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Loan No. \_\_\_\_\_

4500

## MORTGAGE AND SECURITY AGREEMENT AND FINANCING STATEMENT

THIS MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (the "Mortgage") is made as of February 23, 1989 by and between CarCare Enterprises, Inc., (the "Mortgagor"), whose mailing address is 1098 Tower Lane, Bensenville, Illinois, 60106, and COLE TAYLOR BANK (the "Mortgagee"), whose mailing address is 4400 W. Oakton, Skokie, Illinois 60076.

### W I T N E S S E T H:

WHEREAS, the Mortgagor is justly indebted to Mortgagee in the principal sum of THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00) evidenced by one certain PROMISSORY NOTE of the Mortgagor of even date herewith (the "Note"), made payable to the order of and delivered to the Mortgagee, whereby the Mortgagor promises to pay the said principal sum, late charges, and interest at the rate or rates and in installments, all as provided in the Note. The final payment of principal and interest, if not sooner paid, shall be due on June 30, 1989. All such payments on account of the indebtedness secured hereby shall be applied first to interest on the unpaid principal balance, secondly to any other sums due thereunder, thirdly to all other advances and sums secured hereby, and the remainder to principal, all of said principal and interest being made payable at such place as the holder of the Note may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee.

NOW, THEREFORE, the Mortgagor, to secure the payment of said principal sum of money and said interest and late charges and prepayment premiums in accordance with the terms, provisions and limitations of this Mortgage and of the Note, and all promissory notes hereafter executed by Mortgagor evidencing all renewals or refinancings of said Note, and the performance of the covenants and agreements herein contained by the Mortgagor to be performed, and also

THIS DOCUMENT PREPARED BY *David T. Cohen*  
DAVID T. COHEN & ASSOC., LTD.  
62 ORLAND SQUARE DRIVE  
ORLAND PARK, IL 60462

PERMANENT INDEX NO.:  
PARCEL 1: 10-18-106-043-0000  
PARCEL 2: 10-36-407-036-0000  
PARCEL 3: 13-18-300-043-0000  
PARCEL 4: 13-29-425-044-0000

BOX \_\_\_\_\_

PROPERTY ADDRESS:  
PARCEL 1: 9246 WAUKEGAN RD.  
MORTON GROVE, IL 60053

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715364702 JMT  
6/6/89

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in consideration of the sum of ONE DOLLAR (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents MORTGAGE, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto the Mortgagee and its successors and assigns, the following described real estate and all of its present and hereafter-acquired estate, right, title and interest therein, situated, lying and being in the County of Cook and State of Illinois to-wit, which Property is legally described on Exhibit "A" attached hereto and made a part hereof, which, with the property hereinafter described, is collectively referred to herein as the "Premises". The Premises consist of 4 parcels and are designated as Parcel 1, 2 3 and 4 on Exhibit "A" and which may be referred to herein as Parcel 1, Parcel 2, Parcel 3 or Parcel 4 according to their designation on said Exhibit "A";

TOGETHER with all improvements, tenements, reversions, remainders, easements, fixtures and appurtenances now or hereafter thereto belonging, and all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily); all tenant security deposits, utility deposits and insurance premium rebates to which Mortgagor may be entitled or which Mortgagor may be holding; and all shades, awnings, venetian blinds, screens, screen doors, storm doors and windows, stoves and ranges, refrigerators, curtain fixtures, partitions and attached floor covering, if any, now or hereafter therein or thereon, and all fixtures, apparatus, equipment and articles now or hereafter therein or thereon used to supply heat, gas, air conditioning water, light, power, sprinkler protection, waste removal, refrigeration and ventilation (whether single units or centrally controlled) including (without restricting the foregoing): all fixtures, apparatus, equipment and articles (other than trade fixtures used in the operation of a business and other than inventories held for sale) which relate to the use, occupancy, and enjoyment of the Premises, it being understood that the enumeration of any specific articles of property shall in no wise exclude or be held to exclude any items of property not specifically mentioned. All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared (to the maximum extent permitted by law) to form part and parcel of the real estate and to be appropriated to the use of the real estate, and shall be, for the purposes of this Mortgage, deemed to be real estate and conveyed and mortgaged hereby.

TO HAVE AND TO HOLD the Premises unto the Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth.

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IT IS FURTHER UNDERSTOOD AND AGREED THAT:

## **MAINTENANCE, REPAIR AND RESTORATION OF IMPROVEMENTS, PAYMENT OF PRIOR LIENS, ETC.**

1. Mortgagor shall: (a) promptly repair, restore or rebuild any buildings and other improvements now or hereafter on the Premises which may become damaged or destroyed to substantially the same character as prior to such damage or destruction, without regard to the availability or adequacy of any casualty insurance proceeds or eminent domain awards; (b) keep the Premises constantly in good condition and repair, without waste; (c) keep the Premises free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof (collectively called "Liens"), subject, however, to the rights of the Mortgagor set forth in paragraph 1a below; (d) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof (no such lien to be permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of such lien to Mortgagee; (e) complete within a reasonable time any building(s) or other improvement(s) now or at any time in process of erection upon the Premises; (f) comply with all federal, state and local requirements of law, regulations, ordinances, orders and judgments and all covenants, easements and restrictions of record with respect to the Premises and the use thereof; (g) make no alterations in the Premises without Mortgagee's prior written consent; (h) suffer or permit no change in the general nature of the occupancy of the Premises without Mortgagee's prior written consent; (i) observe and comply with all conditions and requirements (if any) necessary to preserve and extend all rights, easements, licenses, permits (including without limitation zoning variations and any non-conforming uses and structure), privileges, franchises and concessions applicable to the Premises-or contracted for in connection with any present or future use of the Premises; and (j) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof and of the Note. As used in this paragraph 1 and elsewhere in this Mortgage, the term "Indebtedness" means and includes the unpaid principal sum evidenced by the Note, together with all interest, additional interest and late charges and prepayment premiums thereon, and all other sums at any time secured by this Mortgage.

