

COPY



**CITY OF SAN DIEGO
PERCENTAGE RATE LEASE AGREEMENT**

Between

**THE CITY OF SAN DIEGO,
a California municipal corporation**

And

**HEARTLAND AUTOMOTIVE SERVICES II, INC.,
a Delaware corporation**

Location: 1005 B Street

DOCUMENT NO. 303430

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

**CITY OF SAN DIEGO
PERCENTAGE RATE LEASE AGREEMENT**

THIS CITY OF SAN DIEGO PERCENTAGE RATE LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), as lessor, and, HEARTLAND AUTOMOTIVE SERVICES II, INC., a Delaware corporation ("LESSEE"), as lessee, to be effective as of the first day of the calendar month following execution by CITY (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

SECTION 1: PREMISES

1.1 Leased Premises.

CITY leases to LESSEE and LESSEE leases from CITY all of that City-owned, improved real property (the "Premises") consisting of approximately 5,000 square feet, located at 1005 B Street in the City of San Diego, County of San Diego, State of California, and more particularly described in Exhibit "A" - Premises, which is attached hereto and by this reference incorporated herein.

1.2 Easements and Reservations.

- a. CITY reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable, in its reasonable discretion, for the public good.
- c. CITY may enter the Premises to develop and/or repair municipal resources and services.

CITY shall not unreasonably or substantially interfere with LESSEE'S use of the Premises and shall reimburse LESSEE for physical damages, if any, to the permanent improvements located on the Premises resulting from CITY exercising the rights reserved in this section. The reimbursement may include a reduction in the rent proportionate to the amount of physical damage as reasonably determined by CITY. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.3 Eminent Domain.

If all or part of the Premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE shall be as follows:

- a. Full Taking. If the entire Premises is taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. Partial Taking - Remainder Unusable. If a partial taking of the Premises occurs, and in the reasonable opinion of CITY, the remaining part of the Premises is unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the reasonable opinion of CITY, the remaining part of the Premises is suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE'S operations are reduced or impaired.
- d. Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. LESSEE shall be entitled to any award attributable to the taking of, or damages to, LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE, or any damages to LESSEE'S landscaping, parking, signage, or the removal or relocation of same. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY may transfer CITY'S interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises under this Lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

1.4 Related Council Actions.

By entering into this Lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the development or operation of the Premises. "Discretionary action" includes without limitation re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Premises. LESSEE shall diligently seek all entitlements and actions, from both CITY and

other governmental agencies with jurisdiction over the Premises, as are necessary to develop and operate the uses contemplated by this Lease, all at no cost to CITY.

1.5 Quiet Possession.

LESSEE, paying the rent and performing its obligations under this Lease, shall at all times during the term of this Lease peaceably and quietly have, hold, and enjoy the Premises. If CITY for any reason cannot deliver possession of the Premises to LESSEE at the commencement of this Lease, or if during the term of this Lease LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damage; provided, however, the commencement of this Lease shall automatically be extended until the date CITY delivers possession of the Premises to LESSEE. Notwithstanding the foregoing, if CITY is unable to deliver possession of the Premises to LESSEE within six (6) months after the Effective Date, LESSEE may terminate this Lease upon written notice to CITY without further liability and all prepaid rent, if any, paid by LESSEE to CITY shall be returned in full to LESSEE.

SECTION 2: TERM

2.1 Term.

The term of this Lease ("Term") shall be year-to-year for ten (10) years commencing on the Effective Date. As used in this Lease, "Lease Year" shall mean the 12-month period commencing on the Effective Date, and each anniversary thereof, and ending on the last day of the ending calendar month of the first and each successive Lease Year.

2.2 Early Termination.

- a. Either CITY or LESSEE may terminate this Lease, to be effective as of the end of a Lease Year, by written notice delivered to the other party at least one hundred eighty (180) days prior to the end of that Lease Year. Except for the return of a pro-rata share of any prepaid rent, it is mutually agreed that CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by LESSEE resulting from any termination of this Lease.
- b. It is contemplated that upon execution of this Lease, LESSEE shall make certain capital investments of repairs or improvements to the Premises. If, during the first sixty (60) months of this lease, the CITY chooses to exercise the early termination clause under this Lease, CITY shall make a pro-rata repayment to LESSEE as compensation for preventing LESSEE from realizing the full economic value of those capital improvements. The anticipated

capital improvements to be made by Lessee and a buyback schedule in the event of early termination are detailed in **Exhibit B: Capital Improvements and Buyback Schedule**, which is attached hereto and by this reference incorporated herein. In no event shall the total capital improvements subject to this buy back clause exceed Fifty Thousand Dollars (\$50,000.00).

2.3 **No Relocation Benefits.**

LESSEE acknowledges and agrees that it shall not be entitled to any relocation payments or other benefits from CITY for any reason whatsoever upon any termination of this Lease.

2.4 **Holdover.**

Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be deemed a renewal or extension of this Lease. LESSEE'S continued occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy terminable at will upon thirty (30) days prior written notice, and all other terms and conditions of this Lease shall continue in full force and effect. At any time during such holdover tenancy, and upon thirty (30) days prior written notice, CITY may increase the rent payable under this Lease to an amount up to one hundred twenty-five percent (125%) of the rent payable just prior to such holdover tenancy.

2.5 **Surrender and Quitclaim.**

- a. **Surrender of Premises.** Upon the expiration or earlier termination of this Lease, LESSEE shall surrender the Premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances: (i) existing on the Effective Date; and/or (ii) existing after the Effective Date and not the result of LESSEE'S use, occupancy, development, or maintenance of the Premises, and in a decent, safe, and sanitary condition.
- b. **Quitclaim Deed.** Within five (5) days after written demand at any time after surrender of the Premises, LESSEE shall execute and deliver to CITY a valid and recordable quitclaim deed covering all of the Premises. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting LESSEE'S failure to execute this Lease provision, and the notice shall be conclusive evidence of the termination of this Lease and all of LESSEE'S rights to the Premises.

SECTION 3: USES

3.1 Permitted Uses.

The Premises are leased to LESSEE solely for the purpose of managing and operating an automotive repair facility on the Premises, specializing in minor automotive tune-ups, lubrication, and repair, and the sale of minor automotive parts, accessories and related goods ("LESSEE'S Business"), and for no other purpose whatsoever without CITY'S prior written approval. Notwithstanding any other provision of this Lease to the contrary, LESSEE'S use of the Premises for any unauthorized or illegal purpose shall constitute a default of this Lease. Notwithstanding any provision of this Lease to the contrary, upon such default, CITY may terminate this Lease immediately upon written notice to LESSEE. If LESSEE is reasonably in doubt as to the propriety of a particular use, LESSEE may request CITY'S written determination thereof. Such determination shall be binding on LESSEE.

