

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
2005 - 02408

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*Glenn J. Lowrey*

REGISTER OF DEEDS

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PROOF P  
FEES \$ 65.50  
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**WHEN RECORDED RETURN TO:**

Symetra Life Insurance Company  
Mortgage Loan Department  
PO Box 84066  
Seattle, WA 98124-8466

Loan No. SPLM1491

**DEED OF TRUST, ASSIGNMENT OF LEASES  
AND SECURITY AGREEMENT**

THIS DEED OF TRUST ("Deed of Trust") is made this 7th day of January, 2005, by and between TREGARON TOWNE CENTRE I, LLC, a limited liability company, organized and existing under the laws of Nebraska, as GRANTOR, whose address is 11205 John Galt Boulevard, Omaha, NE 68137; COMMONWEALTH LAND TITLE INSURANCE COMPANY, a corporation, as TRUSTEE, whose address is c/o First Nebraska Title, 2425 South 120th Street, Omaha, NE 68144; and Symetra Life Insurance Company, a Washington corporation, as BENEFICIARY, whose address is Mortgage Loan Department, PO Box 84066, Seattle, WA 98124-8466.

Grantor owes Beneficiary the principal sum of EIGHT HUNDRED SEVENTY FIVE THOUSAND AND NO/100 U.S. DOLLARS (\$875,000.00) (the "Loan"). The debt is evidenced by Grantor's Real Estate Note (the "Note") dated the same date as this Deed of Trust, which provides for interest thereon and monthly payments, with the full debt, if not paid earlier, due and payable on February 1, 2025. Upon the terms, covenants, and conditions set forth in this Deed of Trust and in consideration of the Loan made by Beneficiary to Grantor, Grantor hereby irrevocably grants, bargains, sells, conveys, assigns, warrants and transfers to the Trustee IN TRUST, for the benefit and security of Beneficiary, WITH POWER OF SALE, the following described property, whether now owned or hereafter acquired, situated in Sarpy County, State of Nebraska, (which is hereinafter referred to as the "Real Property"):

Lot 8, TREGARON TOWNE CENTRE, a Subdivision in Sarpy County, Nebraska. (Assessor's Tax Parcel No. 011577804), which has the street address of 2403 Towne Centre Drive, City of Bellevue, Nebraska;

together with (a) all land lying in streets and roads adjoining the Real Property, and all access rights and easements pertaining to the Real Property, (b) all the lands, tenements, privileges, reversions, remainders, and water rights and stock, oil and gas rights, royalties, minerals and mineral rights, hereditaments and appurtenances belonging or in any way pertaining to the Real Property, (c) all buildings, structures, improvements, fixtures and property now or hereafter attached to or used in the operation of the Real Property, which shall be deemed part of the Real Property and not severable wholly or in part without material injury to the Real Property, (d) all rents, issues and profits of the Real Property, all existing and future leases of the Real Property (including extensions, renewals and subleases), all agreements for use and occupancy of the Real Property (all such leases and agreements whether written or oral, are hereafter

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referred to as the "Leases"), and all guaranties of lessees' performance under the Leases, together with the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues, profits and other income of any nature now or hereafter due under the Leases or from or arising out of the Real Property, all proceeds payable as a result of a lessee's exercise of an option to purchase the Real Property, all proceeds derived from the termination or rejection of any Lease in a bankruptcy or other insolvency proceeding, and all proceeds from any rights and claims of any kind which Grantor may have against any lessee under the Leases or any occupants of the Real Property (all of the above are hereafter collectively referred to as the "Rents"), (e) all compensation, awards, damages, causes of action and proceeds (including insurance proceeds and any interest on any of the foregoing) arising out of or relating to a taking or damaging of the Real Property by reason of any public or private improvement, condemnation proceeding, fire, earthquake or other casualty, injury or decrease in the value of the Real Property, and (f) all additions, accessions, replacements, substitutions, after-acquired interests, and proceeds of any of the property described in this paragraph (all of the foregoing together with the Real Property is hereinafter collectively referred to as the "Property").

For the Purpose of Securing:

(1) the repayment of the debt evidenced by the Note with interest as therein set forth, and any extensions, renewals or modifications thereof; (2) the performance of each agreement of Grantor herein contained; (3) the repayment of such additional loans or advances as hereafter may be made to Grantor, or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; and (4) the repayment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof to protect the security of this Deed of Trust, together with interest as herein provided.

As used in this Deed of Trust, the "Loan Documents" shall mean the Note, this Deed of Trust, Assignment of Leases and Rents, Guaranties, and the other documents and instruments executed and delivered in connection with the closing of the Loan.

To Secure Performance of All Obligations of this Deed of Trust, Grantor represents, warrants and agrees as follows:

1. Personal Property Security. Grantor hereby grants to the Beneficiary a security interest in that portion of the Property not deemed real property for the purpose of securing performance of all of Grantor's obligations under the Loan Documents.