## **RIGHT TO CONTEST**

1a. Anything in this Mortgage to the contrary notwithstanding, Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any lien not expressly subordinated to the lien hereof and defer payment and discharge thereof during the pending of such contest, provided: (i) that such contest shall have the effect of preventing the sale or for-

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feiture of the Premises or any part thereof, or any interest therein, to satisfy such lien; (ii) that, within ten (10) days after Mortgagor has been notified of the assertion of such lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such lien; and (iii) in the case of a lien not expressly subordinated to the lien hereof, that Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of COLE TAYLOR BANK, in Chicago, Illinois, a sum of money which shall be sufficient in the reasonable judgment of Mortgagee to pay in full such lien and all interest which might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest whenever, in the reasonable judgment of Mortgagee, such increase is advisable. Such deposits are to be held without any allowance of interest. If Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to pay the amount of the lien plus any interest finally determined to be due upon the conclusion of such contest, to the extent such amount exceeds the amount which Mortgagee will pay as provided below, or shall fail to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may, at its option, apply the money deposited in payment of or on account of such lien, or that part thereof then unpaid, together with all interest thereon. If the amount of money so deposited shall be insufficient for the payment in full of such lien, together with all interest thereon, Mortgagor shall forthwith, upon demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such lien or that part thereof then unpaid, together with all interest thereon (provided Mortgagor is not then in default hereunder) when so requested in writing by Mortgagor and when furnished by Mortgagor with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount of payment to be made.

## **PAYMENT OF TAXES**

2. Mortgagor shall pay all general taxes before any penalty or interest attaches, and shall pay special taxes, special assessments, water charges, sewer service charges, and all other charges against the Premises of any nature whatsoever when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor within thirty (30) days following the date of payment. Mortgagor shall pay in full "under protest" any tax or assessment which Mortgagor may desire to contest, in the manner provided by law, except for Certificate of Error proceeding where the proper statutory procedure must be followed.

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## TAX DEPOSITS

3. Mortgagor shall deposit with the Mortgagee or such depository ("Depository") as the Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of COLE TAYLOR BANK, in Skokie, Illinois, commencing on the date of disbursement of the proceeds of the loan secured hereby and on the first day of each month following the month in which said disbursement occurs, a sum equal to the amount of all real estate taxes and assessments (general and special) next due upon or for the Premises (the amount of such taxes next due to be based upon the Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed) reduced by the amount, if any, then on deposit with the Mortgagee or the Depository, divided by the number of months to elapse before one month prior to the date when such taxes and assessments will become due and payable. Such deposits are to be held and are to be used for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due. If the funds so deposited are insufficient to pay any such taxes or assessments (general or special) when the same become due and payable, the Mortgagor shall, within ten (10) days after receipt of demand therefor from the Mortgagee or Depository, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for the year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of the Mortgagee or the Depository.

Anything in this Paragraph 3 to the contrary notwithstanding, if the funds so deposited are insufficient to pay any such taxes or assessments (general or special) or any installment thereof, Mortgagor will, not later than the thirtieth (30) day prior to the last day on which the same may be paid without penalty or interest, deposit with the Mortgagee or the Depository the full amount of any such deficiency.

If any such taxes or assessments (general or special) shall be levied, charged, assessed or imposed upon or for the Premises, or any portion thereof, and if such taxes or assessments shall also be a levy, charge, assessment or imposition upon or for any other premises not encumbered by the lien of this Mortgage, then the computation of any amount to be deposited under this Paragraph 3 shall be based upon the entire amount of such taxes or assessments, and Mortgagor shall not have the right to apportion the amount of any such taxes or assessments for the purposes of such computation. No interest shall be allowed to Mortgagor on account of any deposit hereunder and said deposit need not be kept separate and apart from any other funds of Mortgagee or Depository.

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Mortgagee initially waives the tax deposit requirements of this Paragraph 3, provided, however, that Mortgagee reserves the right to reinstate such requirements in the event Mortgagor fails to pay any such taxes or assessments when due.

## INSURANCE DEPOSITS

3a. For the purpose of providing funds with which to pay premiums when due on all policies of fire and other hazard insurance covering the Premises and the Collateral (defined below), Mortgagor shall deposit with the Mortgagee or the Depository, commencing on the date of disbursement of the proceeds of the loan secured hereby and on the first day of each month following the month in which said disbursement occurs, a sum equal to the Mortgagee's estimate of the premiums that will next become due and payable on such policies reduced by the amount, if any, then on deposit with the Mortgagee or the Depository, divided by the number of months to elapse before one (1) month prior to the date when such premiums become due and payable. No interest shall be allowed to Mortgagor on account of any deposit made hereunder and said deposit need not be kept separate and apart from any other funds of the Mortgagee or the Depository. Mortgagee initially waives the insurance deposit requirements of this Paragraph 3a, provided, however, that Mortgagee reserves the right to reinstate such requirements in the event Mortgagor fails to pay any such insurance premiums at least five (5) business days before the same are due. Mortgagor shall promptly furnish Mortgagee evidence of each such premium payment.

## MORTGAGEE'S INTEREST IN AND USE OF TAX DEPOSITS; SECURITY INTEREST

4. In the event of a default hereunder, the Mortgagee may, at its option but without being required so to do, upon notice to Mortgagor apply any monies at the time on deposit pursuant to Paragraph 3 and 3a hereof on any of Mortgagor's obligations contained herein or in the Note, in such order and manner as the Mortgagee may elect. When the Indebtedness has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Premises as the same appear on the records of the Mortgagee. A security interest, within the meaning of the Uniform Commercial Code of the State of Illinois, is hereby granted to the Mortgagee in and to all monies at any time on deposit pursuant to Paragraphs 3 and 3a hereof and such monies and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all as additional security for the Indebtedness hereunder and shall, in the absence of default hereunder, be applied by the Mortgagee or Depository for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor; provided, however, that neither the Mortgagee nor the Depository shall be liable for any failure to apply to the payment of taxes or assessments any

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amount so deposited unless Mortgagor, while not in default hereunder, shall have furnished Mortgagee with the bills therefor and requested Mortgagee or the Depository in writing to make application of such funds to the payment of the particular taxes or assessments or insurance premiums for payment of which they were deposited, accompanied by the bills for such taxes or assessments. Neither Mortgagee nor the Depository shall be liable for any act or omission taken in good faith, but only for its gross negligence or willful misconduct.