3.2 Operation of Facilities.

Throughout the Term, LESSEE shall continuously operate LESSEE'S Business and maintain a regular schedule of days and hours of operation; LESSEE shall provide CITY a copy of its operating schedule upon execution of this Lease by LESSEE. Any changes to the schedule shall be subject to CITY'S prior written approval.

3.3 Competent Management.

Throughout the Term, LESSEE shall provide competent management of LESSEE'S Business to CITY'S reasonable satisfaction. For purposes of this section, "competent management" shall mean demonstrated ability in the management and operation of an automotive repair facility specializing in minor automotive tune-ups, lubrication, and repair, and the sale of minor automotive parts, accessories and related goods in a fiscally responsible manner and in accordance with industry standards.

3.4 Cal/OSHA.

LESSEE and its employees, agents, contractors, and invitees shall comply at all times with the health and safety requirements of Title 8 of the California Code of Regulations, as such regulations are enforced by the State of California Division of Occupational Safety and Health (also known as "Cal/OSHA").

3.5 Standard of Employees.

LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner.

SECTION 4: RENT

4.1 Time and Place of Payment.

All rents required under this Lease shall be made payable to "City Treasurer" and mailed with the correct month's invoice payment stub to the Office of the City Treasurer, City of San Diego, P.O. Box 129030, San Diego, California 92112-9030, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California 92101

The place of payment may be changed at any time by CITY upon thirty (30) days prior written notice to LESSEE. Mailed rental payments shall be deemed made upon the date the payment is postmarked by the postal authorities. If a postmark is illegible, the payment shall be deemed made upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

4.2 Rent.

- a. Minimum Rent. The annual minimum rent ("Minimum Annual Rent") established for the term of this Lease is Sixty Seven Thousand Two Hundred Dollars (\$67,200.00), which is Five Thousand Six Hundred Dollars (\$5,600.00) on a monthly installment basis ("Minimum Monthly Rent").

If, on a calendar month basis, the Minimum Monthly Rent is greater than the Percentage Rent, as it is defined in Section 4.2 b. Percentage Rent. below, then the Minimum Monthly Rent is required to be paid for that month. Minimum Monthly Rents are to be paid in monthly installments on or before the day of the calendar month when Percentage Rents are due pursuant to Section 4.3 Payment Procedure. below.

Provided, however, in the event that the combined total Percentage Rent payments and Minimum Monthly Rent installments during any Lease Year equal or exceed the required Minimum Annual Rent for that year, then for the balance of such year, LESSEE shall discontinue paying monthly installments of the Minimum Monthly Rent and shall continue paying only Percentage Rents until the beginning of the ensuing Lease Year. It is the intent of this provision that LESSEE shall pay monthly installments of the Annual Minimum Rent as a guarantee against the Percentage Rent requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term, shall prevail on an annual basis.

- b. Percentage Rent. "Percentage Rent" will be calculated on a calendar month basis and will be equal to twelve percent (12%) of LESSEE'S monthly Net Sales, as defined in Section 4.2 c. Net Sales. below, resulting from its use of the Premises.

- c. Net Sales. "Net Sales" shall mean all of LESSEE'S, any sublessee's, permittee's, licensee's, or other party's receipts derived from LESSEE'S Business and/or resulting from the occupancy or operation of the Premises, including without limitation payments in cash, by credit or debit card, and the fair market value of goods or services received in barter transactions, LESS the following deductions:
- (1) Cash discounts from the usual price for goods or services offered at the Premises;
 - (2) Returns or refunds, or credits received in settlement of claims for loss or damage to goods, wares or merchandise;
 - (3) All sales taxes, excise taxes, gross receipts taxes and similar taxes, whether imposed under any existing or future rules, regulations, laws or ordinances;
 - (4) All receipts from the transfer of goods, wares or merchandise from the Premises to any other store or warehouse in the chain of stores operated by LESSEE or its affiliates;
 - (5) The proceeds of sales of used motor oil or other recovered fluids and materials;
 - (6) All receipts from the delivery of goods, wares or merchandise from the Premises to any manufacturers or suppliers thereof, for any purpose except a sale; and
 - (7) All receipts from vending machines, weighing machines, stamp machines, telephones and the like, except such portion thereof as the LESSEE may retain.

The parties acknowledge that the foregoing definition of Net Sales is intended to coincide with the definition of Net Sales upon which LESSEE is required to pay royalties to its franchisor, Jiffy Lube International.

4.3 Rent Payment and Statement.

- a. Payment Procedure. On or before the last day of the calendar month following the calendar month in which the Net Sales subject to rent were earned, LESSEE shall provide payment equal to the greater of the Minimum Monthly Rent or the Percentage Rent, computed as described in Section 4.2 b. above, by one of the methods of delivery stipulated in Section 4.1 above.

Any rents due CITY from sublease activities or operations will begin with the earliest of the following dates (whether or not prior approval was given by

CITY as required by this lease and whether or not a separate percentage rent was established by CITY):

- (1) Sublease commencement date.
 - (2) Physical occupancy date.
 - (3) Earliest activity date (i.e., sale of goods, solicitation of business, construction or alterations, etc.).
- b. Monthly Rent Statement. On or before the last day of the calendar month following the calendar month in which the Net Sales subject to rent were earned, LESSEE shall provide to CITY a statement signed by LESSEE or its authorized agent attesting to its accuracy, which shall be legally binding upon LESSEE and which will indicate the following:
- (1) One-twelfth of the annual minimum rent until the full annual minimum rent is achieved in any lease year.
 - (2) Total Net Sales for the subject month. If additional/other business categories are ever added for which separate percentage rents are established, then the total Net Sales for the subject month shall be itemized as to those business categories. A gross receipts breakdown of each business conducted on the Premises must be included when a reported category shows Net Sales to be from more than one business operation.
 - (3) The percentage rental due CITY, computed and totaled.
 - (4) The accumulated total of all rents previously paid for the current Lease Year.

The statement shall be mailed to The City of San Diego, Real Estate Assets Department, Attn: Property Agent - Heartland Automotive Services Lease, 1200 Third Avenue, Suite 1700, MS 51A, San Diego, California 92101.