2. Security Agreement. This Deed of Trust shall be deemed a Security Agreement as defined in the Uniform Commercial Code with respect to any Property not deemed to be real property which is either referred to or described herein or in any way connected with the use and enjoyment of the Real Property. Without limiting any other rights or remedies of Beneficiary herein, Beneficiary shall have all of the rights conferred upon a secured party by the Uniform Commercial Code.

3. Payment of the Note and Performance of Obligations. Grantor shall promptly pay when due all principal and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note and strictly comply with all the terms and conditions of the Loan Documents.

4. Warranty of Title. Grantor has good and marketable title to an indefeasible fee simple estate in the Real Property, subject to no liens, encumbrances, easements, assessments, security interest, claims or defects of any kind except those approved in writing by Beneficiary (the "Exceptions") and real estate taxes for the current year. Neither the Exceptions nor the real estate taxes are delinquent or in default. Grantor has the right to convey the Real Property to Trustee for the benefit of Beneficiary, and the right to grant a security interest in the Personal Property. Grantor will warrant and defend title to the Property and will

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defend the validity and priority of the lien of this Deed of Trust and the security interest granted herein against any claims or demands.

5. Prohibited Liens. Grantor shall not permit any governmental or statutory liens (including tax and mechanic's and materialmen's liens) to be filed against the Real Property except for real estate taxes and assessments not yet due and liens permitted by the Loan Documents or approved by Beneficiary in writing.

6. Payment of Taxes and Other Liens and Assessments. Grantor shall pay the real estate taxes and any assessments at least ten (10) days prior to delinquency unless otherwise agreed to in writing by Beneficiary. All other encumbrances, charges and liens affecting the Real Property, including mortgages and deeds of trust, whether prior to or subordinate to the lien of this Deed of Trust, shall be paid when due and shall not be in default. On request Grantor shall furnish evidence of payment thereof.

7. Maintenance; No Waste. Grantor shall protect and preserve the Property and maintain it in good condition and repair. Grantor shall do all acts and take all precautions which, from the character and use of the Property, are reasonable, proper or necessary. Grantor shall not commit or permit any waste of the Property.

8. Alterations, Removal and Demolition. Grantor shall not structurally alter, remove or demolish any building or improvement on the Real Property without Beneficiary's prior written consent. Grantor shall not remove any fixture or other item or property which is part of the Property without Beneficiary's prior written consent unless the fixture or item of property is replaced by an article of equal value and suitability owned by Grantor free and clear of any lien or security interest.

9. Completion, Repair and Restoration. Grantor shall promptly complete or repair and restore in good workmanlike manner any building or improvement on the Real Property which may be constructed or damaged or destroyed and shall pay all costs incurred therefor. No damage to or destruction of the Real Property shall affect the full and prompt performance of Grantor's obligations under the Loan Documents.

10. Compliance with Laws. Grantor shall comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting the Real Property and shall not commit or permit any act upon or concerning the Real Property in violation of any such laws, ordinances, regulations, covenants, and restrictions.

11. Impairment of Property. Grantor shall not, without Beneficiary's prior written consent, change the general nature of the use of the Real Property, initiate, acquire or permit any change in any public or private restrictions (including a zoning reclassification) limiting the uses which may be made of the Real Property, or take or permit any action which would impair the value of the Property or Beneficiary's lien or security interest in the Property.

12. Inspection of Real Property. Beneficiary or its authorized representative may inspect the Real Property at reasonable times after reasonable notice.

13. Grantor's Defense of Property and Beneficiary. Grantor shall appear in and defend any action or proceeding which may affect the Property or the rights or powers of Beneficiary or Trustee. If Beneficiary is made a party to any litigation concerning this Deed of Trust or the Property, or any part thereof or interest therein, or the occupancy thereof by Grantor, then Grantor shall indemnify and hold Beneficiary harmless from all liability by reason of such litigation, including attorneys fees and expenses incurred by Beneficiary in any such litigation, whether or not any such litigation is prosecuted to judgment.

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14. Beneficiary's Right to Protect Property. Beneficiary may commence, appear in, and defend any action or proceeding which may affect the Property or the rights or powers of Beneficiary or Trustee. Beneficiary may pay, purchase, contest or compromise any encumbrance, charge or lien which is not an Exception which in its judgment appears to be prior or superior to the lien of this Deed of Trust. If Grantor fails to make any payment or do any act required under the Loan Documents, including without limitation, payment of taxes and assessments and maintenance of insurance on the Property, Beneficiary, without any obligation to do so, without notice to or demand upon Grantor and without releasing Grantor from any obligations under the Loan Documents, may make the payment or cause the act to be performed in such manner and to such extent as Beneficiary may deem necessary to protect the Property. Beneficiary is authorized to enter upon the Real Property for such purposes. In exercising any of these powers Beneficiary may incur such expenses, in its absolute discretion, it deems necessary.

