

Loan No. T7

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MART LIMITED PARTNERSHIP III

to

SECURITY PACIFIC NATIONAL BANK

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ASSIGNMENT OF LEASES  
AND RENTS

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Dated: As of November 27, 1991

Location: 3620 23rd Street  
Columbus, Nebraska

County: Platte

RECORD AND RETURN TO:

Messrs. Thacher, Proffitt & Wood  
2 World Trade Center  
New York, New York 10048

Attention: Charles A. Dietzgen, Esq.  
File No.: 16248-0120

Title No.: C-6762(A)-1 issued by  
Platte County Title Company as  
agent for Commonwealth Land  
Title Insurance Company

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THIS ASSIGNMENT made as of the 27<sup>th</sup> day of November, 1991, by MART LIMITED PARTNERSHIP III, an Illinois limited partnership, having its principal place of business at 2901 Butterfield Road, Oak Brook, Illinois 60521 ("Assignor") to SECURITY PACIFIC NATIONAL BANK, a national banking association organized and existing under the laws of the United States of America, having its principal place of business at 555 Anton Boulevard, Costa Mesa, California 92626 ("Assignee").

W I T N E S S E T H :

THAT Assignor is the fee owner of the land, more particularly described in Exhibit A annexed hereto and made a part hereof, together with the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (hereinafter collectively referred to as the "Trust Property");

THAT Assignor is the owner of lessor's interest in that certain lease dated November 27, 1991 between Assignor, as lessor, and Wal-Mart Stores, Inc. ("Wal-Mart"), as lessee (such lease together with all assignments, supplements and amendments thereto and any memoranda or short forms thereof entered into for the purpose of recording, registering or filing being collectively referred to as the "Wal-Mart Lease"), pursuant to which, the entire Trust Property has been leased to Wal-Mart;

THAT Assignor for good and valuable consideration, receipt whereof is hereby acknowledged, hereby grants, transfers and assigns to Assignee the entire lessor's interest in and to the Wal-Mart Lease;

TOGETHER WITH the entire lessor's interest in and to any other leases and agreements affecting the use, enjoyment or occupancy of the Trust Property now or hereafter made affecting the Trust Property or any portion thereof, together with any extension or renewal of the same (the "Additional Leases"), this Assignment of other present and future leases and present and future agreements being effective without further or supplemental assignment;

The Wal-Mart Lease and Additional Leases together with any extension or renewal of the same are hereinafter collectively referred to as the "Leases" and all tenants under the Leases, including without limitation Wal-Mart, now or hereafter existing are hereinafter collectively referred to as "Lessees";

TOGETHER WITH all rents, income, issues, profits and other sums payable to Assignor under the Leases including, without limitation, any and all insurance proceeds payable pursuant to paragraph 10 of the Wal-Mart Lease, any purchase price payable by Wal-Mart pursuant to paragraphs 11 or 20 of the Wal-Mart Lease and any payments which become due pursuant to paragraph 33 of the Wal-Mart Lease, and together with all rents, income, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the use, enjoyment and occupancy of the Trust Property (hereinafter collectively referred to as the "Rents").

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TOGETHER WITH all of Assignor's claims and rights to the payment of damages arising from any rejection by a Lessee of any Lease or by a trustee for such Lessee under the Bankruptcy Code, 11 U.S.C. §101 et seq., as the same may be amended (the "Bankruptcy Code");

TOGETHER WITH all rights, powers, privileges, options and other benefits of Assignor as lessor under the Leases, including without limitation the immediate and continuing right to make claim for, receive, collect and receipt for all Rents payable or receivable under the Leases or pursuant thereto (and to apply the same to the payment of the Debt or the Obligations, each as hereinafter defined), and to do all other things which Assignor or any lessor is or may become entitled to do under the Leases.

THIS ASSIGNMENT is a present, absolute and unconditional assignment and transfer of all of Assignor's right, title and interest in and to the Leases and the Rents made in consideration of that certain first deed of trust loan made by Assignee to Assignor evidenced by a certain note in the principal sum of \$4,832,913.00, of even date herewith made by Assignor to Assignee (said note, together with any extensions, renewals or modifications thereof, hereinafter collectively referred to as the "Note") and secured by a certain deed of trust and security agreement in the principal sum of \$4,832,913.00, of even date herewith granted by Assignor to Assignee covering the Trust Property and intended to be duly recorded (said deed of trust, together with any modifications thereof, hereinafter collectively referred to as the "Deed of Trust") and as additional security for:

A. the payment of the principal sum and interest, and all other sums due and payable (hereinafter collectively referred to as the "Debt") under the Note and the Deed of Trust; and

B. the performance and discharge of each and every obligation, covenant and agreement of Assignor contained herein, in the Deed of Trust, in the Note and in all and any of the documents other than this Assignment, the Note or the Deed of Trust now or hereafter executed by Assignor and/or others and by or in favor of Assignee which wholly or partially secure or guarantee payment of the Debt (hereinafter referred to as the "Other Security Documents"); it being intended by Assignor and Assignee that this Assignment constitutes an absolute assignment and not an assignment for additional security only.

