (the "Effective Date"), the Registrant (formerly known as Vencor, Inc.) filed with the Delaware Secretary of State an Amended and Restated Certificate of Incorporation (the "Amended and Restated Certificate of Incorporation"), under which the authorized capital stock of the Company consists of 40,000,000 shares of capital stock consisting of (1) 39,000,000 shares of New Common Stock; and (2) 1,000,000 shares of Preferred Stock, par value $0.25 per share (the "Preferred Stock"). Pursuant to the Final Plan of Reorganization, on the Effective Date, the Company has issued to holders of certain claims against the Company, a total of 15,000,000 shares of New Common Stock, and Warrants to purchase an aggregate of 7,000,000 shares of New Common Stock. No Preferred Stock is being issued on the Effective Date. This Registration Statement on Form 8-A pertains only to the New Common Stock and the Warrants.

The following description of the capital stock of the Company and certain provisions of the Company's Amended and Restated Certificate of Incorporation and Amended and Restated By-Laws is a summary and is qualified in its entirety by the Amended and Restated Certificate of Incorporation, the Amended and Restated By-Laws and the Warrant Agreement (defined below),

which have been filed as Exhibits 3.1, 3.2 and 4.1, respectively, to this Registration Statement on Form 8-A.

NEW COMMON STOCK

The issued and outstanding shares of New Common Stock are validly issued, fully paid and nonassessable. Holders of New Common Stock are entitled to one vote per share for each share held of record on all matters submitted to a vote of stockholders and are entitled to receive ratably such dividends as may be declared by the Board of Directors out of funds legally available therefor. There is no cumulative voting in the election of directors. As of the Effective Date, Vencor Operating, Inc., (to be renamed Kindred Healthcare Operating, Inc., "Kindred Operating, Inc."), a wholly-owned subsidiary of the Company, and the Company as guarantor, are entering into a $120,000,000 credit facility (the "Exit Facility") and a credit agreement (the "Senior Secured Notes Credit Agreement") providing for the issuance of $300,000,000 of Senior Secured Notes due 2008 of Kindred Operating, Inc. issued pursuant to the Final Plan of Reorganization. The Exit Facility and the Senior Secured Notes Credit Agreement contain negative covenants that restrict, among other things, the ability of Kindred Operating, Inc. to pay dividends to the Company. It is therefore not contemplated that the Company will have sufficient resources to pay dividends on the New Common Stock for the foreseeable future. In the event of a liquidation, dissolution or winding up of the Company, holders of New Common Stock have the right to a ratable portion of assets remaining after payment of liabilities and subject to the prior rights of any holders of Preferred Stock then outstanding. The holders of New Common Stock have no preemptive rights.

TRANSFER AGENT AND REGISTRAR

The transfer agent and registrar for the New Common Stock is National City Bank.

PREFERRED STOCK

The Company's Amended and Restated Certificate of Incorporation authorizes the Board of Directors to issue Preferred Stock in one or more series and to establish the designations, powers, preferences and rights and the qualifications, limitations and restrictions of any series with respect to the number of shares included in such series, the rate and nature of dividends, the price and terms and conditions on which shares may be redeemed, the terms and conditions for conversion or exchange into any other class or series of stock, voting rights and other terms. The Company may issue, without the approval of the holders of New Common Stock, Preferred Stock which has voting, dividend or liquidation rights superior to the New Common Stock and which may adversely affect the rights of holders of New Common Stock. The issuance of Preferred Stock could, among other things, adversely affect the voting power of the holders of New Common Stock and could have the effect of delaying, deferring or preventing a change in control of the Company. No Preferred Stock is being issued under the Final Plan of Reorganization, and no Preferred Stock was outstanding on the Effective Date.

CERTAIN RESTRICTIONS

The Amended and Restated Certificate of Incorporation states that the Company may not issue nonvoting equity securities to the extent prohibited by Section 1123(6)(a) of the Bankruptcy Code. In addition, in order to help ensure that a third party entity (Ventas, Inc. ("Ventas")), continues to meet the requirements for treatment as a real estate investment trust, the Amended and Restated Certificate of Incorporation prohibits a particular shareholder (Tenet Healthcare Corporation and its successors, collectively "Tenet") from beneficially owning, directly or indirectly (including by application of certain attribution rules under the Internal Revenue Code), shares of New Common Stock in excess of the Existing Holder Limit (as defined in the Amended and Restated Certificate of Incorporation) for so long as Tenet remains a significant shareholder in Ventas. Any shares of New Common Stock beneficially owned by Tenet in excess of such Existing Holder Limit, including shares beneficially owned by persons that are or become related to Tenet under the attribution rules, will be designated as "excess stock" and treated as described in the Amended and Restated Certificate of Incorporation. The certificates evidencing the New Common Stock contain a legend referencing the above restriction. In addition, if the Company engages in an "Accretive Transaction" (as defined in the Amended and Restated Certificate of Incorporation), it shall purchase from Ventas such number of shares necessary to prevent Ventas from beneficially owning in excess of 9.9% of the Company after giving effect to such Accretive Transaction.

CERTAIN STATUTORY PROVISIONS

In its Amended and Restated Certificate of Incorporation, the Company has elected not to be governed by Section 203 of the Delaware General Corporation Law ("Section 203"). Section 203 prohibits a publicly held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the time of the transaction in which the person became an interested stockholder, unless (i) prior to such time of the business combination or the transaction which resulted in the stockholder becoming an interested stockholder, the transaction is approved by the board of directors of the corporation, (ii) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owns at least 85% of the outstanding voting stock, or (iii) at or subsequent to such time, the business combination is approved by the board of directors and by the affirmative vote of at least 66-2/3% of the outstanding voting stock that is not owned by the interested stockholder. For purposes of Section 203, a "business combination" includes a merger, asset sale or other transaction resulting in a financial benefit to the interested stockholder, and an "interested stockholder" is a person who, together with affiliates and associates, owns (or within three years, did own) 15% or more of the corporation's voting stock.

WARRANTS

The Warrants are being issued to certain claimants of the Company under the Warrant Agreement (the "Warrant Agreement"), dated as of the Effective Date, between the Company and Wells Fargo Bank Minnesota, National Association, as warrant agent (the "Warrant Agent"). A copy of the Warrant Agreement is attached hereto as Exhibit 4.1. Two series of

Warrants (the "Series A Warrants" and the "Series B Warrants") are being issued pursuant to the Warrant Agreement, forms of which are attached to the Warrant

Agreement which is attached hereto as Exhibit 4.1. Both series of Warrants have identical terms except that each series has a different exercise price. The following summary of the Warrants does not purport to be complete and is qualified in its entirety by reference to the Warrant Agreement.

The Series A Warrants represent the right to purchase an aggregate 2,000,000 shares of New Common Stock and the Series B Warrants represent the right to purchase an aggregate of 5,000,000 shares of New Common Stock, subject to dilution under certain circumstances. The exercise price of the Series A Warrants is $30.00 and the exercise price of the Series B Warrants is $33.33. The exercise period for both series of Warrants shall begin at 9:00 a.m., Eastern Standard Time, on the Effective Date, and shall expire at 5:00 p.m., Eastern Standard Time, on the date which is five years from the Effective Date (the "Warrant Exercise Period"). Each New Warrant not exercised prior to the expiration of the Warrant Exercise Period will become void, and all rights thereunder will terminate.

Pursuant to the Final Plan of Reorganization, the Company agreed to use its commercially reasonable efforts to have both series of Warrants listed for trading on a national securities exchange or on the Nasdaq National Market. Listing criteria initially may not be satisfied and it is unlikely that such listing will initially be authorized. In addition, the Warrant Agreement requires the Company to use commercially reasonable efforts to quote and to maintain the quotation of both series of Warrants on the Nasdaq National Market, and requires the Company to use such efforts to cause both series of Warrants to be quoted on alternative exchanges or to include them in alternative quotation systems if quotation on the Nasdaq National Market is not (or is no longer) available.

The number and kind of securities purchasable upon the exercise of the Warrants and the exercise price therefor is subject to adjustment upon the occurrence of certain events as set forth in the Warrant Agreement, including, without limitation: the issuance of capital stock as a dividend or distribution on the New Common Stock; subdivisions, reclassifications and combinations of the New Common Stock; the distribution to holders of New Common Stock of indebtedness or assets of the Company or any entity controlled by the Company (excluding cash dividends or cash distributions from consolidated earnings or surplus legally available for such dividends or distributions) or shares of capital stock of any entity controlled by the Company; and the issuance of shares of New Common Stock, or other securities convertible into or exchangeable or exercisable for shares of New Common Stock, for a consideration that is less than the then-current market price of the New Common Stock. The Warrants are subject to dilution, along with the New Common Stock.

No adjustment in such shares or exercise price will be required in connection with the issuance of New Common Stock, warrants, options or other securities pursuant to: the Final Plan of Reorganization; any plan adopted by the Company or any entity controlled by the Company for the benefit of its employees, officers or directors; an underwritten public offering satisfying specified criteria; a plan adopted by the Company for the reinvestment of dividends or interest; the issuance of shares of New Common Stock to shareholders of any corporation which is acquired by, merged into or made a part or subsidiary of, the Company in an arm's length transaction; or a change in the par value of the New Common Stock. In addition, no adjustment

will be required (a) if in connection with any of the events otherwise giving rise to an adjustment the holders of the Warrants receive such rights, securities or assets as such holders would have been entitled had the Warrants

been exercised immediately prior to such event; or (b) unless such adjustment would require at least a 3% change in the aggregate number of shares of New Common Stock issuable upon the hypothetical exercise of a Warrant (but any adjustment requiring a change of less than 3% will be carried forward and taken into account in any subsequent adjustment).

The Company and the Warrant Agent may from time to time supplement or amend the Warrant Agreement without approval of any holder to cure, among other things, any ambiguity or to correct or supplement any provision, or to comply with the requirements of the Nasdaq National Market or any national securities exchange, if applicable. Any other supplement or amendment to the Warrant Agreement will require the approval of the holders of a majority of the outstanding Warrants of each series, with each series voting separately as a class. Notwithstanding the foregoing, any amendment or supplement which (i) increases the exercise price; (ii) decreases the number of shares of New Common Stock issuable upon exercise of a Warrant; or (iii) shortens the period during which the Warrants may be exercised, requires the consent of the holder of the Warrant affected thereby.

Under the Warrant Agreement, the Company is not obligated to furnish any holders of the Warrants with quarterly, annual or other reports regarding the Company, although it intends to do so to the extent required by applicable law or any securities exchange on which the Warrants may be listed or any quotation system in which they may be included.

REGISTRATION RIGHTS

On the Effective Date, the Company is entering into a Registration Rights Agreement, which among other things, provides that (i) the Company shall file a shelf registration statement with respect to the New Common Stock and Warrants as soon as practicable after the Effective Date but in no event later than 120 days following the Effective Date and (ii) the Company will use its reasonable best efforts to cause such registration statement to be declared effective as soon as practicable and to keep such registration statement continuously effective for a period of two years with respect to such securities (subject to commercially reasonable exceptions). Holders of 10% or more (or 9.99% or more in the case of Ventas Realty, Limited Partnership, or its designee, if any, to which New Common Stock is issued under Section 5.04(ii) of the Final Plan of Reorganization) of the New Common Stock (either initially or upon exercise of Warrants) and the Warrants, on a fully converted basis (all such holders being referred to herein as "Holders") are entitled to participate in the Registration Rights Agreement by executing and delivering the same no later than thirty (30) days after the Effective Date. Holders are entitled to exercise certain demand and "piggyback" registration rights with respect to the Registrable Securities (as defined in the Registration Rights Agreement), subject to customary exceptions and black-out periods. In addition, until such time as the New Common Stock is listed on a national securities exchange, the Company covenants to comply with certain of the requirements of NASD Rule 4460 as if it were subject thereto. In the event the Company fails to comply with its obligations under the Registration Rights Agreement, Holders are entitled to seek specific performance in addition to other remedies that might be available. The foregoing summary of the Registration Rights Agreement does not purport to be complete and is qualified in its entirety

by reference to the Registration Rights Agreement, a copy of which is attached as Exhibit 10.1 hereto.

Item 2. Exhibits

2.1 Fourth Amended Joint Plan of Reorganization of Vencor, Inc. and Affiliated Debtors Under Chapter 11 of the Bankruptcy Code, dated December 14, 2000. (Filed as Exhibit 2.1 to the Company's Form 8-K filed on March 19, 2001 and incorporated herein by reference).

2.2 Findings of Fact, Conclusions of Law and Order Under 11 U.S.C. (S) 1129 And Rule 3020 of the Federal Rules of Bankruptcy Procedure Confirming the Fourth Amended Joint Plan of Reorganization of Vencor, Inc., et al., as signed by the United States Bankruptcy Court for the District of Delaware on March 16, 2001 and entered on the docket of the United States Bankruptcy Court for the District of Delaware on March 19, 2001. (Filed as Exhibit 2.2 to the Company's Form 8-K filed on March 19, 2001 and incorporated herein by reference).

3.1 Amended and Restated Certificate of Incorporation of Vencor, Inc., dated as of April 20, 2001.

3.2 Amended and Restated By-Laws of Kindred Healthcare, Inc., dated as of April 20, 2001.

4.1 Warrant Agreement, dated as of April 20, 2001, between Vencor, Inc. (to be renamed Kindred Healthcare, Inc.) and Wells Fargo Bank Minnesota, National Association, as Warrant Agent (including Forms of Series A Warrant Certificate and Series B Warrant Certificate, respectively).

10.1 Registration Rights Agreement, dated as of April 20, 2001 among Vencor, Inc. (to be renamed Kindred Healthcare, Inc.) and the Initial Holders (as defined therein).

SIGNATURE

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the Registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

KINDRED HEALTHCARE, INC.

By: /s/ Richard A. Lechleiter

Richard A. Lechleiter
Vice President, Finance,
Corporate Controller and
Treasurer

Date: April 20, 2001

EXHIBIT 3.1

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
VENCOR, INC.

The undersigned Corporation hereby certifies as follows:

1. The name of the corporation is Vencor, Inc (the "Corporation"). The date of filing of its original certificate of incorporation with the Secretary of State was March 27, 1998 under the name "Vencor Healthcare, Inc."

2. This Amended and Restated Certificate of Incorporation amends, restates and integrates the provisions of the Certificate of Incorporation of the Corporation as currently in effect. Pursuant to the authority of Section 303 of the General Corporation Law of the State of Delaware, the provisions contained in this Amended and Restated Certificate of Incorporation are contained in and authorized by the Fourth Amended Joint Plan of Reorganization of Vencor, Inc. And Affiliated Debtors Under Chapter 11 Of The Bankruptcy Code, dated as of December 14, 2000, as modified and confirmed by the Findings of Fact, Conclusions of Law and Order Under 11 U.S.C. (S)1129 and Rule 3020 of the Federal Rules of Bankruptcy Procedure Confirming the Fourth Amended Plan of Reorganization of Vencor, Inc. et al (the "Order"), which Order was signed by the United States Bankruptcy Court for the District of Delaware (the "Court") on March 16, 2001 and entered on the docket of the Court on March 19, 2001. The Court has jurisdiction of the proceedings for the reorganization of the Corporation under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. (S)101 et. seq. A copy of the Order is attached hereto as Exhibit A, and provides, inter alia, that this Amended and Restated Certificate of Incorporation be executed on behalf of the Corporation by the undersigned officer of the Corporation.

3. The text of the Certificate of Incorporation as currently in effect is hereby amended and restated to read as set forth herein in full:

_____

FIRST. The name of the corporation is Kindred Healthcare, Inc. (hereinafter referred to as the "Corporation").

SECOND. The address of the Corporation's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

THIRD. The purpose of the Corporation is to engage in any lawful act or

activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH. (a) The total number of shares of capital stock which the Corporation is authorized to issue is 40,000,000, consisting of 39,000,000 shares of Common Stock, par value $0.25 per share, and 1,000,000 shares of Preferred Stock, par value $0.25 per share.

(a) The holders of Common Stock shall be entitled to one vote per share on all matters to be voted on by the stockholders of the Corporation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, holders of Common Stock shall receive a pro rata distribution of any remaining assets after payment of or provision for all liabilities and the liquidation preference on Preferred Stock, if any.

(b) Subject to the provisions of Article NINTH hereof, shares of Preferred Stock may be issued in one or more series from time to time by the Board of Directors, and the Board of Directors is expressly authorized to fix by resolution or resolutions the designations and the powers, preferences and rights, and the qualifications, limitations and restrictions thereof, of the shares of each series of Preferred Stock, including without limitation the following:

(i) the distinctive serial designation of such series which shall distinguish it from other series;

(ii) the number of shares included in such series, which number may be increased or decreased from time to time unless otherwise provided by the Board of Directors in the resolution or resolutions providing for the issuance of such series;

(iii) the rate of dividends (or method of determining such dividends) payable to the holders of the shares of such series, any conditions upon which such dividends shall be paid and the date or dates (or the method for determining the date or dates) upon which such dividends shall be payable;

(iv) whether dividends on the shares of such series shall be cumulative and, in the case of shares of any series having cumulative dividend rights, the date or dates (or method of determining the date or dates) from which dividends on the shares of such series shall be cumulative;

(v) the amount or amounts which shall be payable out of the assets of the Corporation to the holders of the shares of such series upon voluntary or involuntary liquidation, dissolution or winding up the Corporation, and the relative rights of priority, if any, of payment of the shares of such series;

(vi) the price or prices (or the method of determining such price or prices) at which, the form of payment of such price or prices at which, the period or periods within which and the terms and conditions upon which the shares of such series may be redeemed, in whole or in part, at the option of the Corporation or at the option of the holder or holders thereof or upon the happening of a specified event or events;

(vii) the obligation, if any, of the Corporation to purchase or redeem shares of such series pursuant to a sinking fund or otherwise and the price or prices at which, the period or periods within which and the terms and conditions upon which the shares of such series shall be redeemed or purchased, in whole or in part, pursuant to such obligation; and

(viii) whether or not the shares of such series shall be convertible or exchangeable, at any time or times at the option of the holder or holders thereof or at the option of the Corporation or upon the happening of a specified event or events, into shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation, and the price or prices or rate or rates of exchange or conversion and any adjustments applicable thereto.

Upon such designation, the Secretary of the Corporation shall cause a Certificate of Designations setting forth a copy of such resolution and the number of shares of Preferred Stock as to which the resolution applies to be executed, acknowledged, filed and recorded in accordance with Section 103 of the General Corporation Law of the State of Delaware.

(c) All shares of the Corporation's common stock, par value $0.25 per share, and the 17,433 shares of the Corporation's 6% Series A Non-Voting Convertible Preferred Stock, par value $1.00 per share, in each case issued and outstanding immediately prior to the filing of this Amended and Restated Certificate of Incorporation shall be cancelled upon the filing of this Amended and Restated Certificate of Incorporation and without further action by the Corporation or the holders thereof.

FIFTH. (a) The affairs of the Corporation shall be managed and conducted by a Board of Directors. The number of Directors of the Corporation shall be as from time to time fixed by, or in the manner provided in, the Bylaws of the Corporation; provided, however, that in no event shall the number of Directors be less than three (3). In the absence of a determination of such number by the Board of Directors, the number of Directors of the Corporation shall be seven. The Directors shall be elected at the annual meeting of stockholders in accordance with the provisions of the Bylaws of the Corporation, and the election of Directors need not be by written ballot except as and to the

extent provided for therein. A majority of the Directors shall constitute a quorum for the transaction of business, except that any vacancy on the Board of Directors, whether created by an increase in the number of directors or otherwise, may be filled by a majority of Directors then in office, even if less than a quorum, or by a sole remaining Director.

(b) Any Director, or the entire Board of Directors, may be removed from office with or without cause but only by the affirmative vote of not less than two-thirds (2/3) of the votes entitled to be cast by the holders of all outstanding shares of Voting Stock (as defined herein), voting together as one class. Any Director elected or appointed to fill a vacancy shall hold office until the next election at the annual meeting of stockholders, and until his or her successor has been duly elected and qualified or until his or her earlier resignation or removal.

SIXTH. The Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal By-laws of the Corporation by the affirmative vote of not less than two-thirds (2/3) of the Directors present at any meeting of the Board, assuming a quorum is present; provided, however, that with respect to the number of Directors provided for in Section 2.1 thereof, the affirmative vote of not less than 80% of all Directors then in office shall be required. The holders of shares of Voting Stock (as defined herein) shall, to the extent such power is at the time conferred on them by applicable law, also have the power to make, alter, amend or repeal the By-laws of the Corporation by the vote of at least two-thirds (2/3) of the votes entitled to be

cast by the holders of all outstanding shares of Voting Stock, voting together as one class. The term "Voting Stock" shall mean stock of any class or series of the Corporation entitled to vote in the election of Directors generally.

SEVENTH. [Intentionally omitted.]

EIGHTH. (a) The personal liability of the directors of the Corporation is hereby eliminated to the fullest extent permitted by Section 102(b)(7) of the General Corporation Law of the State of Delaware, as the same may be amended or supplemented.

(b) The Corporation shall, to the full extent permitted by Section 145 of the General Corporation Law of the State of Delaware, as amended from time to time, indemnify all persons whom it may indemnify pursuant thereto. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article EIGHTH shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement may be entitled under the Bylaws or any agreement, action of shareholders or disinterested directors or otherwise, both as to action in their official capacity and as to action in another capacity while holding such office of the Corporation, shall continue as to a person who has ceased to be a director or officer of the Corporation, and shall

inure to the benefit of the heirs, executors and administrators of such a person. Notwithstanding the foregoing, the indemnification obligations of the Corporation pursuant to this Article EIGHTH shall be limited to (i) officers, directors, agents and employees who, as of September 13, 1999, were employed by the Corporation or serving as directors of the Corporation, and (ii) agents and employees who were no longer employed by the Corporation as of September 13, 1999, other than such agents and employees who were officers and directors of the Corporation prior to September 13, 1999.

(c) No amendment, modification or repeal of this Article EIGHTH shall adversely affect any right or protection of a director or officer of the Corporation under or pursuant to this Article EIGHTH that exists at the time of such amendment, modification or repeal. This Article EIGHTH may not be amended, modified or repealed except by the affirmative vote of not less than two-thirds (2/3) of the votes entitled to be cast by the holders of all outstanding shares of Voting Stock, voting together as one class.

NINTH. The Corporation shall not be authorized to issue non-voting capital stock to the extent prohibited by Section 1123(a)(6) of Title 11 of the United States Code ("Bankruptcy Code"); provided, however, that this Article NINTH (a) will have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) will have only such force and effect, if any, for so long as such Section is in effect and applicable to the Corporation, and (c) in all events may be deemed void or eliminated in accordance with applicable law as from time to time in effect

TENTH. A. (1) Definitions. For the purposes of this Article TENTH, the following terms shall have the following meanings:

"Adoption Date" shall mean the date on which this Amended and Restated Certificate of Incorporation is filed with the Secretary of State of the State of Delaware.