15. Repayment of Beneficiary's Expenditures. Grantor shall pay within 10 days after written notice from Beneficiary all sums expended by and all costs and expenses incurred by Beneficiary in taking any actions pursuant to the Loan Documents including attorneys' fees, appraisal and inspection fees, and the costs for title reports. Expenditures by Beneficiary shall bear interest from the date of such advance or expenditure until paid at the rate of six percent (6%) per annum above the note rate in effect at that time, shall constitute advances made under this Deed of Trust and shall be secured by and have the same priority as the lien of this Deed of Trust. If Grantor fails to pay any such expenditures, and interest thereon, Beneficiary may, at its option, without foreclosing the lien of this Deed of Trust, commence an independent action against Grantor for the recovery of the expenditures and advance any undisbursed loan proceeds to pay the expenditures.

16. Due On Sale or Transfer; Change of Control. If (i) the Real Property or any part thereof or interest therein is sold, transferred, leased (other than a space lease with no option to purchase), conveyed, or otherwise alienated, or a contract of sale or other conveyance entered into with respect thereto, or (ii) there is a change in or transfer of a controlling interest in Grantor without the prior written consent of Beneficiary, then, upon the occurrence of any one or more of the foregoing events, and regardless of whether or not Grantor shall be in default under the Note or this Deed of Trust or any other Loan Document, Beneficiary may, at its option, declare the then outstanding principal balance evidenced by the Note plus accrued interest thereon immediately due and payable or, at its sole option, it may consent to the conveyance in writing and may increase the interest rate on the Note to the interest rate on which Beneficiary would then commit to make a first mortgage loan of like term and character with similar security, as determined by Beneficiary in its sole discretion, or impose whatever other conditions it may deem necessary to compensate it for the increased risk resulting from the breach of the foregoing covenants. Such increase in interest shall entitle Beneficiary to increase monthly payments under the Note so that the increased monthly payments will fully amortize the outstanding balance of the indebtedness over the unexpired term of the Note. The execution and delivery by the Grantor of any joint venture agreement, partnership agreement, declaration or revocation of trust, option agreement or other agreement whereby any other person or entity may become entitled, directly or indirectly, to the title, possession or enjoyment of the Real Property, or the income or other benefits of the Real Property, shall, in each case, be deemed to be a conveyance or assignment of the Grantor's interest in the Real Property for the purposes of this paragraph, and shall require prior written consent from the Beneficiary. If ownership of the Real Property or any part thereof becomes vested in a person or an entity other than Grantor, whether or not Beneficiary has given written consent to such change in ownership, Beneficiary may deal with such successor or successors in interest with reference to this Deed of Trust and the obligations secured hereby, in the same manner as with Grantor, without in any way vitiating or discharging Grantor's liability hereunder or the obligations hereby secured.

Notwithstanding the foregoing provisions, and provided Grantor is not then in default under the Note, this Deed of Trust or any of the Loan Documents, Grantor shall have a one-time only right upon payment of an assumption fee equal to one percent (1%) of the unpaid principal balance of the Note to convey the

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Real Property to a transferee whose property management ability, financial strength and credit history are approved by Beneficiary, which approval shall not be unreasonably withheld or delayed. If Beneficiary withholds its approval because of the proposed transferee's lack of creditworthiness, property management ability or financial strength or other reasonable basis which leads Beneficiary to reasonably believe the loan or the security would be impaired, Beneficiary shall not be deemed to have unreasonably withheld its consent. As a condition of Beneficiary's approval, such transferee shall assume Grantor's obligations under the Note and the Loan Documents and Grantor and any Guarantors of the indebtedness shall agree to remain fully bound. Any consent given by Beneficiary pursuant to the foregoing paragraphs shall not constitute a consent to any future such transaction. In addition, Grantor shall have a one-time only right, upon the prior written consent of Beneficiary, to transfer the Property solely for Grantor's estate planning purposes, which transfer shall not be subject to payment of the above-described assumption fee.

17. Due On Encumbrance. Grantor agrees that should the Real Property or any part thereof at any time be or become subject to the lien of any other mortgage or deed of trust or subject to any other encumbrance, pledge, or security interest (except with the prior written consent of Beneficiary), the whole of the principal and interest secured hereby shall, at the option of the Beneficiary, become immediately due and payable.

18. Insurance. Without limiting the generality of any other provision contained in this Deed of Trust, Grantor shall procure and maintain insurance on the Property with premiums prepaid providing replacement cost coverage and insuring against loss by fire, lightning, windstorm, vandalism and other risks covered by extended coverage insurance, loss of rents/income or business interruption insurance for a minimum of one year, earthquake and flood to the extent required by Beneficiary now or in the future and coverage for such other perils and risks as may be required by Beneficiary from time to time. Grantor shall also procure and maintain comprehensive general public liability insurance against bodily injury or death or property damage occurring in, upon or about, or resulting from, the Property with limits in such amounts as are acceptable to Beneficiary, but in no event less than \$2,000,000 per occurrence and \$2,000,000 general aggregate, naming Beneficiary as an additional insured. All insurance shall be with companies satisfactory to Beneficiary having a Best rating of B+VI or better and in such amounts acceptable to Beneficiary with lender's loss payable clauses in favor of and in form satisfactory to Beneficiary. At least 10 days prior to the expiration of the term of any insurance policy, Grantor shall furnish Beneficiary with written evidence of renewal or issuance of a satisfactory replacement policy. If requested Grantor shall deliver copies of all policies to Beneficiary. In the event of foreclosure of this Deed of Trust all interest of Grantor in any insurance policies pertaining to the Property and in any claims against the policies and in any proceeds due under the policies shall pass to Beneficiary.

