

07-22-1999

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Docket No.:

6109-24623

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To the Honorable Commissioner c.

and the attached original documents or copy thereof.

1. Name of conveying party(ies):

CARE SOUTH HOME HEALTH SERVICES, INC.

mes
7-1399

- Individual(s)
- General Partnership
- Corporation-State Georgia
- Other
- Association
- Limited Partnership

Additional names(s) of conveying party(ies) Yes No

2. Name and address of receiving party(ies):

Name: NATIONSBANK, N.A.

Internal Address: NC1-001-07-05

Street Address: 101 North Tryon Street, 7th Floor

City: Charlotte State: NC ZIP: 28255

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State
- Other a National Banking Association

If assignee is not domiciled in the United States, a domestic designation is Yes N
(Designations must be a separate document from Additional name(s) & address(es) Yes N

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: March 9, 1998

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s)



07-13-1999

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #26

Additional numbers

B. Trademark Registration No.(s)

2,154,810

Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Robert W. Reardon

Internal Address: MORRIS, MANNING & MARTIN, LLP

Street Address: 1600 Atlanta Financial Center

3343 Peachtree Road, NE

City: Atlanta State: GA ZIP: 30326

6. Total number of applications and registrations involved:.....

1

7. Total fee (37 CFR 3.41):.....\$ 540.00

- Enclosed 40E
- Authorized to be charged to deposit account

8. Deposit account number:

07/21/1999 DNGUYEN 00000332 2154810

DO NOT USE THIS SPACE

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40.00 OP

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

David M. Lockman

Name of Person Signing

Signature

7/12/99

Date

Total number of pages including cover sheet, attachments, and



TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "Agreement") dated March 9, 1998 is executed and delivered by CARESOUTH HOME HEALTH SERVICES, INC., a corporation organized under the laws of Georgia (the "Debtor"), in favor of NATIONSBANK, N.A. (the "Secured Party").

RECITALS

1. CARESOUTH HOME HEALTH SERVICES, INC. (the "Company") and the Secured Party have entered into that certain Credit Agreement dated March 9, 1998 (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "Credit Agreement") pursuant to which the Secured Party has agreed to extend certain financial accommodations to the Company subject to the terms thereof;

2. The Company owns, directly or indirectly, all of the capital stock of the other Debtors.

3. The Debtors and the Company, though separate legal entities, are mutually dependent on each other in the conduct of their respective businesses and have determined it to be in their mutual best interests to obtain financing from the Secured Party.

4. It is a condition precedent to the Secured Party's extension of such financial accommodations under the Credit Agreement that the Debtor execute and deliver this Agreement;

AGREEMENT

THEREFORE, in consideration of the above premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Debtor, the Debtor hereby agrees with the Secured Party as follows:

Section 1 Security Interest In Trademarks. Pursuant to the terms of this Agreement and to secure the prompt and complete payment, observance and performance of all of the Obligations, the Debtor hereby conditionally assigns to the Secured Party and grants to the Secured Party a security interest in, with power of sale to the extent permitted by Applicable Law, all of the Debtor's right, title and interest in, to and under all of the following, whether now owned or existing or hereafter acquired or arising (collectively, the "Trademark Collateral"): (a) all trademarks, trademark applications, service marks, and service mark applications, including without limitation, the registered trademarks, trademark applications, service marks and service mark applications listed on Schedule I attached hereto and made a part hereof, and (i) all renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including without limitation, payments under all licenses entered into

in connection therewith and damages and payments for past or future infringements or dilutions thereof, (iii) the right to sue for past, present and future infringements and dilutions thereof, (iv) all of the Debtor's rights corresponding thereto throughout the world; (b) the goodwill of the Debtor's business connected with and symbolized by the Trademark Collateral; and (c) all books and records relating to any of the foregoing and all products and proceeds relating to any of the foregoing.

Section 2 Effective Date of Conditional Assignment. The Debtor hereby acknowledges and agrees that the conditional assignment of the Trademark Collateral effected hereby shall automatically occur and be effective, without any action necessary on the part of, or any notice to or consent from, the Debtor, the Secured Party or any other Person, simultaneously with any foreclosure on, or transfer or other conveyance of, any of the Collateral by or to the Secured Party as permitted under, or otherwise as a result of or in lieu of the exercise of the Secured Party's rights and remedies under, the Loan Documents or Applicable Law.