ASSIGNOR WARRANTS that (i) Assignor is the sole owner of the entire lessor's interest in the Leases; (ii) the Leases are valid and enforceable and have not been altered, modified or amended in any manner whatsoever except as herein set forth; (iii) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated; (iv) none of the Rents have been collected for more than one (1) month in advance; (v) Assignor is a limited partnership duly organized and validly existing under the laws of the State of Illinois, has full power and authority to execute and deliver this Assignment and the execution and delivery of this Assignment has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Assignor or the Trust Property; (vi) the premises demised under the Leases have been completed and the tenants under the Leases have accepted the same and have taken possession of the same on a rent-paying basis; (vii) Assignor is not required to perform any construction or finishing work under any of the

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Leases, and Assignor does not owe any money to any Lessee for finish allowances or moving expense reimbursement; (viii) there exist no offsets, defenses or counterclaims with respect to the payment of any portion of the Rents or other sums payable under the Leases; (ix) to the best of Assignor's knowledge, neither Assignor nor any Lessee is in default under or in breach of any of the terms, covenants or provisions of the Leases and Assignor knows of no event which, but for the passage of time or the giving of notice, or both, would constitute an event of default under or a breach of the Leases by Assignor or any Lessee; (x) neither Assignor nor any Lessee has commenced any action or given or received any notice for the purpose of terminating the Leases; and (xi) no action, whether voluntary or otherwise, is pending against any Lessee under the bankruptcy laws or similar laws of the United States or any state thereof.

ASSIGNOR COVENANTS with Assignee that Assignor (a) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases; (b) shall promptly send copies to Assignee of all notices of default which Assignor shall send or receive under the Leases; (c) shall enforce all of the terms, covenants and conditions contained in the Leases upon the part of the lessees thereunder to be observed or performed, short of termination thereof; (d) shall not execute any other assignment or pledge of Assignor's interest in the Leases or the Rents; (e) shall not alter, modify or change the terms of the Leases or cancel, terminate or accept a surrender of the Leases or convey, transfer, or suffer or permit a conveyance or transfer of the Trust Property or of any interest therein so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, lessees thereunder without the prior written consent of Assignee, which consent may be given or withheld in Assignee's sole discretion, and any such attempted action in contravention of the terms hereof shall be void; (f) shall not consent to any assignment of or subletting under the Leases not in accordance with its terms, without the prior written consent of Assignee, which consent may be given or withheld in Assignee's sole discretion, and any such attempted consent to an assignment or subletting in contravention of the terms hereof shall be void; (g) shall not alter, modify or change the terms of any guaranty of the Leases or cancel or terminate such guaranty without the prior written consent of Assignee, which consent may be given or withheld in Assignee's sole discretion, and any such attempted modification in contravention of the terms hereof shall be void; (h) shall execute and deliver at the request of Assignee all such further assurances, confirmations and assignments in connection with the Trust Property as Assignee shall from time to time require; and (i) shall not enter into any new lease of the Trust Property or any portion thereof.

THIS ASSIGNMENT is made on the following terms, covenants and conditions:

1. Present Assignment. Assignee is hereby granted and assigned by Assignor the right to enter the Trust Property for the purpose of enforcing its interest in the Leases and the Rents, this Assignment constituting a present absolute and unconditional assignment of all of Assignor's right, title and interest in the Leases and Rents, including, but not by way of limitation, (i) the immediate and continuing right to make claim for, receive, collect and receipt for all Rents, insurance proceeds, condemnation awards and other sums payable or receivable under the Leases or pursuant thereto, whether denominated as rent, other expenses, other payments or as the purchase price of the Trust Property or any portion thereof or otherwise, together with all proceeds from any of the above, (ii) the right to make all waivers and agreements with respect to the Leases and Rents or any portion thereof, (iii) the right to give

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all notices, consents, releases and other instruments with respect to the Leases and Rents or any portion thereof, (iv) the right to take all action upon the happening of a default under the Leases, including, without limitation, the commencement, conduct and consummation of proceedings at law or in equity as shall be permitted under any provision thereof or by law or in equity, (v) the right to appear in any proceeding, claim, suit or action in connection with the rejection of any Lease, and the right to file and prosecute any claim for damages arising from the rejection of any Lease under the Bankruptcy Code, and (vi) the right to do any and all other things whatsoever which Assignor is or may become entitled to do under the Leases, all with the same effect as if done by the lessor named in the Leases.