19. Condemnation and Insurance Proceeds. Grantor shall give immediate notice to Beneficiary of any condemnation proceeding, or loss or damage to any Property. Grantor authorizes Beneficiary, at Beneficiary's option, to make a claim for and enter into a compromise or settlement with respect to any proceeds payable as a result of condemnation, loss or damage. All proceeds payable as a result of a condemnation, loss or damage shall be paid to Beneficiary. Provided Grantor is not then in default on any obligation owed to Beneficiary, Beneficiary shall, after deducting its expenses including attorney's fees, apply the proceeds to the repair and restoration of the Property on such conditions as Beneficiary may impose including evidence of sufficient funds to complete the work, approval of the plans and specifications and periodic disbursement of the proceeds during the course of repair and restoration. If the restoration or repair is not economically feasible and/or the value of Beneficiary's security is diminished, the proceeds, at the option of Beneficiary, shall be applied to the debt secured by this Deed of Trust, whether or not then due, with any excess paid to Grantor. No application of the proceeds to the debt shall extend or postpone the due date of any monthly payments on the Note or reduce the amount of any such payments.

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20. Leases. Grantor shall fully comply with all of the terms, conditions and provision of any Leases on the Real Property so that no breach shall occur and do all that is necessary to preserve all the Leases in force. With respect to any Lease involving an initial term of three years or more, Grantor shall not, without the prior written consent of Beneficiary, modify or amend the Lease for a lesser rental or term, or accept surrender of the Lease or terminate the Lease except in accordance with the terms of the Lease providing for termination in the event of default. Any proceeds or damages resulting from a lessee's default under any such Lease, at Beneficiary's option, shall be paid to Beneficiary and applied against sums owed under the Loan Documents even though such sums may not be due and payable. Except for real estate taxes and assessments, Grantor shall not permit any lien to be created against the Real Property which may be or may become prior to any Lease. If the Real Property is partially condemned or suffers a casualty, Grantor shall promptly repair and restore the Real Property in order to comply with the Leases.

21. Assignment of Leases and Rents; Grantor's Right to Collect. Grantor hereby absolutely and irrevocably assigns to Beneficiary all Grantor's interest in the Rents and Leases. This assignment shall be subject to the terms and conditions of any separate Assignment of Leases and Rents, whenever executed, in favor of Beneficiary and covering the Real Property. Unless otherwise provided in any separate Assignment of Leases and Rents, and so long as Grantor is not in default under the Loan Documents, Grantor may collect the Rents as they become due. Grantor shall use the Rents to pay normal operating expenses for the Real Property and sums due and payments required under the Loan Documents. No Rents shall be collected more than two months in advance of the due date. Grantor warrants that it has made no prior assignment of the Rents or Leases and will make no subsequent assignment without the prior written consent of Beneficiary. Grantor's right to collect the Rents shall not constitute Beneficiary's consent to the use of cash collateral in any bankruptcy proceeding.

22. Beneficiary's Right to Collect Rents. If Grantor is in default under the Loan Documents, without notice to Grantor, Beneficiary or its agents, or a court appointed receiver, may collect the Rents. In doing so, Beneficiary may (a) evict lessees for nonpayment of rent, (b) terminate in any lawful manner any tenancy or occupancy, (c) lease the Real Property in the name of the then owner on such terms as it may deem best and (d) institute proceedings against any lessee for past due rent. The Rents received shall be applied to payment of the costs and expenses of collecting the Rents, including a reasonable fee to Beneficiary, a receiver or an agent, operating expenses for the Real Property and any sums due or payments required under the Loan Documents, in such amounts as Beneficiary may determine. Any excess shall be paid to Grantor, however, Beneficiary may withhold from any excess a reasonable amount to pay sums anticipated to become due which exceed the anticipated future Rents. Beneficiary's failure to collect or discontinuing collection at any time shall not in any manner affect the subsequent enforcement by Beneficiary of its rights to collect the Rents. The collection of the Rents shall not cure or waive any default under the Loan Documents. Beneficiary or a receiver shall have no obligation to perform any of Grantor's obligations under the Leases. In exercising its rights under this section Beneficiary shall be liable only for the proper application of and accounting for the Rents collected by Beneficiary or its agents. Any Rents paid to Beneficiary or a receiver shall be credited against the amount due from the lessee under the Lease. In the event any lessee under the Lease becomes the subject of any proceeding under the Bankruptcy Code or any other federal, state or local statute which provides for the possible termination or rejection of the leases assigned hereby, Grantor covenants and agrees that in the event any of the Leases are so rejected, no damages settlement shall be made without the prior written consent of Beneficiary; any check in payment of damages for rejection or termination of any such Lease will be made payable to both the Grantor and Beneficiary; and Grantor hereby assigns any such payment to Beneficiary and further covenants and agrees that upon request of Beneficiary, it will duly endorse to the order of Beneficiary any such check, the proceeds of which will be applied to any portion of the indebtedness secured hereunder in such manner as Beneficiary may elect.