## INSURANCE

5. Mortgagor shall keep all buildings and improvements and the Collateral (defined in Paragraph 27 below) now or hereafter situated on said Premises insured against loss or damage by fire on a so-called "All Risks" basis and against such other hazards as may reasonably be required by Mortgagee, including without limitation of the generality of the foregoing: (a) rent loss or business interruption insurance whenever in the opinion of Mortgagee such protection is necessary; and (b) flood insurance whenever same is available and, in the opinion of Mortgagee, such protection is necessary because the Premises are located in a HUD designated flood hazard area. Mortgagor shall also provide insurance coverages with such limits for personal injury and death and property damage as Mortgagee may require. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts reasonably satisfactory to Mortgagee, with waiver of subrogation and replacement cost endorsements and a standard non-contributory mortgagee clause attached to all policies, including a provision requiring that the coverages evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to the Mortgagee. Mortgagor shall deliver all original policies, including additional and renewal policies, to Mortgagee and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard non-contributory mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the original policy or policies of such insurance. In the event of a foreclosure of the lien of this Mortgage, or of a transfer of title to the Premises either in lieu of foreclosure or by purchase at the foreclosure sale, all interest in all insurance policies in force shall pass to Mortgagee, transferee or purchaser, as the case may be.

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Within ninety (90) days following the end of each fiscal year of Mortgagor, at the request of the Mortgagee, Mortgagor agrees to furnish evidence of replacement cost, without cost to the Mortgagee, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the building(s) and other improvements on the Premises.

## ADJUSTMENT OF LOSSES WITH INSURER AND APPLICATION OF PROCEEDS OF INSURANCE

6. In case of loss or damage by fire or other casualty, Mortgagee is authorized: (a) to settle and adjust any claim under insurance policies which insure against such risks; or (b) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, Mortgagee is authorized to collect and receipt for any such insurance monies. So long as: (a) all leases of the Premises are in full force and effect and each tenant thereunder is not in default and such loss or damage shall not result in the termination or cancellation of any of those leases or give any tenant thereunder the right to terminate or cancel its lease; (b) no insurer denies liability as to any insured or claims any right of participation in any of the Mortgagee's security; and (c) this Mortgage is not in default; then such insurance proceeds, after deducting therefrom any reasonable expenses incurred by Mortgagee in the collection thereof, shall be made available by the Mortgagee for the repair, rebuilding or restoration of the building(s) and other improvement(s) on the Premises; provided, however, that Mortgagor shall not be obligated to repair, restore or rebuild the Premises if Mortgagor elects by written notice to Mortgagee within thirty (30) days after such insurance settlement to apply such proceeds and/or Mortgagor's own funds to retire the indebtedness in full. In all other cases, such insurance proceeds may, at the option of the Mortgagee, be: (a) applied to retire the Indebtedness in full if the amount of proceeds are sufficient to effectuate such full payment, whether due or not; (b) applied in reduction of the indebtedness; or (c) held by the Mortgagee and used to reimburse Mortgagor (or any lessee) for the cost of the repair, rebuilding or restoration of the building(s) and other improvement(s) on the Premises. In any event, the building(s) and other improvement(s) shall be so repaired, restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the insurance proceeds are made available for repair, rebuilding or restoration, such proceeds shall be disbursed upon the "Disbursing Party" (hereinafter defined) being furnished with satisfactory evidence of the cost of completion thereof and with architects' certificates, waivers of lien, contractors' and subcontractors' sworn statements, title continuations and other evidence of cost and payments so that the Disbursing Party can verify that the amounts disbursed from time to time are represented by completed and in-place work and that said work is free



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and clear of mechanics' lien claims. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed from time to time, and at all times the undisbursed balance of such proceeds remaining in the hands of the Disbursing Party shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. If the cost of rebuilding, repairing or restoring the buildings and other improvements may reasonably exceed the sum of TEN THOUSAND DOLLARS (\$10,000.00), then the Mortgagee must approve plans and specifications of such work before such work shall be commenced. Any surplus which may remain out of said insurance proceeds, after payment of the cost of repair, rebuilding, restoration and the reasonable charges of the Disbursing Party, shall, at the option of the Mortgagee and upon notice to the Mortgagor, be applied on account of the Indebtedness or paid to any party entitled thereto as the same appear on the records of the Mortgagee. No interest shall be allowed to Mortgagor on any proceeds of insurance held by the Disbursing Party.

As used in this Paragraph 6, the term "Disbursing Party" refers to the Mortgagee and to any responsible trust company or title insurance company selected by the Mortgagee.

## **STAMP TAX; EFFECT OF CHANGES IN LAWS REGARDING TAXATION**

7. If, by the laws of the United States of America or of any state or subdivision thereof having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, the Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor further covenants to reimburse the Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note.

7.1. In the event of the enactment, after this date, of any law of the state in which the Premises are located deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments or reimburse the Mortgagee therefor; provided, however, that if in the opinion of counsel for the Mortgagee: (a) it might be unlawful to require Mortgagor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law; then and in any such event, the Mortgagee may elect, by

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notice in writing given to the Mortgagor, to declare all of the Indebtedness to be and become due and payable ninety (90) days from the giving of such notice.

## OBSERVANCE OF LEASE ASSIGNMENT

8. As additional security for the payment of the Note and for the faithful performance of the terms and conditions contained herein, Mortgagor has assigned to the Mortgagee all of its right, title and interest as landlords in and to the leases listed on the SCHEDULE OF LEASES attached hereto, if any, and all future leases of the Premises. All leases of the Premises are subject to the approval of the Mortgagee as to form, content and tenant(s), which approval shall not be unreasonably withheld or delayed.