4.4 Inspection of Records.

- a. Records. LESSEE shall, at all times during the Term, keep or cause to be kept true, accurate, and complete books, records, and accounts of all financial transactions in the operation of LESSEE'S Business and all other business activities conducted upon, and all financial transactions resulting from, LESSEE'S use of the Premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, or other documents (which may be in electronic form) as necessary to allow CITY to easily determine Net Sales. All retail sales or charges shall be

recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. Such registers or other devices shall record sales totals and other transaction numbers and sales details, and shall not be re-settable. Registered totals shall be read and recorded at the beginning and end of each business day. All sales and charges may be recorded by a system other than cash registers or other comparable devices, provided such system is approved by CITY, which shall not be unreasonably withheld.

- b. Annual Statement of Net Sales. Within sixty (60) days after the end of each Lease Year, LESSEE shall, at its sole expense, deliver to CITY a statement of annual Net Sales for the Lease Year, including the gross receipts and all deductions taken to calculate the annual Net Sales. Such statement shall be signed by LESSEE or its authorized agent attesting to the accuracy and completeness thereof, which shall be legally binding upon LESSEE. LESSEE shall comply with all reasonable requests by CITY to modify the form and content of such Statement of Net Sales, and shall provide such additional information regarding LESSEE'S Business and all other business activities conducted upon, and all financial transactions resulting from, LESSEE'S use of the Premises as CITY may reasonably request. The statement shall be mailed to the same address stipulated in Section 4.3 b. Monthly Rent Statement. above.
- c. CITY'S Right to Inspect and Audit. LESSEE shall keep all of its books of account, records, and supporting documentation throughout the Term, plus three (3) years. LESSEE shall make such books, records, and documentation available for inspection and audit by CITY in one location within the County of San Diego or at LESSEE'S corporate office (such records and supporting documentation may be in electronic form and provided to the CITY). LESSEE shall maintain separate books and records related to LESSEE'S use of the Premises. Upon at least 24 hours notice, CITY may inspect and audit LESSEE'S Business and all other business activities conducted upon, and all financial transactions resulting from, LESSEE'S use of the Premises as reasonably necessary and appropriate for CITY to determine the rent due CITY under this Lease. If required by a state or federal agency, LESSEE shall promptly deliver to CITY, at CITY'S reasonable request and at LESSEE'S sole expense, any and all data reasonably needed to enable CITY to fully comply with all requirements of the state or federal agency regarding LESSEE'S activities on the Premises, LESSEE'S Business, and all other business activities conducted upon, and all financial transactions resulting from, LESSEE'S use of the Premises.
- d. Audit Cost. The full cost of each CITY audit shall be borne by CITY, unless one or both of the following conditions exists, in which case LESSEE shall reimburse CITY for all costs of the audit:

- (1) For any given Lease Year, if an audit reveals an underpayment of rent, on an annual basis, of more than five percent (5%) or more than Ten Thousand Dollars (\$10,000), whichever is less, calculated as the difference between the rent reported as payable by LESSEE and the rent payable as determined by the audit; or
- (2) LESSEE failed to maintain true, accurate, and complete books, records, accounts, and supporting source documents in accordance with generally accepting accounting practices and this Lease.

Any rent deficiency determined by the audit shall be delinquent rent, subject to all penalties and remedies provided to CITY for delinquent rent under this Lease. CITY shall credit any overpayment determined by the audit, without interest, against future rents due under this Lease. CITY shall refund to LESSEE any overpayment, without interest, determined by an audit after the expiration or earlier termination of this Lease within thirty (30) days after CITY'S certification of the audit.

- e. Default. LESSEE'S failure to keep complete and accurate records in accordance with generally accepted accounting principles, and/or to make LESSEE'S books and records available to CITY in accordance with this Lease shall be a default under the Lease and cause for termination.

4.5 Delinquent Rent.

- a. Late-Payment Charges. Except as otherwise provided herein, if LESSEE fails to pay rent within ten (10) days after it is due, LESSEE shall pay, in addition to the delinquent rent, a late-payment charge equal to five percent (5%) of the delinquent rent. If the rent is still unpaid after fifteen (15) days past due, LESSEE shall pay an additional late-payment charge equal to ten percent (10%) of the delinquent rent [being a total of fifteen percent (15%)], which the parties agree to be appropriate to compensate CITY for loss resulting from payment delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. In no event shall the charge for late payments of rent be less than Fifty Dollars (\$50.00).
- b. Audited-Underpayment Charges. Notwithstanding any other provision of this Lease to the contrary, and in lieu of late-payment charges as provided herein, if an audit performed pursuant to the terms of this Lease reveals that LESSEE has underpaid rent by more than five percent (5%), then LESSEE shall pay CITY, in addition to the underpaid rent, an audited-deficiency charge equal to fifteen percent (15%) of the underpaid rent, plus interest at the rate of ten percent (10%) per annum on the underpaid rent until paid. The parties agree that such audited-deficiency charge is appropriate to compensate CITY for loss resulting from payment delinquency, opportunities, legal costs, and the cost of servicing the delinquent account. In the event CITY audit(s) discloses

that the unpaid rent is less than five percent (5%) of the total rent, and should LESSEE fail to pay said unpaid rent within thirty (30) days after written notice from CITY, an additional fee of ten percent (10%) of said unpaid amount shall be added to the unpaid amount to compensate CITY for costs and losses due to such nonpayment. LESSEE agrees to pay such amounts and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur for LESSEE's late payment. In no event shall the audited-delinquency charge be less than Five Hundred Dollars (\$500).

- c. No Waiver. CITY'S acceptance of late-payment charges, audited-delinquency charges, or any portion of late or underpaid rent shall neither constitute a waiver of LESSEE'S default with respect to late payment, nor prevent CITY from exercising any of its other rights and remedies granted in this Lease.

4.6 Unauthorized-Use Charge.

LESSEE shall pay to CITY, as additional rent, an unauthorized-use charge equal to one hundred percent (100%) of the gross receipts for any service or use that is not permitted by this Lease if LESSEE has continued such unauthorized use after written notice from CITY. Such payment is subject to the due date provided in this Lease for rental payments and the provisions for delinquent and/or underpaid rent. Neither the existence of such unauthorized-use charge nor the payment of the charge, or any part of it, shall constitute an authorization of the unauthorized use, and shall not be a waiver of any of CITY rights under this Lease.

