

THIS INSTRUMENT WAS
PREPARED BY AND UPON
RECORDATION RETURN TO:

98-1130407
Charles J. Mack
Wolin & Rosen, Ltd.
2 N. LaSalle Street, Suite 1776
Chicago, Illinois 60602
W&R File No. 1925454

(Space Above For Recorder's Use)

WASH DEPOT XIV, INC., as Borrower,

to

FIRST SECURITY COMMERCIAL MORTGAGE, L.P., as Lender

98-1130407
ASSIGNMENT
OF LEASES AND RENTS

Dated: As of May 21, 1998
Property Address: 2021 & 2031 North Rand Road
Palatine, Illinois
Section:
Block: [Block]
Lot: [Lot]
Tax Parcel: 02-02-203-035 Vol. 148
02-02-203-036 Vol. 148
County: Cook
Loan No.: 981-0089

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is made as of May 21, 1998, by WASH DEPOT XIV, INC., a Delaware corporation, having an address at 435 Eastern Avenue, Malden, Massachusetts 02148 ("Borrower"), to FIRST SECURITY COMMERCIAL MORTGAGE, L.P., a Delaware limited partnership, having an address at 150 S. Wacker Drive, Suite 1100, Chicago, Illinois 60606 ("Lender").

WITNESSETH:

WHEREAS, Borrower has requested that Lender make a loan to Borrower in the aggregate principal amount of ONE MILLION FIVE HUNDRED TWENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$1,525,000.00) (the "Loan");

WHEREAS, Lender has agreed to make the Loan to Borrower upon, and subject to, the terms and conditions set forth herein and in the other Loan Documents (as hereinafter defined);

WHEREAS, concurrently herewith, Borrower has delivered to Lender its Promissory Note of even date herewith in the amount of the Loan (as the same may hereafter from time to time be modified, amended, replaced, restated, supplemented, renewed, or extended, and any note(s) issued in exchange therefor or in substitution thereof, collectively, the "Note") in evidence of the Loan, with interest from the date hereof at the rates set forth in the Note, such interest and the principal amount thereof to be payable in accordance with the terms and conditions provided in the Note;

WHEREAS, Borrower has delivered to Lender certain Mortgage, Security Agreement and Fixture Filing (the "Security Instrument"), dated as of the date hereof, to Lender, encumbering Borrower's interest in that certain parcel of land situated in the County of Cook, State of Illinois, as more particularly described in Exhibit A attached 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 (collectively, the "Property"), which is intended to be duly recorded in said County concurrently with this Assignment;

NOW THEREFORE, in consideration of the making of the Loan and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Borrower hereby agrees, covenants, represents and warrants with and to Lender as follows:

ARTICLE I-ASSIGNMENT

Section 1.1 PROPERTY ASSIGNED. Borrower hereby irrevocably, absolutely and unconditionally assigns and grants to Lender all of Borrower's right, title and interest in and to the following property, rights, interests and estates now owned or hereafter acquired by Borrower, whether now owned or hereafter acquired (collectively, the "Assigned Property");

(a) Leases and Other Agreements. All existing and future leases and all other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Property or any portion thereof now or hereafter made, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code") together with any extension, renewal or replacement of the same (collectively, the "Leases"); this Assignment of all such other present and future Leases being effective without further or supplemental assignment.

(b) Rents. All rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements, all income, rents, issues, profits, receipts, revenues, deposits, accounts, accounts receivable and other receivables and benefits from the operation of the car wash and oil change facility on the Land or the Improvements, including, without limitation, all revenues and credit card receipts collected from all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of sale, lease, sublease, license, concession or other grant of the right of the possession, use or occupancy of all or any portion of the Land or the Improvements, or personally created thereon, or rendering of services by Borrower or any operator or manager of the car wash and oil change facility or the commercial space located in the Land or the Improvements or acquired from others including, without limitation, from the rental of any retail space, commercial space, or other space, stores, food and beverage retail sales, telephone and television systems, fuel retail sales, oil change retail sales, the provision or sale of other goods and services, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance relating to the use, enjoyment or occupancy of the Land or the Improvements, and any other items of revenue, receipts or other income, all regardless of whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "Rents").

(c) Bankruptcy Claims. All claims and rights (the "Bankruptcy Claims") to the payment of damages and other claims arising from any rejection by a lessee of any Lease under the Bankruptcy Code.