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23. Financing Statement. This Deed of Trust shall also serve as a financing statement filed for record in the real estate records as a fixture filing pursuant to the Uniform Commercial Code.

24. Late Charge. In the event that any payment or portion thereof is not paid within ten (10) days commencing with the date it is due, Beneficiary may collect, and Grantor agrees to pay a "late charge" of 5% of the delinquent payment, but not to exceed the highest such charge permitted by applicable law. This late charge shall apply individually to each payment past due. This paragraph shall not relieve the Grantor of the obligation to make payments on or before the date on which they are due nor do the terms of this paragraph in any way affect Beneficiary's remedies pursuant to the terms of the Note secured hereby or this Deed of Trust.

25. Default; Remedies. TIME IS OF THE ESSENCE. If Grantor fails to pay any installment of principal or interest on the Note within ten (10) days of the date the same is due and payable, or if Grantor fails perform or observe any other covenant or agreement of Grantor contained in this Deed of Trust or in any of the Loan Documents for more than thirty (30) days after receipt of written notice specifying such default, or if Grantor fails to provide or maintain the insurance required by this Deed of Trust, or if Grantor fails to perform or observe any other obligation of Grantor to Beneficiary when due, whether now existing or hereafter arising, or if any representation, warranty, or statement made by Grantor or any guarantor in any Loan Document, certificate or financial statement delivered to Beneficiary shall be incorrect or misleading in any material respect, or if Grantor makes an assignment for the benefit of creditors, or if a petition in bankruptcy is filed by or against Grantor and not dismissed within sixty (60) days, or if any guarantor of the Loan revokes, or attempts to revoke, its guaranty, or is the subject of a petition in bankruptcy or other insolvency proceeding, then and in any such event (each of such events being a default by Grantor under this Deed of Trust for the purposes of the acceleration provisions contained in the Note), the whole sum of the indebtedness, at the option of the Beneficiary or the holder of the indebtedness, shall become immediately due and payable and Beneficiary may exercise its rights and remedies under the Loan Documents and applicable law. Beneficiary may cause Trustee to execute a written notice of default and of election to cause said Real Property to be sold in the manner provided by the Nebraska Trust Deeds Act under the power of sale to satisfy the indebtedness and obligations hereof, and Trustee shall file such notice of record in each county wherein said Real Property or some part or parcel thereof is situated and shall mail such notice to Grantor in the manner prescribed by law. After lapse of such time as may then be required by law following the recordation of said notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Grantor, shall sell said Real Property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Grantor to direct the order in which such Real Property, if consisting of several lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed, and in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale. Trustee shall execute and deliver to the purchaser its deed conveying said Real Property so sold, but without any covenant or warranty, expressed or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof.

Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to the payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorneys fees; (2) cost of any evidence of title procured in connection with such sale; (3) all sums expended under the terms hereof, not then repaid, with accrued interest thereon at 12% per annum from the date of the expenditure; (4) all sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or to the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place. Grantor agrees to surrender possession of the Real Property to the Purchaser at the aforesaid sale, immediately after such sale, in the event such possession has not previously been surrendered by Grantor. Upon the occurrence of any default,

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the Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorneys fee in such amount as may be fixed by the court. Beneficiary's exercise of any of its rights and remedies shall not constitute a waiver or cure of a default. Beneficiary's failure to enforce any default shall not constitute a waiver of the default or any subsequent default. In the event the Loan Documents are referred to an attorney for enforcement of Beneficiary's rights or remedies, whether or not suit is filed or any proceedings are commenced, Grantor shall pay all Beneficiary's costs and expenses including Trustee's and reasonable attorneys' fees (including attorneys' fees for (i) any appeal, (ii) relief from stay motions, cash collateral disputes, assumption/rejection motions and disputes regarding proposed disclosure statements and plans in any bankruptcy proceeding or (iii) for any other judicial or nonjudicial proceeding or arbitration), appraisal and inspection fees and cost of a title report.

26. Cumulative Remedies. All Beneficiary's and Trustee's rights and remedies specified in the Loan Documents are cumulative, not mutually exclusive and not in substitution of any rights or remedies available in law or equity. In order to obtain performance of Grantor's obligations under the Loan Documents, without waiving its rights in the Property, Beneficiary may proceed against Grantor or may proceed against any other security or guaranty for the Note, in such order and manner as Beneficiary may elect. The commencement of proceedings to enforce a particular remedy shall not preclude the discontinuance of the proceedings and the commencement of proceedings to enforce a different remedy.

