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**WHEN RECORDED RETURN TO:**

**This Space Provided for Recorder's Use**

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

Loan No. SPLM1491

**ASSIGNMENT OF LEASES AND RENTS**

**GRANTOR (ASSIGNOR):** TREGARON TOWNE CENTRE I, LLC, a Nebraska limited liability company

**GRANTEE (ASSIGNEE):** Symetra Life Insurance Company, a Washington corporation

**LEGAL DESCRIPTION (ABBREVIATED):** Lot 8, TREGARON TOWNE CENTRE, **ADDITIONAL LEGAL ON PAGE 1**

**ASSESSOR'S TAX PARCEL No.** 011577804

THIS ABSOLUTE ASSIGNMENT OF LEASES AND RENTS is made by TREGARON TOWNE CENTRE I, LLC, a Nebraska limited liability company ("Assignor"), whose address is 11205 John Galt Boulevard, Omaha, NE 68137, in favor of **Symetra Life Insurance Company**, a Washington corporation ("Assignee"), whose address is PO Box 84066, Seattle, Washington 98124-8466, Attention: Mortgage Loan Department.

**WITNESSETH:**

FOR VALUE RECEIVED, Assignor does hereby assign to Assignee the Scheduled Leases, if any, as shown in Schedule "1" attached hereto and incorporated by reference, any and all existing and future leases (including any subleases), and any and all extensions, renewals and replacements thereof, upon all or any part of the premises located in Sarpy County, Nebraska, described more particularly as:

Lot 8, TREGARON TOWNE CENTRE, a Subdivision in Sarpy County, Nebraska

(the "Premises"). All such leases, subleases and tenancies are hereinafter referred to as the "Leases";

TOGETHER with any and all guaranties of performance by tenants under the Leases;

TOGETHER with the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, income, deposits, royalties, bonuses, benefits, payments in lieu of rents, awards in condemnation, issues and profits (hereinafter the "Rents") now due or which may become due or to which Assignor may now or shall hereafter (including those Rents coming due during any redemption period) become entitled or may demand or claim, arising or issuing from or out of the Leases or from or out of the Premises or any part thereof, including but not limited to minimum rents, additional rents, percentage rents, deficiency rents and liquidated damages following default, and all proceeds payable under any policy of insurance covering loss of Rents resulting from untenability caused by destruction or damage to the Premises, together with any and all rights and claims of any kind which Assignor may have against any tenant under the Leases or any subtenants or occupants of the Premises, excepting therefrom, any sums which by the express provisions of any of the Leases are payable directly to any governmental authority or to any other person, firm or corporation other than the landlord under the Lease.

TO HAVE AND TO HOLD the same unto the Assignee, its successors and assigns, until termination of this Assignment.

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SUBJECT, however, to a license hereby granted by Assignee to Assignor, to collect and receive all of the Rents; provided, however, such license is limited as hereinafter provided.

FOR THE PURPOSE OF SECURING the payment of the indebtedness evidenced by a certain Real Estate Note made by Assignor, payable to the order of Assignee in the amount of EIGHT HUNDRED SEVENTY FIVE THOUSAND AND NO/100 U.S. DOLLARS (\$875,000.00), dated January 7, 2005, and presently held by Assignee, including any extensions, modifications and renewals thereof and any supplemental instrument, agreement or note increasing such indebtedness, as well as the payment, observance, performance and discharge of all other obligations, covenants, conditions and warranties contained in the Deed of Trust made by Assignor, dated January 7, 2005, recorded in the Records of Sarpy County, Nebraska, and in any extensions, modifications, supplements and consolidations thereof, covering the Premises and securing the Note and supplemental notes, if any (collectively, the "Note" and "Deed of Trust").

TO PROTECT THE SECURITY OF THIS ASSIGNMENT IT IS AGREED AS FOLLOWS:

1. **Assignor's Warranties About Leases and Rents.** That Assignor represents and warrants that:
  - (a) it has good title to the Leases and Rents hereby assigned and good right to assign the same, and that no other person, firm, or corporation has any right, title, or interest therein;
  - (b) Assignor has duly and punctually performed all the terms, covenants, conditions and warranties of the Leases on Assignor's part to be kept, observed and performed;
  - (c) the Scheduled Leases, if any, and all other existing Leases are valid and unmodified except as indicated herein and in full force and effect;
  - (d) Assignor has not previously sold, assigned, transferred, mortgaged or pledged the Rents from the Premises, whether now due or thereafter to become due;
  - (e) any of the Rents due and issuing from the Premises for any period subsequent to the date of this Assignment have not been collected and payment of same has not otherwise been waived, released, discounted, set off, or otherwise discharged or compromised; and
  - (f) the tenants under the Scheduled Leases, if any, and all other existing Leases are not in default of any of the Lease terms.
2. **Assignor's Covenants of Performance.** Assignor covenants and agrees:
  - (a) to observe, perform and discharge, duly and punctually, all the obligations, terms, covenants, conditions and warranties of the Note and Deed of Trust, of the Scheduled Leases, and of all existing and future Leases affecting the Premises, on the part of Assignor to be kept, observed and performed, and to give prompt notice to Assignee of (i) any failure on the part of Assignor to observe, perform and discharge same, and (ii) any notice, demand or other document received by Assignor from any tenant or subtenant under the Leases claiming any default by the Assignor under the Leases;
  - (b) to enforce or secure in the name of Assignee the performance of each and every obligation, term, covenant, condition and agreement in the Leases by any tenant to be performed, and to notify Assignee of the occurrence of any default under the Leases; and
  - (c) to neither create nor permit any lien, charge or encumbrance upon its interest as lessor of the Leases except the lien of the Deed of Trust or as provided in the Deed of Trust.
3. **Prior Approval For Actions Affecting Leases.** Without the prior written consent of the Assignee, Assignor agrees that it will not:
  - (a) receive or collect any Rents from any present or future tenant of the Premises or any part thereof for a period of more than two (2) months in advance of the date on which such payment is due (whether in cash or by promissory note), nor pledge, transfer, mortgage, or otherwise encumber or assign future payments of Rents;
  - (b) waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any tenant under any Leases of the Premises, of and from any obligations, covenants, conditions and agreements by tenant to be kept, observed and performed, including the obligation to pay the Rents thereunder in the manner and at the place and time specified therein; and

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- (c) cancel, terminate or consent to any surrender of any of the Leases, nor permit any of the aforementioned, nor commence an action of ejectment or any summary proceedings for dispossession of the tenant under any of the Leases, nor exercise any right of recapture provided in any Leases, nor modify, or in any way alter the terms thereof;
  - 4. **Default Deemed Default Under Deed of Trust.** In the event any representation or warranty herein of Assignor shall be found to be untrue or Assignor shall default in the observance or performance of any obligation, term, covenant, condition or warranty herein, then in each such instance, the same shall constitute and be deemed to be a default under the Note and Deed of Trust, thereby entitling Assignee to declare all sums secured thereby and hereby immediately due and payable and to exercise any and all of the rights and remedies provided thereunder and herein, as well as by law.
  - 5. **License to Collect Rents.** As long as no default by Assignor has occurred and is continuing in the payment of any indebtedness secured hereby or in the observance and performance of any other obligation, term, covenant or condition or warranty herein or in the Note and Deed of Trust or contained in the Leases, Assignor shall have the right under a license granted hereby (but limited as provided in the following paragraph) to collect, but not prior to accrual, all of the Rents arising from or out of said Leases, or any renewals, extensions, and replacements thereof, or from or out of the Premises or any part thereof; and Assignor shall receive such Rents and shall hold them, as well as the right and license to receive them, as a trust fund to be applied, and Assignor hereby covenants to so apply them, as required by the Assignee, first to the payment of taxes and assessments upon said Premises before penalty or interest is due thereon; second to the cost of insurance, maintenance and repairs required by the terms of said Deed of Trust; third to the satisfaction of all obligations specifically set forth in the Leases; and fourth to the payment of interest and principal becoming due on the Note and Deed of Trust, before using any part of the Rents for any other purposes.
  - 6. **Performance And Termination of License.** Upon or at any time after default in the payment of any indebtedness secured hereby or in the observance or performance by Assignor of any obligation, term, covenant, condition or warranty herein, the Note and Deed of Trust or in the Leases, Assignee, at its option and without notice, shall have the complete right, power and authority hereunder to exercise and enforce any or all of the following rights and remedies at any time:
    - (a) to terminate the license granted to Assignor to collect the Rents without taking possession, and to demand, collect, receive, sue for, attach and levy against the Rents in Assignee's own name; to give proper receipts, releases and acquittances therefor; and after deducting all necessary and proper costs and expenses of operation and collection as determined by Assignee, including reasonable attorneys' fees, to apply the net proceeds thereof, together with any funds of Assignor deposited with Assignee, upon any indebtedness secured hereby and in such order as Assignee may determine;
    - (b) to declare all sums secured hereby immediately due and payable and, at its option, exercise all or any of the rights and remedies contained in the Note and Deed of Trust;
    - (c) without regard to the adequacy of the security or the solvency of Assignor, with or without any action or proceeding through any person or by agent, or by the Trustee under any Deed of Trust secured hereby, or by a receiver to be appointed by a court, and without regard to Assignor's possession, to enter upon, take possession of, manage and operate the Premises or any part thereof; make, modify, enforce, cancel or accept surrender of any Leases now or hereafter in effect on said Premises or any part thereof; remove and evict any lessee; increase or decrease Rents; decorate, clean and repair; and otherwise do any act or incur any costs or expenses as Assignee shall deem proper to protect the security hereof, as fully and to the same extent as Assignor could do if in possession; and in such event, to apply the Rents so collected in such order as Assignee shall deem proper to the operation and management of said Premises, including the payment of reasonable management, brokerage and attorneys' fees, payment of the indebtedness under the Note and Deed of