Section 3. Restrictions on Future Agreements. Except for the agreements set forth on Schedule II, the Debtor shall not enter into any agreement, including without limitation, any license or royalty agreement, which purports to transfer or assign any interest in any of the Trademark Collateral to any Person. The Debtor will not take any action or fail to take any action, and will use its reasonable best efforts to prevent any action by any Person, which would adversely affect the validity or enforceability of the rights transferred to the Secured Party under this Agreement or the rights associated with any of the Trademark Collateral.

Section 4. New Trademark Collateral. The Debtor represents and warrants that Schedule I is a true, correct and complete listing of all of the trademarks, trademark applications, service marks and service mark applications of the Debtor. If, prior to the termination of this Agreement, the Debtor shall obtain rights to any other trademarks, trademark applications, service marks, service mark applications or other property which constitutes or would constitute Trademark Collateral, or the Debtor shall register any Trademark Collateral with the United States Patent and Trademark office which Trademark Collateral is not so registered as of the date hereof, the Debtor shall promptly so notify the Secured Party in writing. Upon such occurrence, the Debtor shall, at the request of the Secured Party and at the Debtor's sole cost and expense, execute and deliver any and all agreements, instruments, documents, and papers as the Secured Party may request to subject such other trademarks, trademark applications, service marks, service mark applications or other property to the conditional assignment and security interest effected hereby and/or to perfect such conditional assignment and security interest.

Section 5. Representations. The Debtor represents and warrants to the Secured Party that:

(a) Each trademark, trademark application, service mark and service mark application constituting part of the Trademark Collateral is subsisting and no such

trademark, trademark application, service mark or service mark application has been adjudged invalid or unenforceable in whole or in part;

(b) The Trademark Collateral (other than any trademark or service mark application) is (and, to the knowledge of the Debtor, any trademark or service mark application of the Debtor is) valid and enforceable and no claim has been made that the use of any of the Trademark Collateral infringes upon the rights of any Person;

(c) The Debtor (i) is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to all of the Trademark Collateral (other than any trademark or service mark application), free and clear of any Liens other than Permitted Liens, and (ii) to the knowledge of the Debtor, is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to the Trademark Collateral consisting of any trademark or service mark application, free and clear of any Liens other than Permitted Liens;

(d) Schedule II hereof sets forth all license and royalty agreements or other arrangements regarding or in any way relating to any Trademark Collateral (the "License Agreements") and no item set forth on Schedule II hereof prohibits or limits the Debtor in any way from granting to the Secured Party the conditional assignment and security interest effected by this Agreement; and

(e) The chief executive office and principal place of business of the Debtor and the books and records relating to the Trademark Collateral are presently located at 577 Mulberry Street, Suite 1200, Macon, Georgia 31201, and have been located there for the five-year period immediately preceding the date hereof. During such five-year period, the Debtor has not changed its name, identity or corporate structure in any way other than as set forth in the Security Agreement.

Section 6. Royalties; No Liability. The Secured Party's interest in the Trademark Collateral as granted and authorized by the Debtor hereunder shall be coextensive with the Debtor's interest in the Trademark Collateral and shall not create any liability for the payment of royalties or other charges from the Secured Party to the Debtor. Notwithstanding any other provision of this Agreement to the contrary, the Debtor expressly acknowledges and agrees that it shall continue to observe and perform all of the conditions and obligations contained in the License Agreements to be observed and performed by it, and that neither this Agreement, nor any action taken pursuant hereto, shall cause the Secured Party to be under any obligation or liability in any respect whatsoever to any party to any License Agreement or to any other Person for the observance or performance of any of the representations, warranties, conditions, covenants, agreements or terms therein contained.

Section 7. Right to Inspect. The Secured Party shall have the right from time to time, upon five (5) days' prior notice and during normal business hours, to enter upon the Debtor's premises and to examine the Debtor's books, records and operations relating to

the Trademark Collateral. After the occurrence and during the continuance of an Event of Default, the Debtor agrees that the Secured Party shall have the right to take any and all actions to preserve the Trademark Collateral and any and all infringements thereon.