"Beneficial Ownership" shall mean ownership of Shares by a Person who would be treated as an owner of such Shares either directly or constructively through the application of Section 318(a) of the Code, as modified by Section 856(d)(5) of the Code. The terms "Beneficial Owner," "Beneficially Own," "Beneficially Owns" and "Beneficially Owned" shall have the correlative meanings.

"Beneficiary" shall mean an organization or organizations described in Sections 170(b)(1)(A) and 170(c) of the Code and identified by the Board of Directors as the beneficiary or beneficiaries of the Trust.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Common Stock" shall mean outstanding Common Stock of the Corporation

as may be authorized and issued from time to time pursuant to Article FOURTH and any Shares convertible into or exchangeable for Common Stock as if such Shares had been so converted or exchanged.

"Excess Stock" shall mean Stock resulting from an event described in Section 3 of this Article TENTH.

"Existing Holder" shall mean Tenet so long as, but only for so long as, Ventas provides the Corporation on November 1st and May 1st of each year (each such date a "Certificate Delivery Date") with a certificate signed by an executive officer of Ventas certifying that (a) Tenet Beneficially Owns, and has Beneficially Owned at all times since May 1, 1998, in excess of nine percent (9.0%), in number of shares or value, of the outstanding Common Stock of Ventas, or nine and nine-tenths percent (9.9%), in number of shares or value, of the outstanding shares of any class or series of Preferred Stock of Ventas and (b) Tenet has the right under the Ventas Certificate of Incorporation to exceed such Beneficial Ownership limitations without any action on the part of the board of directors of Ventas (a "Certificate"); provided, however, that if Ventas fails
to deliver such Certificate to the Corporation within 30 days following the applicable Certificate Delivery Date, then the Corporation shall notify Ventas in writing of such failure, in which case "Existing Holder" shall continue to mean Tenet until such Certificate delivery failure shall remain unremedied for a period of 30 days following the date Ventas receives such written notice. For the avoidance of doubt, in the event Ventas fails to deliver a Certificate to the Corporation within 30 days following written notification from Vencor, Tenet shall immediately cease to be an "Existing Holder" hereunder.

"Existing Holder Limit" shall mean (a) with respect to Common Stock, that number of shares of Common Stock of the Corporation which, when added to the amount of Common Stock Beneficially Owned by Ventas, would equal nine and nine-tenths percent (9.9%), in number of shares or value, of the outstanding Common Stock of the Corporation, (b) with respect to Preferred Stock, that number of shares of Preferred Stock of the Corporation which, when added to the amount of Preferred Stock Beneficially Owned by Ventas, would equal nine and nine-tenths percent (9.9%), in number of shares or value, of the outstanding shares of any class or series of Preferred Stock of the Corporation, or (c) with respect to any other combination of the Common Stock, Preferred Stock and any other equity securities of the Corporation which, when added to all such securities Beneficially Owned by Ventas would equal nine and nine-

tenths percent (9.9%) of (i) the total combined voting power of all classes of stock of the Corporation entitled to vote or (ii) the total value of shares of all classes of stock of the Corporation.

"Lessor" shall mean any Person (or an affiliate of any such Person) that leases real property to the Corporation and has or is an affiliate of an entity that has elected to be taxed as a REIT under the Code.

"Market Price" shall mean the last reported sales price reported on the New York Stock Exchange of Shares of the relevant class on the trading day immediately preceding the relevant date, or if the Shares of the relevant class are not then traded on the New York Stock Exchange, the last reported sales price of Shares of the relevant class on the trading day immediately preceding the relevant date as reported on any exchange or quotation system over which the Shares of the relevant class may be traded, or if the Shares of the relevant class are not then traded over any exchange or quotation system, then the market price of the Shares of the relevant class on the relevant date as determined in good faith by the Board of Directors of the Corporation.

"Person" shall mean an individual, corporation, partnership, limited liability company, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity or any government or agency or political subdivision thereof and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended.

"Preferred Stock" shall mean outstanding Preferred Stock of the Corporation as may be authorized and issued from time to time pursuant to Article Fourth and any Shares convertible into or exchangeable for Preferred Stock as if such Shares had been so converted or exchanged.

"Purported Beneficial Transferee" shall mean, with respect to any purported Transfer which results in Excess Stock, the purported beneficial transferee for whom the Purported Record Transferee would have acquired Shares, if such Transfer had been valid under Section A.(2) of this Article TENTH.

"Purported Record Transferee" shall mean, with respect to any purported Transfer which results in Excess Stock, the record holder of the Shares if such Transfer had been valid under Section A.(2) of this Article TENTH.

"REIT" shall mean an entity which has elected to be treated as a real estate investment trust under Subchapter M of the Code.

"Shares" shall mean any of the common or preferred shares of the Corporation as may be authorized and issued from time to time pursuant to Article Fourth.

"Tenet" shall mean Tenet Healthcare Corporation and its successors.

"Transfer" shall mean any sale, transfer, gift, assignment, devise or other disposition of Shares (including (a) the granting of any option or entering into any agreement for the sale, transfer or other disposition of

Shares or (b) the sale, transfer, assignment or other disposition of any securities or rights convertible into or exchangeable for Shares), whether voluntary or involuntary, whether of record or beneficially and whether by operation of law or otherwise.

"Trust" shall mean any trust created by the Corporation as contemplated by Section B.(1) of this Article TENTH.

"Trustee" shall mean a Person, who shall be unaffiliated with the Corporation, any Purported Beneficial Transferee and any Purported Record Transferee, identified by the Board of Directors of the Corporation as the trustee of the Trust.

"Ventas" means Ventas, Inc. and its successors and assigns.

(2) Restrictions on Ownership and Transfer.

(a) From and after the Adoption Date, the Existing Holder shall not Beneficially Own Shares in excess of the Existing Holder Limit.

(b) From and after the Adoption Date, any Transfer that, if effective, would result in the Existing Holder Beneficially Owning Shares in excess of the Existing Holder Limit shall be void ab initio as to the Transfer of such Shares which would be otherwise Beneficially Owned by the Existing Holder in excess of the Existing Holder Limit, and the Existing Holder shall acquire no rights to such Shares.

(3) Designation of Excess Stock.

(a) If, notwithstanding the other provisions contained in this Article TENTH, at any time from and after the Adoption Date, there is a purported Transfer such that the Existing Holder would Beneficially Own Shares in excess of the Existing Holder Limit, then such number of Shares in excess of such Existing Holder Limit (rounded up to the nearest whole Share) shall be automatically designated as Excess Stock. Such designation shall be effective as of the close of business on the business day prior to the date of the purported Transfer.

(b) If, notwithstanding the other provisions contained in this Article TENTH, at any time from the Adoption Date, the Existing Holder purchases or otherwise acquires an interest in a Person which Beneficially Owns Shares (the "Purchase") and, as a result, the Existing Holder would Beneficially Own Shares in excess of the Existing Holder Limit, then such number of Shares in excess of such Existing Holder Limit (rounded up to the nearest whole Share) shall be automatically designated as Excess Stock. Such designation shall be effective as of the close of business on the business day prior to the date of the Purchase. In determining which Shares are designated as Excess Stock, Shares Beneficially Owned by the Existing Holder prior to the Purchase shall be

designated as Excess Stock before any Shares Beneficially Owned by the Person an interest in which is being so Purchased.

(c) If, notwithstanding the other provisions contained in this Article TENTH, at any time from and after the Adoption Date, there is a redemption, repurchase, restructuring or other transaction with respect to a Person that Beneficially Owns Shares (the "Entity") and, as a result, the Existing Holder would Beneficially Own Shares in excess of the Existing Holder Limit, then such number of Shares in excess of such Existing Holder Limit (rounded up to the nearest whole Share) shall be automatically designated as Excess Stock. Such designation shall be effective as of the close of business on the business day prior to the date of the transfer. In determining which Shares are designated as Excess Stock, Shares Beneficially owned by the Entity shall be designated as Excess Stock before any Shares Beneficially Owned by the Existing Holder (independently of such Existing Holder's interest in the Entity) are so designated.

(d) If, notwithstanding the other provisions contained in this Article TENTH, at any time from the Adoption Date, an event, other than an event described in Section A.(3)(a) through (c) of this Article TENTH, occurs which would, if effective, result in the Existing Holder Beneficially Owning Shares in excess of the Existing Holder Limit, then the smallest number of Shares Beneficially Owned by such Existing Holder which, if designated as Excess Stock, would result in such Existing Holder's Beneficial Ownership of Shares not being in excess of such Existing Holder Limit, shall be automatically designated as Excess Stock. Such designation shall be effective as of the close of business on the business day prior to the date of the relevant event.

(4) Notice of Ownership or Attempted Ownership in Violation of Section A.(2). Any Person who acquires or attempts to acquire Beneficial Ownership of Shares in violation of Section A.(2) shall immediately give written notice to the Corporation of such event.

(5) Owners Required to Provide Information.

From and after the Adoption Date:

(a) Tenet shall, within 30 days after January 1 of each year, give written notice to the Corporation stating the number of Shares Beneficially Owned, if any, and a description of how such Shares are held. Furthermore, each Beneficial Owner shall provide to the Corporation such additional information as the Corporation may request in order to determine the effect, if any, of such Beneficial Ownership on the status as a REIT of any Lessor of the Corporation.

(b) Each Person who is a Beneficial Owner of Shares and each Person

(including the stockholder of record) who is holding Shares for a Beneficial Owner shall provide to the Corporation such information as the Corporation may request, in good faith, in order to determine the effect of such Beneficial Ownership on the status of any Lessor of the Corporation as a REIT or any such Lessor's compliance with the regulations promulgated under the REIT provisions of the Code.

(c) Ventas shall provide to the Corporation information as the Corporation may request, in good faith, regarding (i) the Existing Holder's Beneficial Ownership of shares of stock in Ventas and (ii) Ventas' Beneficial Ownership of shares of stock in Vencor.

(6) Remedies for Breach. If the Board of Directors or its designees shall at any time determine in good faith that a Transfer has taken place in violation of Section A.(2) of this Article TENTH or that a Person intends to acquire or has attempted to acquire Beneficial Ownership of any Shares in violation of Section A.(2) of this Article TENTH, the Board of Directors shall take such action as it deems necessary to refuse to give effect or to prevent such Transfer (or any Transfer related to such intent), including but not limited to refusing to give effect to such Transfer on the books of the Corporation or instituting proceedings to enjoin such Transfer; provided, however, that any Transfers or attempted Transfers in violation of Sections A.(2)(a) and (b) of this Article TENTH shall automatically result in the designation of Excess Stock described in Section A.(3) of this Article TENTH, irrespective of any action (or non-action) by the Board of Directors.

(7) Ambiguity. In the case of an ambiguity in the application of any of the provisions of this Article TENTH, including any definition contained in Section A.(1) of this Article TENTH and any ambiguity with respect to which Shares are to be designated as Excess Stock in a given situation, the Board of Directors shall have the power to determine the application of the provisions of this Article TENTH with respect to any situation based on the facts known to it.

B. Excess Stock.

(1) Ownership in Trust. Upon any purported Transfer or other event that results in the designation of Shares as Excess Stock pursuant to Section A.(3) of this Article TENTH, such Excess Stock shall be deemed to have been transferred to the Trustee, as trustee of the Trust for the exclusive benefit of the Beneficiary. The Trust shall name a Beneficiary if one does not already exist, within five days of the discovery of any designation of any Excess Stock; provided, however, that the failure to so name a Beneficiary shall not affect

the designation of Shares as Excess Stock or the transfer thereof to the Trustee. Excess Stock so held in trust shall be issued and outstanding stock of the Corporation. The Purported Record Transferee shall have no rights in such Excess Stock except as provided in Section B.(5) of this Article TENTH.

(2) Dividend Rights. Any dividends (whether taxable as a dividend, return of capital or otherwise) on Excess Stock shall be paid to the Trust for the benefit of the Beneficiary. Upon liquidation, dissolution or winding up, the Purported Record Transferee shall receive, for each Excess Stock, the lesser of (a) the amount per share of any distribution made upon liquidation, dissolution or winding up or (b) the price paid by the Purported Record Transferee for the Excess Stock, or if the Purported Record Transferee did not give value for the Excess Stock, the Market Price of the Excess Stock on the day of the event causing the Excess Stock to be in held in trust. Any such dividend paid or distribution paid to the Purported Record Transferee in excess of the amount provided in the preceding sentence prior to the discovery by the Trust that the Shares with respect to which the dividend or distribution was made had been designated as Excess Stock shall be repaid, upon demand, to the Trust for the benefit of the Beneficiary.

(3) Rights Upon Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of, or any distribution of the assets of, the Corporation, (a) subject to the preferential rights of the Preferred Stock, if any, as may be determined by the

Board of Directors of the Corporation and the preferential rights of the Excess Preferred Stock, if any, the Trust shall be entitled to receive, ratably with each other holder of Common Stock and Excess Common Stock, that portion of the assets of the Corporation available for distribution to the holders of Common Stock or Excess Common Stock which bears the same relation to the total amount of such assets of the Corporation as the number of Shares of Excess Common Stock held by such holder bears to the total number of Shares of Common Stock and Excess Common Stock then outstanding, and (b) each holder of Excess Preferred Stock shall be entitled to receive that portion of the assets of the Corporation which a holder of the Preferred Stock that was exchanged for such Excess Preferred Stock would have been entitled to receive had such Preferred Stock remained outstanding. The Trust, as holder of the Excess Stock in trust, shall distribute ratably to the Beneficiaries of the Trust, when determined, any such assets received in respect of the Excess Stock in any liquidation, dissolution or winding up of, or any distribution of the assets of the Corporation.

(4) Voting Rights. The Trustee shall be entitled to vote the Excess Stock on behalf of the Beneficiary on any matter. Subject to Delaware law, any vote cast by a Purported Record Transferee with respect to the Excess Stock

prior to the discovery by the Corporation that the Excess Stock was held in trust will be rescinded ab initio; provided, however, that if the Corporation has already taken irreversible action with respect to a merger, reorganization, sale of all or substantially all of the assets, dissolution of the Corporation or other action by the Corporation, then the vote cast by the Purported Record Transferee shall not be rescinded. The owner of the Excess Stock will be deemed to have given an irrevocable proxy to the Trustee to vote the Excess Stock for the benefit of the Beneficiary.

Notwithstanding the provisions of this Article TENTH, until the Corporation has received written notification that Excess Stock have been transferred into a Trust, the Corporation shall be entitled to rely on its share transfer and other stockholder records for purposes of preparing lists of stockholders entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting votes of stockholders.

(5) Restrictions on Transfer. Excess Stock shall be transferable only as provided in this Section B.(5) of Article TENTH. At the direction of the Board of Directors, the Trustee shall transfer the Shares held in the Trust to a Person or Persons whose ownership of such Shares will not cause the Existing Holder to be treated as a Beneficial Owner of any such Shares. If such a transfer is made to such a Person or Persons, the interest of the Beneficiary shall terminate and proceeds of the sale shall be payable to the Purported Record Transferee and to the Beneficiary. The Purported Record Transferee shall receive the lesser of (a) the price paid by the Purported Record Transferee for the Shares or, if the Purported Record Transferee did not give value for the Shares, the Market Price of the Shares on the day of the event causing the Shares to be held in trust, or (b) the price received by the Trust from the sale or other disposition of the Shares. Any proceeds in excess of the amount payable to the Purported Record Transferee will be paid to the Beneficiary. The Trustee shall be under no obligation to obtain the highest possible price for the Excess Stock. It is expressly understood that the Purported Record Transferee may enforce the provisions of this Section against the Beneficiary.

C. Severability. If any provision of this Article TENTH or any application of any such provision is determined to be invalid by any Federal or state court having jurisdiction

over the issues, the validity of the remaining provisions shall not be affected and other applications of such provision shall be affected only to the extent necessary to comply with the determination of such court.

D. New York Stock Exchange Transactions. Nothing in this Article TENTH shall preclude the settlement of any transaction entered into through the

facilities of the New York Stock Exchange or other national securities exchange. The fact that the settlement of any transaction occurs or takes place shall not negate the effect of any other provision of this Article TENTH and any transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this Article TENTH.

E. Amendment of Article TENTH. For so long as there is an Existing Holder, this Article TENTH may not be amended, modified or repealed except by the affirmative vote of not less than ninety-five percent (95%) of each class of Voting Stock of the Corporation voting separately by class.

F. Termination. The provisions of this Article TENTH shall terminate and be of no further force and effect, automatically and with no action on the part of the Corporation, the Board of Directors or the shareholders of the Corporation, on the date on which there are no Existing Holders.

G. Liability. Neither the Corporation, nor any director, officer, shareholder, employee, agent or representative thereof, shall have any liability whatsoever to anyone (including, without limitation, Lessor or any director, officer, shareholder, employee, agent, representative or creditor thereof) for any acts or omissions, with respect to the terms of this Article TENTH which acts (or omissions) are taken in good faith in accordance with the provisions of this Article TENTH.

H. Legend. (1) Each certificate for Common Stock shall bear the following legend:

"The Common Stock represented by this certificate is subject to restrictions on ownership and transfer. The Existing Holder may not Beneficially Own any Common Stock in excess of the Existing Holder Limit. All capitalized terms used in this Legend have the meanings set forth in the Amended and Restated Certificate of Incorporation of the Corporation, a copy of which, including the restrictions on ownership and transfer, will be sent without charge to each stockholder who so requests. If the restrictions on ownership and transfer are violated, the Common Stock represented hereby will be automatically designated as Excess Stock which will be held in trust by the Trustee for the benefit of the Beneficiary."

Instead of the foregoing legend, the certificate may state that the Corporation will furnish a full statement about certain restrictions on transferability to a stockholder on request and without charge.

(2) Each certificate for Preferred Stock shall bear the following legend:

"The Preferred Stock represented by this certificate is subject to restrictions on ownership and transfer. The Existing Holder may not Beneficially Own any Preferred Stock in excess of the Existing Holder Limit. All capitalized terms used in this legend have the meanings set forth in the Amended and Restated Certificate of Incorporation of the Corporation, a copy of which, including the restrictions on ownership and transfer, will be sent without charge to each stockholder who so requests. If the restrictions on ownership and transfer are violated, the Preferred Stock represented hereby will be automatically designated as Excess Stock which will be held in trust by the Trustee for the benefit of the Beneficiary."

Instead of the foregoing legend, the certificate may state that the Corporation will furnish a full statement about certain restrictions on transferability to a stockholder on request and without charge.

ELEVENTH. The Corporation expressly elects not to be governed by Section 203 of the General Corporation Law of the State of Delaware.

TWELFTH. A. In the event that the Corporation proposes to redeem, repurchase or otherwise reacquire Shares or engage in any other transaction the result of which would increase Ventas' Beneficial Ownership in the Corporation in excess of nine and ninety-nine hundredths percent (9.99%) (an "Accretive Transaction"), then:

1. The Corporation shall give written notice to Ventas fifteen days prior to the consummation of the Accretive Transaction, specifying the material terms of the Accretive Transaction, including, if applicable, the price per Share to be paid by the Corporation in the Accretive Transaction (the "Accretive Transaction Per Share Price") and the number and percentage of each class of stock of the Corporation to be acquired in the Accretive Transaction.

2. Such written notice shall constitute an offer by the Corporation to purchase from Ventas, on the date immediately prior to the closing of the proposed Accretive Transaction (the "Article Twelfth Closing Date"), by wire transfer of immediately available funds, a number of Shares, at a price per share equal to the Article Twelfth Purchase Price (as defined below), such that after the consummation of the proposed Accretive Transaction, Ventas' Beneficial Ownership shall not exceed nine and ninety-nine hundredths percent (9.99%). For the avoidance of doubt, Ventas shall not be required to accept such offer.

3. The "Article Twelfth Purchase Price" shall equal the Accretive Transaction Per Share Price; provided, however, that if (x) the number of Shares to be purchased from Ventas pursuant to Section A.(2) of this Article TWELFTH exceeds 25,000 and (y) the Accretive Transaction giving rise to such repurchase obligation is a non-arm's-

length transaction (including without limitation a repurchase of Shares from employees, officers or directors of the Corporation), then the "Article Twelfth Purchase Price" shall equal the greater of (a) the Accretive Transaction Per Share Price and (b) either (i) if the Shares are admitted for trading on a national securities exchange, the average closing price of the

Shares for the ten trading days prior to the Article Twelfth Closing Date on the principal national securities exchange on which the Shares are admitted for trading, or (ii) if the Shares are not admitted for trading on a national securities exchange, but are admitted for trading on an interdealer quotation system, the average closing price of the Shares for the ten trading days prior to the Article Twelfth Closing Date on such interdealer quotation system, or (iii) if the Shares are not admitted for trading on a national securities exchange or on an interdealer quotation system, the fair market value as agreed upon in good-faith by Ventas and the Corporation. The Corporation shall make a supplemental payment to Ventas in the event that the actual Accretive Transaction Per Share Price exceeds the Accretive Transaction Per Share Price used to calculate the Article Twelfth Purchase Price.

4. If Ventas accepts the Corporation's offer contemplated by Section A.(2) of this Article TWELFTH by written notice to the Corporation no less than five days prior to the Article Twelfth Closing Date, the Shares to be repurchased from Ventas and the cash consideration therefor shall be transferred to and held in escrow as of the Article Twelfth Closing Date pending consummation of the Accretive Transaction. If the proposed Accretive Transaction is not consummated within fifteen days of the Article Twelfth Closing Date, and only in such event, then the repurchase of Shares by the Corporation from Ventas shall be rescinded and shall be null and void ab initio. In the event the proposed Accretive Transaction is consummated within such fifteen day period, the escrow shall be and shall be deemed to have been terminated immediately prior to the consummation of the Accretive Transaction and the Shares and funds shall be and shall be deemed to have been released to the Corporation and Ventas at such time, respectively.

B. Ventas shall promptly notify the Corporation in writing immediately upon any change in its Beneficial Ownership in the Corporation. Ventas shall not purchase or acquire any Shares of the Corporation other than from the Corporation so as to increase its Beneficial Ownership percentage in the Corporation to over 5%.

C. Any Accretive Transaction that is consummated by the Corporation in violation of this Article TWELFTH shall be null and void.

D. This Article TWELFTH may not be amended, modified or repealed except by the affirmative vote of not less than ninety-five percent (95%) of each class of Voting Stock of the Corporation, voting separately as a class.