2. Notice and Payments. (a) Assignor designates Assignee to receive, and shall authorize and direct each Lessee named in the Leases or any other or future lessees or occupants of the Trust Property to pay over to Assignee, all Rents and other payments required to be made by Lessee under said Leases by Lessee at such address as Assignee shall designate and to continue to do so until otherwise notified by Assignee; (b) Assignor designates Assignee to receive all notices, demands, undertakings, documents and other instruments or communications which Lessee is required or permitted to give, make or deliver to or serve upon the lessor under the Leases, and Assignor shall direct Lessee, any future lessees or occupants of the Trust Property to deliver to Assignee, at its address above, or at such other address as Assignee shall designate, duplicate originals of all such notices, demands, undertakings, documents and other instruments; (c) no payment or delivery of any notice, demand, undertaking, document or other instrument or communication by any Lessee shall be of any force or effect unless made to Assignee as provided herein; (d) Assignee is irrevocably authorized, but not obligated, to exercise all rights and remedies to collect, compromise and release all rentals and other monies payable under the Leases and to deal with the Leases in such manner and at such times as Assignee may, in its discretion, deem advisable; (e) Assignor represents and warrants that it has notified each Lessee and shall continue to notify and direct each new Lessee or occupant in writing, and in a manner and form satisfactory to Assignee, of the foregoing; and (f) Assignor shall forward to Assignee any and all sums received by Assignor in connection with the operation of the Trust Property at such address as Assignee shall designate within five (5) days of receipt of such sums by Assignor.

3. Assignor to Remain Liable. Assignor shall remain liable under the Leases to perform all the obligations to be performed by it thereunder, all in accordance with and pursuant to the terms and provisions of the Leases, and Assignee shall have no obligation or liability under the Leases by reason of or arising out of this Assignment, nor shall Assignee be required or obligated in any manner to perform or fulfill any of the obligations of Assignor under or pursuant to the Leases, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it, or to present or file any claim, or to take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times. Notwithstanding the above, Assignee hereby grants to Assignor a revocable license to exercise any and all rights under the Leases with respect to the Trust Property in order to enable Assignor to take all actions necessary for the proper management and operation of the Trust Property except for (i) the right to make claim for, receive, collect and receipt for any Rents, insurance proceeds, condemnation awards and any other sums payable or receivable under the Leases or pursuant thereto, whether denominated as rent, other expenses, other payments or as the purchase price of the Trust

Property or any portion thereof or otherwise, or any proceeds from any of the above, (ii) the right to take any action upon the happening of a default under the Leases, including, without limitation, the commencement, conduct and consummation of proceedings at law or in equity, or (iii) the right to appear in any proceeding, claim, suit or action in connection with the rejection of any Lease, or the right to file or prosecute any claim for damages arising from the rejection of any Lease under the Bankruptcy Code, without having first obtained Assignee's prior written consent to do any of the foregoing. Notwithstanding the above, however, (i) in no event shall Assignor be permitted to amend or modify the terms of the Leases without the prior written consent of Assignee, and (ii) in no event shall Assignor, without the prior written consent of Assignee, in the exercise of any rights under the Wal-Mart Lease or otherwise, take any action in connection with the management and operation of the property which would (a) have a material adverse affect on the rights and benefits of the landlord under the Wal-Mart Lease, (b) in any way affect the monthly amount payable, or any other amount payable, or the Original Term under, the Wal-Mart Lease, or (c) in any way reduce the obligations of Wal-Mart under the Wal-Mart Lease. Upon or at any time after a default by Assignor hereunder or the occurrence of an Event of Default (as defined in the Deed of Trust) (a "Default"), the license granted to Assignor herein may be revoked by Assignee. The obligations of Assignor under the Leases may be performed by Assignee or its nominee, but only at the option of Assignee, without releasing Assignor therefrom and without providing for or resulting in any assumption of liability or obligations thereunder by Assignee.

Notwithstanding anything to the contrary contained herein, Assignee hereby agrees that in the event Assignor shall request Assignee's consent pursuant to the terms of this Assignment, Assignee's consent shall be deemed given by Assignee in the event Assignor shall deliver to Assignee a written request for such consent by certified mail, return receipt requested, in an envelope clearly marked "URGENT-IMMEDIATE RESPONSE REQUIRED" and Assignee shall fail to approve or disapprove of such request within fifteen (15) business days from the receipt by Assignee of such request.

4. Assignment Irrevocable; Power of Attorney. Assignor agrees that this Assignment and said designation and directions to Lessee herein set forth are irrevocable and Assignor will not, while this Assignment is in effect or thereafter until Lessee has received from Assignee notice of the termination hereof, take any action as lessor under the Leases or otherwise which is inconsistent with this Assignment or make any other assignment, designation or direction inconsistent herewith and that any assignment, designation or direction inconsistent herewith shall be void. Assignor grants to Assignee its irrevocable power of attorney, coupled with an interest, to take any and all actions deemed necessary by Assignee to collect the Rents or otherwise enforce its rights under this Assignment.