Mortgagor will not without Mortgagee's prior written consent: (i) execute any assignment or pledge of any rents or any leases of the Premises except an assignment or pledge securing the Indebtedness; or (ii) accept any payment of any installment of rent more than thirty (30) days before the due date thereof; or (iii) make any lease of the Premises except for actual occupancy by the tenant thereunder.

Mortgagor at its sole cost and expense will: (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all leases of the Premises, on the part of the landlord thereunder to be kept and performed; (ii) enforce or secure the performance of all of the covenants, conditions and agreements of such leases on the part of the tenants to be kept and performed, but Mortgagor shall not modify, amend, cancel, terminate or accept surrender of any lease without prior written consent of Mortgagee; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such leases or the obligations, duties or liabilities of the landlord or of any tenants thereunder; (iv) transfer and assign or cause to be separately transferred and assigned to Mortgagee, upon written request of Mortgagee, any lease or leases of the Premises heretofore or hereafter entered into, and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment; (v) furnish Mortgagee, within ten (10) days after a request by Mortgagee so to do, a written statement containing the names of all tenants and the terms of all leases of the Premises, including the spaces occupied and the rentals payable thereunder; and (vi) exercise within ten (10) days of any demand therefor by Mortgagee any right to request from the tenant under any lease of the Premises a certificate with respect to the status thereof.

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Nothing in this Mortgage or in any other documents relating to the loan secured hereby shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of any landlord under any of the leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the landlord, each and all of which covenants and payments Mortgagor agrees to perform and pay or cause to be performed and paid.

In the event of the enforcement by Mortgagee of any remedies provided for by law or by this Mortgage, the tenant under each lease of the Premises shall, at the option of the Mortgagee, attorn to any person succeeding to the interest of landlord as a result of such enforcement and shall recognize such successor in interest as landlord under such lease without change in the terms or other provisions thereof; provided, however, the said successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment or modification to any lease made without the consent of Mortgagee or said successor in interest. Each tenant, upon request by said successor in interest, shall execute and deliver an instrument or instruments confirming such attornment.

It is covenanted and agreed that a material default under any assignment of rents or leases executed pursuant to this paragraph 8 shall constitute a default hereunder, on account of which the whole of the Indebtedness secured hereby shall after expiration at any applicable period of cure, at the option of the Mortgagee, become immediately due and payable, without notice to the Mortgagor.

## **MORTGAGOR AND LIEN NOT RELEASED**

9. From time to time Mortgagee may, at Mortgagee's option, without giving notice to or obtaining the consent of Mortgagor or Mortgagor's successors or assigns or the consent of any junior lien holder, guarantor or tenant, without liability on Mortgagee's part and notwithstanding Mortgagor's breach of any covenant, agreement or condition: (a) release anyone primarily or secondarily liable on any of the Indebtedness; (b) accept a renewal note or notes therefor; (c) release from the lien of this Mortgage any part of the Premises; (d) take or release other or additional security for the Indebtedness; (e) consent to any plat, map or plan of the Premises; (f) consent to the granting of any easement; (g) join in any extension or subordination agreement; (h) agree in writing with Mortgagor to modify the rate of interest or period of amortization of the Note or change the time of payment or the amount of the monthly installments payable thereunder; and (i) waive or fail to exercise any right, power or remedy granted by law or herein or in any other instrument given at any time to evidence or secure the payment of the Indebtedness.

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Any actions taken by Mortgagee pursuant to the terms of this Paragraph 9 shall not impair or affect: (a) the obligation of Mortgagor or Mortgagor's successors or assigns to pay any sums at any time secured by this Mortgage and to observe all of the covenants, agreements and conditions herein contained; (b) the guaranty of any individual or legal entity for payment of the Indebtedness; and (c) the lien or priority of the lien hereof against the Premises.

Mortgagor shall pay to Mortgagee a reasonable service charge and such title insurance premiums and reasonable attorneys' fees as may be incurred by Mortgagee for any action described in this Paragraph 9 taken at the request of Mortgagor or its beneficiary or beneficiaries, provided, however, that such obligation shall not apply to Mortgagor relative to Mortgagee's preparation of release documentation upon full payment and discharge of the Indebtedness secured hereby consistent with Paragraph 19 hereof.

## **MORTGAGEE'S PERFORMANCE OF DEFAULTED ACTS**

10. In case of default herein which continues beyond any applicable period of cure, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner Mortgagee deems expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said Premises or contest any tax or assessment or cure any default of any landlord in any lease of the Premises. All monies paid for any of the purposes herein authorized and all reasonable expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax referred to in Paragraphs 7 or 7.1 or to protect the Premises or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable upon written notice thereof to Mortgagor and with interest thereon at the rate of interest set forth in the Note applicable to a period when a default exists thereunder. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

## **MORTGAGEE'S RELIANCE ON TAX BILLS, ETC.**

11. Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale,



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forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

## ACCELERATION OF INDEBTEDNESS IN CASE OF DEFAULT

12. If: (a) default be made in the due and punctual payment of principal or interest on the Note, or any other payment due in accordance with the terms of the Note (which terms are hereby incorporated by reference); or (b) the Mortgagor or any guarantor of the Note shall file (i) a petition for liquidation, reorganization or adjustment of debt under Title 11 of the United States Code (11 U.S.C. SS 101 et seq.) or any similar law, state or federal, whether now or hereafter existing, or (ii) any answer admitting insolvency or inability to pay its debts, or (iii) fail to obtain a vacation or stay of involuntary proceedings within thirty (30) days, as hereinafter provided; or (c) any order for relief of the Mortgagor or any guarantor of the Note shall be entered in any case under Title 11 of the United States Code, or a trustee or a receiver shall be appointed for the Mortgagor or for any guarantor of the Note, or for all or the major part of the property of Mortgagor or of any guarantor of the Note in any voluntary or involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the property of the Mortgagor or of any guarantor of the Note in any voluntary or involuntary proceeding for the reorganization, dissolution, liquidation, adjustment of debt or winding up of the Mortgagor or of any guarantor of the Note and such trustee or receiver shall not be discharged or such jurisdiction not be relinquished or vacated or stayed on appeal or otherwise stayed within thirty (30) days; or (d) the Mortgagor or any guarantor of the Note secured hereby shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all or any major part of its property; or (e) any default shall be made in the due observance or performance of any other covenant, agreement or condition hereinbefore or hereinafter contained and required to be kept or performed or observed by the Mortgagor; (f) default shall be made in the due observance or performance of any covenant, agreement or condition required to be kept or observed by Mortgagor or any guarantor of the Note in any other instrument given at any time to secure the payment of the Note; then and in any such event, the whole of the indebtedness shall at once, at the option of the Mortgagee, become immediately due and payable without notice to Mortgagor. If while any insurance proceeds or condemnation awards are held by or for the Mortgagee to reimburse Mortgagor or any lessee for the cost of repair, rebuilding or restoration of building(s) or other improvement(s) on the Premises, as set forth in Paragraphs 6 and 18 hereof, the Mortgagee shall be or become entitled to accelerate the maturity of the Indebtedness, then and in such