SECTION 5: ASSIGNMENT

5.1 Encumbrance.

LESSEE shall not encumber this Lease, its leasehold estate, and its improvements on the Premises by deed of trust, mortgage, chattel mortgage, or other security instrument without CITY'S prior written consent.

5.2 Assignment and Subletting.

LESSEE shall not assign this Lease or any interest in this Lease, and shall not sublet the Premises or any part of the Premises, or any right or appurtenant privilege to the Premises, or permit any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises or any part of the Premises without CITY'S prior written consent, which shall not be unreasonably withheld. CITY'S consent to an assignment, subletting, occupation, or use by any other person shall not be deemed consent to any subsequent assignment, subletting, occupation, or use by another person. Any assignment or subletting without

CITY'S consent shall be void and shall be a default of this Lease.

Notwithstanding any provision of this Lease to the contrary, upon such default, CITY may terminate this Lease immediately upon written notice to LESSEE.

Neither this Lease nor any interest in it shall be assignable, as to LESSEE'S interest, by operation of law, without CITY'S written consent. For the purposes of this section "assignment" shall include the transfer of any ownership interest in this Lease by LESSEE or by any partners, principals, or stockholders of LESSEE, as the case may be, from the original LESSEE.

- a. Consent Conditions. CITY'S consent to any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing to assume the rights and obligations assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this Lease applicable to the rights and obligations assumed. CITY may require, as a condition to consenting to any assignment or sublease, that this Lease be revised to comply with then-current CITY lease provisions, and that the sublease be subject and subordinate to each and every provision of this Lease.
- b. Charter Section 225. Pursuant to San Diego City Charter section 225, LESSEE and each of its sublessees and assignees shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in this Lease and the precise nature of all interests of all persons therein. LESSEE'S failure to fully disclose all of the information required by Charter section 225, or LESSEE'S failure to require each of its sublessees and assignees to fully disclose such information, shall be a default of this Lease. Pursuant to City Charter Section 225, every person or entity which will have an interest in this Lease as a sublessee or assignee must be reviewed and approved by CITY.
- c. Additional Consideration to CITY. If this Lease is assigned, or if a majority of the leasehold is subleased, LESSEE shall pay to CITY an amount equal to two percent (2%) of the gross amount paid for the leasehold in connection with an approved assignment, or two percent (2%) of any amount paid to LESSEE in consideration of the sublease. The amount upon which the two-percent payment shall be based shall be the total consideration resulting from the transaction, including without limitation all cash payments and the market value of non-cash consideration, including without limitation stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY'S consent to any assignment or majority subletting, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this section, together with an acknowledgment from the proposed assignee or sublessee as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrently with the completion of the proposed transaction. Any assignment or subletting in violation of this Lease shall be void and shall be a default of this Lease. Notwithstanding any provision of this Lease to the

contrary, upon such default, CITY may terminate this Lease immediately upon written notice to LESSEE. The two-percent payment required by this subsection shall not apply to:

- (1) An assignment or transfer of a beneficial interest in the leasehold resulting from assignment, devise, bequest, intestate succession, or by operation of law for the benefit of Jiffy Lube International, Inc., or a franchisee of Jiffy Lube International, Inc., or the spouse or descendants of LESSEE, if an individual, or if LESSEE is other than an individual, LESSEE'S majority owner or an affiliate of LESSEE; or
- (2) An assignment deemed by CITY, in its reasonable discretion, not to materially affect the legal and equitable ownership interests in the leasehold, such as a change in LESSEE'S legal or fictitious name without any other change in the equity, beneficial use of, or legal title to, the leasehold as an asset or the income produced thereby.

SECTION 6: DEFAULTS AND REMEDIES

6.1 Defaults and Remedies.

Upon default by LESSEE, CITY may pursue any one or more of the remedies listed in this section in addition to any other remedies now or later available to CITY at law or in equity. Such remedies shall be cumulative and not exclusive.

a. Defaults. Each of the following shall constitute a default of this Lease:

- (1) LESSEE'S failure to make any payment required under this Lease when due, if the failure continues for ten (10) days following written notice of the failure by CITY; or
- (2) LESSEE'S breach of any of its obligations under this Lease, other than those requiring payment to CITY, and LESSEE either: (i) fails to cure the breach within thirty (30) days following written notice from CITY; or, (ii) if such breach is not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion within a reasonable time; or
- (3) LESSEE voluntarily files any petition under any bankruptcy or insolvency act or law; or
- (4) LESSEE has involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the matter is not dismissed by a court of competent jurisdiction within ninety (90) days of filing; or

- (5) LESSEE is adjudicated a bankrupt; or
- (6) LESSEE makes a general assignment for the benefit of creditors.

b. Remedies.

- (1) Default For Nonpayment. Upon a default by LESSEE for nonpayment, CITY may, at its option, give LESSEE, or any person claiming right through LESSEE, a written "Three-Day Notice to Pay or Quit," if said default is based upon 6.1(a)(1) or CITY may terminate the Lease and all right of LESSEE and of all persons claiming right through LESSEE to the Premises or to possession of the Premises, and CITY may enter and take possession of the Premises, and may recover the amount set forth below.
- (2) Default Other Than For Nonpayment. Upon a default by LESSEE for other than nonpayment, CITY may, at its option, terminate this Lease and all right of LESSEE and of all persons claiming right through LESSEE to the Premises or possession of the Premises, and CITY may enter and take possession of the Premises, and may recover from LESSEE the amount set forth below. If any such default is not curable within thirty (30) days after notice to LESSEE, CITY will not terminate this Lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues the cure to completion within a reasonable time.
- (3) CITY'S Recovery. Upon termination of the Lease upon a default, CITY may recover the sum of:
 - i.) the worth at the time of award of any unpaid rent that was due at the time of termination;
 - ii.) the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
 - iii.) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;
 - iv.) any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE'S breach and default, or that in the ordinary course of things, would be likely to result; and

- v.) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses (i) and (ii), above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (iii), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any other amounts payable by LESSEE under this Lease.

- c. Default if Leasehold is Encumbered. If there is a CITY-approved deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of LESSEE'S default under this Lease, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion within a reasonable time. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise all of the following options:
- i. CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY'S notice of such costs to LESSEE, and mortgagee or beneficiary;
 - ii. CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and the mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and
 - iii. CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiary, trustee or mortgagee as a condition of early payoff of the related obligation by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is not curable by LESSEE, then any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been

approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the 30-day period after receiving CITY'S written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights, privileges, and obligations of LESSEE, subject to the curing of the default, if possible, by mortgagee or beneficiary. In that event, LESSEE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Lease.