27. Sale of Personal Property After Default. The Personal Property may be sold separately or as a whole, at the option of Beneficiary. In the event of a Trustee's sale of all the Property, Beneficiary hereby assigns its security interest in the Personal Property to the Trustee. Beneficiary may also realize on the Personal Property in accordance with the remedies available under the Uniform Commercial Code or at law. In the event of a foreclosure sale, Grantor and the holders of any subordinate liens or security interest waive any equitable, statutory or other right they may have to require marshaling of assets or foreclosure in the inverse order of alienation.

28. Appointment of Receiver. In the event of a default, Beneficiary shall be entitled, without notice, without bond, and without regard to the adequacy of the security for the Loan, to the appointment of a receiver for the Property. The receiver shall have, in addition to all the rights and powers customarily given to and exercised by a receiver, all the rights and powers granted to Beneficiary by the Loan Documents.

29. Foreclosure of Lessee's Rights; Subordination. Beneficiary shall have the right, at its option, to foreclose this Deed of Trust subject to the rights of any lessees of the Real Property. Beneficiary's failure to foreclose against any lessee shall not be asserted as a claim against Beneficiary or as a defense against any claim by Beneficiary in any action or proceeding. Beneficiary at any time may subordinate this Deed of Trust to any or all of the Leases except that Beneficiary shall retain its priority claim to any condemnation or insurance proceeds.

30. Reconveyance After Payment. Upon written request of Beneficiary stating that all obligations secured by this Deed of Trust have been paid, Trustees shall reconvey, without warranty, the Real Property then subject to the lien of this Deed of Trust. The recitals in any reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in the reconveyance may be described as "the person or person legally entitled thereto. Grantor shall pay any Trustee's fees or recording fees.

31. Powers of Beneficiary. Without affecting the obligations of any party under the Loan Documents and without affecting the lien of this Deed of Trust and Beneficiary's security interest in the Property, Beneficiary may from time to time, without notice (a) release any Grantor and any other party now or hereafter liable for the payment or performance of any obligations under the Loan Documents, including



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guarantors of the Loan, (b) release all or any part of the Property, (c) subordinate the lien of this Deed of Trust or Beneficiary's security interest in the Property, (d) take or release any other security or guaranty, (e) postpone, grant an extension of time or accelerate the time for performance of the obligations owed under the Loan Documents, (f) modify, waive, forbear, delay or fail to enforce any obligations owed under the Loan Documents, (g) sell or otherwise realize on any other security or guaranty prior to, contemporaneously with or subsequent to a sale of all or any part of the Property, (h) make advances pursuant to the Loan Documents including advances in excess of the Note amount, (i) consent to the making of any map or plat of the Real Property, and (j) join in the grant of any easement on the Real Property. Any subordinate lienholder shall be subject to all such releases, extensions or modifications without notice to or consent from the subordinate lienholder. Grantor shall pay any fees, title insurance premiums or recording charges in connection with any of the foregoing.

32. Nonwaiver of Terms and Conditions. TIME IS OF THE ESSENCE with respect to performance of the obligations due under the Loan Documents. Beneficiary's failure to require prompt enforcement of any required obligations shall not constitute a waiver of the obligations due or any subsequent required performance of the obligation. No term or condition of the Loan Documents may be waived, modified or amended except by a written agreement signed by Grantor and Beneficiary. Any waiver of any term or condition of the Loan Documents shall apply only to the time and occasion specified in the waiver and shall not constitute a waiver of the term or condition at any subsequent time or occasion.

33. Use of Real Property. The Real Property is not used principally, or at all, for agricultural or farming purposes.

34. Joint and Several Liability. If there is more than one Grantor of this Deed of Trust, their obligations shall be joint and several.

35. Operating and Financial Statements. Grantor will deliver to Beneficiary (i) within ninety (90) days following the end of each fiscal year of Grantor during the term of the Loan, at Grantor's expense, Grantor's certified financial statement for such fiscal year prepared on a consistent basis and fairly, accurately and completely stating the financial condition of Grantor as of the end of such year and the results of its operations for the period covered; and (ii) upon Beneficiary's request, operating statements and occupancy reports for the Real Property in a form and for periods satisfactory to Beneficiary certified as correct by Grantor. Grantor shall permit Beneficiary to examine all books and records of Grantor pertaining to the Real Property and deliver to Beneficiary upon request all financial statements, credit reports and other documents in the possession of Grantor relating to the financial condition of Grantor, any tenant of the Real Property and any guarantor of the Loan, including rental, income and expense statements pertaining to the Real Property and tax returns and audits.

36. Maximum Interest Rate. The Loan Documents are expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to Beneficiary for the use, forbearance or detention of the money loaned under the Note or otherwise, or for the performance or payment of any indebtedness, exceed the maximum amount permitted under applicable law. If the loan secured by this Deed of Trust is subject to a law which sets maximum interest or loan charges, and that law is finally interpreted so that interest or other loan charges collected or to be collected exceed the maximum amount permitted by law, and Grantor or any other holder of this Deed of Trust shall ever receive as interest on the Loan an amount which exceeds the maximum amount of interest permitted by applicable law, such excess amount shall be applied to reduction of the principal amount owing on the Loan so as to fully and strictly comply with such law. All sums paid or agreed to be paid to Beneficiary for the use, forbearance or detention of the indebtedness secured hereby shall, to the extent permitted by law, be amortized, allocated, prorated and spread throughout the term of the Loan so that the actual rate of interest is uniform throughout said term and does not exceed the maximum rate permitted by applicable law.