5. No Liability of Assignee. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Trust Property or from any other act or omission of Assignee in managing the Trust Property unless such loss is caused by the willful misconduct and bad faith of Assignee. Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or under or by reason of this Assignment and Assignor shall, and hereby agrees, to indemnify Assignee for, and to defend and hold Assignee harmless from, any and all liability, loss or damage which may or might be incurred under the Leases or under or by reason of this Assignment and from any and all claims

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and demands whatsoever, including the defense of any such claims or demands which may be asserted against Assignee by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Assignee incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby and by the Deed of Trust and the Other Security Documents and Assignor shall reimburse Assignee therefor immediately upon demand and upon the failure of Assignor so to do Assignee may, at its option, declare all sums secured hereby and by the Deed of Trust and the Other Security Documents immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Trust Property upon Assignee, nor for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Assignee responsible or liable for any waste committed on the Trust Property by the tenants or any other parties, or for any dangerous or defective condition of the Trust Property, including without limitation the presence of any Hazardous Materials (as defined in the Deed of Trust), or for any negligence in the management, upkeep, repair or control of the Trust Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

6. The Clearing Account. Assignor hereby agrees that any and all Rents and other sums received directly by Assignee pursuant to the terms of this Assignment shall be deposited with Assignee (all such deposits are collectively referred to herein as "Clearing Account Deposits"). Each Clearing Account Deposit shall be placed by Assignee into an account in the name of Assignee (the "Clearing Account") and shall be held and otherwise maintained by Assignee in accordance with the terms and conditions set forth herein (the Clearing Account Deposits and the Clearing Account are hereinafter collectively referred to as the "Collateral"). Assignor hereby grants Assignee a first priority perfected security interest in the Collateral. Assignee shall be entitled to any and all interest accruing on the Clearing Account Deposits.

7. Clearing Account Withdrawals. (a) Provided no Default shall have occurred and be continuing, Assignee shall withdraw sums from the Clearing Account on the tenth (10th) day of each calendar month prior to the Maturity Date (as defined in the Deed of Trust) to pay all amounts then due and payable under the terms of the Note, the Deed of Trust and the Other Security Documents.

(b) To the extent that there are sums in the Clearing Account on the tenth (10th) day of any calendar month in excess of the amounts then due and payable under the terms of the Note, the Deed of Trust and any Other Security Documents, such excess, if any, shall be released to Assignor or Assignor's designee within five (5) business days (the "Excess Payments").

(c) Upon the occurrence of a Default, (i) Assignor's rights in and to the Excess Payments shall terminate and Assignee shall have no obligation to release any of the Collateral, including any Excess Payments to Assignor or Assignor's designee, and (ii) Assignee may, at Assignee's option, withdraw all or any portions of the Collateral (including Excess Payments) and apply the Collateral and Excess Payments toward payment of (A) the Debt in such order and proportion as Assignee in its sole discretion may determine, any law, custom or use to the contrary notwithstanding, (B) all expenses of managing and securing the Trust

Property, including without limitation, the salaries, fees and wages of a managing agent and such other employees or agents as Assignee may deem necessary or desirable and all expenses of operating and maintaining the Trust Property, including, without being limited thereto, (C) all taxes, charges, claims, assessments, water charges, sewer rents and any other liens affecting the Trust Property or any portion thereof, (D) premiums for all insurance which Assignee may deem necessary or desirable, (E) the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Trust Property (collectively, the "Obligations") and (F) all costs and attorneys' fees. In addition to the rights and remedies of Assignee listed in this paragraph, Assignee shall have all of the rights and remedies available to it under the Uniform Commercial Code of Tennessee and other applicable laws. Nothing in this paragraph shall be deemed to (i) be a waiver by Assignee of any of its rights or remedies under the Note, the Deed of Trust, the Other Security Documents or this Assignment upon a default by Assignor thereunder, or (ii) affect in any other way the terms and provision of the Note, the Deed of Trust or any of the Other Security Documents.

8. Bankruptcy. (a) Assignor hereby unconditionally assigns, transfers and sets over to Assignee all of Assignor's claims and rights to the payment of damages arising from any rejection by Lessee of any Lease under the Bankruptcy Code. Assignee shall have the right to proceed in its own name or in the name of Assignor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Assignor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of Lessee under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies. Any amounts received by Assignee as damages arising out of rejection of any Lease as aforesaid shall be applied first to all costs and expenses of Assignee (including, without limitation, attorneys fees) incurred in connection with the exercise of any of its rights or remedies under this paragraph 8 and then in accordance with paragraph 7 of this Assignment.

(b) If there shall be filed by or against Assignor a petition under the Bankruptcy Code, and Assignor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, Assignor shall give Assignee not less than ten (10) days' prior notice of the date on which Assignor shall apply to the bankruptcy court for authority to reject the Lease. Assignee shall have the right, but not the obligation, to serve upon Assignor within such ten-day period a notice stating that (i) Assignee demands that Assignor assume and assign the Lease to Assignee pursuant to Section 365 of the Bankruptcy Code and (ii) Assignee covenants to cure or provide adequate assurance of future performance under the Lease. If Assignee serves upon Assignor the notice described in the preceding sentence, Assignor shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Assignee of the covenant provided for in clause (ii) of the preceding sentence.

9. Security. Assignee may take or release any security for the payment of the Debt, may release any party primarily or secondarily liable therefor and may apply any security held by it to the reduction or satisfaction of the Debt without prejudice to any of its rights under this Assignment.

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10. Other Remedies. (a) Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the power and rights granted to Assignee hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note, the Deed of Trust or the Other Security Documents and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms thereof. The right of Assignee to collect the Debt and to enforce any security therefor held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder. The collection of the Rents and the application thereof to the Debt or the Obligations shall not be considered a waiver of any default by Assignor under the Note, the Deed of Trust, the Leases, this Assignment or the Other Security Documents, and in no event shall such collection and application release Assignor from the obligation to make any payments required under the terms of the Note, the Deed of Trust, or any of the Other Security Documents on or before the date such payments are required to be made.