- d. Abandonment by LESSEE. If LESSEE breaches the Lease and abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies under this Lease, including but not limited to the right to recover the rent as it becomes due, plus damages.
- e. Waiver. CITY'S failure to insist upon the strict performance of any of LESSEE'S obligations under this Lease, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY'S waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY'S delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Lease. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY'S acceptance of any rents shall not be a waiver of any default preceding the rent payment. The property constituting the Premises is publicly-owned and held in trust for the benefit of the CITY'S citizens. CITY'S failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.

SECTION 7: INDEMNITY; INSURANCE

7.1 Indemnity.

LESSEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including without limitation injury to LESSEE'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Lease or LESSEE'S occupancy,

use, development, or maintenance of the Premises, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, and after having provided notice to LESSEE, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

7.2 Insurance.

Upon execution and delivery of this Lease, LESSEE shall deliver to CITY a current certificate of insurance for:

- 1) Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of Four Million Dollars (\$4,000,000). Coverage may be provided in the form of primary and umbrella limits equal to the aforementioned limits; and
- 2) Workers' Compensation Insurance, as required by the laws of the State of California for all of LESSEE'S employees who are subject to this Lease, with Employers' Liability coverage with limits not less than One Million Dollars (\$1,000,000).
 - a. Additional Insureds. Pursuant to a blanket endorsement [CG2015 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds under LESSEE'S Commercial General Liability policy.
 - b. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department.
 - c. Qualified Insurer(s). All insurance required by the terms of this Lease must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list).

- d. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- e. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. Before the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Lease.
- f. Accident Notices. LESSEE agrees to give CITY notice of any fire or other damage to the building or LESSEE'S Personal Property worth Five Thousand Dollars (\$5,000.00) or more that may occur on the premises within ten (10) days of such fire or damage.
- g. Failure to Comply. Notwithstanding any other provision of this Lease to the contrary, if 30 days after written notice given by CITY LESSEE fails or refuses to obtain or maintain insurance as required by this Lease, or fails to provide proof of insurance, CITY may terminate this Lease immediately upon such breach.
- h. All-Risk Property Insurance. LESSEE shall obtain and maintain, at its sole cost, All-Risk Property insurance on all insurable property on the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver to CITY a certificate of such insurance.

7.3 Waste, Damage or Destruction.

LESSEE shall keep the Premises clean and clear of refuse and obstructions, and dispose of all garbage, trash, and rubbish in a manner reasonably satisfactory to CITY. If the Premises is damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE shall make or cause to be made full repair of the damage and restore the Premises to the condition which existed prior to the damage; or, at CITY'S option, LESSEE shall clear and remove from the Premises all debris resulting from the damage and rebuild the Premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to the damage. LESSEE shall commence preliminary steps toward performing repairs, restoration, or replacement of the Premises within thirty (30) days of the occurrence of the fire or damage, and shall complete the required repairs, restoration, or replacement of the Premises within a reasonable time. Notwithstanding anything in this Lease to the contrary, in the event the building or improvements suffer damage worth more than Five Thousand Dollars (\$5,000.00), LESSEE may terminate this Lease immediately

and shall have no further obligations to CITY and CITY shall have no further obligations under section 2.2(b) herein.

SECTION 8: IMPROVEMENTS/ALTERATIONS/REPAIRS

8.1 Acceptance of Premises.

By signing this Lease, LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself as to the condition of the Premises. LESSEE shall rely solely on its independent inspections, tests, investigations, and observations in entering into this Lease, including without limitation LESSEE'S own investigation regarding the presence of any hazardous substances on the Premises. LESSEE acknowledges that the Premises are in satisfactory condition and accepts the Premises in the condition existing on the Effective Date. LESSEE shall not hold CITY responsible for any defects, whether apparent or latent, in the Premises. Upon execution of this Lease, LESSEE shall deliver to CITY true and complete copies of all reports and other documents prepared by or for LESSEE concerning the physical condition of the Premises. If LESSEE fails to investigate the Premises for the presence of any hazardous substances, or fails to notify CITY of the presence of hazardous substances after its investigation, LESSEE shall be deemed to have waived any and all claims against CITY resulting from the presence of hazardous substances on the Premises.

8.2 Entry and Inspection.

Upon reasonable notice, CITY may at all times enter the Premises for the purpose of viewing and ascertaining the condition of the Premises, or to protect its interests in the Premises, or to inspect the operations conducted on the Premises. If CITY'S entry or inspection discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY may, after ten (10) days prior written notice to LESSEE, have any necessary maintenance work done at LESSEE'S sole expense, and LESSEE shall pay promptly any and all costs incurred by CITY in having the necessary maintenance work done to keep the Premises in a decent, safe, healthy, and sanitary condition. If at any time CITY reasonably determines that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate, in CITY'S reasonable opinion, to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall neither create nor increase any obligation of CITY'S under this Lease.

8.3 Maintenance.

LESSEE shall, at its sole cost and expense, pay all costs of operating and maintaining the Premises throughout the Term. LESSEE shall, at its sole cost and expense, make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws. LESSEE shall comply with all applicable codes and standards of CITY, state, and federal agencies applicable to all maintenance, repairs, and replacements on the Premises.

8.4 Improvements and Alterations.

LESSEE shall not construct any improvement, structure, or installation on the Premises, or make any material alteration to the Premises without CITY'S prior written approval. LESSEE shall not make major structural or architectural design alterations to approved improvements, structures, or installations on the Premises without CITY'S prior written approval.

- a. Superior Interests. This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Premises, whether or not of record. LESSEE shall obtain all licenses, permits, and agreements from such third parties as may be necessary or reasonably advisable to validate its use of the Premises, relative to any such superior interest. If LESSEE'S use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, LESSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
- b. Projects. LESSEE shall notify CITY of all improvement projects on the Premises and shall inform permitting authorities that the Premises are CITY-owned property.
- c. Repair and Restoration. These provisions shall not relieve LESSEE of any obligation under this Lease to maintain the Premises in a decent, safe, healthy and sanitary condition, including without limitation structural repair and restoration of damaged or worn improvements.