(d) Lease Guaranties. All claims and rights under any and all lease guaranties, letters of credit and any other credit support (individually, a "Lease Guaranty" and collectively, the "Lease Guaranties") given to Borrower by any guarantor in connection with any of the Leases (individually, a "Lease Guarantor" and collectively, the "Lease Guarantors").

(e) Proceeds. All proceeds from any sale or other disposition of the Leases, the Rents, the Lease Guaranties and the Bankruptcy Claims.

(f) Other. All rights, powers, privileges, options and other benefits of Borrower as lessor under the Leases and beneficiary under the Lease Guaranties, including without limitation, the immediate and continuing right to make claim for, receive, collect and apply all Rents payable

or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the principal sum, interest and all other sums due and payable under the Note, this Assignment and all of the other Loan Documents (collectively, the "Debt")), and to do all other things which Borrower or any lessor is or may become entitled to do under the Leases or the Lease Guaranties.

(g) Entry. The right, at Lender's option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver, to collect the Rents and to enforce the Leases.

(h) Power of Attorney. Borrower's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in Section 3.1 of this Assignment and any or all other actions designated by Lender for the proper management and preservation of the Property.

(i) Other Rights and Agreements. Any and all other rights of Borrower in and to the items set forth in subsections (a) through (h) above, and all amendments, modifications, replacements, renewals, extensions, supplements, restatements and substitutions thereof.

ARTICLE 2 - TERMS OF ASSIGNMENT

Section 2.1 PRESENT ASSIGNMENT AND LICENSE BACK. It is intended by Borrower that this Assignment constitute a present, complete, effective, irrevocable, absolute and unconditional assignment of the Assigned Property, and not an assignment for additional security only. Nevertheless, subject to the terms of this Assignment and the Security Instrument, Lender grants to Borrower a revocable license to collect and receive the Rents and other sums payable pursuant to any of the Assigned Property unless and until there shall be an Event of Default (as defined in the Security Instrument). Borrower shall hold a sufficient portion of the Rents and all sums payable pursuant to any of the Assigned Property in trust for the benefit of Lender to discharge all current sums due on the Debt.

Section 2.2 NOTICE TO LESSEES. Borrower does hereby specifically authorize, instruct and direct each and every present and future tenant, occupant, lessee and licensee of the whole or any part of the Property and all Lease Guarantors to pay over to Lender or to such other party as Lender directs all Rents and all sums payable under the other Assigned Property upon receipt of demand from Lender so to pay the same upon the occurrence of an Event of Default. Borrower hereby agrees that each such present and future tenant, occupant, lessee, licensee and Lease Guarantor may rely upon such written demand from Lender so to pay the Rents and other sums without any inquiry into whether there exists an Event of Default or whether Lender is otherwise entitled to such Rents and other sums. Borrower hereby waives any right, claim or demand which Borrower may have against any present or future tenant, occupant, lessee, licensee

or Lease Guarantor by reason of such payment of Rents and other sums to Lender, and any such payment shall discharge such tenant's, occupant's, lessee's, licensee's or Lease Guarantor's obligation to make such payment to Borrower.

Section 2.3 INCORPORATION BY REFERENCE. All representations, warranties, covenants, conditions and agreements contained in the Note, the Security Instrument and any and all of the other documents, instruments and agreements now or hereafter executed by Borrower and/or others and by or in favor of Lender, which wholly or partially secure or guaranty payment of the Debt or which from time to time may evidence any portion of the Debt (as each of the same may be amended, modified, extended, renewed, restated, consolidated, substituted, supplemented or replaced from time to time, collectively, the "Loan Documents"), are hereby made a part of this Assignment to the same extent and with the same force as if fully set forth herein.