E. Capitalized terms used in this Article TWELFTH but not otherwise defined shall have the meaning ascribed to them in Article TENTH. For purposes of this Article TWELFTH, "Ventas" shall mean Ventas, Inc., its subsidiaries, and their respective successors and assigns.

F. The provisions of this Article TWELFTH shall terminate and be of no further force and effect, automatically and with no action on the part of the Corporation, the Board of Directors or the shareholders of the Corporation, on the date on which Ventas ceases to Beneficially Own any Common Stock.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been executed as of the 20th day of April, 2001 on behalf of the Corporation by Richard A. Schweinhart, its Senior Vice President and Chief Financial Officer, thereby acknowledging under penalties of perjury that the foregoing Amended and Restated Certificate of Incorporation is the act and deed of the Corporation and that the facts stated therein are true.

VENCOR, INC.

By /s/ Richard A. Schweinhart

Name: Richard A. Schweinhart
Title: Senior Vice President and
Chief Financial Officer

EXHIBIT 3.2

AMENDED AND RESTATED

BY-LAWS

OF

KINDRED HEALTHCARE, INC.

ARTICLE I

Stockholders

Section 1.1. Annual Meetings. An annual meeting of stockholders shall be held for the election of directors at such date, time and place either within or without the State of Delaware as may be designated by the Board of Directors from time to time. Subject to Section 1.11, any other proper business may be transacted at the annual meeting.

Section 1.2. Special Meetings. Special meetings of stockholders may be called by (i) the Chairman of the Board, if any, (ii) pursuant to a resolution approved by a majority of the Board of Directors, or (iii) by written request to the Chairman of the Board by stockholders representing in excess of 50% of the then outstanding common stock entitled to vote. Any special meeting so called shall be held at such date, time and place either within or without the State of Delaware as may be stated in the notice of the meeting.

Section 1.3. Notice of Meetings. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the written notice of any meeting shall be given not less than ten nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation.

Section 1.4. Adjournments. Any meeting of stockholders, annual or special, may be adjourned from time to time, to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place

thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 1.5. Quorum. At each meeting of stockholders, except where otherwise provided by law or the Amended and Restated Certificate of Incorporation or these By-laws, the holders of a majority of the outstanding shares of stock entitled to vote on a matter at the meeting, present in person or represented by proxy, shall constitute a quorum. For purposes of the foregoing, where a separate vote by class or classes is required for any matter, the holders of a majority of the outstanding shares of such class or classes, present in person or represented by proxy, shall constitute a quorum to take action with respect to the vote on that matter. In the absence of a quorum of the holders of any class of stock entitled to vote on a matter, the holders of such class so present or represented may, by majority vote, adjourn the meeting of such class from time to time in the manner provided by Section 1.4 of these By-laws until a quorum of such class shall be so present or represented. Shares of its own capital stock belonging on the record date for the meeting to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section 1.6. Organization. Meetings of stockholders shall be presided over by the Chairman of the Board, if any, or in the absence of the Chairman of the Board by the Vice Chairman of the Board, if any, or in the absence of the Vice Chairman of the Board by the President, or in the absence of the President by a Vice President, or in the absence of the foregoing persons by a chairman designated by the Board of Directors, or in the absence of such designation by a chairman chosen at the meeting. The Secretary, or in the absence of the Secretary an Assistant Secretary, shall act as secretary of the meeting, but in the absence of the Secretary and any Assistant Secretary the chairman of the meeting may appoint any person to act as secretary of the meeting.

The order of business at each such meeting shall be as determined by the chairman of the meeting. The chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts and things as are necessary or desirable for the proper conduct of the meeting, including, without limitation, the establishment of procedures for the maintenance of order and safety, limitations on the time allotted to questions or comments on the affairs of the Corporation, restrictions on entry to such meeting after the time prescribed for the commencement thereof and the opening

and closing of the voting polls.

Section 1.7. Inspectors. Prior to any meeting of stockholders, the Board of Directors or the Chairman shall appoint one or more inspectors to act at such meeting and make a written report thereof and may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at the meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain the number of shares outstanding and the voting power of each, determine the shares represented at the meeting and the validity of proxies and ballots, count all votes and ballots, determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. The inspectors may appoint or retain other persons to assist them in the performance of their duties. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at

the meeting. No ballot, proxy or vote, nor any revocation thereof or charge thereto, shall be accepted by the inspectors after the closing of the polls. In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted therewith, any information provided by a stockholder who submits a proxy by telegram, cablegram or other electronic transmission from which it can be determined that the proxy was authorized by the stockholder, ballots and the regular books and records of the corporation, and they may also consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for such purpose, they shall, at the time they make their certification, specify the precise information considered by them, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

Section 1.8. Voting; Proxies. Unless otherwise provided in the Amended and Restated Certificate of Incorporation, each holder of common stock entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of common stock held by such stockholder which has voting power upon the matter in question. If the Amended and Restated Certificate of Incorporation provides

for more or less than one vote for any share on any matter, every reference in these By-laws to a majority or other proportion of stock shall refer to such majority or other proportion of the votes of such stock. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power, regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or another duly executed proxy bearing a later date with the Secretary of the Corporation. Voting at meetings of stockholders need not be by written ballot and need not be conducted by inspectors unless the holders of a majority of the outstanding shares of all classes of stock entitled to vote thereon present in person or represented by proxy at such meeting shall so determine. Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. In all other matters, unless otherwise provided by law or by the Amended and Restated Certificate of Incorporation or these By-laws, the affirmative vote of the holders of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. Where a separate vote by class or classes is required, the affirmative vote of the holders of a majority of the shares of such class or classes present in person or represented by proxy at the meeting shall be the act of such class or classes, except as otherwise provided by law or by the Amended and Restated Certificate of Incorporation or these By-laws.

Section 1.9. Fixing Date for Determination of Stockholders of Record. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any

meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 1.10. List of Stockholders Entitled to Vote. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present.

Section 1.11. Advance Notice of Stockholder Proposals. (a) The matters to be considered and brought before any annual or special meeting of stockholders of the Corporation shall be limited to only such matters, including the nomination and election of directors, as shall be brought properly before such meeting in compliance with the procedures set forth in this Section 1.11.

(b) For any matter to be properly before any annual meeting of stockholders, the matter must be (i) specified in the notice of annual meeting given by or at the direction of the Board of Directors, (ii) otherwise brought before the annual meeting by or at the direction of the Board of Directors or (iii) brought before the annual meeting in the manner specified in this Section 1.11(b) by a stockholder of record or a stockholder (a "Nominee Holder") that holds voting securities entitled to vote at meetings of stockholders through a nominee or "street name" holder of record and can demonstrate to the Corporation such indirect ownership and such Nominee Holder's entitlement to vote such securities. In addition to any other requirements

under applicable law and the Amended and Restated Certificate of Incorporation and By-laws of the Corporation, persons nominated by stockholders for election as Directors of the Corporation and any other proposals by stockholders shall be properly brought before the meeting only if notice of any such matter to be

presented by a stockholder at such meeting of stockholders (the "Stockholder Notice") shall be delivered to the Secretary of the Corporation at the principal executive office of the Corporation not less than 60 nor more than 90 days prior to the anniversary date of the annual meeting for the preceding year; provided, however, that if and only if the annual meeting is not scheduled to be held within a period that commences 30 days before such anniversary date, as the case may be, and ends 30 days after such anniversary date, as the case may be (an annual meeting date outside such period being referred to herein as an "Other Meeting Date"), such Stockholder Notice shall be given in the manner provided herein by the later of the close of business on (i) the date sixty (60) days prior to such Other Meeting Date or (ii) the tenth (10) day following the date such Other Annual Meeting Date is first publicly announced or disclosed. Any stockholder desiring to nominate any person or persons (as the case may be) for election as a Director or Directors of the Corporation shall deliver, as part of such Stockholder Notice, a statement in writing setting forth the name of the person or persons to be nominated, the number and class of all shares of each class of stock of the Corporation owned of record and beneficially by each such person, as reported to such stockholder by such nominee(s), the information regarding each such person required by paragraphs (a), (e) and (f) of Item 401 of Regulation S-K adopted by the Securities and Exchange Commission (or the corresponding provisions of any regulation subsequently adopted by the Securities and Exchange Commission applicable to the Corporation), each such person's signed consent to serve as a Director of the Corporation if elected, such stockholder's name and address, the number and class of all shares of each class of stock of the Corporation owned of record and beneficially by such stockholder and, in the case of a Nominee Holder, evidence establishing such Nominee Holder's indirect ownership of, and entitlement to vote, securities at the meeting of stockholders. Any stockholder who gives a Stockholder Notice of any matter proposed to be brought before the meeting (not involving nominees for director) shall deliver, as part of such Stockholder Notice, the text of the proposal to be presented and a brief written statement of the reasons why such stockholder favors the proposal and setting forth such stockholder's name and address, the number and class of all shares of each class of stock of the Corporation owned of record and beneficially by such stockholder, if applicable, any material interest of such stockholder in the manner proposed (other than as a stockholder) and, in the case of a Nominee Holder, evidence establishing such Nominee Holder's indirect ownership of, and entitlement to vote, securities at the meeting of stockholders. As used herein, shares "beneficially owned" shall mean all shares which such person is deemed to beneficially own pursuant to Rules 13d-3 and 13d-5 under the Securities and Exchange Act of 1934 (the "Exchange Act").

(c) Only such matters shall be properly brought before a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more Directors to the Board of Directors, any stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if the Stockholder Notice required by

Section 1.11(b) hereof shall be delivered to the Secretary of the Corporation at the principal executive office of the Corporation not later than the close of business on the tenth day following the day on which the

date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such a meeting is publicly announced or disclosed.

(d) For purposes of this Section 1.11, a matter shall be deemed to have been "publicly announced or disclosed" if such matter is disclosed in a press release or in a document publicly filed by the Corporation with the Securities and Exchange Commission.

(e) In no event shall the adjournment or postponement of an annual meeting, or any announcement thereof, commence a new period for the giving of notice as provided in this Section 1.11. This Section 1.11 shall not apply to shareholder proposals made pursuant to Rule 14a-8 under the Exchange Act.

(f) The person presiding at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall have the power and duty to determine whether notice of nominees and other matters proposed to be brought before a meeting has been duly given in the manner provided in this Section 1.11 and, if not so given, shall direct and declare at the meeting that such nominees and other matters shall not be considered.

ARTICLE II

Board of Directors

Section 2.1. Powers; Number; Qualifications. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, except as may be otherwise provided by law or in the Amended and Restated Certificate of Incorporation. The Board of Directors shall consist of seven (7) members. The number of members may be increased or decreased from time to time only by resolution adopted by the affirmative vote of not less than 80% of all Directors then in office. Directors need not be stockholders.

Section 2.2. Election; Term of Office; Resignation; Removal; Vacancies. Except as otherwise provided in these Bylaws, the Directors shall be elected at the annual meeting of stockholders and each shall serve until his or her successor shall be elected and qualified. Any Director may resign at any time, which resignation shall be made in writing and shall take effect at the time specified therein, and if no time be specified, at the time of its receipt by the Chief Executive Officer or Secretary of the Corporation. The acceptance of a resignation shall not be necessary to make it effective. Any Director, or the

entire Board of Directors, may be removed from office with or without cause but only by the affirmative vote of not less than two-thirds (2/3) of the votes entitled to be cast by the holders of all outstanding shares of Voting Stock (as defined herein), voting together as one class. If the office of any Director becomes vacant (due to resignation, removal or otherwise), the remaining Directors in office, though less than a quorum, by a majority vote, or the holders of a majority of all the shares of Voting Stock outstanding, may appoint any qualified person to fill such vacancy. Any Directors elected or appointed to fill a vacancy shall hold office until the next annual meeting of stockholders, and until his or her successor is elected and qualified or until his or her earlier resignation or removal. As used in these Bylaws the term "Voting Stock" shall mean stock of any class or series of the Corporation entitled to vote in the election of Directors generally.

Section 2.3. Regular Meetings. Regular meetings of the Board of Directors may be held at such places within or without the State of Delaware and at such times as the Board may from time to time determine, and if so determined notice thereof need not be given.

Section 2.4. Special Meetings. Special meetings of the Board of Directors may be held at any time or place within or without the State of Delaware whenever called by the Chairman of the Board, if any, by the President or pursuant to a resolution approved by a majority of the Board of Directors. Reasonable notice thereof shall be given by the person or persons calling the meeting.

Section 2.5. Participation in Meetings by Conference Telephone Permitted. Unless otherwise restricted by the Amended and Restated Certificate of Incorporation or these By-laws, members of the Board of Directors, or any committee designated by the Board, may participate in a meeting of the Board or of such committee, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this by-law shall constitute presence in person at such meeting.

Section 2.6. Quorum; Vote Required for Action. At all meetings of the Board of Directors one-half (1/2) of the entire Board shall constitute a quorum for the transaction of business. The vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board unless the Amended and Restated Certificate of Incorporation or these By-laws shall require a vote of a greater number. In case at any meeting of the Board a quorum shall not be present, the members of the Board present may adjourn the meeting from time to time until a quorum shall be present.

Section 2.7. Organization. Meetings of the Board of Directors shall be

presided over by the Chairman of the Board, if any, or in the absence of the Chairman of the Board by the Vice Chairman of the Board, if any, or in the absence of the Vice Chairman of the Board by the President, if a member of the Board of Directors, or if the President is not a member of the Board of Directors or in the President's absence by a chairman chosen at the meeting. The Secretary, or in the absence of the Secretary an Assistant Secretary, shall act as secretary of the meeting, but in the absence of the Secretary and any Assistant Secretary the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.8. Action by Directors Without a Meeting. Unless otherwise restricted by the Amended and Restated Certificate of Incorporation or these By-laws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board or of such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

Section 2.9. Compensation of Directors. Unless otherwise restricted by the Amended and Restated Certificate of Incorporation or these By-laws, the Board of Directors shall have the authority to fix the fees or other compensation of Directors for services to the Corporation, including attendance at meetings of the Board or committees of the Board.

ARTICLE III

Committees

Section 3.1. Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the Directors of the Corporation. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors or in these By-laws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (i) approving or adopting, or

recommending to the stockholders, any action or matter expressly required by law to be submitted to stockholders for approval, (ii) adopting, amending or repealing these By-laws or (iii) removing or indemnifying directors.

Section 3.2. Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board may adopt, amend and repeal rules for the conduct of its business. In the absence of a provision by the Board or a provision in the rules of such committee to the contrary, a majority of the entire authorized number of members of such committee shall constitute a quorum for the transaction of business, the vote of a majority of the members present at the time of such vote if a quorum is then present shall be the act of such committee, and in other respects each committee shall conduct its business in the same manner as the Board conducts its business pursuant to Article II of these By-laws.

ARTICLE IV

Officers

Section 4.1. Officers; Election. As soon as practicable after the annual meeting of stockholders in each year, the Board of Directors shall elect a President and a Secretary, and it may, if it so determines, elect from among its members a Chairman of the Board and a Vice Chairman of the Board. The Board may also elect one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Secretaries, a Treasurer and one or more Assistant Treasurers and such other officers as the Board may deem desirable or appropriate and may give any of them such further designations or alternate titles as it considers desirable. Any number of offices may be held by the same person unless the Amended and Restated Certificate of Incorporation or these By-laws otherwise provide.

Section 4.2. Term of Office; Resignation; Removal; Vacancies. Unless otherwise provided in the resolution by the Board of Directors electing any officer, each officer shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal. Any officer may resign at any time upon written notice to the Board or

to the President or the Secretary of the Corporation. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective. The Board may remove any officer with or without cause at any time. Any such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation, but the election of an officer shall not of itself create contractual rights. Any vacancy occurring in any office of the

Corporation by death, resignation, removal or otherwise may be filled by the Board at any regular or special meeting or by unanimous written consent.

Section 4.3. Powers and Duties. The officers of the Corporation shall have such powers and duties in the management of the Corporation as shall be stated in these By-laws or in a resolution of the Board of Directors which is not inconsistent with these By-Laws and, to the extent not so stated, as generally pertain to their respective offices, subject to the control of the Board. The Secretary shall have the duty to record the proceedings of the meetings of the stockholders, the Board of Directors and any committees in a book to be kept for that purpose. The Board may require any officer, agent or employee to give security for the faithful performance of his or her duties.

Section 4.4. Voting Upon Stock in Other Corporations. Unless otherwise ordered by the Board of Directors, the Chairman of the Board or the Vice Chairman of the Board, if any, or the President or any Executive Vice President or any Vice President or the Secretary or the Treasurer shall have full power and authority on behalf of the Corporation to execute and deliver a proxy or proxies for and/or to attend and to act and to vote at any meetings of stockholders of any corporation in which the Corporation may hold stock, and at any such meetings shall possess and may exercise any and all rights and powers incident to the ownership of such stock and which, as the owner thereof, the Corporation might have possessed and exercised if present. The Board of Directors, by resolution, from time to time, may confer like powers upon any other person or persons.

ARTICLE V

Stock

Section 5.1. Stock Certificates and Uncertificated Shares. The shares of stock in the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate theretofore issued until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board, every holder of stock represented by certificates, and upon request every holder of uncertificated shares, shall be entitled to have a certificate signed by or in the name of the Corporation by the Chairman or Vice Chairman of the Board, if any, or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the Corporation, representing the number of shares of stock registered in certificate form owned by such holder. If such certificate is manually signed by one officer or manually countersigned by a transfer agent or by a registrar, any other signature on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate

shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

If the Corporation is authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided by law, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated shares, the Corporation shall send to the registered owner thereof a written notice containing the information required by law to be set forth or stated on certificates or a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

Section 5.2. Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

ARTICLE VI

Miscellaneous

Section 6.1. Fiscal Year. The fiscal year of the Corporation shall be determined by the Board of Directors.

Section 6.2. Seal. The Corporation may have a corporate seal which shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors. The corporate seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 6.3. Waiver of Notice of Meetings of Stockholders, Directors and Committees. Whenever notice is required to be given by law or under any provision of the Amended and Restated Certificate of Incorporation or these By-laws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, Directors or members of a committee of Directors need be specified in any written waiver of notice unless so required by the Amended and Restated Certificate of Incorporation or these By-laws.

Section 6.4. Indemnification of Directors, Officers and Employees. The Corporation shall indemnify to the full extent permitted by law any person made or threatened to be made a party to any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person or such person's testator or intestate representative is or was a Director, officer or employee of the Corporation or serves or served at the request of the Corporation or any other enterprise as a Director, officer, member or employee. Notwithstanding the foregoing, the indemnification obligations of the Corporation pursuant to this Section 6.4 shall be limited to (i) officers, directors, agents and employees who as of September 13, 1999, were employed by the Corporation or serving as directors of the Corporation and (ii) agents and employees who were no longer employed by the Corporation as of September 13, 1999, other than such agents and employees who were officers and directors of the Corporation prior to September 13, 1999.

Expenses, including attorneys' fees, incurred by any such person in defending any such action, suit or proceeding shall be paid or reimbursed by the Corporation promptly upon receipt by it of an undertaking of such person to

repay such expenses if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation. The rights provided to any person by this by-law shall be enforceable against the Corporation by such person who shall be presumed to have relied upon it in serving or continuing to serve as a Director, officer or employee as provided above. No amendment of this by-law shall impair the rights of any person arising at any time with respect to events occurring prior to such amendment. For purposes of this by-law, the term "Corporation" shall include any predecessor of the Corporation and any constituent corporation (including any constituent of a constituent) absorbed by the Corporation in a consolidation or merger; the term "other enterprise" shall include any corporation, partnership, limited liability company, joint venture, trust or employee benefit plan; service "at the request of the Corporation" shall include service as a director, officer or employee of the Corporation which imposes duties on, or involves services by, such director, officer or employee with respect to an employee benefit plan, its participants or beneficiaries; any excise taxes assessed on a person with respect to an employee benefit plan shall be deemed to be indemnifiable expenses; and action by a person with respect to an employee benefit plan which such person reasonably believes to be in the interest of the participants and beneficiaries of such plan shall be deemed to be action not opposed to the best interests of the Corporation.

The indemnification and payment of expenses provided by, or granted pursuant to, this Section 6.4 shall not be deemed exclusive of any other rights to which those seeking

indemnification or payment of expenses may be entitled under any by-law, agreement, vote of stockholders or disinterested Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

Anything in these By-laws to the contrary notwithstanding, no elimination of this Section 6.4, and no amendment of this Section 6.4 adversely affecting the right of any person to indemnification hereunder, shall be effective until the 60th day following notice to such person of such action, and no elimination of or amendment to this Section 6.4 shall deprive any person of his or her rights hereunder arising out of alleged or actual events or acts occurring prior to such 60th day or actual or alleged failures to act prior to such 60th day.

The Corporation shall not, except by elimination or amendment of this Section 6.4 in a manner consistent with the preceding paragraph, take any corporate action or enter into any agreement which prohibits, or otherwise limits the rights of any person to, indemnification in accordance with the provisions of this Section 6.4. The indemnification of any person provided by this Section 6.4 shall continue after such person has ceased to be a Director, officer or employee of the Corporation and shall inure to the benefit of such person's heirs, executors, administrators and legal representatives.

Section 6.5. Interested Directors; Quorum. No contract or transaction between the Corporation and one or more of its Directors or officers, or between the Corporation and any other corporation, partnership, limited liability company, association or other organization in which one or more of its directors or officers are directors, members or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the Director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because his or her or their votes are counted for such purpose, if: (1) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or (2) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (3) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board, a committee thereof or the stockholders. Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

Section 6.6. Form of Records. Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on, or be in the form of, punch cards, magnetic tape, photographs, micro photographs or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect the same.

Section 6.7. Amendment of By-laws. The Board of Directors may amend or repeal these By-laws or adopt new By-laws by the affirmative vote of two-thirds (2/3) of the

Directors present at any meeting of the Board, assuming a quorum is present; provided, however, that the affirmative vote of not less than 80% of all Directors then in office shall be required to amend or repeal Section 2.1 hereof. The stockholders may amend or repeal these By-laws or adopt new By-laws only by the affirmative vote of at least two-thirds (2/3) of the then outstanding common stock entitled to vote.

EXHIBIT 4.1

WARRANT AGREEMENT

between

VENCOR, INC.

(to be renamed Kindred Healthcare, Inc.)

and

WELLS FARGO BANK OF MINNESOTA, N.A.

as Warrant Agent

Dated as of April 20, 2001

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WARRANT AGREEMENT, dated as of April 20, 2001, between Vencor, Inc. (to be renamed Kindred Healthcare, Inc.), a Delaware corporation (the "Company"), and Wells Fargo Bank Minnesota, National Association, as Warrant Agent (together with any successors and assigns, the "Warrant Agent").