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37. Evasion of the Prepayment Penalty. If Grantor is in default, any tender of payment sufficient to satisfy all sums due under the Loan Documents made at any time prior to foreclosure sale shall constitute an evasion of the prepayment terms contained in the Note, if any, and shall be deemed a voluntary prepayment.

38. Payment of New Taxes. If any federal, state or local law is passed subsequent to the date of this Deed of Trust which requires Beneficiary to pay any tax because of this Deed of Trust or the sums due under the Loan Documents, then Grantor shall pay to Beneficiary on demand any such taxes if it is lawful for Grantor to pay them. If it is not lawful for Grantor to pay such taxes, then at its option Beneficiary may declare a default under the Loan Documents.

39. Acceptance By Trustee. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of any pending sale under any other deed of trust or of any action or proceeding in which Grantor, Beneficiary, or Trustee shall be a party, unless brought by the Trustee.

40. Substitution of Trustee. Beneficiary may at any time discharge the Trustee and appoint a successor Trustee who shall have all of the powers, duties, authority and title of the original Trustee. Appointment of a successor Trustee shall become effective upon filing for record in the office of the County Recorder of each county in which said Real Property is situated a Substitution of Trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by law.

41. Environmental Compliance and Indemnification. Grantor represents and warrants to Beneficiary that to the best of Grantor's knowledge after due and diligent inquiry, neither the Real Property nor any improvements thereon presently contain asbestos, or signs of water damage or mold in any form, and except as disclosed by the Environmental Site Assessment provided to Beneficiary in writing prior to closing the Loan, no hazardous or toxic waste or substances are being stored on (or located in the soil, groundwater, surface water or waterways) at or under the Real Property or any adjacent property in quantities or concentrations sufficient to require investigation, removal or remediation under the Environmental Laws (as hereinafter defined) nor have any such quantities or concentrations of waste or substances been stored or used on the Real Property or any adjacent property prior to Grantor's ownership, possession or control of the Real Property, nor are any underground storage tanks (whether or not in use) located in, on or under any part of the Real Property. Grantor agrees to provide written notice to Beneficiary immediately upon Grantor becoming aware of any underground storage tanks on the Real Property, or that the Real Property or any adjacent property is being or has been contaminated with hazardous or toxic waste or substances. Grantor will not cause nor permit any activities on the Real Property which directly or indirectly could result in the Real Property or any adjoining property becoming contaminated with hazardous or toxic waste or substances. For purposes of this Deed of Trust, the term "hazardous or toxic waste or substances" means asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials and petroleum and its refined products, and any substance or material defined, regulated, controlled, limited, prohibited or classified as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term in the Comprehensive Environmental Response Compensation Act of 1980 ("CERCLA"), as amended (42 USC 9601, et seq.), the Hazardous Materials Transportation Act, as amended, (49 USC 1801, et seq.), the Resource Conservation and Recovery Act ("RCRA"), as amended, (42 USC 6901, et seq.) the Clean Water Act, as amended, (33 USC 1251, et seq.), the Clean Air Act, as amended, (42 USC 7401, et seq.), the Toxic Substances Control Act, as amended, (15 USC 2601, et seq.) or in any other applicable federal, state or local environmental statute, regulation or ordinance now or hereafter in effect governing the Real Property it businesses, products or assets, with respect to discharges into the ground and surface water, emissions into ambient air and generation, control,

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accumulation, storage, treatment, transportation, removal, labeling, or disposal of waste materials or process by-products, the existence, cleanup, and/or remedy of contamination on property, the protection of the environment from soil, air or water pollution, or from spilled, deposited or otherwise emplaced contamination (the "Environmental Laws"). Grantor shall promptly comply with all statutes, regulations and ordinances which apply to Grantor or the Real Property and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction or by which Grantor is bound, relating to the use, collection, storage, treatment, control, removal or cleanup of hazardous or toxic substances in, on or under the Real Property or in, on or under any adjacent property that becomes contaminated with hazardous or toxic substances as a result of construction, operations or other activities on, or the contamination of, the Real Property, at Grantor's expense. Beneficiary may, but is not obligated to, enter upon the Real Property and take such actions and incur such costs and expenses to effect such compliance as it deems advisable to protect its interest as Beneficiary; and whether or not Grantor has actual knowledge of the existence of hazardous or toxic substances in, on or under the Real Property or any adjacent property as of the date of this instrument, Grantor shall reimburse Beneficiary on demand for the full amount of all costs and expenses incurred by Beneficiary in connection with such compliance activities. Grantor agrees to indemnify and hold harmless Beneficiary, its officers, agents and employees from and against any and all loss, damage, expense (including without limitation reasonable attorneys fees and the cost of environmental consultants), liability, claims, suits, judgments, fines and penalties or liability associated with or related to the presence, use, manufacture, storage, dumping, disposal, cleanup or removal of hazardous materials or toxic waste affecting the Real Property; provided, however, the foregoing indemnity shall not apply to the willful misconduct or gross negligence of Beneficiary, or its employees, agents and representatives. These covenants and agreements shall survive any foreclosure, release, discharge or satisfaction of this Deed of Trust or the indebtedness secured thereby.