ARTICLE 3 - REMEDIES

Section 3.1 REMEDIES OF LENDER. (a) Upon or at any time after the occurrence of an Event of Default, the license granted to Borrower in Section 2.1 of this Assignment automatically shall be revoked, and Lender immediately shall be entitled to possession of all Rents and other sums payable pursuant to any of the Assigned Property, whether or not Lender enters upon or takes control of the Property. In addition, upon or at any time after the occurrence of an Event of Default, without waiving such Event of Default, to the extent permitted by law, without notice and without regard to the adequacy of the security for the Debt, with or without bringing any action or proceeding, either in person or by agent, nominee, attorney or a receiver appointed by a court, at its option Lender may dispossess Borrower and its agents and servants from the Property and exclude Borrower and its agents or servants wholly therefrom, and take possession of the Property and all books, records and accounts relating thereto, without liability for trespass, damages or otherwise. Thereupon, Lender may have, hold, manage, lease and operate the Property on such terms and for such period of time as Lender may deem proper, and either with or without taking possession of the Property in its own name, demand, sue for or otherwise collect and receive all Rents and other sums payable pursuant to any of the Assigned Property, including those past due and unpaid, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Lender. Lender may apply the Rents and other sums payable pursuant to any of the Assigned Property to the payment of the following in such order and proportion as Lender in its sole discretion may determine: (i) all expenses of managing and securing the Property, including, without limitation, the salaries, fees and wages of a managing agent and such other employees or agents as Lender may deem necessary or desirable, (ii) all expenses of operating and maintaining the Property, including, without limitation, all utility charges, Insurance Premiums, Taxes and Other Charges (as such terms are defined in the Security Instrument) and any other liens, charges or expenses as Lender may deem necessary or desirable, (iii) the cost of all alterations, renovations, repairs or replacements, (iv) all expenses incident to taking and retaining possession of the Property, including, without limitation, all court costs and reasonable

attorneys' fees and disbursements, and (v) the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion.

(b) In addition, upon the occurrence of an Event of Default, Lender, at its option, may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, negotiate, execute, cancel, enforce, extend, renew or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents from the Property and all other sums payable pursuant to any of the Assigned Property, (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupancy of such part of the Property as may be in the possession of Borrower or any Affiliate (as defined in the Security Instrument) of Borrower, or (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise.

Section 3.2 OTHER REMEDIES. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the power and rights granted to Lender hereunder shall be deemed to be a waiver by Lender of its rights and remedies under any Loan Document, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms thereof. The right of Lender to collect the Debt and to enforce any security therefor held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Lender may take or release other security for the payment of the Debt, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the reduction or satisfaction of the Debt without prejudice to any of its rights under this Assignment.

Section 3.3 NON-WAIVER. The exercise by Lender of the option granted it in Section 3.1 of this Assignment and the collection of the Rents and other sums payable pursuant to any of the Assigned Property and the application thereof as herein provided shall not be considered a waiver of any default by Borrower under any Loan Document. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (a) the failure of Lender to comply with any request of Borrower or any other party to take any action to enforce any of the provisions hereof or of any of the Loan Documents, (b) the release, regardless of consideration, of the whole or any part of the Property, or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Assignment or the other Loan Documents. The rights of Lender under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others.

Section 3.4 BANKRUPTCY. (a) Upon or at any time after the occurrence of an Event of Default, Lender shall have the right to proceed in its own name or in the name of Borrower 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 Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

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

ARTICLE 4 - NO LIABILITY, FURTHER ASSURANCES

Section 4.1 NO LIABILITY OF LENDER. This Assignment shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any Lease or Lease Guaranty or otherwise impose any obligation upon Lender. Lender shall not be liable to Borrower or any other party for Lender's failure to let the Property after an Event of Default, for any waste committed on the Property by the tenants or any other parties, for any dangerous or defective condition of the Property, including without limitation, the presence of any Hazardous Substances (as defined in the Security Instrument), for any negligence in the management, upkeep, repair or control of the Property resulting in loss, injury or death to Borrower or any tenant, licensee, employee or stranger, or for any other act or omission of Lender in managing the Property after an Event of Default except to the extent directly caused by the gross negligence or willful misconduct of Lender. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless Lender from and against any and all liability, loss or damage which may or might be incurred under the Assigned Property or under or by reason of this Assignment and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against Lender 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 or any Lease Guaranties, except to the extent directly caused by the gross negligence or willful misconduct of Lender. Should Lender incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured by this Assignment, by the Security Instrument and the Other Security Documents (as defined in the Security Instrument), shall become immediately due

and payable and shall bear interest at the Default Rate (as defined in the Security Instrument) from the date incurred by Lender until paid.

Section 4.2 NO MORTGAGEE IN POSSESSION. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Lender. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

Section 4.3 FURTHER ASSURANCES. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto Lender the property and rights hereby assigned or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Assignment or for filing, registering or recording this Assignment and, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more assignments, financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien and security interest hereof in and upon the Assigned Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including, without limitation, such rights and remedies available to Lender pursuant to this Section 4.3.