W I T N E S S E T H:

WHEREAS, the Company and certain affiliates of the Company were Debtors and Debtors-in-Possession in the jointly administered cases (the "Chapter 11 Cases") filed under title 11 of the U.S. Code, as amended from time to time ("the Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), entitled "In re Vencor, Inc., et al., Debtors and Debtors in Possession," Chapter 11 Case Nos. 99-3199 through 99-3327;

WHEREAS, in connection with and as part of the transactions to be consummated pursuant to the confirmation of a Plan of Reorganization (as amended, modified or supplemented from time to time) of the Company and its affiliated debtors in the Chapter 11 Cases (the "Plan"), the Company has agreed to issue two series of Warrants (the "Series A Warrants" and the "Series B Warrants" and, collectively, the "Warrants"), with the Series A Warrants exercisable for the purchase of an aggregate of 2,000,000 shares of Common Stock (as defined herein) of the Company and the Series B Warrants exercisable for the purchase of an aggregate of 5,000,000 shares of Common Stock of the Company;

WHEREAS, by Order signed by the Bankruptcy Court on March 16, 2001 and entered on the docket of the Bankruptcy Court on March 19, 2001, the Bankruptcy

Court confirmed the Plan;

WHEREAS, the Plan contemplates that the Company will enter into certain agreements, including, without limitation, this Warrant Agreement;

WHEREAS, the Company desires to issue the Warrants, each of which entitles the holder thereof to purchase one share of its Common Stock (each of said shares of Common Stock deliverable upon exercise of the Warrants, a "Warrant Share"); and

WHEREAS, the Company wishes the Warrant Agent to act on behalf of the Company, and the Warrant Agent is willing to so act in connection with the issuance, division, transfer, exchange and exercise of Warrants.

NOW, THEREFORE, in consideration of the foregoing, to implement the terms of the Plan, and for the purpose of defining the terms and provisions of the Warrants and the respective rights and obligations thereunder of the Company and the registered owners of the Warrants (the "Holders") and any security into which they may be exchanged, the Company and the Warrant Agent hereby agree as follows:

Section 1. Definitions. The following terms, as used herein, have the following meanings (all terms defined in the singular to have the correlative meanings when used in the plural and vice versa):

"Agreement" means this Warrant Agreement, as the same may be amended,\\ modified or supplemented from time to time.\\

"Assets" has the meaning ascribed to such term in Section 9.1(c) hereof.

"Business Day" means a day other than (a) a Saturday or Sunday, (b) any day on which banking institutions located in the City of New York, New York or Minneapolis, Minnesota are required or authorized by law or by local proclamation to close, or (c) any day on which the New York Stock Exchange is closed.

"Commercially Reasonable Efforts", when used with respect to any obligation to be performed or term or provision to be observed hereunder, means such efforts as a reasonably prudent Person seeking the benefits of such performance or action would make, use, apply or exercise to preserve, protect or advance its rights or interests, provided that such efforts do not require such Person to incur a material financial cost or a substantial risk of material liability unless such cost or liability (i) would customarily be incurred in the course of performance or observance of the relevant obligation, term or provision, (ii) is caused by or results from the wrongful act or negligence of the Person whose performance or observance is required hereunder, or (iii) is not excessive or unreasonable in view of the rights or interests to be preserved, protected or advanced. Such efforts may include, without limitation, the expenditure of such funds and retention by such Person of such accountants, attorneys or other experts or advisors as may be necessary or appropriate to effect the relevant action; the undertaking of any special audit or internal investigation that may be necessary or appropriate to effect the relevant action; and the commencement, termination or settlement of any action, suit or proceeding involving such Person to the extent necessary or appropriate to effect the relevant action.

"Common Stock" means the common stock, par value $0.25 per share, of the Company after the Effective Date (defined in the Plan as "New Common Stock").

"Convertible Securities" has the meaning ascribed to such term in Section 9.1(d) hereof.

"Effective Date" has the meaning ascribed to such term in the Plan.

"Exercise Period" has the meaning ascribed to such term in Section 4.1
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hereof.

"Exercise Price" means, collectively, (i) $30.00 per Warrant Share for the
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Series A Warrants (the "Series A Exercise Price") and (ii) $33.33 per Warrant
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Share for the Series B Warrants (the "Series B Exercise Price"), in each case as
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adjusted pursuant to Section 9 hereof.

"Holder" has the meaning ascribed to such term in the preamble hereto.

"NASD" has the meaning ascribed to such term in Section 4.2 hereof.

"Person" means a natural person, a corporation, a partnership, a trust, a
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joint venture, any regulatory authority or any other entity or organization.

"Plan" has the meaning ascribed to such term in the preamble hereto.

"Price Per Share" has the meaning ascribed to such term in Section
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9.1(e)(ii) hereof.

"Rights" has the meaning ascribed to such term in Section 9.1(b) hereof.

"SEC" means the U.S. Securities and Exchange Commission, or any successor
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governmental agency or authority thereto.

"Series A Warrants" has the meaning ascribed to such term in the preamble
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hereto.

"Series B Warrants" has the meaning ascribed to such term in the preamble
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hereto.

"Subsidiary" has the meaning ascribed to such term in Section 9.1(c)
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hereof.

"Transfer Agent" has the meaning ascribed to such term in Section 7 hereof.

"Warrant" has the meaning ascribed to such term in the preamble hereto.

"Warrant Certificate" has the meaning ascribed to such term in Section 2.1
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hereof

"Warrant Register" has the meaning ascribed to such term in Section 2.2
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hereof.

"Warrant Share" has the meaning ascribed to such term in the preamble
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hereto.

Section 2. Form of Warrant; Execution; Registration.

2.1 Form of Warrant; Execution of Warrants. The certificates evidencing the Series A Warrants and the Series B Warrants (collectively, the "Warrant Certificates") shall be in registered form only and shall be issued initally in the form of a single, global Warrant Certificate for the Series A Warrants and a single global Warrant Certificate for the Series B Warrants, substantially in the form set forth as Exhibit A and Exhibit B hereto, respectively, and in each case (i) bearing the legend set forth in Exhibit C hereto, (ii) registered in the name of The Depository Trust Company (the "DTC") or its nominee and (iii) deposited with the Warrant Agent as custodian for the Holder. Transfers of beneficial interests in, and exercises of, Warrants evidenced by a global Warrant Certificate may only be made in accordance with the rules and regulations of the DTC. Beneficial interests in Warrants evidenced by a global Warrant Certificate may be exchanged upon request, in whole or in part, (a) in respect of Series A Warrants, for a definitive Warrant Certificate substantially in the form of Exhibit A hereto and (b) in respect of Series B Warrants, for a definitive Warrant Certificate substantially in the form of Exhibit B hereto, in each case registered in the name of the holder. The Warrant Certificates shall be signed on behalf of the Company by its Chairman of the Board, Chief Executive Officer, Chief Financial Officer or one of its Vice Presidents. The signature of any such officer on the Warrant Certificates may be manual or by facsimile. Any Warrant Certificate may be signed on behalf of the Company by any person who, at the actual date of the execution of such Warrant Certificate, shall be a proper officer of the Company to sign such Warrant Certificate. Each Warrant Certificate shall be dated the date it is countersigned by the Warrant Agent pursuant to Section 2.3 hereof.

2.2 Registration. The Warrant Certificates shall be numbered and shall be registered on the books of the Company maintained at the principal office of the Warrant Agent initially in Minneapolis, Minnesota (or such other place in the continental United States as the Warrant Agent shall from time to time notify the Company and the Holders in writing) (the "Warrant Register") as they are issued. The Company and the Warrant Agent shall be entitled to treat the registered owner of any Warrant as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in such Warrant on the part of any other person.

2.3 Countersignature of Warrants. The Warrant Certificates shall be manually countersigned by the Warrant Agent and shall not be valid for any purpose unless so countersigned. Warrant Certificates may be countersigned, however, by the Warrant Agent and may be delivered by the Warrant Agent notwithstanding that the persons whose manual or facsimile signatures appear thereon as proper officers of the Company shall have ceased to be such officers at the time of such countersignature, issuance or delivery. The Warrant Agent shall, upon written instructions of the Chairman of the Board, the Chief Executive Officer, Chief Financial Officer or any Vice President of the Company, countersign, issue and deliver Warrant Certificates entitling the Holders thereof to purchase not more than an aggregate of 7,000,000 Warrant Shares (subject to adjustment pursuant to Section 9 hereof) and shall countersign, issue and deliver Warrant Certificates as otherwise provided in this Agreement.

Section 3. Transfer and Exchange of Warrants. Subject to the terms hereof, the Warrant Agent shall initially countersign, register in the Warrant Register and deliver Warrants hereunder in accordance with the written instructions of the Company. Subject to the terms hereof and the receipt of such documentation as the Warrant Agent may reasonably require, the Warrant Agent shall thereafter from time to time register the transfer of any outstanding Warrants upon the Warrant Register upon surrender of the Warrant Certificate or Certificates evidencing such Warrants duly endorsed or accompanied (if so required by it) by

a written instrument or instruments of transfer in form reasonably satisfactory to the Warrant Agent, duly executed by the registered Holder or Holders thereof or by the duly appointed legal representative thereof or by a duly authorized attorney. Subject to the terms of this Agreement, each Warrant Certificate may be exchanged for another Warrant Certificate or Certificates entitling the Holder thereof to purchase a like aggregate number of Warrant Shares, at the same exercise price and having the same term, as the surrendered Warrant Certificate or Certificates then entitles such Holder to purchase. Any Holder desiring to exchange a Warrant Certificate or Certificates shall make such request in writing delivered to the Warrant Agent, and shall surrender, duly endorsed or accompanied (if so required by the Warrant Agent) by a written instrument or instruments of transfer in form reasonably satisfactory to the Warrant Agent, the Warrant Certificate or Certificates to be so exchanged. Upon registration of transfer, the Company shall issue and the Warrant Agent shall countersign and deliver by certified mail a new Warrant Certificate or Certificates to the persons entitled thereto. Upon any partial transfer, a new Warrant Certificate of like tenor and representing in the aggregate the number of Warrants which were not so transferred, shall be issued to, and in the name of, the Holder.

No service charge shall be made for any exchange or registration of transfer of a Warrant Certificate or of Warrant Certificates, but the Company may require payment of a sum sufficient

to cover any stamp tax or other tax or other governmental charge that is imposed in connection with any such exchange or registration of transfer pursuant to Section 5 hereof.

By accepting the initial delivery, transfer or exchange of Warrants, each Holder shall be deemed to agree to the terms of this Agreement as it may be in effect from time to time, including any amendments or supplements duly adopted in accordance with Section 18 hereof.

Section 4. Term of Warrants; Exercise of Warrants; Compliance with Government Regulation.

4.1 Term of Warrants. Subject to the terms of this Agreement, each Holder shall have the right, until the expiration of the applicable Exercise Period for the Warrants held, to receive from the Company the number of Warrant Shares which the Holder may at the time be entitled to receive upon exercise of such Warrants and payment of the Exercise Price then in effect for such Warrant Shares, and the Warrant Shares issued to a Holder upon exercise of its Warrants shall be duly authorized, validly issued, fully paid and nonassessable. Each Warrant not exercised prior to the expiration of its Exercise Period shall become void, and all rights thereunder and all rights in respect thereof under this Agreement shall cease as of the expiration of such Exercise Period. The Exercise Period for the Warrants shall begin at 9:00 a.m., New York City time, on the date of their issuance, and end at 5:00 p.m, New York City time, on April 20, 2006 (five years after the Effective Date).

4.2 Exercise of Warrants. During the Exercise Period, each Holder may, subject to this Agreement, exercise from time to time some or all of the Warrants evidenced by its Warrant Certificate(s) by (i) surrendering to the Company at the principal office of the Warrant Agent such Warrant Certificate(s) with the form of election to purchase on the reverse thereof duly filled in and signed, which signature shall be guaranteed by a bank or trust company having an office or correspondent in the United States or a broker or dealer which is a member of a registered security exchange or the National Association of Securities Dealers, Inc. (the "NASD"), or, to the extent held in "street" name, Holder shall comply with applicable law, and (ii) paying to the Warrant Agent for the account of the Company the aggregate Exercise Price for the number of Warrant Shares in respect of which such Warrants are exercised. Warrants shall be deemed exercised on the date such Warrant Certificate(s) are surrendered to the Warrant Agent and tender of payment of the aggregate Exercise Price is

received by the Warrant Agent. Payment of the aggregate Exercise Price shall be made in cash by wire transfer of immediately available funds to the Warrant Agent for the account of the Company.

Upon the exercise of any Warrants in accordance with this Agreement, the Company shall issue and cause to be delivered promptly, to or upon the written order of the Holder and in the name of the Holder, a certificate or certificates for the number of full Warrant Shares issuable upon exercise of such Warrants, and shall take such other actions as are reasonably necessary to complete the exercise of such Warrants (including, without limitation, payment of any cash with respect to fractional interests required under Section 10 hereof). The Warrant Agent shall have no responsibility or liability for such issuance or the determination of the number of Warrant Shares issuable upon such exercise. The certificate or certificates representing such Warrant Shares shall have been issued and the Holder shall be deemed to have become a holder of record of such Warrant Shares as of the date such Warrants are exercised in accordance with the terms

hereunder. Each Warrant Share, when issued upon exercise of the Warrants, shall be duly authorized, validly issued, fully paid and non-assessable and shall be delivered free and clear of all claims, liens, charges, security interests or encumbrances of any kind, including without limitation any preemptive or similar rights.

In the event that less than all of the Warrants evidenced by a Warrant Certificate are exercised, the Holder thereof shall be entitled to receive a new Warrant Certificate or Certificates as specified by such Holder evidencing the remaining Warrants, and the Warrant Agent is hereby irrevocably authorized by the Company to countersign, issue and deliver the required new Warrant Certificate or Certificates evidencing such remaining Warrants pursuant to the provisions of this Section 4.2 hereof and of Section 3 hereof. The Company, whenever required by the Warrant Agent, will supply the Warrant Agent with Warrant Certificates duly executed on behalf to the Company for such purpose.

Upon delivery of the Warrant Shares issuable upon exercise in accordance herewith and of any required new Warrant Certificates, the Company shall direct the Warrant Agent by written order to cancel the Warrant Certificates surrendered upon exercise. Such canceled Warrant Certificates shall then be disposed of by the Warrant Agent in a manner permitted by applicable law and satisfactory to the Company in accordance with its written instructions to the Warrant Agent. The Warrant Agent shall inform promptly the Company with respect to Warrants exercised and concurrently pay to the Company all amounts received by the Warrant Agent upon exercise of such Warrants.

The Warrant Agent shall keep copies of this Agreement and any notices given or received hereunder available for inspection by the Holders during normal business hours at its office. The Company shall supply the Warrant Agent from time to time with such numbers of copies of this Agreement as the Warrant Agent may reasonably request.

4.3 Compliance with Government Regulations; Qualification under Securities Laws. The Company is issuing the Warrants based upon the belief that the issuance and the exercise of the Warrants, and the issuance of the Warrant Shares upon exercise of the Warrants, are exempt from registration under the Federal securities laws pursuant to Section 1145 of the Bankruptcy Code. The Company covenants that if, following a due demand to exercise Warrants, any Warrant Shares required to be reserved for purposes of exercise of such Warrants require, under any federal or state law, registration with or approval of any governmental authority before such shares may be issued upon exercise, and the Holder requesting the exercise of a Warrant provides an opinion of counsel acceptable to the Company to the effect that the exercise of the Warrant requires registration, then the Company will, unless the Company has received an opinion of counsel to the effect that such registration is not then required by such laws, use its Commercially Reasonable Efforts to cause such shares to be so registered or approved, as the case may be; provided that in no event shall such Warrant Shares be issued, and the exercise of all such Warrants shall be

suspended, for the period from the date of such due demand for exercise until such registration or approval is in effect; provided, further, that the Exercise Period for such Warrants (but only such Warrants) shall be extended one day for each day (or portion thereof) that any such suspension is in effect. The Company shall promptly notify the Warrant Agent of any such suspension, and the Warrant Agent shall have no duty, responsibility or liability in respect of any Warrant Shares issued or delivered prior to its receipt of such notice.

The Company shall promptly notify the Warrant Agent of the termination of any such suspension, and such notice shall set forth the number of days that the Exercise Period with respect to such Warrants shall be extended as a result of such suspension.

Section 5. Payment of Taxes. The Company will pay all documentary stamp and other like taxes, if any, attributable to the initial issuance and delivery of the Warrants and the initial issuance and delivery of the Warrant Shares upon the exercise of Warrants, provided, that the Company shall not be required to pay any tax or taxes which may be payable in respect of any transfer of the Warrants, and the Warrant Agent shall not register any such transfer or issue or deliver any Warrant Certificate(s) unless or until the persons requesting the registration or issuance shall have paid to the Warrant Agent for the account of the Company the amount of such tax (which the Warrant Agent shall then apply to the payment of such tax), if any, or shall have established to the reasonable satisfaction of the Company that such tax, if any, has been paid.

Section 6. Mutilated or Missing Warrant Certificates. In the event that any Warrant Certificate shall be mutilated, lost, stolen or destroyed, the Company shall issue, and at the direction of the Company by written order the Warrant Agent shall countersign and deliver in exchange and substitution for and upon cancellation of the mutilated Warrant Certificate or in lieu of and substitution for the Warrant Certificate lost, stolen or destroyed, a new Warrant Certificate of like tenor and representing all equivalent right or interest, but only upon receipt of evidence reasonably satisfactory to the Company and the Warrant Agent of such loss, theft or destruction of such Warrant Certificate and an indemnity or bond, if requested by the Company or the Warrant Agent, also reasonably satisfactory to them. An applicant for such a substitute Warrant Certificate shall also comply with such other reasonable procedures as the Company or the Warrant Agent may reasonably require.

Section 7. Reservation of Warrant Shares. There have been reserved, and the Company shall at all times keep reserved, free from preemptive rights, out of its authorized Common Stock a number of shares of Common Stock sufficient to provide for the exercise of the rights of purchase represented by the outstanding Warrants. The transfer agent for the Common Stock and every subsequent or other transfer agent for any shares of the Company's capital stock issuable upon the exercise of the Warrants (each, a "Transfer Agent") will be and are hereby irrevocably authorized and directed at all times to reserve such number of authorized shares as shall be required for such purpose. The Company will keep a copy of this Agreement on file with each Transfer Agent. The Warrant Agent is hereby irrevocably authorized to requisition from time to time from the Company or a Transfer Agent, as the case may be, the certificates for Warrant Shares required to honor outstanding Warrants upon exercise thereof in accordance with the terms of this Agreement. The Company will supply its Transfer Agent with duly executed stock certificates for such purposes and will promptly provide or otherwise make available any cash which may be payable as provided in Section 10 hereof. The Company will furnish to its Transfer Agent a copy of all notices of adjustments and certificates related thereto, transmitted to each Holder pursuant to Section 9.2 hereof. The Company will give the Warrant Agent prompt notice of any change in any Transfer Agent or any change of address of any Transfer Agent.

Before taking any action which would cause an adjustment pursuant to Section 9 reducing the Exercise Price, the Company will take any and all

corporate action which may be

necessary in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares (free of preemptive rights and free from all taxes, liens, charges and security interests with respect to the issuance thereof) at the Exercise Price as so adjusted.

Section 8 Listings; Quotation. The Company shall use its Commercially Reasonable Efforts (including requests for waivers) to have each series of the Warrants listed on a national securities exchange or included for quotation in the Nasdaq National Market or the Nasdaq Small Cap Market, and shall use its Commercially Reasonable Efforts to maintain such listing or inclusion. In the event the Warrants do not qualify for such listing or inclusion, the Company will use its Commercially Reasonable Efforts (including requests for waivers) to achieve such qualification and to effect such inclusion or listing whenever the Warrants qualify therefor, and prior to such time, shall use Commercially Reasonable Efforts to cause some other customary trading market to admit the Warrants for trading.

Section 9 Adjustment of Exercise Price; Number of Warrant Shares into Which Warrants are Exercisable. The number and kind of securities purchasable upon the exercise of each Warrant, and the Exercise Price, shall be subject to adjustment from time to time upon the happening of certain events, as hereinafter described. The Warrant Agent shall be fully protected in relying on the certificate described in Section 9.2 below regarding the adjustment and on any adjustment therein contained, and shall not be obligated or responsible for calculating any adjustment, nor shall it be deemed to have knowledge of such an adjustment unless and until it shall have received such certificate.

9.1 Mechanical Adjustments. The number of Warrant Shares purchasable upon the exercise of each Warrant and the Exercise Price shall be subject to adjustment as follows:

(a) Adjustment for Change in Capital Stock. Subject to paragraphs (f) and (h) below, in the event the Company (i) pays a dividend on all its outstanding shares of Common Stock in shares of Common Stock, or makes a distribution of shares of Common Stock on all its outstanding shares of Common Stock; (ii) makes a distribution on all its outstanding shares of Common Stock in shares of its capital stock other than Common Stock; (iii) subdivides its outstanding shares of Common Stock into a greater number of shares of Common Stock; (iv) combines its outstanding shares of Common Stock into a smaller number of shares of Common Stock; or (v) issues, by reclassification of its shares of Common Stock, other securities of the Company (including any such reclassification in connection with a consolidation or merger in which the Company is the surviving entity), then the number of Warrant Shares purchasable upon exercise of each Warrant immediately prior thereto shall be adjusted so that the Holder of each Warrant shall be entitled to receive upon the exercise of the Warrant the kind and number of Warrant Shares or other securities of the Company which such Holder would have owned or have been entitled to receive upon the happening of any of the events described above had such Warrant been exercised in full immediately prior to the happening of such event or any record date with respect thereto. If a Holder is entitled to receive shares of two or more classes of capital stock of the Company pursuant to the foregoing upon exercise of Warrants, the allocation of the adjusted Exercise Price between such classes of capital stock shall be determined reasonably and in good faith by the Board of Directors of the Company. After such allocation, the exercise privilege and the Exercise Price with respect to each class of capital stock shall thereafter be subject to adjustment on terms substantially identical to those applicable to

Common Stock in this Section 9. An adjustment made pursuant to this paragraph (a) shall become effective immediately after the record date for such event or, if none, immediately after the effective date of such event. Such adjustment shall be made successively whenever such an event occurs.