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event, the Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by or for it in reduction of the Indebtedness, and any excess held by it over the amount of the Indebtedness shall be paid to Mortgagor or any party entitled thereto, without interest, as the same appear on the records of the Mortgagee.

The foregoing notwithstanding, Mortgagor shall have ten (10) days after written notice from Mortgagee within which to cure any monetary default and thirty (30) days after written notice from Mortgagee within which to cure any non-monetary default.

## FORECLOSURE; EXPENSE OF LITIGATION

13. When the Indebtedness or any part thereof shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof. In any civil action to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the order or judgment for foreclosure and sale all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of said order or judgment) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens' Certificates and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such civil action or to evidence to bidders at any sale which may be had pursuant to such order or judgment the true condition of the title to, or the value of, the Premises. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be reasonably incurred in the protection of the Premises and in the maintenance of the lien of this Mortgage, including the reasonable fees of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including probate, appellate and bankruptcy proceedings, or in preparations for the commencement or defense of any action or proceeding or threatened action or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the rate set forth in the Note applicable to a period when a default exists thereunder, and shall be secured by this Mortgage. the foregoing notwithstanding, Mortgagor shall not be liable for costs, expenses and attorneys fees incurred by Mortgagee in defense of any action by Mortgagor against Mortgagee pursuant to the Note, this Mortgage or otherwise in the event Mortgagor prevails in such action.

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At all times, the Mortgagor shall appear in and defend any suit, action or proceeding that might in any way in the reasonable judgment of Mortgagee affect the value of the Premises, the priority of this Mortgage or the rights and powers of Mortgagee hereunder or under any document given at any time to secure the Indebtedness. Mortgagor shall, at all times, indemnify, hold harmless and reimburse Mortgagee on demand for any and all loss, damage, expense or cost, including cost of evidence of title and reasonable attorneys' fees, arising out of or incurred in connection with any such suit, action or proceeding, and the sum of such expenditure shall be secured by this Mortgage, and shall bear interest after written demand at the rate specified in the Note applicable to a period when an uncured default exists thereunder, and such interest shall be secured hereby and shall be due and payable on demand.

## APPLICATION OF PROCEEDS OF FORECLOSURE SALE

14. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding Paragraph hereof; second, all other items which may under the terms hereof constitute secured Indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; and fourth, any overplus to any party entitled thereto as their rights may appear.

## APPOINTMENT OF RECEIVER OR MORTGAGEE IN POSSESSION

15. Upon, or at any time after, the commencement of an action to foreclose this Mortgage, the court in which such action was commenced may, upon request of the Mortgagee, appoint a receiver of the Premises either before or after foreclosure sale, without notice and without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and the Mortgagee or any holder of the Note may be appointed as such receiver or as Mortgagee in possession. Such receiver or the Mortgagee in possession shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure action and, in case of a sale and a deficiency, during the full statutory period of redemption (if any), whether there be redemption or not, as well as during any further times (if any) when Mortgagor, except for the intervention of such receiver or Mortgagee in possession, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may

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authorize the receiver or Mortgagee in possession to apply the net income in its hands in payment in whole or in part of: (a) the Indebtedness secured hereby or by any order or judgment foreclosing the lien of this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or the lien of such order or judgment, provided such application is made prior to foreclosure sale; (b) the deficiency in case of a sale and deficiency.

## RIGHTS CUMULATIVE

16. Each right, power and remedy conferred upon the Mortgagee by this Mortgage and by all other documents evidencing or securing the Indebtedness and conferred by law and in equity is cumulative and in addition to every other right, power and remedy, express or implied, given now or hereafter existing, at law and in equity, and each and every right, power and remedy herein or therein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee; and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of, or discontinuance by, the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

## MORTGAGEE'S RIGHT OF INSPECTION

17. Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose, provided, however, that any such inspection shall be conducted in a manner which does not interfere with the business operations of Mortgagor or any tenants in possession of the Premises.

## CONDEMNATION

18. Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. So long as: (a) each lease listed on the SCHEDULE OF LEASES attached hereto, if any, and all future leases of the Premises are in full force and effect and each tenant thereunder is not in default and such taking shall not result in the termination or cancellation of any of those leases or give any tenant thereunder the right to cancel its lease; (b) the Premises require repair, rebuilding or restoration; and (c) this Mortgage is not in default; then any award, after deducting therefrom any reasonable expenses incurred in the collection thereof, shall be made available by the Mortgagee for the repair,



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rebuilding or restoration of the Premises in accordance with plans and specifications to be submitted to and approved by the Mortgagee, provided, however, that Mortgagor shall not be obligated to repair, restore or rebuild the Premises if Mortgagor elects by written notice to Mortgagee within thirty (30) days after confirmation of any such condemnation award or damages to apply such proceeds and/or Mortgagors own funds to retire the Indebtedness in full.