(b) In the event Assignee shall be in default of any of its obligations under this Assignment, such default shall not release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Assignor for the payment of the Debt or entitle Assignor to any offset, defense or counterclaim against the payment of the Debt and Assignor shall not claim or be entitled to any credit or credits on account of the Debt, Assignor hereby expressly waiving any rights relating thereto.

(c) In addition to the rights which Assignee may have herein, upon the occurrence of a Default, Assignee, at its option, may either require Assignor to pay monthly in advance to Assignee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Trust Property as may be in possession of Assignor or may require Assignor to vacate and surrender possession of the Trust Property to Assignee or to such receiver and, in default thereof, Assignor may be evicted by summary proceedings or otherwise.

11. No Mortgagee in Possession. Nothing herein contained shall be construed as constituting Assignee a "deed of trust beneficiary in possession" in the absence of the taking of actual possession of the Trust Property by Assignee.

12. No Partnership or Joint Venture. The execution of this Assignment, the collection of Rents and the enforcement and performance of any other rights or powers granted or assigned to Assignee hereunder, is not intended to be, and shall not be construed to be, the formation of a partnership or joint venture between Assignor and Assignee. Assignee is not an agent of Assignor, and Assignee shall have no duty to account for the Rents collected hereunder nor any other fiduciary obligations to Assignor.

13. Conflict of Terms. In case of any conflict between the terms of this Assignment and the terms of the Deed of Trust, the terms of this Assignment shall prevail.

14. No Oral Change. This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of Assignor or Assignee, but only by an agreement in

writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

15. Certain Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word "Assignor " shall mean "each Assignor and any subsequent owner or owners of the Trust Property or any part thereof or interest therein," the word "Assignee" shall mean "Assignee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by the Deed of Trust," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the words "Trust Property" shall include any portion of the Trust Property and any interest therein, and the word "Debt" shall mean the principal balance of the Note with interest thereon as provided in the Note and the Deed of Trust and all other sums due pursuant to the Note, the Deed of Trust, this Assignment and the Other Security Documents; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

16. Non-Waiver. The failure of Assignee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Assignor shall not be relieved of Assignor's obligations hereunder by reason of (i) failure of Assignee to comply with any request of Assignor or any other party to take any action to enforce any of the provisions hereof or of the Deed of Trust, the Note or the Other Security Documents, (ii) the release regardless of consideration, of the whole or any part of the Trust Property, or (iii) any agreement or stipulation by Assignee extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Note, the Deed of Trust or the Other Security Documents. Assignee may resort for the payment of the Debt to any security held by Assignee in such order and manner as Assignee, in its discretion, may elect. Assignee may take any action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Assignee thereafter to enforce its rights under this Assignment. The rights of Assignee under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Assignee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

17. Further Assurances. Assignor (a) shall execute any instruments or take any steps required by Assignee in order that notice of the security interest granted and assigned by Assignor to Assignee in the Collateral pursuant to this Assignment shall be given to all appropriate parties and/or as may be required to enable Assignee to enforce its rights under this Assignment, and (b) shall execute, at the request of Assignee, all UCC-1 financing statements under the Uniform Commercial Code and other instruments and documents required by Assignee to perfect the security interest in the Collateral intended to be created pursuant to this Assignment (c) authorizes Assignee, to the extent that the Assignee may lawfully do so, to execute and file at any time financing statements under the Uniform Commercial Code without the signature of Assignor with respect to any security interest in the Collateral granted to Assignee pursuant to this Assignment and (d) Assignor shall execute, from time to time, upon

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request of Assignee, all instruments of further assurance and all such supplemental instruments as Assignee may reasonably request to accomplish the intent of this Assignment.

18. Inapplicable Provisions. If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

19. Duplicate Originals. This Assignment may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

20. Governing Law. This Assignment was negotiated and executed in New York and shall be governed and construed in accordance with the laws of the State of New York.

21. Termination of Assignment. Upon payment in full of the Debt and the delivery and recording of a satisfaction or discharge of Deed of Trust duly executed by Assignee, this Assignment shall become and be void and of no effect and Assignee shall pay to Assignor all sums then outstanding, if any, in the Clearing Account and return the Collateral to Assignor.

22. Submission to Jurisdiction. Assignor covenants and agrees (i) that in any action or proceeding brought by Assignee against Assignor under this Assignment, Assignor shall and does hereby waive trial by jury, (ii) that the Supreme Court of the State of New York for the County of New York, or, in a case involving diversity of citizenship, the United States District Court for the Southern District of New York, shall have jurisdiction of any such action or proceeding, (iii) that service of any summons and complaint or other process in any such action or proceeding may be made by registered or certified mail directed to Assignor at Assignor's addresses hereinbelow set forth, Assignor hereby waiving personal service thereof, and (iv) that within thirty days after such mailing Assignor so served shall appear or answer to any summons and complaint or other process and should Assignor so served fail to appear or answer within said thirty-day period, said Assignor shall be deemed in default and judgment may be entered by Assignee against the said party for the amount as demanded in any summons and complaint or other process so served.