(b) Adjustment for Rights Issue. Subject to paragraphs (f), (h) and (k) below, in case the Company shall issue rights, options or warrants (collectively, "Rights") to all holders of its outstanding Common Stock entitling them to subscribe for or purchase shares of Common Stock at a Price Per Share (as defined in paragraph (e) below) which is lower at the record date mentioned below than the Current Market Price (as defined in paragraph (e) below) per share of Common Stock on such record date, then the number of Warrant Shares thereafter purchasable upon the exercise of each Warrant shall be determined (subject to readjustment pursuant to Section 9.1(k) below) by multiplying the number of Warrant Shares theretofore purchasable upon exercise of each Warrant by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding on the date of issuance of such Rights plus the additional Number of Shares (as defined in paragraph (e) below) of Common Stock offered for subscription or purchase in connection with such Rights and the denominator of which shall be the number of shares of Common Stock outstanding on the date of issuance of such Rights plus the number of shares of Common Stock which the aggregate Proceeds (as defined in paragraph (e) below) received or receivable by the Company upon exercise of such Rights would purchase at the Current Market Price per share of Common Stock at such record date. Such adjustment shall be made whenever Rights are actually issued, and shall become effective on the date of distribution retroactive to the record date for the determination of stockholders entitled to receive such Rights.

(c) Adjustment for Other Distributions. Subject to paragraphs (f) and (h) below, in case the Company shall distribute to all holders of shares of its outstanding Common Stock (x) evidences of indebtedness or assets (excluding cash dividends or distributions payable out of the consolidated earnings or surplus legally available for such dividends or distributions and dividends or distributions referred to in paragraphs (a) or (b) above) of the Company or any corporation or other legal entity a majority of the voting equity or equity interests of which are owned, directly or indirectly, by the Company (a "Subsidiary"), or (y) shares of capital stock of a Subsidiary (such evidences of indebtedness, assets and securities as set forth in clauses (x) and (y) above, collectively, "Assets"), then in each case the number of Warrant Shares thereafter purchasable upon the exercise of each Warrant shall be determined by multiplying the number of Warrant Shares theretofore purchasable upon the exercise of each Warrant by a fraction, the numerator of which shall be the Current Market Price per share of Common Stock on the date of such distribution and the denominator of which shall be such Current Market Price per share of Common Stock less the fair value as of such record date as determined reasonably and in good faith by the Board of Directors of the Company of the portion of the Assets applicable to one share of Common Stock. Such adjustment shall be made whenever any such distribution is made, and shall become effective on the date of distribution retroactive to the record date for the determination of stockholders entitled to receive such distribution.

(d) Adjustment for Common Stock and Convertible Securities Issue. Subject to paragraphs (f) and (h) below, in case the Company shall issue shares of its Common Stock, or securities convertible into, or exchangeable or exercisable for Common Stock or Rights to

subscribe for or purchase such securities (collectively, "Convertible Securities") (excluding the issuance of (i) Common Stock or Convertible

Securities issued in any of the transactions described in paragraphs (a), (b) or (c) above or (ii) Warrant Shares issued upon the exercise of the Warrants), at a Price Per Share of Common Stock, in the case of the issuance of Common Stock, or at a Price Per Share of Common Stock initially deliverable upon conversion, exercise or exchange of such Convertible Securities, in each case, together with any other consideration received by the Company in connection with such issuance, below the Current Market Price per share of Common Stock on the date the Company fixed the offering, conversion or exercise or exchange price of such additional shares, then the number of Warrant Shares thereafter purchasable upon the exercise of each Warrant shall be determined by multiplying the number of Warrant Shares theretofore purchasable upon exercise of each Warrant by a fraction, the numerator of which shall be the total number of shares of Common Stock outstanding on such date plus the additional Number of Shares (as defined below) offered for subscription or purchase and the denominator of which shall be the number of shares of Common Stock outstanding on such date plus the additional Number of Shares which the aggregate Proceeds (as defined below) of the total amount of Convertible Securities so offered would purchase at the Current Market Price per share of Common Stock at such record date. In case the Company shall issue and sell Convertible Securities for a consideration consisting, in whole or in part, of property other than cash or its equivalent, then in determining the "Price Per Share" of Common Stock and the "consideration received by the Company" for purposes of this paragraph (d), the Board of Directors of the Company shall reasonably and in good faith determine the fair value of such property. The determination of whether any adjustment is required under this paragraph (d), by reason of the sale and issuance of any Convertible Securities and the amount of such adjustment, if any, shall be made at such time and not at the subsequent time of issuance of shares of Common Stock upon the exercise, conversion or exchange of Convertible Securities.

(e) Current Market Price; Price Per Share. (i) For the purpose of any computation under this Section 9.1, the "Current Market Price" per share of Common Stock at any date shall be the volume weighted daily average prices for the 20 consecutive trading days preceding the date of such computation. The closing price for each day shall be (x) if the Common Stock shall be then listed or admitted to trading on the New York Stock Exchange, the closing price on the NYSE - Consolidated Tape (or any successor composite tape reporting transactions on the New York Stock Exchange) or (y) if such a composite tape shall not be in use or shall not report transactions in the Common Stock, or if the Common Stock shall be listed on a stock exchange other than the New York Stock Exchange, the last reported sales price regular way or, in case no such reported sale takes place on such day, the average of the closing bid and asked prices regular way for such day, in each case on the principal national securities exchange on which the shares of Common Stock are listed or admitted to trading (which shall be the national securities exchange on which the greatest number of shares of the Common Stock have been traded during such 20 consecutive trading days) or (z) if the Common Stock is not listed or admitted to trading, the average of the closing bid and asked prices of the Common Stock in the over-the-counter market as reported by the Nasdaq National Market or any comparable system or, if the Common Stock is not included for quotation in the Nasdaq National Market or a comparable system, the average of the closing bid and asked prices as furnished by two members of the NASD selected reasonably and in good faith from time to time by the Board of Directors of the Company for that purpose. In the absence of one or more such quotations, the Current Market Price per share of

the Common Stock shall be determined reasonably and in good faith by the Board of Directors of the Company.

(ii) For purposes of this Section 9.1, "Price Per Share" shall be defined and determined according to the following formula:

$$P = R/N$$

Where

P = Price Per Share;

R = the "Proceeds" received or receivable by the Company which (x) in the case of shares of Common Stock is the total amount received or receivable by the Company in consideration for the issuance and sale of such shares; (y) in the case of Rights or Convertible Securities with respect to shares of Common Stock, is the total amount received or receivable by the Company in consideration for the issuance and sale of Rights or such Convertible Securities, plus the minimum aggregate amount of additional consideration, other than the surrender of such Convertible Securities, payable to the Company upon exercise, conversion or exchange thereof; and (z) in the case of Rights to subscribe for or purchase such Convertible Securities, is the total amount received or receivable by the Company in consideration for the issuance and sale of such Rights plus the minimum aggregate amount of additional consideration, other than the surrender of such Convertible Securities, payable upon the exercise of the Right and the conversion or exchange or exercise of such Convertible Securities; provided that in each case the proceeds received or receivable by the Company shall be the net cash proceeds after deducting therefrom any compensation paid or discount allowed in the sale, underwriting or purchase thereof by underwriters or dealers or other performing similar services;

N = the "Number of Shares," which (x) in the case of Common Stock is the number of shares issued; and (y) in the case of Rights or Convertible Securities with respect to shares of Common Stock, is the maximum number of shares of Common Stock initially issuable upon exercise, conversion or exchange thereof.

(f) When De Minimis Adjustment May Be Deferred. No adjustment in the number of Warrant Shares purchasable hereunder shall be required unless such adjustment would require an increase or decrease of at least three percent (3%) in the number of Warrant Shares purchasable upon the exercise of each Warrant, provided that any adjustments which by reason of this paragraph (f) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations shall be made to the nearest one-hundredth of a Warrant Share and the nearest cent.

(g) Adjustment in Exercise Price. Whenever the number of Warrant Shares purchasable upon the exercise of each Warrant is adjusted as herein provided, the Exercise Price payable upon exercise of each Warrant immediately prior to such adjustment shall be adjusted by multiplying such Exercise Price by a fraction, the numerator of which shall be the number of Warrant Shares purchasable upon the exercise of each Warrant immediately prior to such adjustment and the denominator of which shall be the number of Warrant Shares purchasable immediately thereafter.

(h) When No Adjustment is Required. No adjustment in the number of Warrant Shares purchasable upon the exercise of each Warrant or in the Exercise Price need be made under this Section 9.1 in connection with: (i) the issuance of Common Stock, options, rights, Warrants or other securities pursuant to the Plan; (ii) shares of Common Stock, options, rights, warrants or other securities issued by the Company or its subsidiaries for the benefit of employees or directors pursuant to any formal employee stock plan or other employee benefit plan arrangement duly authorized by the Board; (iii) any issuance of shares of Common Stock or Convertible Securities pursuant to an underwritten public offering for a price per share of Common Stock in the case of an issuance of shares of Common Stock, or for a price per share of Common Stock initially deliverable upon conversion or exchange of such securities, that is equal to or greater than 95% of the Current Market Price per share of Common Stock on the date the

Company fixed the offering, conversion or exchange price of such additional shares of Common Stock; (iv) sales of Common Stock pursuant to a plan adopted by the Company for reinvestment of dividends or interest; (v) shares of Common Stock issued to shareholders of any corporation that is acquired by, merged into or made a part or subsidiary of the Company in an arm's-length transaction; or (vi) a change in the par value of the shares of Common Stock. Additionally, no adjustment need be made if the Company issues or distributes to each Holder of Warrants the shares, rights, options, warrants, evidences of indebtedness, assets or other securities referred to in those paragraphs which each Holder of Warrants would have been entitled to receive had the Warrants been exercised for the number of Warrant Shares for which Warrants are then exercisable prior to the happening of such event or the record date with respect thereto.

(i) Capitalization, Reclassification or Consolidation. If any capital reorganization of the Company, or any reclassification of the Common Stock, or any consolidation of the Company with or merger of the Company with or into any other Person, or any sale, lease or other transfer of all or substantially all of the assets of the Company to any other Person, shall be effected in such a way that the holders of the Common Stock shall be entitled to receive stock, other securities, cash or other assets (whether such stock, other securities, cash or other assets are issued or distributed by the Company or another Person) with respect to or in exchange for the Common Stock, then, upon exercise of each Warrant, the Holder shall have the right to receive the kind and amount of stock, other securities, cash or other assets receivable upon such reorganization, reclassification, consolidation, merger or sale, lease or other transfer, by a holder of the number of Warrant Shares that such Holder would have been entitled to receive upon exercise of such Warrant had such Warrant been exercised immediately before such reorganization, reclassification, consolidation, merger or sale, lease or other transfer, subject to adjustments (as determined in good faith by the Board of Directors of the Company). Adjustments for events subsequent to the effective date of such a reorganization, reclassification, consolidation, merger, sale or transfer of assets shall be as nearly equivalent as may be practicable to the adjustments provided for in this Agreement. In any such event, effective

provisions shall be made in the certificate or articles of incorporation of the resulting or surviving corporation, in any contract of sale, merger, conveyance, lease, transfer or otherwise so that the provisions set forth herein for the protection of rights of the Holders shall thereafter continue to be applicable; and any such resulting or surviving corporation shall expressly assume the obligation to deliver, upon exercise, such shares of stock, other securities, cash and property. The provisions of Section 9 shall similarly apply to successive consolidations, mergers, sales, leases or transfers.

(j) Shares of Common Stock. For all purposes of this Agreement, the term "shares of Common Stock" shall mean (i) the class of stock designated as the Common Stock of the Company at the date of this Agreement, or (ii) any other class of stock resulting from successive reclassifications of such shares consisting solely of changes in par value, or from par value to no par value, or from no par value to par value. In the event that at any time, as a result of an adjustment made pursuant to this Section 9.1, the Holders shall become entitled to purchase any securities of the Company other than shares of Common Stock, thereafter the number of such other shares so purchasable upon exercise of each Warrant and the Exercise Price of such shares shall be subject to adjustment from time to time in a manner and on terms substantially identical to the provisions with respect to the Warrant Shares contained in paragraphs (a) through (h) above, and the provisions of this Agreement with respect to the Warrant Shares shall apply on like terms to any such other securities.

(k) Expiration of Rights, etc. Upon the expiration of any Rights in respect of which an adjustment has been made pursuant to Section 9.1(b), if any thereof shall not have been exercised, the Exercise Price and the number of

Warrant Shares purchasable upon the exercise of each outstanding Warrant shall be readjusted so that (i) any calculation previously made on the basis of the additional number of shares of Common Stock offered for subscription or purchase in connection with such Rights shall instead be made on the basis of the additional number of shares of Common Stock actually subscribed to or actually purchased in connection with such Rights and (ii) any calculation previously made on the basis of the aggregate offering price of the total number of shares issuable upon exercise of such Rights shall instead be made on the basis of the aggregate offering price of the total number of shares actually issued upon exercise of such Rights; provided that if, as a result of such readjustment, the net adjustment to the number of Warrant Shares purchasable, upon the exercise of each Warrant as a result of the issuance and exercise of such Rights shall be sufficiently small as to qualify for de minimis deferral pursuant to Section 9.1(f), then the Exercise Price and the number of Warrant Shares purchasable upon the exercise of each Warrant shall be as if no Rights had ever been issued and the provisions of Section 9.1(f) shall otherwise prevail.

9.2 Notice of Adjustment. Whenever the number of Warrant Shares purchasable upon the exercise of each Warrant or the Exercise Price of Warrant Shares is adjusted, as herein provided, the Company shall cause the Warrant Agent promptly to mail to each Holder notice of such adjustment or adjustments and shall deliver to the Warrant Agent a certificate of a firm of independent public accountants (who may be the regular accountants employed by the Company) setting forth the number of Warrant Shares purchasable upon the exercise of each Warrant and the Exercise Price of Warrant Shares after such adjustment, setting forth a brief statement of the facts requiring such adjustment and setting forth in reasonable detail the computations by which such adjustment was made. The Warrant Agent shall be entitled to rely on such certificate and

shall be under no duty or responsibility with respect to any such certificate, except to exhibit the same, from time to time, to any Holder requesting an inspection thereof during reasonable business hours. The Warrant Agent shall not at any time be under any duty or responsibility to any Holder to determine whether any facts exist which may require any adjustment of the Exercise Price or the number of Warrant Shares or other stock or property purchasable upon exercise of Warrants, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed in making such adjustment.

9.3 Preservation of Purchase Rights upon Merger or Consolidation. The Company shall not merge or consolidate with or into any other entity unless the successor entity (in the event the Company is not the successor entity) shall expressly assume, by supplemental agreement reasonably satisfactory in form and substance to the Warrant Agent in its sole judgment and executed and delivered to the Warrant Agent, the due and punctual performance and observance of the covenants and conditions of this Agreement to be performed and observed by the Company. The provisions of this Section 9.3 shall similarly apply to successive consolidations or mergers. The Warrant Agent shall be under a good faith duty and responsibility to determine the correctness of any provisions contained in any such agreement relating to the kind or amount of shares of stock or other securities or property receivable upon exercise of Warrants or with respect to the method employed and provided therein for any adjustments and shall be entitled to rely upon the provisions contained in any such agreement. In the event of any conflict between this Section 9.3 and Section 9.1(i), Section 9.1(i) shall prevail.

9.4 Statement on Warrants. Irrespective of any adjustments in the Exercise Price or the number or kind of shares purchasable upon the exercise of the Warrants, Warrant Certificates theretofore or thereafter issued may continue to express the same Exercise Price and number and kind of Warrant Shares as are stated in the Warrant Certificates initially issuable pursuant to this Agreement.

Section 10. Fractional Interests. Neither the Company nor the Warrant Agent shall be required to issue fractional Warrant Shares on the exercise of Warrants. If more than one Warrant shall be exercised at the same time by the same Holder, the number of full Warrant Shares which shall be issuable upon such exercise shall be computed on the basis of the aggregate number of Warrants so exercised. If any fraction of a Warrant Share would, except for the provisions of this Section 10, be issuable on the exercise of any Warrant, then the Company shall pay an amount in cash equal to the Current Market Price for one Warrant Share on the date the Warrant Certificate is presented for exercise (determined in accordance with Section 9.1(e) hereof), multiplied by such fraction.

Section 11. No Rights as Stockholders. Nothing contained in this Agreement or in any of the Warrants shall be construed as conferring upon the Holders or their transferees the right to vote or to receive dividends or to consent or to receive notice as stockholders in respect of any meeting of stockholders for the election of directors of the Company or any other matter, or any rights whatsoever as stockholders of the Company.

Section 12. Payments in U.S. Currency. All payments required to be made hereunder shall be made in lawful money of the United States of America.

Section 13. Merger or Consolidation or Change of Name of Warrant Agent. Any corporation into which the Warrant Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Warrant Agent shall be a party, or any corporation succeeding to the corporation trust business of the Warrant Agent, shall be the successor to the Warrant Agent hereunder without, other than prompt written notice to the Company with respect thereto, the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that such corporation would be eligible for appointment as a successor Warrant Agent under the provisions of Section 15 hereof. In case any of the Warrant Certificates shall have been countersigned but not delivered at the time such successor to the Warrant Agent shall succeed to the agency created by this Agreement, any such successor to the Warrant Agent may adopt the countersignature of the original Warrant Agent and deliver such Warrant Certificates so countersigned; and in case at that time any of the Warrant Certificates shall not have been countersigned, any successor to the Warrant Agent may countersign such Warrant Certificates either in the name of the predecessor Warrant Agent or in its name; and in all such cases such Warrant Certificates shall be fully valid and effective as provided therein and in this Agreement.

In case at any time the name of the Warrant Agent shall be changed and at such time any of the Warrant Certificates shall have been countersigned but not delivered, the Warrant Agent may adopt the countersignatures under its prior name and deliver such Warrant Certificates so countersigned; and in case at that time any of the Warrant Certificates shall not have been countersigned, the Warrant Agent may countersign such Warrant Certificates either in its prior name or in its changed name; and in all such cases such Warrant Certificates shall be fully valid and effective as provided therein and in this Agreement.

Section 14. Appointment of Warrant Agent. The Company hereby appoints the Warrant Agent to act as agent for the Company hereunder and in accordance with the terms and conditions hereof, and the Warrant Agent hereby accepts such appointment and undertakes the duties and obligations imposed by this Agreement upon the following terms and conditions.

14.1 Correctness of Statements. The statements contained herein and in the Warrant Certificates shall be taken as statements of the Company, and the Warrant Agent assumes no responsibility for the correctness of any of the same except statements that describe the Warrant Agent or action taken by it.

14.2 Breach of Covenants. The Warrant Agent shall not be responsible for any

failure of the Company to comply with any of the covenants contained in this Agreement or in the Warrant Certificates to be complied with by the Company.

14.3 Performance of Duties. The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its duly appointed attorneys or agents.

14.4 Reliance on Counsel. Before the Warrant Agent acts or refrains from acting, the Warrant Agent may consult at any time with legal counsel satisfactory to it (who may be counsel for the Company), and the Warrant Agent shall incur no liability or responsibility to the

Company or to any Holder in respect to any action taken, suffered or omitted by it hereunder in good faith and in accordance with the written opinion or the written advice of such counsel.

14.5 Proof of Actions Taken. Whenever in the performance of its duties under this Agreement the Warrant Agent shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking or suffering any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed conclusively to have been proved and established by a certificate signed by any of the Chairman of the Board, Chief Executive Officer, Chief Financial Officer or one of the Vice Presidents of the Company and delivered to the Warrant Agent; and such certificate shall be full authorization to the Warrant Agent for any action taken or suffered in good faith by it under the provisions of this Agreement in reliance upon such certificate.

14.6 Compensation and Indemnification. The Company agrees to pay the Warrant Agent reasonable compensation for all services rendered by the Warrant Agent in the performance of its duties under this Agreement, to reimburse the Warrant Agent for all reasonable expenses, taxes and governmental charges and other charges incurred by the Warrant Agent in the performance of its duties under this Agreement (including but not limited to the reasonable fees and expenses of a single legal counsel), and to indemnify the Warrant Agent and its officers, agents and directors for and to hold each harmless from and against any and all losses and liabilities, including judgments, costs and reasonable counsel fees, for anything done or omitted by the Warrant Agent or any of its agents in the performance of its duties under this Agreement, except as a result of the Warrant Agent's gross negligence or willful misconduct as determined in a final judgment of a court of competent jurisdiction and authority. The Company's obligations under this Section 14.6 and any claim arising hereunder shall survive the resignation or removal of the Warrant Agent and the termination or discharge of the Company's obligations under this Agreement.

14.7 Legal Proceedings. The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or to take any other action likely to involve material expense unless the Company or any one or more Holders shall furnish the Warrant Agent with reasonable security and indemnity for any costs and expenses which may be incurred or any liabilities which may arise (but only to the extent such costs and expenses or liabilities would be covered by the preceding Section 14.6), but this provision shall not affect the power of the Warrant Agent to take such action as the Warrant Agent may consider proper, whether with or without any such security or indemnity. All rights of action of any Holder under this Agreement or under any of the Warrants may be enforced by the Warrant Agent, and any action, suit or proceeding instituted by the Warrant Agent shall be brought in its name as Warrant Agent, and any recovery of judgment shall be for the ratable benefit of the Holders, as their respective rights or interests may appear.

14.8 Other Transactions in Securities of Company. Subject to the provisions of applicable law, the Warrant Agent and any stockholder, director, officer or

employee of the Warrant Agent may buy, sell or deal in any of the Warrants or any other securities of the Company or have a pecuniary interest in any transaction in which the Company may be interested or contract with or lend money to the Company or otherwise act as fully and freely as

though it were not Warrant Agent under this Agreement. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other legal entity.

14.9 Liability of Warrant Agent. The Warrant Agent shall act hereunder solely as agent, and its duties shall be determined solely by the provisions hereof. The Warrant Agent shall not be liable for anything which it may do or refrain from doing in connection with this Agreement except for its own negligence or bad faith.

14.10 Reliance on Documents. The Warrant Agent will not incur any liability or responsibility to the Company or to any Holder for any action taken in reliance on any notice, resolution, waiver, consent order, certificate, or other paper, document or instrument reasonably believed by it to be genuine and to have been signed, sent or presented by the proper party or parties.

14.11 Validity of Agreement. The Warrant Agent shall not be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution hereof by the Warrant Agent) or for any of the statements of fact or recitals contained in this Agreement or in respect of the validity or execution of any Warrant Certificate (except its countersignature thereof) or any Warrant; nor shall the Warrant Agent by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any Warrant Shares (or other securities) to be issued pursuant to this Agreement or any Warrant, or as to whether any Warrant Shares (or other securities) will, when issued, be validly issued, fully paid and nonassessable, or as to the Exercise Price or the number or amount of Warrant Shares or other securities or any assets or other property issuable upon exercise of any Warrant.