ARTICLE 5 - MISCELLANEOUS PROVISIONS

Section 5.1 DOCUMENT PROTOCOLS. This assignment is governed by the Document Protocols set forth on Appendix I annexed to the Security Instrument, which are incorporated herein as if fully set forth herein.

Section 5.2 CONFLICT OF TERMS. In case of any conflict between the terms of this Assignment and the terms of the Security Instrument, the terms of the Security Instrument shall prevail.

Section 5.3 CERTAIN DEFINITIONS. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, and all other capitalized terms used but not otherwise defined herein shall have the meanings provided therefor in the Security Instrument.

Section 5.4 AUTHORITY. Borrower (and the undersigned representative of Borrower, if any) represents and warrants that it has full power and authority to execute and deliver this Assignment, and the execution and delivery of this Assignment has been duly authorized and

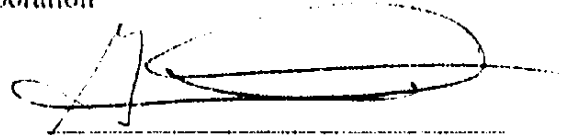
does not conflict with or constitute a default under any law, judicial order or other agreement affecting Borrower or the Property.

Section 5.5 TERMINATION OF ASSIGNMENT. Upon payment in full of the Debt and the delivery and recording of a satisfaction or discharge of Security Instrument duly executed by Lender, this Assignment shall become and be void and of no effect.

IN WITNESS WHEREOF THIS ASSIGNMENT has been executed by Borrower as of the day and year first above written.

BORROWER:

WASH DEPOT XIV, INC., a Delaware corporation



By:

Name: Gregory S. Anderson

Its: Executive Vice President

Property of Cook County Clerk's Office

STATE OF Illinois
)SS
COUNTY OF DeKalb

I, the undersigned, a notary public, in and for the county and state aforesaid, DO HEREBY CERTIFY, that GREGORY S. ANDERSON, personally known to me to be the Executive Vice President of WASH DEPOT XIV, INC., a Delaware corporation, and personally known to me to be the same person whose name is subscribed to within the Document, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his free and voluntary act and deed of WASH DEPOT XIV, INC., a Delaware corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 22 day of May, 1998.

[SEAL]

[Signature]
Notary Public
DONN V.L. FORBES
Notary Public
My Commission Expires Nov. 8, 2002

Property of Cook County Clerk's Office

UNOFFICIAL COPY 98483938

EXHIBIT "A" -

LEGAL DESCRIPTION

PARCEL 1:

That part of Section 2, Township 42 North, Range 10 East of the Third Principal Meridian, described as follows: Beginning at the intersection of the East and West 1/4 line of said Section with the center line of Rand Road, said intersection being 1514.39 feet West of the East line of said Section (measured on said East and West 1/4 line); thence Northwesterly along the center line of said Rand Road, said center line forming an angle of 47 degrees 00 minutes 30 seconds with the East and West 1/4 line of said Section, 145.08 feet to the place of beginning; thence Northwesterly along the center line of Rand Road, 100 feet; thence Northeasterly at right angles to Rand Road, 548.28 feet; thence Southeasterly along a line that forms an angle of 52 degrees 36 minutes 30 seconds to the right with a prolongation of the last described course for a distance of 125.89 feet; thence Southwesterly 548.28 feet to the place of beginning, in Cook County, Illinois.

PARCEL 2:

That part of Section 2, Township 42 North, Range 10 East of the Third Principal Meridian, described as follows: Beginning at the intersection of the East and West 1/4 line of said Section with the center line of Rand Road, said intersection being 1514.39 feet West of the East line of said Section (measured on said East and West 1/4 line); thence Northwesterly along the center line of said Rand Road, said center line forming an angle of 47 degrees 00 minutes 30 seconds with the East and West 1/4 line of said Section, a distance of 145.08 feet to point of beginning; thence Northwesterly along the center line of Rand Road, 100 feet; thence Northeasterly at right angles to Rand Road, 471.84 feet; thence Southeasterly along a line that forms an angle of 52 degrees 36 minutes 30 seconds to the right, with a prolongation of the last described course for a distance of 125.89 feet; thence Southwesterly 548.28 feet to the place of beginning, in Cook County, Illinois.

PROPERTY
ADDRESS: 2021 & 2031 N. RAND RD.
PALATINE, ILLINOIS

PIN: 02-02-203-035 Vol. 148
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