23. Wal-Mart's Acknowledgement. Pursuant to the certificate attached hereto as Exhibit B and made a part hereof, Wal-Mart, as the sole lessee of the Trust Property, has acknowledged that (a) the Wal-Mart Lease has been assigned by Assignor to Assignee, (b) Assignee shall be entitled to all of the rights and benefits of and payments due to Assignor, as lessor, under the Wal-Mart Lease, and (c) all payments made by Wal-Mart pursuant to the Wal-Mart Lease shall be made directly to Assignee or its designated agent or trustee.

24. Exculpation. Assignee shall not enforce the liability and obligation of Assignor to perform and observe the obligations contained in the Note, the Deed of Trust or this Assignment by any action or proceeding wherein a money judgment shall be sought against Assignor, except that Assignee may bring a foreclosure action, action for specific performance (other than specific performance under the Note) or other appropriate action or proceeding to

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enable Assignee to enforce and realize upon this Assignment, the Deed of Trust, and the Other Security Documents, and the interest in the Trust Property, the Rents and any other collateral given to Assignee created by the Assignment, the Deed of Trust and the Other Security Documents; provided, however, that any judgment in any such action or proceeding shall be enforceable against Assignor only to the extent of Assignor's interest in the Trust Property, in the Rents and in any other collateral, if any, given to Assignee to secure the Debt. Assignee, by accepting the Note, the Deed of Trust, and this Assignment agrees that it shall not sue for, seek or demand any deficiency judgment against Assignor in any such action or proceeding, under or by reason of or under or in connection with the Note, the Other Security Documents, (as defined in the Deed of Trust) the Deed of Trust or this Assignment. The provisions of this paragraph shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by the Note, the Other Security Documents, the Deed of Trust or this Assignment; (b) impair the right of Assignee to name Assignor as a party defendant in any action or suit for judicial foreclosure and sale under the Deed of Trust; (c) impair the right of Assignee to obtain the appointment of a receiver; (d) impair the right of Assignee to exercise any of its rights against Tenant pursuant to (i) the Wal-Mart Lease or (ii) this Assignment; (e) apply in case of the right of Assignee to bring suit against Assignor with respect to fraud or intentional written misrepresentation by Assignor or any other person or entity controlled by or acting under the direction of Assignor (including, without limitation, Assignor's partners, directors, officers and shareholders) in connection with the Note, the Deed of Trust, this Assignment or the Other Security Documents; (f) impair the right of Assignee to bring suit against any other person (other than any of Assignor's partners, directors, officers or shareholders acting on behalf of Assignor) or entity with respect to fraud or intentional written misrepresentation by Assignor or any other person or entity in connection with the Note, the Deed of Trust, this Assignment or the Other Security Documents; (g) impair the right of Assignee to obtain insurance proceeds or condemnation awards due to Assignee under the Deed of Trust, the Wal-Mart Lease or this Assignment; (h) impair the right of Assignee to enforce the provisions of subparagraph 34(g) and paragraphs 32 and 33 of the Deed of Trust (provided, however, the right of Assignee to collect the cost and expense of the Environmental Study (as defined in the Deed of Trust) or the Asbestos Study (as defined in the Deed of Trust) shall be limited to Assignor's interest in the Trust Property, the Rents and any other collateral, if any, given to Assignee to secure the Debt); or (i) apply in the case of the right of Assignee to recover any sums due under the Note, the Deed of Trust, this Assignment or the Other Security Documents from Assignor or any transferee of Assignor upon a sale of the Trust Property in violation of paragraphs 8 or 50 of the Deed of Trust.

THIS ASSIGNMENT, together with the covenants and warranties therein contained, shall inure to the benefit of Assignee and any subsequent holder of the Deed of Trust and shall be binding upon Assignor, his heirs, executors, administrators, successors and assigns and any subsequent owner of the Trust Property.

(Continued on next page)

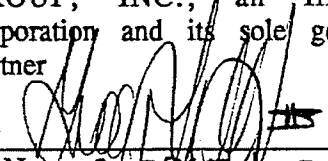
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IN WITNESS WHEREOF, Assignor has executed this instrument the day and year first above written.

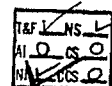
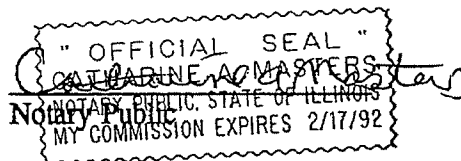
MART LIMITED PARTNERSHIP III, an Illinois limited partnership

By: INTERVEST REAL ESTATE GROUP, INC., an Illinois corporation and its sole general partner

By:   
Name: ~~GEORGE~~ LUBURICH  
Title: AUTHORIZED REPRESENTATIVE

STATE OF IL )  
 )SS:  
COUNTY OF DU PAGE

The foregoing was acknowledged before me this 22<sup>nd</sup> day of Nov., 1991, by George Lubinski, an Authorized Rep of Intervest Real Estate Group, Inc., an Illinois corporation on behalf of Mart Limited Partnership III, an Illinois limited partnership.