14.12 Instructions from Company. The Warrant Agent is hereby authorized and directed to accept instructions with respect to the performance of its duties hereunder from any person believed in good faith by the Warrant Agent to be the Chairman of the Board, Chief Executive Officer, the Chief Financial Officer or one of the Vice Presidents of the Company, and to apply to such officers for advice or instructions in connection with its duties, and shall not be liable for any action taken or suffered to be taken by it in good faith in accordance with instructions of any such officer or officers or any delay in acting while waiting for these instructions.

Section 15. Change of Warrant Agent. The Warrant Agent may resign and be discharged from its duties under this Agreement by giving to the Company thirty (30) days' prior written notice. The Warrant Agent may be removed by like notice to the Warrant Agent and the Holders from the Company, such notice to specify the date when removal shall become effective. If the Warrant Agent shall resign or be removed or shall otherwise become incapable of acting, then the Company shall appoint a successor to the Warrant Agent. If the Company shall fail to make such appointment within a period of thirty (30) days after such removal or written notification of such resignation or incapacity by the resigning or incapacitated Warrant Agent, then any Holder may, at the Company's expense, apply to any court of competent jurisdiction for the appointment of a successor to the Warrant Agent. Any successor Warrant Agent, whether appointed by the Company or such a court, shall be a bank or trust company, in good standing, incorporated under the laws of the United States of America or any state thereof and having at the time of its appointment as Warrant Agent a combined capital and surplus of at least $100,000,000. After appointment and acceptance of such appointment in writing, the successor

Warrant Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Warrant Agent without further act or deed; but the former Warrant Agent shall deliver and transfer to the successor Warrant Agent any property at the time held by it hereunder, and shall execute and deliver any further assurance, conveyance, act or deed necessary for the purpose. Failure to file any notice provided for in this Section 15, however, or any defect therein, shall not affect the legality or validity of the resignation or removal of the Warrant Agent or the appointment of the successor Warrant Agent, as the case may be. In the event of such resignation or removal, the successor Warrant Agent shall promptly mail to each Holder written notice of such removal or resignation and the name and address of such successor Warrant Agent.

Section 16. Notices. Any notice pursuant to this Agreement by the Company or by any Holder to the Warrant Agent, shall be in writing and shall be delivered in person or sent by registered or certified mail and shall be deemed given upon receipt at its offices at:

If by mail:

Wells Fargo Bank Minnesota, N.A.
Sixth and Marquette
MAC N9303-120
Minneapolis, MN 55479
Attention: Corporate Trust Services

If in person:

Wells Fargo Bank Minnesota, N.A.
Corporate Trust Services
608 Second Avenue South
12th Floor - Northstar East Bldg.
Minneapolis, MN 55402

Any notice pursuant to this Agreement by the Warrant Agent or by any Holder to the Company, shall be in writing and shall be delivered in person or sent by registered or certified mail and shall be deemed given upon receipt at its offices at Vencor, Inc. (to be renamed Kindred Healthcare, Inc.), 680 South Fourth Street, Louisville, Kentucky 40202, Attn: General Counsel and Chief Financial Officer. Each party hereto may from time to time change the address to which its notices are to be delivered or mailed hereunder by notice to the other party.

Any notice mailed pursuant to this Agreement by the Company or the Warrant Agent to the Holders shall be in writing and shall be mailed first class, postage prepaid, or otherwise delivered, to such Holders at their respective addresses in the Warrant Register. The initial address of each Holder shall be as provided by the Company to the Warrant Agent. Any Holder may change its address by notice to the Company and the Warrant Agent given in accordance with this Section 16.

Section 17. Cancellation of Warrants. In the event the Company shall purchase or otherwise acquire any Warrants, the same shall thereupon be delivered to the Warrant Agent and

be cancelled by it and retired. The Warrant Agent shall cancel any Warrant Certificate surrendered for exchange, substitution, transfer or exercise in whole or in part.

Section 18. Supplements and Amendments. The Company and the Warrant Agent may from time to time supplement or amend this Agreement, the Warrants and the Warrant Certificates without approval of any Holder, in order to cure any ambiguity or to correct or supplement any provision contained herein which may be defective or inconsistent with any other provision herein, or to comply with the requirements of any national securities exchange or the Nasdaq National

Market or the Nasdaq Small Cap Market, or to make any other provisions in regard to matters or questions arising hereunder which the Company and the Warrant Agent may deem necessary or desirable and which shall not be inconsistent with the provisions of the Warrants and this Agreement. Any other supplement or amendment to this Agreement may be made with the approval of the Holders of a majority of outstanding Warrants of each series of Warrants, voting separately as two classes. Notwithstanding anything in this Agreement to the contrary, no supplement or amendment that changes the rights and duties of the Warrant Agent under this Agreement will be effective against the Warrant Agent without the execution of such supplement or amendment by the Warrant Agent.

Section 19. Successors. All the covenants and provisions of this Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure solely to the benefit of the Company or the Warrant Agent and their respective successors hereunder.

Section 20. Applicable Law. This Agreement and each Warrant issued hereunder shall be governed by and construed in accordance with the laws of the state of New York without giving effect to the principles of conflict of laws thereof.

Section 21. Benefits of this Agreement. Nothing in this Agreement shall be construed to give to any Person other than the Company, the Warrant Agent and the Holders any legal or equitable right, remedy or claim under this Agreement; rather, this Agreement shall be for the sole and exclusive benefit of the Company, the Warrant Agent, their respective successors, and the Holders.

Section 22. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

Section 23. Captions. The captions of the Sections and subsections of this Agreement, have been inserted for convenience only and shall have no substantive effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, all as of the day and year first above written.

VENCOR, INC.

(to be renamed Kindred Healthcare, Inc.)

By: _____

Name: _____

Title: _____

WELLS FARGO BANK MINNESOTA, N.A.

as Warrant Agent

By: _____

Name: _____

Title: _____

EXHIBIT A
TO WARRANT AGREEMENT

No. _____ _____ Warrants

Series A Warrant Certificate

CUSIP No. 494580-11-1

VENCOR, INC.
(to be renamed Kindred Healthcare, Inc.)

This Warrant Certificate certifies that _____ or registered assigns, is the registered holder of Series A Warrants (the "Warrants") expiring at 5:00 p.m., New York City time, on April 20, 2006 (five years after the Effective Date of the Plan (as defined in the Warrant Agreement referred to on the reverse side hereof)) (the "Expiration Date"), to purchase Common Stock, $0.25 par value per share (the "Common Stock"), of VENCOR, INC. (to be renamed Kindred Healthcare, Inc.), a Delaware corporation (the "Company"). The Warrants may be exercised at any time from 9:00 a.m., New York City time, on April 21, 2001 to 5:00 p.m., New York City time, on the Expiration Date. Each Warrant entitles the holder upon exercise to receive from the Company, if exercised before 5:00 p.m., New York City time, on the Expiration Date, one fully paid and nonassessable share of Common Stock (a "Warrant Share") at the Series A Exercise Price (as defined in the Warrant Agreement referred to on the reverse side hereof), payable in lawful money of the United States of America, upon surrender of this Warrant Certificate and payment of the Series A Exercise Price at the office or agency of the Warrant Agent, subject to the conditions set forth herein and in the Warrant Agreement. The Series A Exercise Price and number of Warrant Shares issuable upon exercise of the Warrants are subject to adjustment upon the occurrence of certain events as set forth in the Warrant Agreement.

WARRANTS NOT EXERCISED ON OR BEFORE 5:00 P.M., NEW YORK CITY TIME, ON APRIL 20, 2006 (FIVE YEARS FROM THE EFFECTIVE DATE) SHALL BECOME VOID.

Reference is hereby made to the further provisions of this Warrant Certificate set forth on the reverse hereof, and such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Warrant Certificate shall not be valid unless countersigned by the Warrant Agent, as such term is used in the Warrant Agreement.

IN WITNESS WHEREOF, VENCOR, INC. (to be renamed Kindred Healthcare, Inc.) has caused this Warrant Certificate to be duly executed.

VENCOR, INC.

(to be renamed Kindred Healthcare, Inc.)

By:

Title:

Dated:

Countersigned:

WELLS FARGO BANK MINNESOTA,
NATIONAL ASSOCIATION,
as Warrant Agent

By:

Authorized Signatory

[Form of Warrant Certificate]

(Reverse)

The Warrants evidenced by this Warrant Certificate are part of a duly authorized issue of Warrants expiring on the Expiration Date entitling the holder upon exercise to receive shares of Common Stock of the Company and are issued or to be issued pursuant to a Warrant Agreement dated as of April 20, 2001 (the "Warrant Agreement"), duly executed and delivered by the Company to Wells Fargo Bank Minnesota, National Association, as Warrant Agent (the "Warrant Agent"), which Warrant Agreement is hereby incorporated by reference in and made a part of this instrument and is hereby referred to for a description of the rights, limitation of rights, obligations, duties and immunities thereunder of the Warrant Agent, the Company and the holders (the words "holders" or "holder" meaning the registered holders or registered holder) of the Warrants. A copy of the Warrant Agreement may be obtained by the holder hereof upon written request to the Warrant Agent. By accepting initial delivery, transfer or exchange of this Warrant Certificate, the duly registered holder shall be deemed to have agreed to the terms of the Warrant Agreement as it may be in effect from time to time, including any amendments or supplements duly adopted in accordance therewith.

The holder of Warrants evidenced by this Warrant Certificate may exercise them by surrendering this Warrant Certificate, with the form of election to purchase set forth hereon properly completed and executed, together with payment of the aggregate Series A Exercise Price in the manner described below at the office of the Warrant Agent. In the event that upon any exercise of Warrants evidenced hereby the number of Warrants exercised shall be less than the total number of Warrants evidenced hereby, there shall be issued to the holder hereof or its assignee a new Warrant Certificate evidencing the number of Warrants not exercised.

Payment of the aggregate Series A Exercise Price must be made in cash by wire transfer to the Warrant Agent for the account of the Company.

The Warrant Agreement provides that upon the occurrence of certain events the number of shares of Common Stock or type of stock issuable upon the exercise of each Warrant, and the Series A Exercise Price of each Warrant, may, subject to certain conditions, be adjusted. No fractions of a share of Common Stock will be issued upon the exercise of any Warrant, but the Company shall pay the cash value thereof determined as provided in the Warrant Agreement.

Warrant Certificates, when surrendered at the office of the Warrant Agent by the registered holder thereof in person or by legal representative or attorney duly authorized in writing, may be exchanged, in the manner and subject to the limitations provided in the Warrant Agreement, but without payment of any service charge, for another Warrant Certificate or Warrant Certificates of like tenor evidencing in the aggregate a like number of Warrants.

Upon due presentation for registration of transfer of this Warrant Certificate at the office of the Warrant Agent, a new Warrant Certificate or Warrant Certificates of like tenor and evidencing in the aggregate a like number of Warrants shall be issued to the transferee(s) in exchange for this Warrant Certificate, subject to the limitations provided in the Warrant

Agreement, without charge except for any tax or other governmental charge imposed in connection therewith.

The Company and the Warrant Agent may deem and treat the registered holder(s) hereof as the absolute owner(s) of this Warrant Certificate (notwithstanding any notation of ownership or other writing hereon made by anyone), for the purpose of any exercise hereof, of any distribution to the holder(s) hereof, and for all other purposes, and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary. Neither the Warrants nor this Warrant Certificate entitles any holder hereof to any rights

of a stockholder of the Company.

PURCHASE FORM

The undersigned hereby irrevocably elects to exercise ___ Warrant(s) represented by this Warrant Certificate, according to the terms and conditions hereof and hereby makes payment of $_____ in payment of the aggregate Series A Exercise Price thereof. If the number of Warrants exercised shall not be all of the Warrants represented by this Warrant Certificate, then a new Warrant Certificate for the balance remaining shall be issued in the name of the undersigned or its assignee as indicated on the Assignment Form.

Dated:

INSTRUCTIONS FOR REGISTRATION OF STOCK

Name:

(please typewrite or print in block letters)

Address:

Signature:

Note: The signature must conform in all respects to name of holder as specified on the face of this Warrant Certificate

Signature Guaranteed:

ASSIGNMENT FORM

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Name:

(please typewrite or print in block letters)

Address:
---

its right, title and interest in ___ Warrants represented by this Warrant Certificate and does hereby irrevocably constitute and appoint _____ Attorney, to transfer the same on the books of the Company, with full power of substitution in the premises.

Dated:

Signature:

Social Security or other identifying number of holder

Note: The signature must conform in all respects to name of holder as specified on the face of this Warrant Certificate

Signature Guaranteed:

EXHIBIT B
TO WARRANT AGREEMENT

No. _____ _____ Warrants

Series B Warrant Certificate

CUSIP 494580-12-9

VENCOR, INC.

(to be renamed Kindred Healthcare, Inc.)

This Warrant Certificate certifies that _____ or registered assigns, is the registered holder of Series B Warrants (the "Warrants") expiring at 5:00 p.m., New York City time, on April 20, 2006 (five years after the Effective Date of the Plan (as defined in the Warrant Agreement referred to on the reverse side hereof)) (the "Expiration Date"), to purchase Common Stock, $0.25 par value per share (the "Common Stock"), of VENCOR, INC. (to be renamed Kindred Healthcare, Inc.), a Delaware corporation (the "Company"). The Warrants may be exercised at any time from 9:00 a.m., New York City time, on April 21, 2001 to 5:00 p.m., New York City time, on the Expiration Date. Each Warrant entitles the holder upon exercise to receive from the Company, if exercised before 5:00 p.m., New York City time, on the Expiration Date, one fully paid and nonassessable share of Common Stock (a "Warrant Share") at the Series B Exercise Price (as defined in the Warrant Agreement referred to on the reverse side hereof), payable in lawful money of the United States of America, upon surrender of this Warrant Certificate and payment of the Series B Exercise Price at the office or agency of the Warrant Agent, subject to the conditions set forth herein and in the Warrant Agreement. The Series B Exercise Price and number of Warrant Shares issuable upon exercise of the Warrants are subject to adjustment upon the occurrence of certain events as set forth in the Warrant Agreement.

WARRANTS NOT EXERCISED ON OR BEFORE 5:00 P.M., NEW YORK CITY TIME, ON APRIL 20, 2006 (FIVE YEARS FROM THE EFFECTIVE DATE) SHALL BECOME VOID.

Reference is hereby made to the further provisions of this Warrant Certificate set forth on the reverse hereof, and such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Warrant Certificate shall not be valid unless countersigned by the Warrant Agent, as such term is used in the Warrant Agreement.

IN WITNESS WHEREOF, VENCOR, INC. (to be renamed Kindred Healthcare, Inc.) has caused this Warrant Certificate to be duly executed.

VENCOR, INC.

(to be renamed Kindred Healthcare, Inc.)

By:

Title:

Dated:

Countersigned:

WELLS FARGO BANK MINNESOTA,
NATIONAL ASSOCIATION
as Warrant Agent

By:

Authorized Signatory

[Form of Warrant Certificate]

(Reverse)

The Warrants evidenced by this Warrant Certificate are part of a duly authorized issue of Warrants expiring on the Expiration Date entitling the holder upon exercise to receive shares of Common Stock of the Company and are issued or to be issued pursuant to a Warrant Agreement dated as of April 20, 2001 (the "Warrant Agreement"), duly executed and delivered by the Company to Wells Fargo Bank Minnesota, National Association, as Warrant Agent (the "Warrant Agent"), which Warrant Agreement is hereby incorporated by reference in and made a part of this instrument and is hereby referred to for a description of the rights, limitation of rights, obligations, duties and immunities thereunder of the Warrant Agent, the Company and the holders (the words "holders" or "holder" meaning the registered holders or registered holder) of the Warrants. A copy of the Warrant Agreement may be obtained by the holder hereof upon written request to the Warrant Agent. By accepting initial delivery, transfer or exchange of this Warrant Certificate, the duly registered holder shall be deemed to have agreed to the terms of the Warrant Agreement as it may be in effect from time to time, including any amendments or supplements duly adopted in accordance therewith.

The holder of Warrants evidenced by this Warrant Certificate may exercise them by surrendering this Warrant Certificate, with the form of election to purchase set forth hereon properly completed and executed, together with payment of the aggregate Series B Exercise Price in the manner described below at the office of the Warrant Agent. In the event that upon any exercise of Warrants evidenced hereby the number of Warrants exercised shall be less than the total number of Warrants evidenced hereby, there shall be issued to the holder hereof or its assignee a new Warrant Certificate evidencing the number of Warrants not exercised.

Payment of the aggregate Series B Exercise Price must be made in cash by wire transfer to the Warrant Agent for the account of the Company.

The Warrant Agreement provides that upon the occurrence of certain events the number of shares of Common Stock or type of stock issuable upon the exercise of each Warrant, and the Series B Exercise Price of each Warrant, may, subject to certain conditions, be adjusted. No fractions of a share of Common Stock will be issued upon the exercise of any Warrant, but the Company shall pay the cash value thereof determined as provided in the Warrant Agreement.

Warrant Certificates, when surrendered at the office of the Warrant Agent by the registered holder thereof in person or by legal representative or attorney duly authorized in writing, may be exchanged, in the manner and subject to the limitations provided in the Warrant Agreement, but without payment of any service charge, for another Warrant Certificate or Warrant Certificates of like tenor evidencing in the aggregate a like number of Warrants.

Upon due presentation for registration of transfer of this Warrant Certificate at the office of the Warrant Agent, a new Warrant Certificate or Warrant Certificates of like tenor and evidencing in the aggregate a like number of Warrants shall be issued to the transferee(s) in exchange for this Warrant Certificate, subject to the limitations provided in the Warrant

Agreement, without charge except for any tax or other governmental charge imposed in connection therewith.

The Company and the Warrant Agent may deem and treat the registered holder(s) hereof as the absolute owner(s) of this Warrant Certificate (notwithstanding any notation of ownership or other writing hereon made by

anyone), for the purpose of any exercise hereof, of any distribution to the holder(s) hereof, and for all other purposes, and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary. Neither the Warrants nor this Warrant Certificate entitles any holder hereof to any rights of a stockholder of the Company.

PURCHASE FORM

The undersigned hereby irrevocably elects to exercise ___ Warrant(s) represented by this Warrant Certificate, according to the terms and conditions hereof and hereby makes payment of $_____ in payment of the aggregate Series B Exercise Price thereof. If the number of Warrants exercised shall not be all of the Warrants represented by this Warrant Certificate, then a new Warrant Certificate for the balance remaining shall be issued in the name of the undersigned or its assignee as indicated on the Assignment Form.

Dated:

INSTRUCTIONS FOR REGISTRATION OF STOCK

Name:

(please typewrite or print in block letters)

Address:

Signature:

Note: The signature must conform in all respects to name of holder as specified on the face of this Warrant Certificate

Signature Guaranteed:

ASSIGNMENT FORM

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Name:

(please typewrite or print in block letters)

Address:

its right, title and interest in ___ Warrants represented by this Warrant Certificate and does hereby irrevocably constitute and appoint _____ Attorney, to transfer the same on the books of the Company, with full power of substitution in the premises.

Dated:

Signature:

Social Security or other identifying number of holder

Note: The signature must conform in all respects to name of holder as specified on the face of this Warrant Certificate

Signature Guaranteed:

EXHIBIT C
TO WARRANT AGREEMENT

UNLESS THIS WARRANT CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR THE WARRANT AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR EXERCISE, AND ANY WARRANT CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY WARRANT SHARES ISSUED UPON THE EXERCISE HEREOF ARE REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, EXERCISE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

Exhibit 4.2

REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT (this "Agreement"), dated as of April 20, 2001, by and among Vencor, Inc. (to be renamed Kindred Healthcare, Inc.), a Delaware corporation (the "Company") and the Persons identified on Schedule 1 hereto (the "Initial Holders").

RECITALS

A. Pursuant to the Company's Fourth Amended and Restated Plan of Reorganization dated as of December 14, 2000 (the "Plan"), upon satisfaction of certain conditions, the Company will issue New Common Stock and/or New Warrants (both as defined in the Plan) to the Initial Holders in the amounts set forth on Schedule 1 hereto.

B. In order to induce the Initial Holders to agree to the Plan, the Company has agreed to grant certain securities registration rights to the Initial Holders as set forth herein.

AGREEMENTS

In consideration of the premises and the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions and General Interpretive Principles. In addition to the defined terms set forth in the Plan that are not otherwise defined herein (which shall have the same meanings herein as in the Plan) and to the capitalized terms defined elsewhere in this Agreement, the following capitalized terms shall have the following meanings when used in this Agreement:

"Adverse Disclosure" means public disclosure of material non-public information, which disclosure in the good faith judgment of the chief executive officer or chief financial officer of the Company (i) would be required to be made in any registration statement filed with the Commission by the Company so that such registration statement would not be materially misleading; (ii) would not be required to be made at such time but for the filing of such registration statement; and (iii) the Company has a bona fide business purpose for avoiding.

"Allocation Percentage" has the meaning set forth in Section 3(e).

"Commission" means the U.S. Securities and Exchange Commission and any
agency succeeding to its functions.

"Demand Registration" has the meaning set forth in Section 3(a).

"Demand Suspension" has the meaning set forth in Section 3(c).

"Expiration Time" means the earlier of (i) April 20, 2003 (the second
anniversary of the Effective Date); provided, however, that the rights and
obligations relating to Piggyback Registrations contained in Section 4 and
Demand Registrations solely as they relate to a Ventas Stockholder Distribution
contained in Section 3 (and the provisions of this Agreement

specifically related thereto) shall continue until April 20, 2005 (the fourth
anniversary of the Effective Date) and (ii) the first time at which there are no
Holders.

"Holder" means an Initial Holder or a successor, assignee or
transferee of an Initial Holder as contemplated by Section 13 hereof, in each
case for so long as such Initial Holder, successor, assignee or transferee holds
Registrable Securities.

"Included Registrable Securities" has the meaning set forth in Section
4(a).

"Indemnified Party" has the meaning set forth in Section 8(c).

"Indemnifying Party" has the meaning set forth in Section 8(c).

"Loss" has the meaning set forth in Section 8(a).

"NASD" means the National Association of Securities Dealers, Inc.

"New Warrant Stock" means any New Common Stock or other security of
the Company or any successor entity issued or issuable upon exercise of any New
Warrant.

"Participant" has the meaning set forth in Section 8(a).

"Person" means a natural person, a partnership, a corporation, a
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limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or other entity, or a governmental entity or any department, agency or political subdivision thereof.

"Piggyback Registration" has the meaning set forth in Section 4(a).