8.5 Utilities.

LESSEE shall order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the Premises. All future service installations of utilities shall be installed underground.

8.6 Liens.

LESSEE shall at all times hold CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against claims, including reasonable attorney fees. If improvements, alterations, or repairs are made to the Premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed in connection with such improvements, LESSEE shall, within five (5) days of the filing, either: (a) take all actions necessary to record a valid release of lien; or (b) file with CITY a bond, cash or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

8.7 Taxes.

LESSEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the Premises (if any), including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE, or levied by reason of the business or other LESSEE activities related to the Premises, including without limitation any licenses or permits. LESSEE acknowledges that this Lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on the leasehold interest. LESSEE shall pay all possessory interest taxes. LESSEE'S payment of taxes, fees and assessments shall not reduce any rent due CITY.

8.8 Signs.

LESSEE shall only post signs required by federal, state or local regulations, including without limitation safety signs required by OSHA, FAA or FCC. LESSEE shall only erect or display banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising on the Premises as allowed by City permit and ordinance. If any unauthorized item is found on the Premises, LESSEE shall remove the item at its expense upon twenty-four (24) hours notice by CITY, or CITY may then enter the Premises and remove the item at LESSEE'S cost. LESSEE shall post a clearly marked and observable sign on the Premises indicating LESSEE'S name and emergency telephone number.

8.9 Ownership of Improvements and Personal Property.

LESSEE acknowledges and agrees that any and all improvements, trade fixtures, structures, and installations or additions ("LESSEE'S Additions") to the Premises by LESSEE shall at Lease expiration or Lease termination be deemed to be part of the Premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this Lease. Such ownership of LESSEE'S Additions shall not include LESSEE'S personal property as described

in **Exhibit C: LESSEE'S Personal Property**, which is attached hereto and by this reference incorporated herein.

- a. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to Lease Termination or one hundred eighty (180) days prior to Lease expiration, and LESSEE shall remove all the improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before Lease expiration or Lease termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- b. LESSEE shall remove LESSEE'S Personal Property by the date of the expiration or termination of this Lease. Any items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove the items at LESSEE'S expense.
- c. If any removal of LESSEE'S Personal Property by LESSEE results in damage to the remaining improvements on the Premises, LESSEE agrees to repair all damage.
- d. If the removal of any of LESSEE'S Personal Property by either CITY or LESSEE takes place after the expiration or earlier termination of this Lease, LESSEE shall pay rent to CITY at the rate in effect immediately prior to such expiration or earlier termination until all of LESSEE'S property has been removed from the Premises.
- e. Notwithstanding an of the foregoing, if LESSEE desires to dispose of LESSEE'S Personal Property used in the operation of the Premises upon the expiration or earlier termination of this Lease, then CITY shall have the first right to acquire or purchase such property.

8.10 **Unavoidable Delay.**

If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform the act, the obligated party shall be excused from performing that act for the period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay rent under this Lease. If LESSEE or CITY claims the existence of a delay, the party claiming the delay shall notify the other party in writing of the fact within ten (10) days after the beginning of the claimed delay.

8.11 Hazardous Substances.

LESSEE shall not allow the installation or release of hazardous substances in, on, under, or from the Premises. LESSEE and LESSEE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Premises without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. As used in this Lease, "hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Lease. Notwithstanding the foregoing, LESSEE may store, utilize, and sell motor oil and other automotive lubricants and similar automotive products in the normal course of LESSEE'S Business in accordance with industry standards and in compliance with all applicable laws.

- a. Remediation. If LESSEE'S occupancy, use, development or maintenance of the Premises results in a release of a hazardous substance, LESSEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules and regulations of governmental authorities.
- b. Indemnity. LESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S occupancy, use, development, or maintenance of the Premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- c. Notice of Release. If LESSEE knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Premises, LESSEE shall immediately notify CITY and deliver a written report thereof to CITY within ten (10) days of receipt of the knowledge or cause for belief. If LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall notify CITY immediately of any material notice of violation received or initiation of environmental actions or private suits related to the Premises.
- d. Environmental Assessment. Upon reasonable cause to believe that LESSEE'S occupancy, use, development, or maintenance of the Premises ("LESSEE'S Operations"), resulted in any hazardous substance being released on or beneath the Premises, CITY may upon written notice to LESSEE cause an

environmental assessment of the Premises to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by LESSEE'S Operations on, in, or under the Premises, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and LESSEE shall pay all costs and expenses therefor.

8.12 Asbestos Disclosure.

LESSEE acknowledges that CITY has disclosed to LESSEE that portions of the structural components of the Premises may contain asbestos. LESSEE acknowledges having received notice from CITY of the presence of asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the Premises caused by LESSEE.

SECTION 9: CITY POLICY IMPLEMENTATION PROVISIONS

9.1 Nondiscrimination.

LESSEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the Premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

9.2 Compliance with CITY'S Equal Opportunity Contracting Program.

LESSEE shall comply with City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated into this Lease. LESSEE, its sublessees and all of its subcontractors are individually responsible to abide by its contents. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and

12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE shall not discriminate against any employee or applicant for employment on any basis prohibited by law. On or before the Commencement Date, LESSEE shall submit a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve the CITY'S commitment to equal employment opportunities. LESSEE and its sublessees shall insert the foregoing provisions in all contracts and subcontracts for any work covered by this Lease so that the provisions will be binding upon each contractor and subcontractor. Compliance with EEO provisions will be implemented, monitored, and reviewed by the CITY'S Equal Opportunity Contracting Program staff. Notwithstanding any provision of this Lease to the contrary, LESSEE'S failure to comply with the requirements of this section and/or submitting false information in response to these requirements shall be a default, upon which CITY may immediately terminate this Lease, and may bar LESSEE from participating in CITY leases and/or contracts for a period of not less than one (1) year.

9.3 Local Business and Employment.

LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY leases and contracts. LESSEE shall, to the extent legally possible, solicit applications for employment, and bids and proposals for contracts and subcontracts, for work associated with this Lease from local residents and firms as opportunities occur. LESSEE shall hire qualified local residents and firms whenever feasible.

9.4 CITY Employee Participation Policy.

This Lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if LESSEE employs an individual who, within the twelve months immediately preceding the employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the LESSEE. These provisions do not apply to members of the City Council.

9.5 Drug-free Workplace.

LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are

prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition; and

- b. Establish a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace;
 - (2) LESSEE'S policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations.