STATE OF NEBRASKA } S.S.  
Platte County  
Entered in Numerical Index and Filed  
for Record in the Recorder's Office of  
said County this 2<sup>nd</sup> day of December  
A.D. 19 91 at 2:39 o'clock P.M.  
Recorded in Book 83 of Miscellaneous  
Page 851 thereof.  
Dorrene Kupperman  
Register of Deeds

Fee \$96.00  
Will call-Platte County Title Co.  
City

(Continued on next page)

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COLUMBUS, NB.

T-7

EXHIBIT "A"

SURVEY OF LOTS 1 AND 2, BLOCK A, RANDALL  
3RD ADDITION TO THE CITY OF COLUMBUS, PLATTE  
COUNTY, NEBRASKA

## DESCRIPTION:

Beginning on the East line of Lot 1, Block A, Randall 3rd Addition to the City of Columbus, Platte County, Nebraska and on the North right of way line of 23rd Street in said City; then 658.16 ft. N 89° 58' 25" W along said 23rd Street right of way line to the West line of said Lot 1 and the East line of Lot 3, said Block A; then 173.85 ft. N 0° 04' 20" W along the West line of said Lot 1 and the East line of said Lot 3 to the NE corner of said Lot 3 and the SE corner of Lot 2, said Block A; then 266.65 ft. N 89° 58' 25" W along the North line of said Lot 3 and the South line of said Lot 2 to the NW corner of said Lot 3; then 173.85 ft. S 0° 20' 21" E along the West line of said Lot 3 and the East line of said Lot 2 to the North right of way line of said 23rd Street; then 64.00 ft. N 89° 58' 25" W along the North right of way line of said 23rd Street to the West line of said Lot 2; then 586.42 ft. N 0° 05' 16" W along the West line of said Lot 2 to the South right of way line of 25th Street in said City; then 988.90 ft. S 89° 54' 05" E along the South right of way line of said 25th Street to the East line of said Lot 1; then 585.17 ft. S 0° W along the East line of said Lot 1 to the point of beginning and containing 12.230 acres more or less. (The bearings in this description are assumed)

## WAL-MART

WAL-MART STORES, INC.  
BENTONVILLE, AR 72716

701 SOUTH WALTON BLVD.  
501-273-4000

November 27, 1991

Security Pacific National Bank  
and its successors and assigns  
555 Anton Boulevard, BC-071  
Costa Mesa, California 92626

Re: Lease dated November 27, 1991 between Mart Limited Partnership III, as Landlord, and Wal-Mart Stores, Inc., as Tenant (the "Lease"), regarding the premises commonly known as 3620 23rd Street, Platte County, Columbus, Nebraska (the "Property")

Gentlemen:

As Tenant under the referenced Lease covering the premises located at the Property, and in order to induce you to make that certain first mortgage loan to the Landlord, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned hereby agrees with and certifies to Security Pacific National Bank, its successors and assigns (the "Lender"), the following:

1. Tenant has accepted possession of the premises described in the Lease. The Landlord is not required to perform any work under the Lease. There are no amounts due Tenant from Landlord in regard to tenant finish allowances, moving expense reimbursement, or in the nature of lease execution inducements. The commencement date of the Lease is November 21, 1991 and the Lease term expires on January 31, 2017.

2. The Lease is in full force and effect and has not been modified, altered or amended nor have any of its terms been waived, except pursuant to the amendments, if any, the dates of which are referenced immediately below and copies of which are attached to this certificate:

Dates of Amendments: None

(Continued on next page)



3. There are no offsets, defenses or counterclaims with respect to the payment of rent reserved under the Lease or to the performance of the other terms, covenants and conditions of the Lease to be performed by Tenant.

4. As of the date hereof, no default in the performance of any covenant, agreement, term, provision, or condition contained in the Lease has been declared under the Lease by either party thereto and, as of the date hereof, Tenant has no knowledge of any facts or circumstances which it might reasonably believe would give rise to any default by either Landlord or Tenant. Tenant has not assigned its interest in the Lease nor sublet the Property or any part thereof.

5. Except as set forth below, Landlord does not hold a security deposit from Tenant in connection with the Lease.

Security Deposit: None

6. No rent under the Lease has been paid more than 30 days in advance of the due date. Tenant has paid rent and all other charges as are required by the Lease.

7. Tenant acknowledges that all of the Landlord's interest under the Lease has been assigned by Landlord to the Lender pursuant to that certain Assignment of Leases and Rents (the "Assignment") intended to be entered into on the date hereof (under which Assignment Lender has granted Landlord a conditional license to perform the obligations of the Landlord in connection with the operation of the demised premises, excluding, however, the right or obligation to collect any payments made by Tenant under the terms of the Lease) and Tenant agrees that the Lender, as assignee of Landlord's interest under the Lease, shall be entitled to the rights and benefits, including without limitation the indemnities set forth in Sections 33 of the Lease, given by Tenant to Landlord under the Lease and all indemnities under the purchase agreement, if any, pursuant to which the Landlord acquired the premises from the Tenant (the "Purchase Agreement") and Lender shall receive all payments pursuant to the Lease. Tenant represents and warrants to the Lender that all of the Seller's representations and warranties made in the Purchase Agreement, if any, are true and correct on the date hereof.