"Registrable Securities" means (i) the New Common Stock, (ii) the New
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Warrants and (iii) the New Warrant Stock issuable upon exercise of the New Warrants, in each case including any securities of the Company or any successor entity that may be issued or distributed in respect thereof by way of stock dividend, stock split or other distribution, consolidation, reclassification or any similar transaction; provided, however, that the foregoing securities shall
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cease to be "Registrable Securities" to the extent that (i) a registration statement with respect to the sale of such securities has been declared effective under the Securities Act and such securities have been disposed of pursuant to such registration statement, (ii) such securities have been disposed of pursuant to and in accordance with Rule 144 (or any similar provision then in force) under the Securities Act or (iii) such securities may be disposed of pursuant to Rule 144(k) (or any similar provision then in force) under the Securities Act. For purposes of this Agreement, any reference to a percentage (or a majority in number) of Registrable Securities shall mean that percentage of Registrable Securities, collectively, computed on the assumption that all such New Warrants were exercised.

"Securities Act" means the Securities Act of 1933, as amended, and the
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rules and regulations of the Commission promulgated thereunder.

"Securities Exchange Act" means the Securities Exchange Act of 1934,
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as amended, and the rules and regulations of the Commission promulgated thereunder.

"Shelf Period" has the meaning set forth in Section 2(b).

"Shelf Registration" means a registration effected pursuant to Section
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2.

"Shelf Registration Statement" means a registration statement of the

Company filed with the Commission on Form S-1 or, if available, Form S-3 (or any successors thereto) for an offering to be made on a continuous or delayed basis pursuant to Rule 415 under the Securities Act (or any similar rule that may be adopted by the Commission) covering all of the Registrable Securities requested to be included by the Initial Holders.

"Shelf Suspension" has the meaning set forth in Section 2(c).

"Underwritten Offering" means an offering registered under the Securities Act in which securities of the Company are sold to an underwriter on a firm commitment basis for reoffering to the public.

"Ventas" means Ventas Realty, Limited Partnership and/or one or more trusts established for the benefit of the stockholders of Ventas, Inc. (the "Trust"). For purposes of requesting a Demand Registration pursuant to Section 3 hereof, either Ventas Realty, Limited Partnership or the Trust (but not both) shall be deemed an Initial Holder.

"Ventas Stockholder Distribution" means a pro rata distribution by Ventas, Inc. of Registrable Securities held by Ventas, Inc. solely to its beneficial owners.

Whenever used in this Agreement, except as otherwise expressly provided or unless the context otherwise requires, any noun or pronoun shall be deemed to include the plural as well as the singular and to cover all genders. The name assigned this Agreement and the section captions used herein are for convenience of reference only and shall not be construed to affect the meaning, construction or effect hereof. Unless otherwise specified, the terms "hereof," "herein," "hereunder" and similar terms refer to this Agreement as a whole, and references herein to Sections refer to Sections of this Agreement.

2. Shelf Registration

(a) Filing. Subject to Section 2(c), as soon as practicable after the Effective Date, but in no event later than 120 days following the Effective Date, the Company shall file with the Commission a Shelf Registration Statement relating to the offer and sale of Registrable Securities by the Holders thereof from time to time in accordance with (i) the reasonable and customary methods of distribution elected by such Holders (including one or more Underwritten Offerings) and (ii) in order to permit a Ventas Stockholder Distribution, in each case as set forth in such Shelf Registration Statement, and shall use its reasonable best efforts to cause such Shelf Registration Statement to be declared effective under the Securities Act as soon as practicable thereafter.

(b) Continued Effectiveness. Subject to Section 2(c), the Company shall use its reasonable best efforts to keep the Shelf Registration Statement continuously effective in order to permit any prospectus that forms a part thereof to be usable by Holders until the Expiration Time (such period being the "Shelf Period"), provided that the Shelf Period shall be subject to extension in accordance with Section 6(c).

(c) Delay in Filing; Suspension of Registration. If the filing, initial effectiveness or continued effectiveness of the Shelf Registration Statement at any time would require the Company to make an Adverse Disclosure or would require the inclusion in such Shelf Registration Statement of audited financial statements that are unavailable to the Company for reasons beyond its reasonable control, the Company may, upon giving prompt written notice (but in any event within five (5) days of determination) of such action to the Holders, delay the filing or initial effectiveness of, or suspend use of, the Shelf Registration Statement for the shortest period of time determined in good faith by the Company to be necessary for such purpose (a "Shelf Suspension"); provided, however, that the Company shall not be permitted to exercise a Shelf Suspensio
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(i) more than three times during any twenty-four (24) month period, (ii) for a period exceeding ninety (90) days on any one occasion, or (iii) for an aggregate period exceeding one hundred twenty (120) days in any twelve (12) month period. In the event of a Shelf Suspension, the Holders agree to suspend, immediately upon their receipt of the notice referred to above, any sale or offer to sell the Registrable Securities, and the use of the prospectus related to the Shelf Registration in connection with any such sale or offer to sell Registrable Securities, and agree not to disclose to any other Person the fact that the Company has exercised a Shelf Suspension or any related facts. The Company shall promptly (but in any event within five (5) days) notify the Holders upon the termination of any Shelf Suspension.

(d) Underwritten Offering. If the Holders holding not less than a majority of the Registrable Securities included in the Shelf Registration Statement so elect by written request to the Company, such Holders may conduct an offering in the form of an Underwritten Offering and the Company, if necessary, shall amend or supplement the Shelf Registration Statement for such purpose. The Holders holding a majority of the Registrable Securities included in such Underwritten Offering shall, after consulting with the Company, have the right to select the managing underwriter or underwriters for the offering, subject to the right of the Company to approve such managing underwriter or underwriters (which approval shall not be unreasonably withheld) and to select one co-managing underwriter

reasonably acceptable to such Holders.

(e) Effect on Demand Registration Obligation. The provisions of Section 3 of this Agreement shall not apply at any time that the Company maintains the effectiveness of a Shelf Registration Statement and is otherwise complying with its obligations under this Section 2 with respect to all Registrable Securities.

3. Demand Registrations.

(a) Demand by Holders.

(i) Subject to Section 2(e), each Initial Holder may make a written request to the Company for registration of all or any part of the Registrable Securities held by such requesting Holder; provided that the estimated market value of the Registrable Securities to

be so registered is at least $10 million in the aggregate or not less than 5% of the Registrable Securities; and provided further that Ventas shall be entitled to request a Demand Registration with respect to a Ventas Stockholder Distribution without regard to the dollar or percentage limits set forth above. Any such requested registration shall hereinafter be referred to as a "Demand Registration." Each request for a Demand Registration shall specify the aggregate amount of Registrable Securities to be registered and the intended methods of disposition thereof.

(ii) Within ten (10) days following receipt of any request for a Demand Registration, the Company shall deliver written notice of such request to all other Holders of Registrable Securities. Thereafter, subject to Section 3(e), the Company shall include in such Demand Registration any additional Registrable Securities which the Holder or Holders thereof have requested in writing be included in such Demand Registration, provided that all requests therefor have been received by the Company within ten (10) days of the Company's having given the applicable notice to such Holder or Holders. All such requests shall specify the aggregate amount of Registrable Securities to be registered and the intended method or methods of distribution of the same. The Company also may elect to include in such registration additional securities of the Company to be registered thereunder, including securities to be sold for the Company's own account or for the account of Persons who are not Holders.

(iii) As promptly as practicable following receipt of a request for a Demand Registration, but in no event later than the later of (x) 180 days following the Effective Date and (y) 60 days following receipt by the Company of such request, the Company shall, subject to the terms hereof and applicable law, use its reasonable best efforts to file a registration statement relating to such Demand Registration and shall use its reasonable best efforts to cause such registration statement to be declared effective under the Securities Act as soon as practicable thereafter and to keep such registration statement effective for not less than ninety (90) days (or such shorter period during which a prospectus is required to be delivered under the Securities Act).

(b) Limitation on Demand Registrations; Effective Registration. In no event shall the Company be required to effect more than one Demand Registration requested by any Initial Holder. In addition, the Company shall not be required to file a registration statement for a Demand Registration (i) at any time during the 120-day period following the effective date of another such registration statement (other than a registration statement relating solely to a Ventas Stockholder Distribution), or (ii) during the period commencing on the seventh day prior to the effective date of an offering by the Company that is registered under the Securities Act and ending on the ninetieth day after such offering is completed, provided that, solely with respect to a Ventas Stockholder Distribution, Ventas shall have been afforded the opportunity to participate in such offering in accordance with the provisions of Section 4 hereof. A registration will not count as a Demand Registration hereunder until the related registration statement becomes effective and has remained effective for the period of time specified in Section 3(a)(iii).

(c) Suspension of Registration. If the filing, initial effectiveness or continued use of a registration statement in respect of a Demand Registration at any time would require the Company to make an Adverse Disclosure or would require the inclusion in such registration statement of audited financial statements that are unavailable to the Company for reasons beyond

the Company's reasonable control, the Company may, upon giving prompt written notice (but in any event within five (5) days of determination) of such action to the Holders holding Registrable Securities included or proposed to be included in such Demand Registration, delay the filing or initial effectiveness of, or suspend use of, such registration statement for the shortest period of time determined in good faith by the Company to be necessary for such purpose a "Demand Suspension"); provided, however, that the Company shall not be permitted to exercise a Demand Suspension (i) more than three times during any twenty-four (24) month period, (ii) for a period exceeding ninety (90) days on

any one occasion, or (iii) for an aggregate period exceeding one hundred twenty (120) days in any twelve (12) month period. In the event of a Demand Suspension, the Holders agree to suspend, immediately upon their receipt of the notice referred to above, any sale or offer to sell the Registrable Securities, and the use of the prospectus related to the Demand Registration in connection with any such sale or offer to sell Registrable Securities, and agree not to disclose to any other Person the fact that the Company has exercised a Demand Suspension or any related facts. The Company shall promptly (but in any event within five (5) days) notify the Holders holding Registrable Securities affected by any Demand Suspension upon the termination of such Demand Suspension.

(d) Underwritten Offering. If the Holders holding not less than a majority of the Registrable Securities included in any offering pursuant to a Demand Registration so elect by written request to the Company, such offering shall be in the form of an Underwritten Offering. Holders holding a majority of the Registrable Securities included in such Underwritten Offering shall, after consulting with the Company, have the right to select the managing underwriter or underwriters for the offering, subject to the right of the Company to approve such managing underwriter or underwriters (which approval shall not be unreasonably withheld) and to select one co-managing underwriter reasonably acceptable to such Holders.

(e) Priority of Securities Registered Pursuant to Demand Registrations. If the managing underwriter or underwriters of a proposed offering of Registrable Securities included in a Demand Registration inform the Holders of such Registrable Securities and the Company in writing that, in its or their opinion, the number of securities requested to be included in such Demand Registration (including securities of the Company for its own account or for the account of other Persons which are not Holders) exceeds the number which can be sold in such offering without being likely to have an adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered, the Company will include in such registration all of the Registrable Securities sought to be registered therein by the Holders and only such lesser number of other securities requested to be included for the account of the Company or for the account of other Persons which are not Holders as shall not, in the opinion of the managing underwriter or underwriters, be likely to have such an effect. In the event that, despite the reduction of the number of securities to be offered for the account of the Company or for the account of Persons which are not Holders in such registration pursuant to the immediately preceding sentence, the number of Registrable Securities to be included in such registration exceeds the number which, in the opinion of the managing underwriter or underwriters, can be sold without having the adverse effect referred to above, the number of Registrable Securities that can be included without having such an adverse effect shall be allocated pro rata among the Holders which have requested participation in the Demand Registration (based, for each such Holder, on the percentage derived by dividing (i) the number of

Registrable Securities which such Holder has requested to include in such Demand Registration by (ii) the aggregate number

of Registrable Securities which all such Holders have requested to include (such Holder's "Allocation Percentage")). Notwithstanding the foregoing, if more than 50% of the Registrable Securities of a Holder requested to be registered pursuant to a Demand Registration under this Section 3 are excluded from such Demand Registration, then the Holder having such securities excluded (an "Excluded Holder") shall have the right to withdraw all, or any number, of their Registrable Securities from inclusion in such Demand Registration no later than 20 days prior to its effectiveness. If less than 80% of the aggregate Registrable Securities requested to be included in such Demand Registration by an Initial Holder are actually included therein, such registration will not count as a Demand Registration of such Initial Holder for purposes of this Section 3. Notwithstanding the foregoing, no Registrable Securities to be distributed pursuant to a Ventas Stockholder Distribution shall be excluded from a Demand Registration by virtue of this Section 3(e).

(f) Registration Statement Form. Registrations under this Section 3 shall be on such appropriate registration form of the Commission (i) as shall be selected by the Company and as shall be reasonably acceptable to the Holders holding a majority of Registrable Securities requesting participation in the Demand Registration and (ii) as shall permit the disposition of the Registrable Securities in accordance with the intended method or methods of disposition specified in the applicable Holders' requests for such registration.

4. Piggyback Registrations.

(a) Participation.

(i) If the Company at any time proposes to file a registration statement with respect to any offering of equity securities for its own account or for the account of any holders of its securities (other than (A) a registration under Section 2 hereof, (B) a registration on Form S-4 or S-8 or any successor form to such forms or (C) a registration on any registration form which does not permit secondary sales or does not include substantially the same information as would be required to be included in a registration statement covering the sale of Registrable Securities (other than information as to the selling stockholders and their intended method or methods of disposition)), then, as soon as practicable (but in no event less than fifteen (15) days prior to the proposed date of filing such registration statement with the Commission), the Company shall give written notice of such proposed filing to all Holders of Registrable Securities and such notice shall offer the Holders the opportunity to register such number of Registrable Securities as each such Holder may

request in writing (a "Piggyback Registration"). Subject to Section 4(b), the Company shall include in such registration statement all such Registrable Securities with respect to which the Company has received written requests for inclusion therein within ten (10) days after the Company's notice has been given ("Included Registrable Securities"). If at any time after giving written notice of its intention to register any equity securities and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to register or to delay registration of such equity securities, the Company may, at its election, give written notice of such determination to each Holder holding Included Registrable Securities and, (x) in the case of a determination not to register, shall be relieved of its obligation to register any Included Registrable Securities in connection with such registration, and (y) in the case of a determination

to delay registering, shall be permitted to delay registering any Included Registrable Securities for the same period as the delay in registering such other equity securities.

(ii) If the offering pursuant to a Piggyback Registration is to be an Underwritten Offering, then each Holder making a request for its Registrable Securities to be included therein must, and the Company shall use its reasonable best efforts to make such arrangements with the underwriters so that each such Holder may, participate in such Underwritten Offering on the same terms as other Persons selling securities in such Underwritten Offering. If the offering pursuant to such registration is to be on any other basis, then each Holder making a request for a Piggyback Registration pursuant to this Section 4(a) must participate in such offering on such basis. Notwithstanding any provision in this Agreement to the contrary, any Holder participating through a Piggyback Registration shall have no right to change the intended method or methods of disposition otherwise applicable, other than to include provisions reasonably necessary to effect a Ventas Stockholder Distribution.

(b) Priority of Piggyback Registration. If the managing underwriter or underwriters of any proposed offering of securities included in a Piggyback Registration informs the Holders holding Included Registrable Securities in writing that, in its or their opinion, the total number of securities which such Holders and any other Persons intend to include in such offering exceeds the number which can be sold in such offering without being likely to have an adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered, then the securities to be included in such registration shall be allocated as follows:

(i) first, 100% of the securities that the Company or any Person exercising a

contractual right to demand registration has proposed to sell shall be included therein;

(ii) second, and only if all the securities referenced in clause (i) have been included, the number of Included Registrable Securities that, in the opinion of such underwriter or underwriters, can be sold without having such adverse effect shall be included therein, with such number to be allocated pro rata among the Holders of Included Registrable Securities (based, for each such Holder, on such Holder's Allocation Percentage); provided, however, that if as a result of the provisions of this Section 4(b), any Holder shall not be entitled to include at least 50% of such Holder's Included Registrable Securities, such Holder may withdraw such Holder's request to include all, or any number of such Registrable Securities in such registration statement no later than 20 days prior to its effectiveness; and

(iii) third, and only if all of the Registrable Securities referenced in clauses (i) and (ii) have been included, any other equity securities eligible for inclusion in such registration which, in the opinion of such underwriters, can be sold without having such adverse effect shall be included therein.

5. Black-out Periods

(a) Black-out Periods for Holders. In the event of (i) a registration by the Company involving the offering and sale by the Company of its equity securities or securities convertible into or exchangeable for its equity securities or (ii) an Underwritten Offering involving the offering and sale by Holders of Registrable Securities, the Holders agree, if requested by the Company (or, in the case of any Underwritten Offering, by the managing underwriter or underwriters) and provided that the Company has complied with its obligations under Section 4, not to effect any public sale or distribution (including any sale pursuant to Rule 144 under the Securities Act) of any securities of the Company (except, in each case, as part of the applicable registration, if permitted, and provided that, solely with respect to a Ventas Stockholder Distribution, Ventas shall have been afforded the opportunity to participate in such offering in accordance with the provisions of Section 4 hereof) which securities are the same as or similar to those being registered in connection with such registration, or which are convertible into or exchangeable or exercisable for such securities, during the period beginning seven (7) days before and ending 90 days (or such lesser period as may be permitted by the Company or such managing underwriters) after, the effective date of the

registration statement filed in connection with such registration, to the extent such Holders are timely notified in writing by the Company or the managing underwriter or underwriters.

(b) Black-out Periods for the Company. In the event of a registration of Registrable Securities pursuant to Section 2 or Section 3 hereof, the Company agrees, if requested by the Holders holding a majority of the Registrable Securities to be sold pursuant to such registration (or, in the case of an Underwritten Offering, by the managing underwriter or underwriters in such Underwritten Offering), not to effect any public sale or distribution of any securities of the Company which are the same as or similar to those being registered, or which are convertible into or exchangeable or exercisable for such securities, during the period beginning seven (7) days before, and ending 90 days (or such lesser period as may be permitted by such Holders or such underwriter or underwriters) after, the effective date of the registration statement filed in connection with such registration (or, in the case of an Underwritten Offering under the Shelf Registration, the date of the closing under the underwriting agreement in connection therewith), to the extent the Company is timely notified in writing by such Holders or such underwriter or underwriters. Notwithstanding the foregoing, the Company may effect a public sale or distribution of securities of the type described above and during the periods described above if the same (A) is made pursuant to a registration on Form S-4 or S-8 or any successor form to such forms or (B) in connection with a direct or indirect acquisition, merger or other business combination by the Company of or with another Person.

6. Registration Procedures.

(a) In connection with the Company's registration obligations pursuant to this Agreement, the Company shall, subject to the limitations set forth herein, use its reasonable best efforts to effect any such registration so as to permit the sale of the applicable Registrable Securities in accordance with the intended method or methods of distribution thereof as expeditiously as reasonably practicable and, in any event, in conformity with any required time period set forth herein, and in connection therewith the Company shall:

(i) before filing a registration statement or prospectus with the Commission, or any amendments or supplements thereto, furnish to the underwriter or

underwriters, if any, and to the Holders holding Registrable Securities included in such registration statement, copies of all documents prepared to be filed, w hich documents shall be subject to the reasonable review and comment of such Holders, such underwriters, if any, and their respective counsel;

(ii) prepare and file with the Commission a registration

statement relating to the registration on any appropriate form under the Securities Act, which form shall be available for the sale of the Registrable Securities;

(iii) prepare and file with the Commission such amendments or supplements to the applicable registration statement or prospectus used in connection therewith as may be (A) reasonably requested by any participating Holder (to the extent such request relates to information relating to such Holder), (B) necessary to keep such registration effective for the period of time required by this Agreement or (C) necessary to comply with the applicable provisions of Rules 424 and 430A under the Securities Act;

(iv) notify the selling Holders and the managing underwriter or underwriters, if any, as soon as reasonably practicable after notice thereof is received by the Company (A) when the applicable registration statement or any amendment thereto has been filed or becomes effective and when the applicable prospectus or any amendment or supplement thereto has been filed, (B) of any written comments by the Commission or any request by the Commission for amendments or supplements to such registration statement or prospectus or for additional information, (C) of the issuance by the Commission of any stop order suspending the effectiveness of such registration statement or any order preventing or suspending the use of any preliminary or final prospectus or the initiation or threat of any proceedings for such purposes and (D) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities for offering or sale in any jurisdiction or the initiation or threat of any proceeding for such purpose;

(v) promptly notify each selling Holder and the managing underwriter or underwriters, if any, when the Company becomes aware of the occurrence of any event as a result of which the applicable registration statement or prospectus (as then in effect) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein (in the case of the prospectus and any preliminary prospectus, in light of the circumstances under which they were made) not misleading or, if for any other reason it shall be necessary to amend or supplement such registration statement or prospectus in order to comply with the Securities Act and, in either case as promptly as reasonably practicable thereafter, prepare and file with the Commission a post-effective amendment or supplement to such registration statement or prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of Registrable Securities, the prospectus shall not contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading;

(vi) make every reasonable effort to prevent or obtain at the earliest possible moment the withdrawal of any stop order with respect to the applicable registration statement or other order suspending the use of any preliminary or final prospectus;

(vii) promptly incorporate in a prospectus supplement or post-effective amendment to the applicable registration statement such information as the managing underwriter or underwriters, if any, or the Holders holding a majority of the Registrable Securities being sold agree should be included therein (or, in the case of a Ventas Stockholder Distribution, by Ventas) relating to the plan of distribution with respect to such Registrable Securities, the amount of Registrable Securities being distributed and the purchase price being paid therefor; and make all required filings of such prospectus supplement or post-effective amendment as soon as reasonably practicable after being notified of the matters to be incorporated in such prospectus supplement or post-effective amendment;

(viii) furnish to each selling Holder and each managing underwriter, if any, without charge, as many conformed copies as such Holder or managing underwriter may reasonably request of the applicable registration statement, including all documents incorporated by reference therein or exhibits to such registration statement;

(ix) deliver to each selling Holder and each managing underwriter, if any, without charge, as many copies of the applicable prospectus (including each preliminary prospectus) as such Holder or managing underwriter may reasonably request (it being understood that the Company consents to the use of the prospectus by each of the selling Holders and the underwriter or underwriters, if any, in connection with the offering and sale of the Registrable Securities covered by the prospectus);

(x) on or prior to the date on which the applicable registration statement is declared effective, use its reasonable best efforts to register or qualify such Registrable Securities for offer and sale under the securities or "Blue Sky" laws of each state and other jurisdiction of the United States, as any such selling Holder or underwriter, if any, or their respective counsel reasonably and timely requests in writing, and do any and all other acts or things reasonably necessary or advisable to keep such registration or qualification in effect so as to permit the commencement and continuance of sales and dealings in such jurisdictions for as long as may be necessary to complete the distribution of the Registrable Securities covered by the registration statement; provided that the Company shall not be required (A) to
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qualify generally to do business in any jurisdiction where it is not then so qualified, (B) to take any action which would subject it to taxation or general service of process in any such jurisdiction where it is not then so subject or (C) make any change in its charter or by-laws that the board of directors of the Company determines in good faith to be contrary to the best interests of the Company and its stockholders;

(xi) cooperate with the selling Holders and the managing underwriter, underwriters or agent, if any, to facilitate the timely preparation

and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends;

(xii) not later than the effective date of the applicable registration statement, provide a CUSIP number for all Registrable Securities included in such registration statement and provide the applicable transfer agent with printed certificates for the Registrable Securities, which certificates shall be in a form eligible for deposit with The Depository Trust Company;

(xiii) obtain for delivery to the underwriter or underwriters, if any, with copies to the Holders included in such registration, an opinion or opinions from counsel for the Company dated the effective date of the registration statement or, in the event of an Underwritten Offering, the date of the closing under the underwriting agreement, in customary form, scope and substance;

(xiv) in the case of an Underwritten Offering, obtain for delivery to the Company and the underwriter or underwriters, if any, with copies (subject to the reasonable consent of the certified public accountants referred to below, determined in accordance with market practice) to the Holders included in such registration, a comfort letter from the Company's independent certified public accountants in customary form and covering such matters of the type customarily covered by comfort letters and as the managing underwriter or underwriters reasonably request, dated the date of execution of the underwriting agreement and brought down to the closing under the underwriting agreement;

(xv) reasonably cooperate with each selling Holder of Registrable Securities and each underwriter or agent, if any, participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with the NASD;

(xvi) use its reasonable best efforts to comply with all applicable rules and regulations of the Commission and make generally available to its securityholders such information (financial or otherwise) as may be required thereunder;

(xvii) provide and cause to be maintained a transfer agent and registrar for all Registrable Securities covered by the applicable registration statement from and after a date not later than the effective date of such registration statement;

(xviii) cause all Registrable Securities covered by the applicable registration statement to be listed on each securities exchange on which any of the Company's securities of such class are then listed or quoted and on each inter-dealer quotation system on which any of the Company's securities of such class are then quoted; and

(xix) make available upon reasonable notice at reasonable times and for reasonable periods for inspection by each Initial Holder and a representative appointed by the Holders holding a majority of the Registrable Securities covered by the applicable registration statement, by any managing underwriter or underwriters participating in any disposition to be effected pursuant to such registration statement and by any attorney, accountant or other agent retained by such Holders or any such managing underwriter, all pertinent financial and other records, pertinent corporate documents and properties of the Company as shall be reasonably necessary to enable them to exercise their due diligence responsibility, and cause all of the Company's officers, directors and employees and the independent public accountants who have certified its financial statements to make themselves available upon reasonable notice at reasonable times and for reasonable periods to discuss the business of the Company and to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such registration statement as shall be reasonably necessary to enable them to exercise their due diligence responsibility (subject to the entry by each party referred to

in this clause (xix) into a customary confidentiality agreement in a form reasonably acceptable to the Company).