LESSEE shall include in each of its subleases and contracts related to this Lease language obligating each sublessee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sublessees and contractors, shall be individually responsible for their own drug-free workplace program.

9.6 Disabled Access Compliance.

LESSEE shall at all times in the occupancy, use, development, and maintenance of the Premises and the Sites comply with the 1990 Americans with Disabilities Act ("ADA") and Title 24 of the California Code of Regulations (commonly known as the "building code") as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.

9.7 Water Quality Assurances.

LESSEE shall comply with San Diego Municipal Code Article 3, Division 3: Stormwater Management and Discharge Control ("Code"), and employ "Best Management Practices" including a "Storm Water Pollution Prevention Plan" as those terms are defined by the Code (collectively, "Prevention Plan") and as approved by CITY under its Stormwater Management Program. Within the first ninety (90) days of the Term, LESSEE shall submit a Prevention Plan satisfactory to the City Manager that will control erosion and reduce the amount of "Pollutants," as defined by the Code, and other sediments discharged from the Premises. CITY may review the Prevention Plan periodically. Within ninety (90) days of written notice from CITY requesting an update of the Prevention Plan, LESSEE shall submit an updated Prevention Plan to CITY'S reasonable satisfaction. LESSEE shall implement all changes to the Prevention Plan as required by CITY and to ensure compliance with all applicable laws, ordinances,

and regulations. LESSEE shall be solely responsible for informing its employees, contractors, subcontractors, agents and vendors of the Prevention Plan and assuring their compliance therewith.

SECTION 10: GENERAL PROVISIONS

10.1 Compliance with Law.

LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. LESSEE shall comply with all notices issued by CITY under the authority of all current or future laws, statutes, ordinances, or regulations.

10.2 Notices.

Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or sent via the United States Postal Service, postage prepaid, or reliable overnight courier, addressed to the parties as follows:

If to LESSEE:

HEARTLAND AUTOMOTIVE SERVICES II, INC.
Attention: Legal Department
11308 Davenport Street
Omaha, NE 68154-5649

If to CITY:

THE CITY OF SAN DIEGO
Real Estate Assets Department
Attention: Real Estate Assets Director
1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101-4199

With a copy by First Class Mail to:

San Diego City Attorney
Attention: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

Or to any mortgagee, trustee, or beneficiary, as applicable, at the appropriate address designated in writing by that party.

- a. Any party entitled or required to receive notice under this Lease may by like notice designate a different address to which notices shall be sent.
- b. Notice shall be effective upon personal service or five (5) days after deposit with the United States Postal Service.

10.3 Partial Invalidity.

If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

10.4 Number and Gender.

Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.

10.5 Captions.

The section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease may not be consecutive. The lack of consecutive numbers shall have no effect on the enforceability of this Lease.

10.6 Entire Understanding.

This Lease contains the entire understanding of the parties. CITY and LESSEE, by signing this Lease, agree that there is no other written or oral understanding between them with respect to the Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each party to this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease. The failure or refusal of any party to read the Lease or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such actions.

10.7 Lease Modifications.

This Lease shall not be modified, altered or amended unless the modification, alteration or amendment is in writing and signed by all parties to this Lease.

10.8 Time is of Essence; Provisions Binding on Successors.

Time is of the essence of all of the terms, covenants, and conditions of this Lease. Except as otherwise provided in this Lease, all of the terms, covenants, and conditions of this Lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

10.9 Authority.

Each individual executing this Lease on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid, and such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

10.10 Survival.

Any obligation which accrues under this Lease prior to its expiration or termination shall survive the expiration or earlier termination of this Lease.

10.11 Cost Recovery.

CITY maintains a schedule of fees to be paid by LESSEE as an offset to administrative costs incurred for CITY staff services that are of benefit to LESSEE. CITY shall process service requests upon receipt of LESSEE'S payment of the applicable fee. The fee schedule, which is maintained by the City Clerk's Office, may be updated from time to time at CITY'S sole discretion.

10.12 Governing Law.

This Lease shall be governed, construed, and enforced in accordance with the laws of the State of California.

10.13 Counterparts.

This Lease may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.14 Consents, Approvals.

Neither CITY nor LESSEE may unreasonably withhold or unreasonably delay any consent or approval required by this Lease.

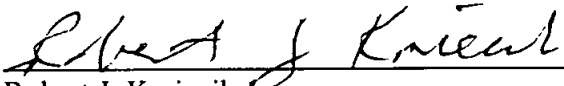
10.15 CITY'S Consent, Discretion.

Whenever required under this Lease, CITY'S consent or approval shall mean the written consent or approval of the San Diego City Manager, or his or her designee ("City Manager"), unless otherwise expressly provided, without need for further resolution by the City Council. CITY'S discretionary acts hereunder shall be made in the City Manager's discretion, unless otherwise expressly provided. All references to "City Manager" herein shall be deemed to refer to the Mayor of San Diego or his or her designee for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the City of San Diego City Charter.

IN WITNESS WHEREOF, this Lease is executed to be effective as of the Effective Date:

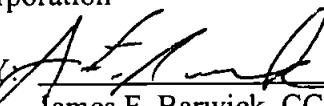
Date: 7-21-2010

HEARTLAND AUTOMOTIVE SERVICES II, INC.,
a Delaware corporation

BY: 
Robert J. Kmiecik
General Counsel

Date: 7/27/10

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: 
James F. Barwick, CCIM
Director, Real Estate Assets

APPROVED AS TO FORM AND LEGALITY:

Date: 7/27/10

JAN I. GOLDSMITH, City Attorney

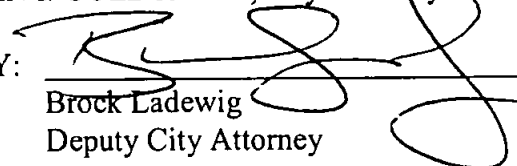
BY: 
Brock Ladewig
Deputy City Attorney

Exhibit A: Premises

1005 B STREET, SAN DIEGO, CALIFORNIA 92139

LOT A, BLOCK 23, HORTONS ADDITION

Exhibit B: Capital Improvements and Buyback Schedule

Proposed Capital Improvements Subject to Buyback

- Parking Lot Repair Remove and repair damaged asphalt sections and re-lay entire parking lot.
- Sign Repair Repair or replace sign face on building, pole sign, repaint pole standard including electrical repair.
- Building Paint Prepare and paint outside of building.
- Interior Lounge Repair Repair water damage, repaint.
- Roof Repair and Mansard Painting Repair or replace as needed the flat roof to the building including flashings, boots and transitions, etc. Replace or repair broken and missing tiles on Mansard and repaint

Buyback Schedule

<u>Termination Effective</u>	<u>Buyback Rate</u>
End of Lease Year 1	90.0%
End of Lease Year 2	78.0%
End of Lease Year 3	63.0%
End of Lease Year 4	45.0%
End of Lease Year 5	25.0%

The maximum amount of capital improvements subject to buyback is \$50,000.00.