8. Tenant shall make all payments due under the Lease to an agent or trustee designated by Lender and Tenant has been so directed by Landlord. Until Tenant is directed otherwise by the Lender, Tenant shall continue to make all such payments notwithstanding the assignment or subletting of the demised premises pursuant to Section 14 of the Lease.

9. Tenant acknowledges and agrees (by way of explanation and clarification and not amendment, modification or substitution) that Tenant may not terminate the Lease during the last three (3) years of the Lease term due to damages to the building on the demised premises pursuant to Section 9(c) of the Lease unless payment of all insurance proceeds provided for under the insurance policy is made by the insurance company, or the Tenant, as the case may be, pursuant to Sections 10(a) or 10(f) respectively, to Lender.

10. Tenant acknowledges and agrees that in the event it exercises its right of first refusal to purchase the Property pursuant to Section 20 of the Lease, Tenant shall pay Lender, as assignee of the Lease, all sums due Lender (as Landlord under the Lease) in connection with the sale of the Property.

11. Tenant hereby covenants and agrees that it shall protect, indemnify and save harmless the Landlord and the Lender (and each of their respective successors and assigns) (each, an "Indemnitee") from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, fees and expenses (including, without limitation, attorney, consultant, investigation and laboratory fees and expenses), imposed upon or incurred by or asserted against any Indemnitee by reason of (a) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release or threatened release of any Hazardous Materials (as hereinafter defined) on, from, or affecting the Property which occurred prior to the conveyance of title to the Property by Tenant to Landlord or the former holder of Landlord's interest under the Lease, as applicable; (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to Hazardous Materials which were located on, or disposed, escaped, seeped, leaked, spilled, discharged, emitted or released from the Property prior to such time that Tenant conveyed title to the Property to Landlord or the former holder of Landlord's interest under the Lease, as applicable; (c) any lawsuit brought or threatened, settlement reached, or governmental order relating to Hazardous Materials which were located on or disposed, escaped, seeped, leaked, spilled, discharged, emitted or released from the Property prior to such time that Tenant conveyed title to the Property to Landlord or the former holder of Landlord's interest under the Lease, as applicable; or (d) any violation of laws, orders, regulations, requirements, or demands of government authorities, which are based upon or in any way related to Hazardous Materials provided such violation occurred prior to such time that Tenant conveyed title to the Property to Landlord or the former holder of Landlord's interest under the Lease, as applicable. As used herein, the term "Hazardous Materials" shall include, without limitation, any flammable, explosive or radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials, asbestos or any material containing asbestos, or any other substance or material as defined by any Federal, state or local environmental laws, ordinance, rule, or regulation including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 9601 et seq.), and in the regulations adopted and publications promulgated pursuant thereto.

Nothing contained in this indemnification by Lessee will prevent the Lessee from pursuing claims, contribution, or actions against third parties and Lessee shall have the right to freely pursue such claims, contribution, and actions. Landlord\* agree to cooperate fully with Lessee's requests concerning all rights, duties, and obligations arising out of this indemnification.

This indemnification shall not run to the successors or assigns of Landlord (other than Landlord's Lender, as hereinafter provided) who are not Permitted Transferees pursuant

\*and Lender

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to Section 5.02 of the Purchase Agreement, dated September 13, 1991, and referred to in Section 7 hereof; provided, however, if Landlord's Lender becomes an owner or operator of the Property through foreclosure, delivery of a deed in lieu thereof, or otherwise from Landlord, this indemnification shall run to Landlord's Lender.

As used herein, the phrase "Landlord's Lender" shall mean such individuals or entities that finance Landlord's purchase of the Property from Lessee, but its successors and assigns shall not include (a) third-party transferees who purchase the Property from Landlord's Lender after Landlord's Lender has taken title to the Property through foreclosure, delivery of a deed in lieu thereof or otherwise from Landlord or (b) individuals or entities which finance the purchase of the Property for an entity which purchases the Property from Landlord.

12. Lessee shall notify the Trustee in the event Lessor defaults in the performance of any covenant or agreement contained in the Lease.

13. This letter has been duly authorized, executed and delivered by the Lessee and constitutes the valid and binding agreement of the Lessee, enforceable in accordance with its terms.

14. The Lessee is a corporation duly qualified and in good standing as a foreign corporation authorized to do business in the state where the Property is located.

15. Each of the legal opinions rendered by counsel for the undersigned in connection with the Purchase Agreements are true and correct as of the date hereof and the Purchasers may rely upon such opinions as if they had been addressed originally to them.

WAL-MART STORES, INC.

By: *Randy Laney*  
Name: D Randy Laney  
Title: Vice President-Finance

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Sworn to and subscribed  
before me this 16th day  
of November, 1991.

*Anita M. Karren*  
Notary Public