(b) The Company may require each selling Holder as to which any registration is being effected to furnish to the Company such information regarding itself, the Registrable Securities held by it, the distribution of such Holder's Registrable Securities and such other information relating to such Holder and its ownership of the applicable Registrable Securities as the Company may from time to time reasonably request, including without limitation information required under Item 507 of Regulation S-K and other information necessary to effect a registration with respect to a Ventas Stockholder Distribution. Each Holder agrees to furnish such information to the Company and to cooperate with the Company as necessary to enable the Company to comply with the provisions of this Agreement. The Company shall have the right to exclude any Holder that does not comply with the preceding sentence from the applicable registration.

(c) Each Holder agrees by acquisition of its Registrable Securities that, upon receipt of any notice from the Company of the occurrence of any event of the kind described in Section 6(a)(v), such Holder shall discontinue disposition of its Registrable Securities pursuant to such registration statement until such Holder's receipt of the copies of the supplemented or amended prospectus contemplated by Section 6(a)(v) and of any additional or supplemental filings that are incorporated by reference in the prospectus, or until such Holder is advised in writing by the Company that the use of the prospectus may be resumed, and has received copies and, if so directed by the Company, such Holder shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in such Holder's possession, of the prospectus covering such Registrable Securities which are current at the

time of the receipt of such notice. In the case of the Shelf Registration Statement, in the event the Company shall give any such notice, the Shelf Period shall be extended by the number of days in the period from and including the date of the giving of such notice in accordance with Section 16 and pursuant to this Section 6(c) to but not including the date when each Holder of Registrable Securities covered by the Shelf Registration Statement shall have received copies of the supplemented or amended prospectus contemplated by Section 6(a)(v), and the restrictions of this Section 6(c) shall no longer be applicable.

7. Registration Expenses. The Company shall pay all expenses incident to its performance or compliance with its obligations under this Agreement, including without limitation: (i) all registration and filing fees, and any other fees and expenses associated with filings required to be made with the Commission or the NASD, (ii) all fees and expenses of compliance with federal and state securities or "Blue Sky" laws, (iii) all of its printing, duplicating, word processing, messenger, telephone, facsimile and delivery expenses (including expenses of printing certificates for the Registrable Securities in a form eligible for deposit with The Depository Trust Company and of printing prospectuses), (iv) all fees and disbursements of counsel for the Company and of all independent certified public accountants of the Company, (v) Securities Act liability insurance or similar insurance if the Company so desires, (vi) all fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange or the quotation of the Registrable Securities on any inter-dealer quotation system, (vii) the reasonable fees and expenses of one counsel for all Holders (selected by the Holders of a majority of the Registrable Securities included in a registration) in an amount not to exceed

$50,000 and (viii) all road show costs and expenses not paid for by the underwriters. In addition, the Company shall pay its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any audit and the fees and expenses of any Person, including special experts, retained by the Company. The Company shall not be required to pay (w) any other costs or expenses in the course of the transactions contemplated hereby, (x) any expenses incurred by the Holders (except as provided in clauses (i), (ii) and (vii) of the preceding sentence), (y) any underwriting discounts or commissions or transfer taxes attributable to the sale of Registrable Securities or (z) any fees and expenses of counsel to the underwriters.

8. Indemnification.

(a) Indemnification by the Company. The Company agrees to indemnify and hold harmless, to the fullest extent permitted by law, each Holder selling Registrable Securities and its respective officers, directors, partners and

employees and each Person who controls (within the meaning of the Securities Act or the Securities Exchange Act) such selling Holder (each, a "Participant") from
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and against any and all losses, claims, damages, judgments, liabilities and expenses (including reasonable costs of investigation and legal expenses) caused by, arising out of or based upon (i) any untrue or alleged untrue statement of a material fact contained in any registration statement under which such Registrable Securities were registered under the Securities Act (including any final, preliminary or summary prospectus contained therein or any amendment thereof or supplement thereto or any documents incorporated by reference therein) or (ii) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus or preliminary prospectus, in light of the circumstances under which they were made) not misleading (each, a "Loss" and
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collectively "Losses"); provided, however, that the Company shall not be liable
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to any Participant in any such case to the extent that any such Loss is caused by written information furnished to the Company by such Holder expressly for use in the preparation thereof , or if such untrue statement or alleged untrue statement or omission or alleged omission is corrected in an amendment or supplement to such prospectus which has been made available to the Holders and the relevant Holder fails to deliver such prospectus as so amended or supplemented, if such delivery is required under applicable law or the applicable rules of any securities exchange, prior to or concurrently with the sales of the Registrable Securities to the Person asserting such Loss. This indemnity shall be in addition to any liability the Company may otherwise have.

(b) Indemnification by the Holders. Each selling Holder agrees
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(severally and not jointly) to indemnify and hold harmless, to the fullest extent permitted by law, the Company, its directors, officers and employees and each Person who controls the Company (within the meaning of the Securities Act and the Securities Exchange Act) from and against any and all Losses to the extent, but only to the extent, that any such Loss is caused by, arises out of or is based upon any information furnished in writing by such selling Holder to the Company specifically for inclusion in any registration statement under which such Registrable Securities were registered under the Securities Act (including any final, preliminary or summary prospectus contained therein or any amendment thereof or supplement thereto or any documents incorporated by reference therein) and was not corrected in a subsequent writing prior to or concurrently with the sale of the Registrable Securities to the Person asserting such Loss.

The liability of any Holder under this paragraph shall in no event exceed the amount by which proceeds received by such Holder from sales of Registrable Securities giving rise to such obligations exceeds the amount of any Loss which such Holder has otherwise been required to pay by reason of such untrue statement or omission. This indemnity shall be in addition to any liability

such Holder may otherwise have.

(c) Indemnification Proceedings. Any Person entitled to indemnification hereunder (an "Indemnified Party") shall (i) give prompt written notice to the Person from whom such indemnification may be sought (the "Indemnifying Party") of any claim with respect to which it seeks indemnification, provided, however, that the failure to so notify the Indemnifying Party shall not relieve it of any obligation or liability which it may have hereunder or otherwise except to the extent it is materially prejudiced by such failure, and (ii) permit such Indemnifying Party to assume the defense of such claim with counsel reasonably satisfactory to the Indemnified Party; provided, however, that the Indemnified Party shall have the right to select and employ separate counsel and to participate in the defense of such claim, and the fees and expenses of such counsel shall be at the expense of the Indemnified Party unless (A) the Indemnifying Party has agreed in writing to pay such fees or expenses, (B) the Indemnifying Party shall have failed to assume the defense of such claim within a reasonable time after having received notice of such claim from the Indemnified Party and to employ counsel reasonably satisfactory to the Indemnified Party, (C) in the reasonable judgment of the Indemnified Party, based upon advice of its counsel, a conflict of interest exists between the Indemnified Party and the Indemnifying Party with respect to such claims or (D) the Indemnified Party has reasonably concluded (based on advice of counsel) that there may be legal defenses available to it or other Indemnified Parties that are different from or in addition to those available to the Indemnifying Party (in which case, if the Indemnified Party notifies the Indemnifying Party in writing that the Indemnified Party elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense of such claim on behalf of the Indemnified Party). If such defense is assumed by the Indemnifying Party, or if such defense is not assumed by the Indemnifying Party but the Indemnifying Party acknowledges that the Indemnified Party is entitled to indemnification hereunder, the Indemnifying Party shall not be subject to any liability for any settlement made without its consent, which consent shall not be unreasonably withheld; provided, that an Indemnifying Party shall not be required to consent to any settlement involving the imposition of equitable remedies or involving the imposition of any material obligations on such Indemnifying Party other than financial obligations for which such Indemnified Party will be indemnified hereunder. If the Indemnifying Party assumes the defense, the Indemnifying Party shall have the right to settle such action without the consent of the Indemnified Party; provided, that the Indemnifying Party shall be required to obtain the consent of the Indemnified Party (which consent shall not be unreasonably withheld) if the settlement includes any admission of wrongdoing on the part of the Indemnified Party or any equitable remedies or restriction on the Indemnified Party or its officers, directors or employees. No Indemnifying Party shall consent to entry of any

judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to each Indemnified Party of an unconditional release from all liability in respect of such claim or litigation. An Indemnifying Party (or, as the case may be, Indemnifying Parties) shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements and other charges of more than one separate firm admitted to practice in such jurisdiction at any one time from all Indemnified Parties collectively unless

(x) the employment of more than one counsel has been authorized in writing by such Indemnifying Party (or Indemnifying Parties) or (y) a conflict exists or may exist (based on advice of counsel to an Indemnified Party) between such Indemnified Party and other Indemnified Parties, in each of which cases the Indemnifying Party (or Indemnifying Parties) shall be obligated to pay the reasonable fees and expenses of such additional counsel or counsels. The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Party or any officer, director or controlling Person of such Indemnified Party and shall survive the transfer of Registrable Securities.

(d) Contribution. If for any reason the indemnification provided for in paragraphs (a) and (b) of this Section 8 is unavailable to an Indemnified Party or is insufficient to hold it harmless as contemplated by paragraphs (a) and (b) of this Section 8, then the Indemnifying Party shall contribute to the amount paid or payable by the Indemnified Party as a result of such Loss in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and the Indemnified Party on the other. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Indemnifying Party or the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. Notwithstanding anything in this Section 8(d) to the contrary, no Indemnifying Party (other than the Company) shall be required pursuant to this Section 8(d) to contribute any amount in excess of the amount by which the net proceeds received by such Indemnifying Party from the sale of Registrable Securities in the offering to which the Losses of the Indemnified Parties relate exceeds the amount of any damages which such Indemnifying Party has otherwise been required to pay by reason of such untrue statement or omission. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 8(d) were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in the preceding sentences. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. If indemnification is

available under this Section 8, the Indemnifying Parties shall indemnify each Indemnified Party to the fullest extent provided in Sections 8(a) and 8(b) hereof without regard to the relative fault of said Indemnifying Parties or Indemnified Party.

(e) Reimbursement. In addition to, but not in duplication of, the foregoing, each Initial Holder shall be entitled to reimbursement from the Company for any out-of-pocket losses actually incurred in the event, and only to the extent, that such Holder suffers such losses as a result of such Holder's inability to make delivery of sold securities due to the Company's breach of its commitment to provide timely notice as required by clauses (C) and (D) of Section 6(a)(iv).

9. Compliance with Rule 144. The Company shall file the reports required to be filed by it under the Securities Act and the Securities Exchange Act so long as the Company is obligated to file such reports, and it shall take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (a) Rule 144 under the Securities Act, as such Rule may be amended from time to

time or (b) any similar rules or regulations hereafter adopted by the Commission. Upon the written request of any Holder, the Company shall deliver to such Holder a written statement as to whether it has complied with such requirements.

10. Underwriting Agreements. If requested by the underwriters for any Underwritten Offering requested by Holders pursuant to Section 2 or Section 3, the Company and the Holders of Registrable Securities to be included therein shall enter into an underwriting agreement with such underwriters, such agreement to be reasonably satisfactory in substance and form to the Company, the Holders holding a majority of the Registrable Securities to be included in such Underwritten Offering and the underwriters, and to contain such terms and conditions as are generally prevailing in agreements of that type, including, without limitation, such representations and warranties to, and covenants with, the underwriters with respect to the business of the Company and its subsidiaries and the registration statement, prospectus and documents, if any, incorporated or deemed to be incorporated by reference therein, in each case, as are customarily made by issuers to underwriters in underwritten offerings of securities similar to the Registrable Securities, and indemnities no less favorable to the recipient thereof than those provided in Section 8. The Holders holding any Registrable Securities to be included in any Underwritten Offering pursuant to Section 4 shall enter into such an underwriting agreement at the request of the Company. No Holder shall be required in any such

underwriting agreement to make any representations or warranties to or agreements with the Company or the underwriters other than representations, warranties or agreements regarding such Holder, such Holder's Registrable Securities, such Holder's intended method of distribution and any other representations required by law or as the underwriters may reasonably request; provided, however, that each Holder agrees to execute customary powers of attorney, custody agreements and other forms or documents reasonably requested by the underwriters.

11. Term. This Agreement shall terminate at the Expiration Time. The provisions of Section 8, 22 and 23 shall survive any termination.

12. Amendments and Waivers. The provisions of this Agreement may be amended or waived at any time only by the written agreement of the Company and the Holders holding a majority of the Registrable Securities; provided, however, that any amendment or waiver that adversely effects any Holder or group of Holders (including without limitation any amendment or waiver to the extent it has an adverse effect on the ability to effect a Ventas Stockholders Distribution) shall only be binding on those Holders that have expressly agreed to such amendment or waiver. Any amendment or waiver on the part of any such Holders of any provision or condition of this Agreement must be made in writing and shall be effective only to the extent specifically set forth in writing. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each Holder and the Company, except as provided in the proviso to the first sentence of this section. Each Holder acknowledges that by operation of this paragraph the Holders holding a majority of the Registrable Securities, acting in conjunction with the Company, will have the right and power to diminish or eliminate all rights pursuant to this Agreement, except as provided in the proviso to the first sentence of this section.

13. Successors, Assigns and Transferees.

(a) The registration rights (other than demand registration rights pursuant to Section 3 hereof; provided, however, that each Initial Holder may transfer and assign all but not less than all of its Registrable Securities to one entity, in which case such Initial Holder's unexercised Demand Registration shall also be transferred and assigned) of any Holder under this Agreement with respect to any Registrable Securities may be transferred and assigned, provided that no such transfer or assignment shall be binding upon or obligate the Company under this Agreement to any such transferee or assignee unless and until (i) the Company shall have received notice of such transfer or assignment as

herein provided and a written agreement of the transferee or assignee to be bound by the provisions of this Agreement and (ii) such transferee or assignee holds Registrable Securities. Any transfer or assignment of the rights and obligations under this Agreement made other than as provided in the first sentence of this Section 13 shall be null and void.

(b) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

14. Final Agreement. This Agreement constitutes the final agreement of the parties concerning the matters referred to herein, and supersedes all prior agreements and understandings.

15. Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

16. Notices. All notices, demands or other communications or documents to be given or delivered under or by reason of the provisions of this Agreement shall be made in writing and shall be deemed to have been received (a) when delivered personally to the recipient; (b) when sent to the recipient by telecopy (receipt electronically confirmed by sender's telecopy machine) if during normal business hours of the recipient, otherwise on the next business day; (c) one business day after the date when sent to the recipient by reputable express courier service (charges prepaid), or (d) seven business days after the date when mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid. Such notices, demands and other communications shall be sent to the parties at the addresses indicated below, or to such other address as any party hereto may, from time to time, designate in writing delivered pursuant to the terms of this Section 16:

If to the Initial Holders, to the addresses set forth on Schedule 1 hereto.

If to Holders other than the Initial Holders, to the addresses set forth on the stock record books of the Company.

If to the Company, to:

Vencor, Inc. (to be renamed Kindred Healthcare, Inc.)
680 South Forest Street

Louisville, KY 40202
Attention: General Counsel and Chief Financial Officer
Fax: (502) 596-4715

17. Governing Law; Service of Process; Consent to Jurisdiction. (a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED WITHIN THE STATE.

(b) To the fullest extent permitted by applicable law, each party hereto (i) agrees that any claim, action or proceeding by such party seeking any relief whatsoever arising out of, or in connection with, this Agreement or the transactions contemplated hereby shall be brought only in the U.S. District Court for the Southern District of New York and in any New York State court located in the Borough of Manhattan and not in any other State or Federal court in the United States of America or any court in any other country, (ii) agrees to submit to the exclusive jurisdiction of such courts located in the State of New York for purposes of all legal proceedings arising out of, or in connection with, this Agreement or the transactions contemplated hereby and (iii) irrevocably waives any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

18. Counterparts and Facsimile Execution. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute one instrument. This agreement may be executed by the exchange of signatures by facsimile transmission. Each party shall receive a duplicate original of the counterpart copy or copies executed by it and the Company.

19. Securities Held by the Company or its Affiliates. Whenever the consent or approval of Holders of a specified percentage of Registrable Securities is required hereunder, Registrable Securities held by the Company or any of its affiliates (as such term is defined in Rule 405 under the Securities Act, but excluding any Holders of Registrable Securities) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

20. Specific Performance. Without limiting or waiving in any respect any rights or remedies of the parties under this Agreement now or hereinafter existing at law or in equity or by statute, each of the parties hereto shall be entitled to seek specific performance of the obligations to be performed by the other(s) in accordance with the provisions of this Agreement.

21. No Inconsistent Agreements. (a) The Company shall not, on or after the date of this Agreement, enter into any agreement with respect to its securities

that is inconsistent with the rights granted to the Holders pursuant to this Agreement or otherwise conflicts with the provisions hereof. The rights granted to the Holders hereunder do not in any way conflict with

and are not inconsistent with the rights granted to the holders of the Company's securities under any other agreement in effect on the date hereof.

(b) In the event of any inconsistency with respect to the registration and sale of New Warrants and New Warrant Stock as provided for in this Agreement and in the Warrant Agreement, dated as of the date hereof between the Company and the Warrant Agent named therein, this Agreement shall govern the rights and obligations of those Holders of Registrable Securities who are also Holders as defined in the Warrant Agreement.

22. Third Party Beneficiaries. Holders of Registrable Securities and the Indemnified Parties are intended third party beneficiaries of this Agreement, and this Agreement shall inure to the benefit of, and may be enforced by, such Persons. Other than as set forth in the preceding sentence, this Agreement shall be binding upon and inure solely to the benefit of each party hereto.

23. NASD Rule 4460. For the period beginning on the date hereof until the date the New Common Stock are listed and admitted and authorized for trading on the New York Stock Exchange, the Nasdaq Stock Market or another national securities exchange, the Company shall comply with the requirements of NASD Rule 4460 as if it were subject thereto, other than those (a) requiring the Company to provide notice of certain actions or events to the NASD or (b) set forth in subsections (b) and (k) thereof.

24. Listing of New Common Stock. The Company shall use its reasonable best efforts to cause the New Common Stock, including the Registrable Securities, to be approved for listing on the New York Stock Exchange, the Nasdaq Stock Market, or other national securities exchange.

25. Capacity of Trust as Signatory. The Company and the Holders agree that (i) this Agreement is executed and delivered by the trustee of the Trust, which initially is The Bank of New York (the "Trustee"), not individually or personally but solely in its capacity as the Trustee of the Trusts, in the exercise of the powers and authority conferred and vested in it as such, (ii) the representations, undertakings and agreements herein made on the part of each applicable Trust are made and intended not as personal representations, undertakings and agreements by the Trustee, but are made and intended for the purpose of binding only each applicable Trust, (iii) nothing herein contained shall be construed as creating any liability on the Trustee, individually or personally, to perform any covenant either expressed or implied contained

herein, all such liability, if any, being expressly waived by the parties who are signatories to this Agreement and by any Person claiming by, through or under such parties and (iv) under no circumstances shall the Trustee be personally liable for the payment of any indebtedness or expenses of each applicable Trust or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by each applicable Trust under this Agreement.

[Remainder of page intentionally left blank.

Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

VENCOR, INC. (to be renamed

KINDRED HEALTHCARE, INC.)

By:

Name:
Title:

[Signature blocks of Initial Holders to appear on subsequent pages]

SCHEDULE 1

INITIAL HOLDERS

Holder	Holding
Ventas Realty, Limited Partnership	1,498,500 shares of New Common Stock
The Ventas Stockholder Trust	0 shares of New Common Stock

[Additional Initial Holders: To include each entity owning at least 10% of the New Common Stock and New Warrants (on a fully converted basis) issued and outstanding immediately following the Effective Date; counterparts may be executed within 30 days of the Effective Date.]