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Trust, and payment to a reserve fund for replacements, which funds shall not bear interest; and

- (d) require Assignor to transfer all security deposits to Assignee, together with all records evidencing such deposits.

Provided, however, that the acceptance by Assignee of this Assignment, with all of the rights, powers, privileges and authority so created, shall not, prior to entry upon and taking possession of said Premises by Assignee, be deemed or construed to constitute Assignee a "Mortgagee in Possession," nor thereafter or at any time or in any event obligate Assignee to appear in or defend any action or proceeding relating to the Leases or to the Premises, or to take any action hereunder, or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under the Leases, or to assume any obligations or responsibility for any security deposits or other deposits delivered to Assignor by any lessee thereunder and not assigned and delivered to Assignee; nor shall Assignee be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Premises; and provided further, that the collection and application of the Rents and/or the entry upon and taking possession of the Premises shall not cure or waive any default; or waive, modify or affect any notice of default required under the Note and Deed of Trust; or invalidate any act done pursuant to such notice. The rights and powers conferred on Assignee hereunder are cumulative of and not in lieu of any other rights and powers otherwise granted Assignee.

In the event applicable law requires Assignee to take actual possession of the Premises (or take some action equivalent thereto, such as securing the appointment of a receiver) in order to perfect or activate its rights and remedies as set forth herein, Assignor hereby waives the benefits of such law and agrees that such law shall be satisfied solely by (i) written notice to Assignor that Assignee intends to enforce its rights in and to the Leases and the Rents assigned hereby, and (ii) written notice to any or all of the tenants under the Leases requiring tenants to commence making payments under the Leases directly to Assignee.

- 7. **Indemnification.** Assignor hereby agrees to indemnify and hold Assignee harmless from any and all liability, loss, damage or expense which Assignee may incur under or by reason or in defense of any and all claims and demands whatsoever which may be asserted against Assignee arising out of the Leases, including, but not limited to, any claims by any tenants of credit for rental for any period under any Leases more than one (1) month in advance of the due date thereof paid to and received by Assignor, but not delivered to Assignee. Should Assignee incur any such liability, loss, damage, or expense, the amount thereof (including reasonable attorneys' fees) with interest thereon at the maximum rate permitted by law shall be payable by Assignor immediately without demand, and shall be secured as a lien hereby and by said Deed of Trust.
- 8. **Records.** Until the indebtedness secured hereby shall have been paid in full, Assignor shall deliver to Assignee executed copies of any and all renewals of existing and all future Leases upon all or any part of the Premises, and will transfer and assign such Leases upon the same terms and conditions as herein contained. Assignor hereby covenants and agrees to make, execute and deliver unto Assignee upon demand and at any time any and all assignments and other records and instruments, including, but not limited to, rent rolls and books of account sufficient for the purpose that Assignee may deem to be advisable for carrying out the purposes and intent of this Agreement.
- 9. **Reports and Statements.** Assignor will deliver to Assignee (i) within ninety (90) days following the end of each fiscal year of Assignor during the term of the Loan, at Assignor's expense, Assignor's certified financial statement for such fiscal year prepared on a consistent basis and fairly, accurately and completely stating the financial condition of Assignor as of the end of such year and the results of its operations for the period covered; and (ii) upon Assignee's request, operating statements and occupancy reports for the Premises in a form and for periods satisfactory to Assignee certified as correct by Assignor. Assignor shall permit Assignee to examine all books and records of Assignor pertaining to the Premises and deliver to Assignee

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upon request all financial statements, credit reports and other documents in the possession of Assignor relating to the financial condition of Assignor, any tenant of the Premises and any guarantor of the Loan, including rental, income and expense statements pertaining to the Premises and tax returns and audits.