Section 8. Termination of Collateral Assignment and Security Interest. This Agreement is made for collateral security purposes only. Upon the indefeasible payment in full of all of the Obligations (as defined in the Credit Agreement), this Agreement shall terminate and the Secured Party shall execute and deliver to the Debtor, at the Debtor's sole cost and expense, all termination statements and other instruments as the Debtor may reasonably request to terminate the Secured Party's security interest in, and conditional assignment of, the Trademark Collateral. Any affidavit, certificate or other written statement of any officer of the Secured Party stating that any part of the Obligations remains unpaid or unperformed, shall be and constitute conclusive evidence of the continuing effectiveness of this Agreement and any Person receiving any such affidavit, certificate or statement, may, and is hereby authorized to, rely thereon.

Section 9. Additional Obligations of the Debtor. (a) The Debtor shall take all reasonable and necessary action to preserve and maintain all of the Debtor's rights in the Trademark Collateral, including without limitation, making timely filings with the United States Patent and Trademark Office for renewals and extensions and diligently monitoring unauthorized use of the Trademark Collateral. Any expenses incurred in connection with the foregoing shall be borne by the Debtor.

(b) The Debtor shall notify the Secured Party promptly if the Debtor knows that any application or registration relating to any Trademark Collateral may become abandoned or dedicated, or of any material adverse determination or development (including without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office or any court) regarding the Debtor's ownership of or the Secured Party's interest in, any Trademark Collateral, its right to register the same, or its right to keep and maintain the same.

(c) The Debtor will at the Debtor's sole cost and expense, take or cause to be taken all reasonably necessary steps and actions, including without limitation, in any proceeding before the United States Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to use its reasonable best efforts to obtain the relevant registration) and to maintain the Trademark Collateral, including without limitation, filing of applications for renewal and payment of maintenance fees.

(d) If any of the Trademark Collateral is infringed by any Person, the Debtor shall notify the Secured Party promptly after the Debtor learns thereof. At the Secured Party's request and at the Debtor's sole cost and expense, the Debtor shall promptly bring any claim for infringement and for recovery of any and all damages for such infringement (with counsel acceptable to the Secured Party, if counsel is necessary), or take such other

actions as shall be appropriate under the circumstances to protect such Trademark Collateral.

(e) The Debtor shall maintain the quality of any and all products on which, or in connection with which, any of the Trademark Collateral is used, substantially consistent with the quality of said products as of the date hereof.

Section 10. Right to Sue. If an Event of Default has occurred and is continuing, the Secured Party shall have the right, but not the obligation, to bring suit in its own name or in the name of the Debtor to enforce any rights pertaining to the Trademark Collateral and, if the Secured Party shall commence any such suit, the Debtor shall, at the request of the Secured Party and at the sole cost and expense of the Debtor, cooperate fully to the extent requested by the Secured Party in aid of such enforcement. The Debtor shall, upon demand, promptly reimburse the Secured Party for all reasonable costs and expenses incurred by the Secured Party in the exercise of such enforcement (including without limitation, the reasonable fees and expenses of attorneys, paralegals, accountants, and other experts).

Section 11. Exercise of Rights and Remedies upon an Event of Default. Upon the occurrence and during the continuance of an Event of Default, the Secured Party may exercise all of the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any applicable jurisdiction, and under any other Applicable Law, including, without limitation, the right, without notice (except as specified below) and with or without taking possession thereof, to sell the Trademark Collateral or any part thereof at public or private sale at any location chosen by the Secured Party, for cash, on credit or for future delivery. The Debtor agrees that, to the extent notice of sale shall be required by Applicable Law, at least ten-days' notice to the Debtor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification, but notice given in any other reasonable manner or at any other reasonable time shall constitute reasonable notification. Upon the occurrence and during the continuation of an Event of Default, the Secured Party shall have the right to establish additional product quality controls as the Secured Party may deem necessary to assure maintenance of the quality of products sold by the Debtor in connection with any of the Trademark Collateral. Further, upon the occurrence and during the continuation of an Event of Default, the Secured Party shall have the right to notify any Person obligated under a License Agreement to pay to the Debtor any fees, royalties or other amounts, to pay such fees, royalties and other amounts directly to the Secured Party.

Section 12. Application of Proceeds. All proceeds from each sale of, or other realization upon, all or any part of the Trademark Collateral following an Event of Default shall be applied or paid over as provided for in the Credit Agreement.