In all other cases, the Mortgagee may elect to apply the proceeds of the award to retire the Indebtedness in full if the amount of such proceeds are sufficient to effectuate such full payment, whether due or not, or make those proceeds available for repair, restoration or rebuilding of the Premises in accordance with plans and specifications to be submitted to and approved by the Mortgagee. In any case where proceeds are made available for repair, rebuilding or restoration, the proceeds of the award shall be paid out in the same manner and under the same conditions provided in Paragraph 6 hereof for the payment of insurance proceeds toward the cost of repair, rebuilding or restoration. Any surplus which may remain out of said award after payment of such cost of repair, rebuilding, restoration and the reasonable charges of the Disbursing Party shall, at the option of the Mortgagee and upon notice to Mortgagor, be applied on account of the Indebtedness or paid to any party entitled thereto as the same appear on the records of the Mortgagee. No interest shall be allowed to Mortgagor on account of any proceeds of any award held by the Mortgagee.

## RELEASE UPON PAYMENT AND DISCHARGE OF MORTGAGOR'S OBLIGATIONS

19. Mortgagee shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all Indebtedness secured hereby (including any prepayment charges and late charges provided for in the Note).

## GIVING OF NOTICE

20. Any notice, demand or communication ("notice") which either party hereto may desire or be required to give to the other party shall be in writing and deposited in United States Mail, by certified mail addressed to the Mortgagor or to the Mortgagee, as the case may be, at the respective addresses set forth on the first page hereof or at such other place as any party hereto may by notice in writing designate as a place for service of notice. Such notice shall be deemed given as of the second (2nd) day following such deposit of the same so addressed in the United States Mail.

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## WAIVER OF DEFENSE

21. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law or in equity upon the Note.

## WAIVER OF STATUTORY RIGHTS

22. Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of the lien of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety.

## FURNISHING OF FINANCIAL STATEMENTS TO MORTGAGEE

23. Mortgagor covenants and agrees that it will keep and maintain, books and records of account in which full, true and correct entries shall be made of all dealings and transactions relative to the Mortgagor and the Premises, which books and records of account shall, at reasonable times and on reasonable notice, be open to the inspection of the Mortgagee and its accountants and other duly authorized representatives. Such books of record and account shall be kept and maintained in accordance with generally accepted accounting principles consistently applied.

23.1 Mortgagor covenants and agrees to furnish to the Mortgagee, within thirty (30) days following the end of every calendar quarter a copy of a report of the operations of the Mortgagor for the quarter or the year then ended, to be certified by the Mortgagor and the chief financial officer of Mortgagor, which report shall be satisfactory to the Mortgagee, including a balance sheet and supporting schedules and containing a detailed statement of income and expenses. Each such certificate to each such quarterly report shall certify that the certifying party examined such records as were deemed necessary for such certification and that those statements are true, correct and complete. Mortgagor shall furnish to Mortgagee within 90 days of the close of Mortgagor's fiscal year an annual audited financial statement with an unqualified opinion prepared by a certified public accounting firm acceptable to Mortgagee.

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23.2 If Mortgagor fails to furnish promptly any report required by Paragraph 23.1, the Mortgagee may elect upon notice to Mortgagor (in addition to exercising any other right, remedy and power) to make an audit of all books and records of Mortgagor and its beneficiaries which in any way pertain to the Premises and to prepare the statement or statements which Mortgagor failed to procure and deliver. Such audit shall be made and such statement or statements shall be prepared by an independent certified public accountant to be selected by the Mortgagee. Mortgagor shall pay all expenses of the audit and other services which expenses shall be secured hereby as additional Indebtedness and shall be immediately due and payable with interest thereon at the rate set forth in the Note applicable to a period when a default exists thereunder.

## **FILING AND RECORDING CHARGES AND TAXES**

24. Mortgagor will pay all filing, registration, recording and search and information fees, and all expenses incident to the execution and acknowledgment of this Mortgage and all other documents securing the Note and all federal, state, county and municipal taxes, other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing, recording or registration of the Note, this Mortgage and all other documents securing the Note and all assignments thereof.

## **BUSINESS PURPOSE; USURY EXEMPTION**

25. Mortgagor represents to Mortgagee that the proceeds of the loan secured by this Mortgage will be used for the purposes specified in Paragraph 6404 of Chapter 17 of the 1983 Illinois Revised Statutes, and that the principal obligation secured hereby constitutes a "business loan" which comes within the purview and operation of said paragraph.

## **MISCELLANEOUS**

26. **Binding Nature.** This Mortgage and all provisions hereof shall extend to and be binding upon the original Mortgagor named on page 1 hereof and its successors, grantees, assigns, each subsequent owner or owners of the Premises and all persons claiming under or through Mortgagor; and the word "Mortgagor" when used herein shall include all such persons and all persons primarily and secondarily liable for the payment of the Indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage.

26.1 **Release of Previous Holder.** The word "Mortgagee" when used herein shall include the successors and assigns of the original Mortgagee named on page 1 hereof, and the holder or holders, from time to time, of the Note. However, whenever the

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Note is sold, each prior holder shall be automatically freed and relieved, on and after the date of such sale, of all liability with respect to the performance of each covenant and obligation of Mortgagee hereunder thereafter to be performed, provided that any monies in which the Mortgagor has an interest, which monies are then held by the seller of the Note, are turned over to the purchaser of the Note.

**25.2 Severability and Applicable Law.** In the event one or more of the provisions contained in this Mortgage or in the Note or in any other document given at any time to secure the payment of the Note shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, the Note or other document and this Mortgage, the Note or other document shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. The validity and interpretation of this Mortgage and the Note it secures are to be construed in accordance with and governed by the laws of the State in which the Premises are situated.

**26.3 Governmental Compliance.** Mortgagor shall not by act or omission permit any lands or improvements not subject to the lien of this Mortgage to include the Premises or any part thereof in fulfillment of any governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises to be so used. Similarly, no lands or improvements comprising the Premises shall be included with any lands or improvements not subject to the lien of this Mortgage in fulfillment of any governmental requirement. Mortgagor shall not by act or omission impair the integrity of the Premises, or any part thereof, as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this paragraph shall be void.

**26.4 Estoppel Certificate.** Mortgagor, within fifteen (15) days after mailing of a written request by the Mortgagee, agrees to furnish from time to time a signed statement setting forth whether or not any default, offset or defense then is alleged to the best of Mortgagors knowledge to exist against the Indebtedness and, if so, specifying the nature thereof.