10. **No Waiver.** The failure of Assignee to avail itself of any of the terms, covenants, and conditions of this Assignment for any period of time or at any time shall not be construed or deemed to be a waiver of any such right, and nothing herein contained nor anything done or omitted to be done by Assignee pursuant hereto shall be deemed a waiver by Assignee of any of its rights and remedies under the Note and Deed of Trust or the laws of the state in which the said Premises are situated. The rights of Assignee to collect the said indebtedness, to enforce any of the security therefor, or to enforce any other right or remedy hereunder, may be exercised by Assignee either prior to, simultaneously with, or subsequent to, any other action taken hereunder and shall not be deemed an election of remedies.
11. **Primary Security.** This Assignment of Leases and Rents is primary in nature to the obligation evidenced and secured by the Note, Deed of Trust and any other document given to secure and collateralize the indebtedness. Assignor further agrees that Assignee may enforce this Assignment without first resorting to or exhausting any other security or collateral; however, nothing herein contained shall prevent Assignee from suing on the Note, foreclosing the Deed of Trust or exercising any other right under any other document collateralizing the Note.
12. **Merger.** So long as any of the Indebtedness secured hereby and by the Note and Deed of Trust shall remain unpaid, unless Assignee shall otherwise consent in writing, the fee title and the leasehold estates created by the Leases upon the Premises shall not merge, but shall always be kept separate and distinct, notwithstanding the union of the leasehold estates and the fee interest in the Premises in the same person by purchase or otherwise or by operation of law.
13. **Termination of Assignment.** Upon payment in full of all of the indebtedness secured by the Note and Deed of Trust and payment of all sums payable hereunder, this Assignment shall be void and of no effect; and no judgment or decree entered as to said indebtedness shall operate to abrogate or lessen the effect of this Assignment until such indebtedness has actually been paid. The affidavit, certificate, letter or statement of any officer of Assignee showing any part of said indebtedness to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment. Any person, firm or corporation may and is hereby authorized to rely on such affidavit, certificate, letter or statement. A demand by Assignee shall be sufficient direction to said tenant to make future payments of Rents to Assignee without the necessity for further consent by or notice to Assignor.
14. **Notice.** All notices, demands or documents of any kind which Assignee may be required or may desire to serve upon Assignor shall be sufficiently served by delivering them to Assignor personally; or by leaving a copy addressed to Assignor at the address appearing hereinabove; or by depositing a copy in the United States mail, postage prepaid, certified or registered mail, addressed to Assignor at the address shown above.
15. **Assignment Binds Successors.** The terms, covenants, conditions and warranties contained herein and the powers granted hereby shall run with the land and shall inure to the benefit of and bind all parties hereto and their respective heirs, successors and assigns; all tenants and their subtenants and assigns; and all subsequent owners of the Premises and subsequent holders of the Note and Deed of Trust.
16. **Location of Performance.** Assignor expressly agrees that this Assignment is performable in the county where the Premises are located, waives the right to be sued elsewhere, and agrees and consents to the jurisdiction of any court of competent jurisdiction located in said county.
17. **Severability.** If any provision of this Assignment or the application thereof to any entity, person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment and

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the application of such provisions to other entities, persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

18. **Entire Agreement.** This document contains the entire agreement concerning the assignment of Rents and Leases between the parties hereto. No variations, modifications or changes herein or hereof shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.
19. **Governing Law.** The parties agree that the law of the State wherein the Premises are located shall govern the performance and enforcement of this Assignment.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment dated as of this 7th day of January, 2005.

**ASSIGNOR:**

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  
Milo P. Vacanti, member

By: Charles J. Vacanti  
Charles J. Vacanti, member

(all signatures must be acknowledged)

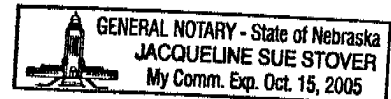
STATE OF NEBRASKA )  
COUNTY OF Douglas ) ss.

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



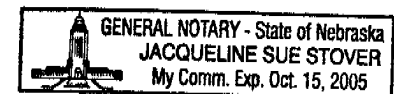
STATE OF NEBRASKA )  
COUNTY OF Douglas ) ss.

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



2005-024096

SCHEDULE "1" TO ASSIGNMENT OF LEASES AND RENTS

SCHEDULE "1" to ASSIGNMENT OF LEASES AND RENTS dated January 7, 2005 between TREGARON TOWNE CENTRE I, LLC, a Nebraska limited liability company ("Assignor") and Symetra Life Insurance Company, a Washington corporation ("Assignee"), for the purpose of securing a Real Estate Note in the principal amount of \$875,000.00.

SCHEDULED LEASES

<u>Suite No.</u>	<u>Lessee</u>	<u>Date of Lease</u>
100/200/300	Edelweiss German Restaurant, Inc.	October 29, 2003
400	Cutting Point Barber and Beauty, LLC	June 11, 2004