42. Notices. Any notice given by Grantor, Trustee or Beneficiary shall be in writing and shall be effective (1) on personal delivery to the party receiving the notice or (2) on the second day after deposit in the United States mail, postage prepaid with return receipt requested, addressed to the party at the address set forth above, or with respect to the Grantor, to the address at which Beneficiary customarily or last communicated with Grantor.

43. Successors and Assigns. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto and their successors and the terms "Grantor", "Trustee" and "Beneficiary" include their successors and assigns.

44. Controlling Document. In the event of a conflict or inconsistency between the terms and conditions of this Deed of Trust and the terms and conditions of any other of the Loan Documents (except for any separate Assignment of Leases and Rents which shall prevail over this Deed of Trust), the terms and conditions of this Deed of Trust shall prevail.

45. Invalidity of Terms and Conditions. If any term or condition of this Deed of Trust is found to be invalid, the invalidity shall not affect any other term or condition of this Deed of Trust and this Deed of Trust shall be construed as if not containing the invalid term or condition.

46. Rules of Construction. This Deed of Trust shall be construed so that whenever applicable, the use of the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders and shall include corporations, partnerships and limited partnerships.

47. Section Headings. The heading to the various sections have been inserted for convenience of reference only and shall not be used to construe this Deed of Trust.

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48. Applicable Law. This Deed of Trust shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Nebraska, including the laws governing the creation, perfection, enforceability and priority of the liens and security interests created by this Deed of Trust and the procedures for foreclosure and for enforcement of the rights and remedies of Beneficiary under this Deed of Trust. In the event that any provision of this Deed of Trust shall be inconsistent with any provision of the laws of Nebraska, provided that such state law provision is applicable to the rights and obligations of the parties to this Deed of Trust, such state law provisions shall take precedence over the provisions of this Deed of Trust, but shall not invalidate or render unenforceable any other provision of this Deed of Trust that can be construed in a manner consistent with applicable state law.

49. Request For Notice. Grantor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at the address hereinabove set forth.


50. Organization; Due Authorization. Grantor is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Nebraska and has the requisite power, authority and legal right to carry on the business conducted by it and to engage in the transactions contemplated by the Loan Documents. The execution and delivery of the Loan Documents and the performance and observance of the provisions thereof have been authorized by all necessary actions of Grantor.

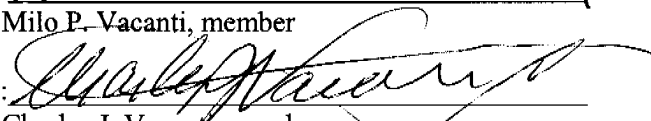
51. Enforceability. This Deed of Trust and each of the other Loan Documents have been duly executed and delivered by Grantor and constitute valid and binding obligations of Grantor, enforceable in accordance with their respective terms, except as the enforceability (but not the validity thereof) may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of creditors' rights generally.

**GRANTOR:**

TREGARON TOWNE CENTRE I, LLC, a Nebraska limited liability company

By: MCV1, L.L.C., a Nebraska limited liability company, its sole member

By:   
Milo P. Vacanti, member

By:   
Charles J. Vacanti, member

*(all signatures must be acknowledged)*

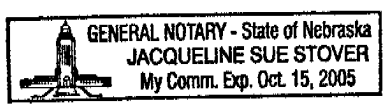
2005-02408L

STATE OF NEBRASKA )  
COUNTY OF Douglas ) ss.

The foregoing instrument was acknowledged before me this 11 day of January, 2005 by Milo P. Vacanti, member of MCV1, L.L.C., a Nebraska limited liability company, sole member of TREGARON TOWNE CENTRE I, LLC, a Nebraska limited liability company.

Witness my hand and official seal at Douglas in said County, the date aforesaid.

Jacqueline Sue Stover  
NOTARY PUBLIC  
My commission expires: 10-15-2005



STATE OF NEBRASKA )  
COUNTY OF Douglas ) ss.

The foregoing instrument was acknowledged before me this 11 day of January, 2005 by Charles J. Vacanti, member of MCV1, L.L.C., a Nebraska limited liability company, sole member of TREGARON TOWNE CENTRE I, LLC, a Nebraska limited liability company.

Witness my hand and official seal at Douglas in said County, the date aforesaid.

Jacqueline Sue Stover  
NOTARY PUBLIC  
My commission expires: 10-15-2005