**26.5 Non-Joinder of Tenant.** After an event of default, Mortgagee shall have the right and option to commence a civil action to foreclose the lien of this Mortgage and to obtain an order or judgment of foreclosure and sale subject to the rights of any tenant or tenants of the Premises. The failure to join any tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any such order or judgment to foreclose their rights shall not be asserted by



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the Mortgagor as a defense in any civil action instituted to collect the Indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

**26.6 Regulation G Clause.** Mortgagor covenants and has been advised by its beneficiaries that the proceeds evidenced by the Note secured hereby will not be used for the purchase or carrying of registered equity securities within the purview and operation of Regulation G issued by the Board of Governors of the Federal Reserve System or for the purpose of releasing or retiring any indebtedness which was originally incurred for any such purpose.

## SECURITY AGREEMENT AND FINANCING STATEMENT

27. Mortgagor and Mortgagee agree: (i) that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "Code") of the state in which the Premises are located with respect to all sums on deposit with the Mortgagee pursuant to Paragraphs 6 and 18 hereof ("Deposits") and with respect to any property included in the definition herein of the word "Premises", which property may not be deemed to form a part of the real estate described in EXHIBIT "A" or may not constitute a "fixture" (within the meaning of Section 9-313 of the code), and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as the "Collateral"); and (ii) that a security interest in and to the Collateral and Deposits is hereby granted to the Mortgagee; and (iii) that the Deposits and all of Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee; all to secure payment of the Indebtedness and to secure performance by the Mortgagor of the terms, covenants and provisions hereof.

In the event of a default under this Mortgage, the Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and Collateral in accordance with its rights, powers and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. The parties agree that if the Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, ten (10) days' notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee. The Mortgagor agrees that, without the written consent of the Mortgagee, the Mortgagor will

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not remove or permit to be removed from the Premises any of the Collateral except that so long as the Mortgagor is not in default hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, un-serviceable or unnecessary for use in the operation of the Premises, but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of the Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. The foregoing notwithstanding Mortgagor is permitted to demolish and remove existing structures and improvements on Parcel 1 of the Premises (i.e. the parcel at 9246 Waukegan Road, Morton Grove, Illinois) for purposes of clearing the land so that a Jiffy Lube Service Center may be constructed thereon. The Mortgagor shall, from time to time, on request of the Mortgagee, deliver to the Mortgagee at the cost of the Mortgagor: (i) such further financing statements and security documents and assurances as Mortgagee may require, to the end that the liens and security interests created hereby shall be and remain perfected and protected in accordance with the requirements of any present or future law; and (ii) an inventory of the Collateral in reasonable detail. The Mortgagor covenants and represents that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto, unless the Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of others; however, Pennzoil Products Company and Allied Investment Corporation have liens against Parcels 2, 3 and 4 of the Premises which liens shall be subordinate to and inferior to the lien of this Mortgage.

The Mortgagor and Mortgagee agree, to the extent permitted by law, that: (i) all of the goods described within the definition of the word "Premises" herein are or are to become fixtures on the land described in EXHIBIT "A"; (ii) this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 9-313 and 9-402 of the Code; and (iii) Mortgagor is a record owner of the land described in EXHIBIT "A".

If the Collateral is sold in connection with a sale of the Premises, Mortgagor shall notify the Mortgagee prior to such sale and shall procure Mortgagee's consent to said sale and shall require as a condition of such sale that the purchaser specifically agrees to assume Mortgagor's obligations as to the security interests herein granted and to execute whatever agreements and

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filings are deemed necessary by the Mortgagee to maintain Mortgagee's first perfected security interest in the Collateral, Deposits and other deposits described in paragraph 4 above.

## DUE ON SALE OR FURTHER ENCUMBRANCE

28. In determining whether or not to make the loan secured hereby, Mortgagee examined the credit-worthiness of Mortgagor, Mortgagor's officers, directors and shareholders and of the Guarantors of the Note, found it acceptable and relied and continues to rely upon same as the means of repayment of the loan. Mortgagee also evaluated the background and experience of the shareholders in owning and operating property such as the Premises, found it acceptable and relies and continues to rely upon same as the means of maintaining the value of the Premises which is Mortgagee's security for the loan. Mortgagor and shareholders are business person or entity well-experienced in borrowing money and owning and operating property such as the Premises, was represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than Mortgagor. Mortgagor further recognizes that any secondary or junior financing placed upon the Premises, (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same; and (d) impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment by Beneficiary and Guarantors of the Note and of value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (iv) keeping the Premises and the beneficial interest free of unpermitted subordinate financing liens, Beneficiary and Mortgagor agree that if this paragraph be deemed a restraint on alienation, that it is a reasonable one and that any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises or any interest therein (whether voluntary or by operation of law) without the Mortgagee's prior written consent, which consent shall not be unreasonably withheld, shall be an event of default

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hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Premises and, therefore, an event of default hereunder:

(a) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, all or any part of the title to the Premises without Mortgagee's consent (provided, however, Mortgagee acknowledges and consents to the existence as of the date hereof, of a prior first security interest of Mortgagee and of security interests of Pennzoil Products Company and Allied Investment Corp., both of which are subordinate to the interest of Mortgagee created hereby, on Parcels 2, 3 and 4 of the Premises);

(b) any sale, conveyance, assignment, or other transfer of any share of stock of Mortgagor (provided, however, that transfers occurring by reason of testate or intestate succession due to death of any shareholder are exempt from this prohibition).

Any consent by the Mortgagee, or any waiver of an event of default, under this Paragraph shall not constitute a consent to, or waiver of any right, remedy or power of Mortgagee upon a subsequent event of default under this Paragraph.

Leases entered into in the ordinary course of Mortgagor's business on lease forms previously approved in writing by Mortgagee and at rental rates not less than those prevailing in the market place at the time of execution of the lease shall be deemed a permitted transfer of title and not an event of default.

## WAIVER OF RIGHT OF REDEMPTION

29. Mortgagor hereby waives any and all right of redemption from sale under any order or decree of foreclosure of this mortgage, on its own behalf and on behalf of each and every person, except decree or judgment creditors of the mortgagors acquiring any interest in or title to the premises subsequent to the date of this mortgage.

## CROSS DEFAULT

30. The parties hereto acknowledge that Parcels 2, 3 and 4 are currently encumbered by a mortgage to Mortgagee recorded as Document No. 27507284 in the office of the Recorder of Deeds of Cook County, Illinois in the original amount of \$825,000.00 and by a mortgage to Pennzoil Products Company in the original amount of \$120,000.00 recorded as Document No. 27507288 in the office of the Recorder of Deeds of Cook County, Illinois and by a mortgage to Allied Investment Corporation, Allied Venture Partnership, a District of Columbia Limited Partnership, Alpha Capitol Venture



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Partners, an Illinois Limited Partnership, William Blair Venture Partners II, an Illinois Limited Partnership, R.G.J. Company Limited Partnership, a Wisconsin Limited Partnership, C. Wolcott Henry, III, an Illinois resident, James H. Scott, an Illinois resident and Robert T. Lewis, an Illinois resident recorded September 1, 1988 as Document No. 88399729 in the office of the Recorder of Deeds of Cook County, Illinois to another mortgage to Allied Investment Corporation in the amount of \$2,925,000.00 recorded January 16, 1987 as Document No. 87033241 in the office of the Recorder of Deeds of Cook County, Illinois to secure a Note for \$255,000.00, and in conjunction therewith, the parties hereunto hereby agree as follows:

(a) that the Mortgagee's lien against Parcels 2, 3 and 4 shall:

(i) be in the amount of \$150,000.00 (Mortgagee's lien against Parcel 1 shall be for the entire \$300,000.00);

(ii) be subject only to the prior lien of Mortgagee;

(iii) be superior to the lien of Pennzoil Products Company created by the Mortgage recorded as Document No. 27507288 in the office of the Recorder of Deeds of Cook County, Illinois and superior to the liens of Allied Investment Corporation created by the aforementioned Mortgage recorded as Document No. 87033241 in the office of the Recorder of Deeds of Cook County, Illinois and of Allied Investment Corporation, a District of Columbia, Allied Venture Partnership, a District of Columbia Limited Partnership, Alpha Capitol Venture Partners, an Illinois Limited Partnership, William Blair Venture Partners II, an Illinois Limited Partnership, R.G.J. Company Limited Partnership, a Wisconsin Limited Partnership, C. Wolcott Henry, III, an Illinois resident, James H. Scott, an Illinois resident and Robert T. Lewis, an Illinois resident created by the aforementioned Mortgage recorded as Document No. 88399729 in the office of the Recorder of Deeds of Cook County, Illinois;

(b) That any default by Mortgagor on any loans secured by Parcels 2, 3 and 4 (or by any Guarantor, Maker or other party having liability for said loans) shall be default on this Mortgage and the Note secured hereby;

## NET WORTH REQUIREMENTS

32.1 Mortgagor shall at all times maintain a net worth in excess of \$2,250,000.00 when subordinated debentures are added back to the equity section. The debt to net worth ratio cannot exceed 10 to 1. Net worth shall be defined as gross assets (less intangible assets and less loans due from officers, shareholders or directors) minus gross liabilities. The failure of Mortgagor

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to maintain the above mentioned ratio and net worth requirements shall constitute a default under this Mortgage and the Note secured hereby.

IN WITNESS WHEREOF, the Mortgagor has executed this Instrument as of the day and year first above written.

CarCare Enterprises Inc.

BY: Robert J. Lewis  
President

ATTEST: D. F. Sch  
Secretary

Property of Cook County Clerk's Office

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EXHIBIT "A" ATTACHED TO AND MADE A PART OF THAT CERTAIN MORTGAGE SECURITY AGREEMENT AND FINANCING STATEMENT DATED FEBRUARY 17, 1989 BY AND BETWEEN CARCARE ENTERPRISES, INC. AND COLE TAYLOR BANK.

## LEGAL DESCRIPTION

### PARCEL 1:

The East 200 feet measured at right angles to the center line of Waukegan Road of the North 110.22 feet of the South 216.01 feet measured on the center line of Waukegan Road, of the North 551.84 feet, of the South 990 feet of that part of the North West 1/4 of Section 18, Township 41 North, Range 13 East of the Third Principal Meridian, lying West of the center line of Waukegan Road (except that part taken for Waukegan Road in Case 66L13 and also except that part previously taken or used for Waukegan Road), in Cook County, Illinois.

### PARCEL 2:

Lots 1, 2, 3 and 4 (except that part taken for widening Western Avenue) in Block 1 in Hewitt Roger's Park Addition in the North 1/2 of the North East 1/4 of the South East 1/4 of Section 36, Township 41 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

### PARCEL 3:

Lots 25 to 28 all inclusive (except the South 17 feet of said Lots) in Block 5 in Booth's Subdivision, a subdivision of the South 33 1/3 acres of the West 1/2 of the South East 1/4 of Section 29, Township 40 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

### PARCEL 4:

Lots 35 to 39 all inclusive in Prassas and Katsigiannis Greater Harlem and Montrose Avenue Subdivision of the North 727.30 feet of the West 1548.80 feet (except the East 5 acres and except the South 80 feet of the North 260 feet of the West 158 feet thereof) of the South 1/2 North of Indian Boundary line of Section 18, Township 40 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

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# UNOFFICIAL COPY

SCHEDULE OF LEASES ATTACHED TO AND MADE A PART OF THAT CERTAIN MORTGAGE SECURITY AGREEMENT AND FINANCING STATEMENT DATED FEBRUARY 17, 1989 BY AND BETWEEN CARCARE ENTERPRISES, INC., AS MORTGAGOR, AND COLE TAYLOR BANK, AS MORTGAGEE.

LESSEE	DATE	TERM DATE	RATE	PREMISES
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NONE. RA  
DWS

Property of Cook County Clerk's Office

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