Section 13. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under Applicable Law, but if any provision of this Agreement shall be prohibited by or invalid under Applicable

Law, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

Section 14. Rights Cumulative. The rights and remedies of the Secured Party under this Agreement, the Credit Agreement, and the other Loan Documents shall be cumulative and not exclusive of any rights or remedies which the Secured Party otherwise has. In exercising its rights and remedies the Secured Party may be selective and no failure or delay by the Secured Party in exercising any right shall operate as a waiver of it, nor shall any single or partial exercise of any power or right preclude its other or further exercise or the exercise of any other power or right.

Section 15. Secured Party Appointed Attorney-in-Fact. The Debtor hereby irrevocably appoints the Secured Party as the Debtor's attorney-in-fact, with full authority in the place and stead of the Debtor and in the name of the Debtor or otherwise, from time to time in the Secured Party's discretion, to take any action and to execute any instrument or document which the Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement and to exercise any rights and remedies the Secured Party may have under this Agreement or applicable law, including without limitation, (a) to sign the Debtor's name on all applications, documents, papers and instruments related to the Trademark Collateral, or which the Debtor is to provide under Section 2 hereof, (b) to grant or issue any exclusive or non-exclusive license under any of the Trademark Collateral or (c) to assign, pledge, convey or otherwise dispose of any of the Trademark Collateral; provided, however, the Secured Party may exercise such power of attorney only upon the occurrence and during the continuation of an Event of Default. The power-of-attorney granted hereby shall be irrevocable and coupled with an interest.

Section 16. Binding Effect: Benefits. This Agreement shall be binding upon the Debtor and its successors and assigns, and shall inure to the benefit of the Secured Party, and its respective successors and assigns. The Debtor's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession of or for the Debtor.

Section 17. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF GEORGIA.

Section 18. Notices. All notices and other communications required or otherwise provided for hereunder shall be given in accordance with the notice provisions of the Credit Agreement.

Section 19. No Duty. The Secured Party shall not be liable for any acts, omissions, errors of judgment or mistakes of fact or law with respect to the Trademark Collateral except for those arising out of or in connection with the Secured Party's gross negligence, willful misconduct or bad faith. Without limiting the generality of the

foregoing, the Secured Party shall be under no obligation to take any action necessary to preserve rights in the Trademark Collateral against any other Persons but may do so at its option, and all expenses incurred in connection therewith shall be for the sole account of the Debtor and shall be added to the Obligations secured hereby.

Section 20. Amendments, Etc. No amendment or waiver of any provision of this Agreement nor consent to any departure by the Debtor herefrom shall in any event be effective unless the same shall be in writing and signed by the Debtor and the Secured Party. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 21. Headings. Section headings used herein are for convenience only and are not to affect the construction of or be taken into consideration in interpreting this Agreement.

Section 22. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which, taken together, shall constitute but one and the same instrument.

Section 23. Definitions. (a) For the purposes of this Agreement:

"Obligations" means, individually and collectively:

(i) all obligations of the Debtor owing to the Secured Party of every kind, nature and description, under or with respect to this Agreement, the Credit Agreement or any of the other documents and instruments executed and delivered in connection herewith or therewith, whether direct or indirect, absolute or contingent, due or not due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any note;

(ii) all renewals, modifications, extensions and supplements to any of the foregoing; and

(iii) all other obligations and indebtedness owing by the Debtor to the Secured Party and all future advances made to the Debtor by the Secured Party, however and whenever created, arising or evidenced, whether direct or indirect, through assignment from third parties, whether absolute or contingent, or otherwise, now or hereafter existing, or due or to become due, including, without limitation, obligations under all guaranties, letters of credit and overdrafts.

(b) Capitalized terms not otherwise defined herein are used herein with the respective meanings given them in the Credit Agreement. Terms not otherwise defined herein or in the Credit Agreement and which are defined in the Uniform Commercial Code as in effect in the State of Georgia, as amended, are used herein with the respective meanings given them therein. References in this Agreement to any document, instrument

or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean such document, instrument or agreement or replacement, as amended, modified or supplemented from time to time.

Section 29. Arbitration. ANY CONTROVERSY OR CLAIM BETWEEN OR AMONG THE PARTIES HERETO INCLUDING BUT NOT LIMITED TO THOSE ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY CLAIM BASED ON OR ARISING FROM AN ALLEGED TORT, SHALL BE DETERMINED BY BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT (OR IF NOT APPLICABLE, THE APPLICABLE STATE LAW), THE RULES OF PRACTICE AND PROCEDURE FOR THE ARBITRATION OF COMMERCIAL DISPUTES OF JUDICIAL ARBITRATION AND MEDIATION SERVICES, INC. ("J.A.M.S."), AND THE "SPECIAL RULES" SET FORTH BELOW. IN THE EVENT OF ANY INCONSISTENCY, THE SPECIAL RULES SHALL CONTROL. JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. ANY PARTY TO THIS AGREEMENT MAY BRING AN ACTION, INCLUDING A SUMMARY OR EXPEDITED PROCEEDING, TO COMPEL ARBITRATION OF ANY CONTROVERSY OR CLAIM TO WHICH THIS AGREEMENT APPLIES IN ANY COURT HAVING JURISDICTION OVER SUCH ACTION.

A. SPECIAL RULES. THE ARBITRATION SHALL BE CONDUCTED IN THE CITY OF THE DEBTOR'S DOMICILE SET FORTH IN SECTION 5(e) HEREOF AND ADMINISTERED BY J.A.M.S. WHO WILL APPOINT AN ARBITRATOR; IF J.A.M.S. IS UNABLE OR LEGALLY PRECLUDED FROM ADMINISTERING THE ARBITRATION, THEN THE AMERICAN ARBITRATION ASSOCIATION WILL SERVE. ALL ARBITRATION HEARINGS WILL BE COMMENCED WITHIN 90 DAYS OF THE DEMAND FOR ARBITRATION; FURTHER, THE ARBITRATOR SHALL ONLY, UPON A SHOWING OF CAUSE, BE PERMITTED TO EXTEND THE COMMENCEMENT OF SUCH HEARING FOR UP TO AN ADDITIONAL 60 DAYS.

B. RESERVATION OF RIGHTS. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO (i) LIMIT THE APPLICABILITY OF ANY OTHERWISE APPLICABLE STATUTES OF LIMITATION OR REPOSE AND ANY WAIVERS CONTAINED IN THIS AGREEMENT; OR (ii) BE A WAIVER BY THE SECURED PARTY OF THE PROTECTION AFFORDED TO IT BY 12 U.S.C. § 91 OR ANY SUBSTANTIALLY EQUIVALENT STATE LAW; OR (iii) LIMIT THE RIGHT OF THE SECURED PARTY HERETO (A) TO EXERCISE SELF HELP REMEDIES SUCH AS (BUT NOT LIMITED TO) SETOFF, OR (B) TO FORECLOSE AGAINST ANY "TRADEMARK COLLATERAL", OR (C) TO OBTAIN FROM A COURT PROVISIONAL OR ANCILLARY REMEDIES SUCH AS (BUT NOT LIMITED TO) INJUNCTIVE RELIEF, WRIT OF POSSESSION OR THE APPOINTMENT OF A RECEIVER. THE SECURED PARTY MAY EXERCISE SUCH SELF HELP RIGHTS,

FORECLOSE UPON SUCH "TRADEMARK COLLATERAL", OR OBTAIN SUCH PROVISIONAL OR ANCILLARY REMEDIES BEFORE, DURING OR AFTER THE PENDENCY OF ANY ARBITRATION PROCEEDING BROUGHT PURSUANT TO THIS AGREEMENT. NEITHER THE EXERCISE OF SELF HELP REMEDIES NOR THE INSTITUTION OR MAINTENANCE OF AN ACTION FOR FORECLOSURE OR PROVISIONAL OR ANCILLARY REMEDIES SHALL CONSTITUTE A WAIVER OF THE RIGHT OF ANY PARTY, INCLUDING THE CLAIMANT IN ANY SUCH ACTION, TO ARBITRATE THE MERITS OF THE CONTROVERSY OR CLAIM OCCASIONING RESORT TO SUCH REMEDIES.

[Signatures on Following Pages]

SCHEDULE I

TRADEMARK COLLATERAL

Trademark

Reg No.

Filing Date

“CareSouth”

75-252,582

March 6, 1997

SCHEDULE II
LICENSE AGREEMENTS

None.