EXAMPLE: If capital improvements total \$50,000 and, pursuant to Section 2.2 a., CITY delivers written notice of Lease termination to be effective as of the end of Lease Year 2, then the buyback amount would be \$39,000.00 (\$50,000 x .78).

Exhibit C: LESSEE'S Personal Property

A. Fanticola Companies

Equipment List – 1005 B Street, San Diego, CA

	<u>QTY</u>
Tanks, Drums and Guns:	
Tanks - 1,000 gallons	2
Tanks - 120 gallons	5
Tank – 240 gallons	1
Degreaser Drum – 35 gallons	1
Tanks – 75 gallons	2
Fire Ball Pumps	11
Grease Guns	2
Oil Guns - Em5 and Em6	8
Oil Consol – 12 holes	1
Pipes and Delivery Hoses	
 Portable Equipment:	
T-Tech Machines	2
Vacuum Machine	1
AC Machine – RTI	1
AC Leak Identifier	1
Tire Rotation Lift	1
Air Compressor	1
Washer Fluid Pump	1
Filter Crusher	1
Radiator Machines	2
Air Filter Racks – Plastic	5
Bay Nets	2
BMW Reset Tool	1
 MISCELLENIOUS TOOLS AND SUPPLIES:	
Fire Extinguishers	2
Impact Gun	1
OBD2 Scanner	1
Fans – 12”	2
PCV Cabinets	3

Exhibit C: LESSEE'S Personal Property (Cont'd)

	<u>QTY</u>
MISCELLENOUS TOOLS AND SUPPLIES: (Cont'd.)	
Wiper Rack	1
Podiums – Bay Double	1
Podiums - Greeter	2
Fender Covers	4
Eye Wash Station	1
Small Tools – Wrenches, Sockets	1
Tool Boards	2
Bottles - FI	2
Steel Step Stools	2
Ladder - 8'	1
Mops & Brooms	3
 Office Equipment and Computers:	
Water Cooler	1
Office Chair	1
Mothership	1
Monitors/Key Boards/Mouse Sets	5
Printers - Phaser 3400	2
Printer - OKI 420	1
Cash Drawer	1
Portable CPUs	4
Red Chairs	3
Lounge Chairs	4
Adding Machine	1
Telephones	2
Coffee Counter	1
Coffee Machine	1
Fax Machine	1
Picture/Poster Frames	2
Bulletin Boards	3

This list comprises items expected to be on hand as of the effective date of the Lease and may be expanded from time to time with similar type items.

RESOLUTION NUMBER R- 303430DATE OF FINAL PASSAGE MAR 05 2008

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE
A 10-YEAR LEASE AGREEMENT WITH HEARTLAND
AUTOMOTIVE SERVICES, II, INC., FOR THE OPERATION
OF AN AUTOMOTIVE MAINTENANCE AND REPAIR
FACILITY (JIFFY LUBE FRANCHISE).

WHEREAS, the City and HEARTLAND AUTOMOTIVE SERVICES, II, INC., a
Delaware corporation [Heartland] have negotiated a 10-year lease agreement for the City-owned
real property located at 1005 B Street for the operation of an automotive maintenance and repair
facility (i.e., a "Jiffy Lube" franchise); and

WHEREAS, under the terms of the proposed lease agreement, Heartland will pay the
greater of minimum rent in the amount of \$67,200 per year or 12% of its gross income; and

WHEREAS, Heartland is currently a month-to-month holdover tenant; and

WHEREAS, the Real Estate Assets Department projects the proposed lease agreement
will substantially increase the rent received by the City; and

WHEREAS, Heartland or the City may terminate the proposed lease effective at the end
of any lease year with 180 days prior notice; NOW, THEREFORE,

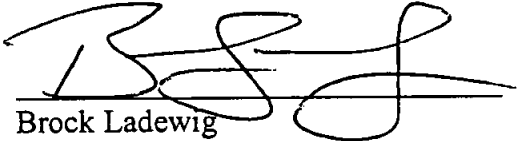
BE IT RESOLVED, by the Council of The City of San Diego, that the Mayor or his
designee is authorized to execute and deliver, for and on behalf of The City of San Diego, a 10-
year lease agreement with HEARTLAND AUTOMOTIVE SERVICES, II, INC., a Delaware
corporation, for the operation of an automotive maintenance and repair facility (i.e., a "Jiffy
Lube" franchise) at 1005 B Street, San Diego, California, under the terms and conditions set

forth in that lease agreement on file in the office of the City Clerk as Document No.

RR- 303430 [Lease]; and

BE IT FURTHER RSOLVED, the Auditor and Comptroller is authorized and directed to accept rents pursuant to the Lease and deposit them in General Fund 100.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Brock Ladewig
Chief Deputy City Attorney

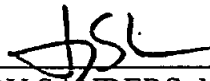
BL:bas
02/11/08
Or.Dept:READ
R-2008-665
MMS #4929

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of FEB 26 2008.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 3.5.08
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on February 26, 2008, by the following vote:

YEAS: PETERS, FAULCONER, ATKINS, YOUNG, MAIENSCHIN,
FRYE, MADAFFER, & HUESO.

NAYS: NONE.

NOT PRESENT: NONE.

RECUSED: NONE.

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

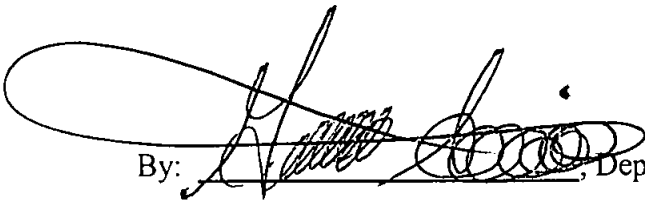
By: GIL SANCHEZ, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-303430, approved by the Mayor of The City of San Diego,
California on March 5, 2008.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy