

**GROUND LEASE AND OPTION TO PURCHASE  
by and between  
THE CITY OF FRESNO and GARREKS, INC.**

This Ground Lease ("Lease") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015, (the "Effective Date") by and between the CITY OF FRESNO, a municipal corporation ("Landlord"), and GARREKS, Inc., a California corporation ("Tenant").

**RECITALS**

A. Landlord is the owner of record of all of that certain real property a portion of which is 3.3418+/- acres (including the adjacent portions of the city streets that will be dedicated to the Landlord) located at the southwest corner of N. Brawley and W. Herndon Avenues (the "Property"), a portion of APN 507-030-12ST (the "Existing Parcel") situated in Fresno, California, and more particularly described in Exhibit A attached hereto.

B. Tenant is interested in developing and operating a commercial development consisting of a gas station, car wash and convenience store on the Property as more particularly described in Schedule 1 attached hereto (the "Project").

C. Landlord wishes to lease a portion of the Property to Tenant (the "Property"), together with all rights, privileges, and easements appurtenant thereto, and improvements thereon, on the terms and conditions set forth herein.

D. The Property is currently pledged as security for a bond owed by Landlord (the "Bond"), which is to be repaid during the Term of this Lease, in part from the Rent payable hereunder.

**AGREEMENT**

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Lease of Property. Landlord hereby leases, transfers and demises to Tenant, and Tenant hereby leases and takes from Landlord, the Property for the terms and upon the agreements, covenants and conditions set forth in this Lease. A description of the Property is more fully set forth in Exhibit A attached hereto. The Property is being leased "AS IS" and "WITH ALL FAULTS," and Landlord makes no warranty of any kind, express or implied, with respect to the Property. Without limiting the generality of the preceding sentence, it is expressly agreed that Landlord makes no warranty as to the marketability, habitability or fitness of the Property for any particular purpose. Nothing in this Lease shall be considered a pre-commitment on the part of the City to approve any permits or entitlements required by this Lease. The City cannot pre-commit to the approval of any discretionary permits or entitlements. Tenant acknowledges that the subject property is within the purview of the Sierra Sky Park Airport and may be subject conditions of approval to ensure the safe operation of the Sierra Sky Park Airport. Tenant further acknowledges that processing of the project may necessitate neighborhood meetings which may prolong the process.

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2. Term. The initial term of this Lease shall run through December 31, 2017 (the "Term") commencing on the Effective Date, and, unless sooner terminated or extended as herein provided. At the end of the Term, this Lease shall convert to a month-to-month lease on the same terms and conditions set forth herein.

3. Rent; Deposit.

3.1 Upon approval of all permits and entitlements (including the expiration of time periods to challenge approvals such as CEQA challenges) necessary to complete the Project (the "Approvals") and provided that Landlord has otherwise fully performed hereunder, Tenant shall pay to Landlord as full consideration under this Lease, the sum of Four Hundred Fifty-Five Thousand Three Hundred Seventy-Three Dollars (\$455,373.00) (the "Rent"). Tenant shall be required to use its best efforts to obtain the Approvals and must obtain the Approvals no later than six (6) months from the Effective Date (the "Approval Period"); provided, however, that Tenant may receive one extension of six (6) months (an "Extension") upon demonstration of unforeseen issues in obtaining the Approvals despite best efforts and upon Landlord's consent, which shall not be unreasonably refused. Upon expiration of the Approval Period and any Extension, Landlord shall have the right, in its sole discretion, to terminate this Lease and all rights of the Tenant hereunder. Notwithstanding the foregoing, if Tenant can demonstrate significant progress toward obtaining the Approvals upon the expiration of the Approval Period or any Extension, Landlord may make reasonable accommodation to allow Tenant to obtain the Approvals to prevent forfeiture of resources expended by Tenant toward completion of the Project.

3.2 Concurrent with the execution of this Lease, Tenant shall pay a refundable deposit to Landlord of Five Thousand Dollars (\$5,000.00) (the "Deposit"). Upon the Tenant obtaining the Approvals, the Deposit shall be credited toward the Rent. If this Lease is terminated prior to Tenant obtaining the Approvals, the Deposit shall be refunded in full.

4. Entitlements. Tenant shall pay all requisite entitlement fees including any technical studies which may be required as a result of the processing of said entitlements. Tenant shall not receive credit towards lease terms nor receive a refund of entitlements fees in the event the project is denied through the public hearing process. In addition, the tenant shall pay all applicable city impact fees.

5. Taxes and Assessments; Limitations on Approvals.

5.1 Tenant covenants and agrees to pay and discharge, during the entire Term, before delinquency, all taxes, assessments, water charges, sewer charges, utility rates and fees, levies or other charges, general, special, ordinary, extraordinary and otherwise, of every kind and character which are or may during the Term be levied, charged, assessed or imposed upon or against the Property or any buildings or improvements which are now or hereafter located thereon, or against any of Tenant's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby. Pursuant to California Revenue and Taxation Code section 107.6, a possessory interest subject to property taxation may be created by entering into this Lease and Tenant acknowledges and agrees that Tenant shall pay any property taxes levied on such possessory interest. At the commencement and at the end of the Term, such taxes, assessments and other charges to be paid by Tenant shall be prorated on the basis of the fiscal year of the

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taxing authority in question so that, at the commencement and at the end of the Term, as to any such taxes, assessments and other charges levied or assessed for a fiscal year preceding the commencement or extending beyond the end of the Term, Tenant will pay only such proportion of such taxes, assessments and other charges as the portion of such fiscal year following the commencement and preceding the end of the Term bears to the entire fiscal year.

5.2 Notwithstanding anything herein to the contrary, Tenant shall not be required to pay any franchise, capital levy, or transfer tax of Landlord, or any net income tax measured by the income of Landlord from all sources, or any tax which may, at any time during the Term, be required to be paid on any gift, or demise, deed, mortgage, descent or other alienation of any part or all of the estate of Landlord in and to the Property or any buildings or improvements which are now or hereafter located thereon, except as hereinafter provided. If Tenant shall be required by law to pay, and pursuant thereto does pay, any tax, assessment or charge specified in this subsection (b), Landlord shall, immediately upon request, reimburse Tenant for any such payments. If such immediate reimbursements are not forthcoming Tenant shall receive a credit against the rental payment next due hereunder for the full amount of such delinquent reimbursements. Any documentary transfer tax assessed upon the creation of a leasehold interest in the Property under this Lease, as well as possessory interest and property taxes shall be paid by Tenant.

5.3 Landlord shall have the right, but not the obligation, at all times during the Term to pay any taxes, assessments or other charges levied or assessed upon or against the Property or any buildings or improvements which are now or hereafter located thereon, and to pay, cancel and clear off all tax sales liens, charges and claims upon or against the Property or any buildings or improvements which are now or hereafter located thereon, and to redeem the Property from the same, or any of them, from time to time, without being obligated to inquire as to the validity of the same. Any sum so paid by Landlord shall become due and payable by Tenant on the next day after any such payment by Landlord.

5.4 Landlord acknowledges that the Property is only a portion of the Existing Parcel, and that the purpose of this Lease is to facilitate Tenant's purchase of the Property as a separate parcel from the Existing Parcel pursuant to the option to purchase granted herein. Because this Lease deals only with the Property and not the Existing Parcel, and because the Landlord has chosen not to subdivide the Existing Parcel prior to the Effective Date to create a newly identified parcel for the Property, Landlord agrees that it shall apply requirements for Approvals for the Property as though the Property were a separate parcel from the Existing Parcel. The preceding shall include but not be limited to any requirements Landlord may impose for improvements on or offsite of the Property. In no case shall Tenant be required to pay for improvements or fees for the Existing Parcel that would not be required if the Property were a unique parcel as of the Effective Date.

## 6. Purchase Option

6.1 Covenant to Convey Interests. Tenant desires to acquire and Landlord hereby grants to Tenant an option to purchase Landlord's interest in the Property, in accordance with the terms set forth below (the "Purchase Option"), and the terms of the Purchase Agreement attached hereto as Exhibit "D".

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6.2 **Exercise of Purchase Option.** At the end of the Term, if Tenant is in compliance with all the material terms of this Lease, Tenant may purchase the Property subject to any liens, covenants, conditions, easements, restrictions and rights-of-way ("Encumbrances") of record as of the date that the Purchase Option is exercised; *provided, however,* that Landlord agrees that it shall not allow any further Encumbrances on the Property through its own acts and omissions. Furthermore, Landlord agrees that it shall cause to be removed any lien or encumbrance on the Property related to the Bond prior to the close of escrow following exercise of the Purchase Option. Notice of exercise of this Purchase Option shall be in writing and delivered to Landlord (the "Exercise Notice").

6.3 **Purchase Price.** The purchase price shall be One Dollar (\$1.00).

6.4 **Payment.** Within 30 days after receipt of the Exercise Notice, the parties shall execute and deliver the Purchase Agreement and shall deposit the funds and documents in escrow as required by the terms of the Purchase Agreement.

6.5 **Memorandum of Lease and Purchase Option.** The Parties shall, concurrent with the execution of this Lease, execute a Memorandum of Lease and Purchase Option in recordable form substantially in the form of attached Exhibit "C", which shall thereafter be recorded.

7. **Quiet Enjoyment.** Landlord covenants that upon payment by Tenant of the rent herein reserved and upon performance and observance by Tenant of all of the agreements, covenants and conditions herein contained on the part of Tenant to be performed and observed, Tenant shall peaceably hold and quietly enjoy the Property during the entire Term without hindrance or interruption by Landlord or by anyone lawfully or equitably claiming by, through or under Landlord.

8. **Use.** Tenant shall have the right to use the Property for any lawful purpose; provided, however, in no event shall the Property be used for any purpose or use (nor shall any activity be carried on upon the Property) which in any manner causes, creates or results in a public or private nuisance, or diminishes the value of Landlord's fee estate.

9. **Title to Buildings and Improvements.**

9.1 Title to all buildings, structures and improvements (both permanent and nonpermanent) that now, or may from time to time constitute a part of the Property, shall be and remain in Tenant until the termination of this Lease. If Tenant does not exercise the Purchase Option, then upon the termination of this Lease, title to all such property, buildings, structures and permanent improvements shall pass to and vest in Landlord without cost or charge to it, free and clear of all liens, and in good condition, reasonable wear and tear excepted. If Tenant exercises the Purchase Option, then title to all improvements shall vest in Tenant upon close of escrow.

9.2 If title to the improvements passes to Landlord, then Tenant shall execute and deliver any and all deeds, bills of sale, assignments, and other documents which in Landlord's sole judgment may be necessary or appropriate to transfer, to evidence or to vest in Landlord clear title to any of the remaining property described in the foregoing subsection 8.1 located on the Property at the time of such termination. Tenant, in addition, shall deliver to Landlord on termination of this Lease originals or certified copies of any plans, reports, surveys, contracts or other items relating to the ownership of or remaining property on the Property. Upon the termination of this Lease, Landlord

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reserves the right to require Tenant to demolish any buildings, structures or improvements and clear the site, at Tenant's expense.

10. Permits, Licenses, etc. Landlord will from time to time during the Term execute and deliver all applications for permits, licenses or other authorizations relating to the Property required by any municipal, county, state, or Federal authorities, or required in connection with the construction, reconstruction, repair or alteration of any buildings or improvements now or hereafter constituting a part of the Property. Landlord will from time to time during the Term execute, acknowledge and deliver any and all instruments required to grant rights-of-way and easements in favor of municipal and other governmental authorities or public utility companies incident to the installation of water lines, fire hydrants, sewers, electricity, telephone, gas, steam, and other facilities and utilities reasonably required for the use and occupancy of the Property. Tenant shall reimburse Landlord for any sum paid by Landlord in respect of the matters specified in this Section 10, including reasonable attorney fees. Notwithstanding the foregoing, Tenant shall not be required to reimburse Landlord for expenses incurred by Landlord following the exercise of the Purchase Option.

11. Repairs, Governmental Regulations and Waste.

11.1 Tenant shall, during the Term, at its own cost and expense and without any cost or expense to Landlord:

11.1.1 Keep and maintain all buildings and improvements now or hereafter located on the Property and all appurtenances thereto in good and neat order and repair and shall allow no nuisances to exist or be maintained therein. Tenant shall likewise keep and maintain the grounds, sidewalks, roads and parking and landscaped areas in good and neat order and repair. Landlord shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Property or any buildings or improvements now or hereafter located thereon, and Tenant hereby expressly waives all right to make repairs at Landlord's expense under sections 1941 and 1942 of the California Civil Code, or any amendments thereof; and

11.1.2 Comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the Property, all buildings and improvements now or hereafter located thereon, or any activity or condition on or in the Property.

11.2 Tenant agrees that it will not commit or permit waste upon the Property.

12. Specific Covenants Regarding Environmental Matters.

12.1 Tenant covenants that (a) no toxic or hazardous substances, including, without limitation, asbestos and the group of organic compounds known as polychlorinated biphenyls (except such substances as are used in accordance with law) shall be generated, treated, stored or disposed of, or otherwise deposited in or located on, or released on or to the Property, including, without limitation, the surface and the subsurface waters of the Property; (b) Tenant will not engage in and will not permit any other party to engage in any activity on the Property which would cause (i) the Property to become a hazardous waste treatment storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, the Resource Conservation and Recovery Act of 1975 ("RCRA") 42 U.S.C. 6901, et seq., as amended, or any similar state law or local ordinance or other environmental law, (ii) a release or threatened release of a hazardous substance from or to the Property within the ambit of the

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Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 et seq., as amended, or any similar state law or local ordinance or any other environmental law, or (iii) the discharge (except in accordance with applicable law) of pollutants or effluents into any water source or system, or the discharge (except in accordance with applicable law) into the air of any emissions, which would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., or the Clear Air Act, 42 U.S.C. 7401, et seq., or any similar state law or local ordinance or any other environmental law; and (c) Tenant will not permit any substance or conditions in or on the Property which might support a claim or cause of action under RCRA, CERCLA, or any other federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements. The terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" shall have the meanings specified in RCRA, provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, provided, further, to the extent that the laws of the State of California establish a meaning for such terms which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply.

12.2 In the event Tenant or Landlord is obligated by any applicable federal, state or local law, ordinance or regulation or otherwise directed by any governmental agency or authority, to clean up, remove or encapsulate or cause the clean up, removal, or encapsulation of any Hazardous Wastes and/or Hazardous Materials or asbestos or material containing asbestos from the Property, the Tenant hereby guarantees to Landlord that Lessee (i) shall promptly undertake to arrange for such clean up, removal and disposal in accordance with all governmental regulations, (ii) shall exercise its best efforts to insure that such clean up and removal shall be conducted in a timely and diligent manner, and (iii) hereby assumes the costs and expense, including any fines, of such clean up and removal unless such condition is determined to have existed on the Property prior to Tenant's execution and acceptance of this Lease in which case Landlord shall be responsible for, and shall assume the cost and expense of, such clean up.

12.3 In the event that any lien is recorded or filed against the Property pursuant to any governmental regulations regarding Hazardous Materials, Hazardous Wastes, or Asbestos, Tenant hereby guarantees to Landlord that Tenant shall, not later than thirty (30) days following the filing of such lien, satisfy the claim and cause the lien thereunder to be discharged of record (whether by payment, bonding or otherwise), unless such condition is determined to have existed on the Property prior to Tenant's execution and acceptance of this Lease, in which case Landlord shall assume the cost and expense of satisfying the claim or causing the lien to be discharged.

12.4 IN ADDITION THE FOREGOING, TENANT SHALL PROTECT, DEFEND, INDEMNIFY AND SAVE HARMLESS LANDLORD, AND LANDLORD'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, AGENTS, EMPLOYEES AND REPRESENTATIVES AND VOLUNTEERS FROM AND AGAINST ALL LOSS (INCLUDING DIMINUTION IN VALUE OF THE PROPERTY), COST, DAMAGE, LIABILITY, OBLIGATION, CAUSES OF ACTION, FINE, PENALTY OR EXPENSE (INCLUDING ATTORNEY'S FEES AND EXPENSES FOR INVESTIGATION,

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INSPECTION, REMOVAL, CLEAN UP, AND REMEDIAL COSTS INCURRED TO PERMIT CONTINUED OR RESUME NORMAL OPERATION OF THE PROPERTY), IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST LANDLORD, ITS OFFICERS, OFFICIALS, EMPLOYEES OR AGENTS BY REASON OF: (1) THE PRESENCE, DISPOSAL, ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, DISCHARGE, EMISSION, RELEASE, OR THREATENED RELEASE OF ANY HAZARDOUS MATERIALS AND/OR HAZARDOUS WASTES ON, FROM, OR AFFECTING THE LEASED PROPERTY OR ANY OTHER PROPERTY OR THE PRESENCE OF ASBESTOS ON THE LEASED PROPERTY; (II) ANY PERSONAL INJURY (INCLUDING WRONGFUL DEATH) OR PROPERTY DAMAGE OR DESTRUCTION (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO SUCH HAZARDOUS WASTES, HAZARDOUS MATERIALS OR ASBESTOS; (III) ANY LAWSUIT BROUGHT OR THREATENED, SETTLEMENT REACHED, OR GOVERNMENT ORDER RELATING TO SUCH HAZARDOUS WASTES, HAZARDOUS MATERIALS OR ASBESTOS; (IV) ANY VIOLATION OF LAWS, ORDERS, REGULATIONS, REQUIREMENTS, OR DEMANDS OF GOVERNMENTAL AUTHORITIES, WHICH ARE BASED UPON OR IN ANY WAY RELATED TO SUCH HAZARDOUS WASTES, HAZARDOUS MATERIALS OR ASBESTOS INCLUDING, WITHOUT LIMITATION, THE COSTS AND EXPENSES OF ANY REMEDIAL ACTION, ATTORNEY AND CONSULTANT FEES, INVESTIGATION AND LABORATORY FEES, COURT COSTS, AND LITIGATION EXPENSES. THE ABOVE AND FOREGOING OBLIGATION CONTAINED IN THIS SECTION SHALL ONLY APPLY TO ANY ACT OR OMISSION OF TENANT OR OF TENANT'S OFFICERS, PRINCIPALS, EMPLOYEES, AGENTS, CONTRACTORS, OR SUBCONTRACTORS IN CONNECTION WITH ANY LOSS (INCLUDING DIMINUTION IN VALUE OF THE PROPERTY), COST, DAMAGE, LIABILITY, OBLIGATION, CAUSES OF ACTION, FINE, PENALTY OR EXPENSE (INCLUDING ATTORNEY'S FEES AND EXPENSES FOR INVESTIGATION, INSPECTION, REMOVAL, CLEAN UP, AND REMEDIAL COSTS INCURRED TO PERMIT CONTINUED OR RESUME NORMAL OPERATION OF THE PROPERTY), IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST LANDLORD, ITS OFFICERS, OFFICIALS, AGENTS OR EMPLOYEES BY REASON OF SUBPARTS (I) THROUGH (IV) OF THIS SECTION AND FOR WHICH SUCH CONDITION WAS NOT A PRE-EXISTING CONDITION OF THE LEASED PROPERTY PRIOR TO LESSEE'S EXECUTION AND ACCEPTANCE OF THIS LEASE.

### 13. Construction of Improvements, Changes, Alterations, Demolition and Replacement.

13.1 Tenant shall have the right at any time and from time to time during the Term to make such improvements to the Property and such changes and alterations, structural or otherwise, to any buildings, improvements, fixtures and equipment now or hereafter located on the Property as Tenant shall deem necessary or desirable.

13.2 Following the Effective Date, Tenant shall proceed with due diligence and dispatch to complete the construction on the Property of the Project.

13.3 Any demolition activity and all improvements, changes and alterations (other than changes or alterations of movable trade fixtures and equipment or improvements, changes or alterations involving costs less than Ten Thousand Dollars

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(\$10,000)) shall be undertaken in all cases subject to the following additional conditions which Tenant covenants to observe and perform:

13.3.1 No improvement, change or alteration, and no demolition and replacements shall be undertaken until Tenant shall have procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits and authorizations of the various municipal departments and governmental subdivisions having jurisdiction, and Landlord agrees to join in the application for such permits or authorizations whenever such action is necessary.

13.3.2 All work done in connection with any improvement, change, alteration or demolition and replacement shall be done promptly and in a good and workmanlike manner and in compliance with all laws, ordinances, orders, rules, regulations and requirements of all Federal, state and municipal governments and the appropriate departments, commissions, boards and officers thereof. All such work shall be at the sole cost and expense of Tenant. Any improvement or repair shall be constructed by a licensed and bonded contractor. Tenant may be subject to Conditional Use Permit approval. Certain planning, land use, zoning, conditional use permits, and public actions required in connection with any Tenant improvement project are discretionary government actions. Nothing in this Lease obligates City or any other governmental entity to grant final approval of any matter described herein. Such actions are legislative, quasi-judicial, or otherwise discretionary in nature. City shall not be liable, in law or equity, to Tenant or any of its executors, administrators, transferees, successors-in-interest, or assigns for any failure of any governmental entity to grant approval on any matter subject to discretionary approval.

13.3.3 Tenant will notify Landlord at least seven (7) days prior to the commencement of any construction. Landlord shall have the right to post and keep posted on the Property, and record, a Notice of Non-responsibility. Tenant shall keep the Property free from any and all liens and encumbrances arising out of or in any way connected with the work performed, materials furnished or obligations incurred by Tenant in connection with any alteration, addition or improvement to the Property.

13.3.4 Tenant shall prepare a work plan and cost estimate which describes in detail and with specificity the nature, scope, location, estimated costs and purpose of all of Tenant's improvements and activities to be performed on the Property, including, without limitation, the specific areas in which Tenant and Tenant's representatives may have access and may conduct Tenant's activities and a schedule of Tenant's activities (the "Work Plan"). The Work Plan will be submitted to Landlord for preliminary approval, care of the City Manager, 2600 Fresno Street, Fresno, California 93721. Tenant acknowledges and agrees Landlord's review of the Work Plan is solely for the purpose of protecting Landlord's interests, and shall not be deemed to create any liability of any kind on the part of Landlord, or to constitute a representation on the part of Landlord that the Work Plan is adequate or appropriate for any purpose, or complies with applicable legal requirements. Tenant and Tenant's representatives shall not commence activities associated with Tenant's improvements on the Property without the prior written consent of Landlord to the Work Plan as set forth above, which consent shall not be unreasonably withheld. Tenant agrees and covenants that all of Tenant's activities shall be performed in strict compliance to the approved Work Plan. Tenant shall not modify the Work Plan without the prior written approval of Landlord.



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13.3.5 Tenant covenants and agrees that Tenant shall conduct Tenant's activities in compliance with the Work Plan approved by Landlord and in such a manner so as to protect the Property, the environment and human health and safety. Except as may be expressly provided in such Work Plan, Tenant shall not cause or permit any Hazardous Substances, except as is reasonably necessary for the Project and the operation of a gas station and carwash, as defined herein, to be brought upon, produced, stored, used, discharged or disposed of on, or in the vicinity of, the Property. In the event Landlord determines that Tenant's activities in any way endanger the Property, the environment, or human health and safety, Landlord may, at Landlord's sole discretion, require that Tenant halt Tenant's activities until appropriate protective measures may be taken to eliminate such endangerment to Landlord's satisfaction. Tenant shall hold Landlord harmless for any claims in any way resulting from any delay under this section. Landlord's right to halt activities under this section shall not in any way alter or affect Tenant's insurance or indemnity obligations under this Lease, nor shall it relieve Tenant from any of Tenant's obligations hereunder that pertain to health, safety, or the protection of the environment.

13.3.6 Landlord reserves the right to restrict access to the Property in the event of fire, earthquake, storm, riot, civil disturbance, or other casualty or emergency, or in connection with City's response thereto, or if emergency repairs or maintenance are required to City facilities within or in the vicinity of the Property, or otherwise when Landlord deems it advisable to do so.

13.3.7 In addition to the insurance coverage referred to in Section 19 below, Workers' Compensation Insurance covering all persons employed in connection with the work and with respect to whom death or injury claims could be asserted against Landlord, Tenant or the Property, and a general liability policy coverage, naming Landlord with limits of not less than Two Million Dollars (\$2,000,000) per occurrence, shall be maintained by Tenant, at Tenant's sole cost and expense, at all times when any work is in process in connection with any improvement, change, alteration or demolition and replacement. All such insurance shall be obtained and kept in force as otherwise provided in Section 17 below.

13.4 Upon completion of construction, Tenant shall provide Landlord with a Notice of Completed Construction. The Notice of Completed Construction shall be solely for the purposes of this Lease, and shall not be considered an acceptance of improvements by Landlord or City, and shall not release Tenant from any legal or permit obligation with respect to construction of the improvements.

13.5 Tenant is prohibited from demolishing or removing any improvements without the prior written consent of Landlord.

13.6 Construction of all improvements shall be done in such a manner as to reduce interference to the Property and other tenants on the Property.

14. Damage or Destruction. No loss or damage by fire or other cause required to be insured against hereunder resulting in either partial or total destruction of any building, structure, or other improvement on the Property, shall operate to terminate this Lease, or to relieve or discharge Tenant from the payment of rents or amounts payable as rent as they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained on the part of Tenant to be performed and observed. Tenant hereby waives the provisions of subsection 2 of

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section 1932 and subsection 4 of section 1933 of the California Civil Code, as amended from time to time.

15. Assignment and Subletting. Tenant shall not assign its interest under this Lease, or sublet any portion of the Property, without the prior written consent of Landlord.

16. Mortgage of Leasehold. Subject to the prior written approval of Landlord, Tenant shall have the right to encumber the leasehold estate created by this Lease by a mortgage, deed of trust or other security instrument, including, without limitation, an assignment of the rents, issues and profits from the Property, (the "Leasehold Mortgage") to secure repayment of any loan to Tenant, and associated obligations. Lender must be an institutional lender not affiliated with Tenant. Tenant shall give prompt notice to Landlord when the Leasehold Mortgage is extinguished.

17. Protection of Lender. During the continuance of any Leasehold Mortgage and until such time as the lien of any Leasehold Mortgage has been extinguished:

17.1 Landlord shall not accept any surrender of this Lease, nor shall Landlord consent to any amendment or modification of this Lease, without the prior written consent of any Lender.

17.2 Notwithstanding any default by Tenant in the performance or observance of any agreement, covenant or condition of this Lease on the part of Tenant to be performed or observed, Landlord shall have no right to terminate this Lease or interfere with the occupancy, use, and enjoyment of the Property unless (i) an event of default shall have occurred and is continuing, (ii) Landlord shall have given any Lender written notice of such event of default, and (iii) the Lender(s) shall have failed to remedy such default, acquire Tenant's leasehold estate created hereby, or commence foreclosure or other appropriate proceedings, all as set forth in, and within the time specified by, this Section 15.

17.3 Any Lender shall have the right, but not the obligation, at any time prior to termination of this Lease and without payment of any penalty, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease. All payments so made and all things so done and performed by a Lender shall be as effective to prevent a termination of this Lease as the same would have been if made, done and performed by Tenant instead of by a Lender.

17.4 Should any event of default under this Lease occur, any Lender shall have sixty (60) days after receipt of written notice from Landlord setting forth the nature of such event of default, within which to remedy the default; provided that in the case of a default which cannot with due diligence be cured within such sixty-day period, the Lender(s) shall have the additional time reasonably necessary to accomplish the cure, provided that (i) such Lender has commenced the curing within such sixty (60) days and (ii) thereafter diligently prosecutes the cure to completion. If the default is such that possession of the Property may be reasonably necessary to remedy the default, the Lender(s) shall have a reasonable additional time after the expiration of such sixty-day period, within which to remedy such default, provided that (i) the Lender(s) shall have fully cured any default in the payment of any monetary obligations of Tenant under this Lease within such sixty day period and shall continue to pay currently such monetary

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obligations as and when the same are due and (ii) the Lender(s) shall have acquired Tenant's leasehold estate or commenced foreclosure or other appropriate proceedings seeking such acquisition within such period, or prior thereto, and is diligently prosecuting any such proceedings.

17.5 Any event of default under this Lease which is not susceptible to remedy by a Lender shall be deemed to be remedied if (i) within sixty (60) days after receiving written notice from Landlord setting forth the nature of such event of default, or prior thereto, a Lender shall have acquired Tenant's leasehold estate created hereby or shall have commenced foreclosure or other appropriate proceedings seeking such acquisition, (ii) a Lender shall diligently prosecute any such proceedings to completion, and (iii) a Lender shall have fully cured any default in the payment and performance of any monetary or other obligations of Tenant hereunder which do not require possession of the Property within such sixty day period and shall thereafter continue faithfully to perform all such monetary obligations which do not require possession of the Property, and (iv) after gaining possession of the Property, a Lender shall perform all other obligations of Tenant hereunder as and when the same are due.

17.6 If a Lender is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings the times specified in subsections above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that Lender shall have fully cured any default in the payment of any monetary obligations of Tenant under this Lease and shall continue to pay currently such monetary obligations as and when the same fall due.

17.7 Landlord shall mail by certified or registered post, return receipt requested, or personally deliver to any Lender a duplicate copy of any and all notices in writing which Landlord may from time to time give to or serve upon Tenant pursuant to the provisions of this Lease, and such copy shall be mailed or delivered to any Lender at, or as near as possible to, the same time such notices are given or served by Landlord. No notice by Landlord to Tenant hereunder shall be deemed to have been given unless and until a copy thereof shall have been so mailed or delivered to any Lender. Upon the execution of any Leasehold Mortgage, Landlord shall be informed in writing of the vesting of the security interest evidenced by the Leasehold Mortgage and of the address to which all notices to the Lender are to be sent. Notwithstanding any other provision of this Section 15, any Lender shall be deemed to have waived any right to receive notice pursuant to this Section unless and until Landlord has received such information.

17.8 Foreclosure of the Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the leasehold mortgage, or any assignment or conveyance of the leasehold estate created by this Lease from Tenant to a Lender or other purchaser through, or in lieu of, foreclosure or other appropriate proceedings of a similar nature shall not constitute a breach of any provision of or a default under this Lease. Upon such foreclosure, sale or conveyance Landlord shall recognize the Lender, or any other foreclosure sale purchaser, as Tenant hereunder. In the event a Lender becomes Tenant under this Lease, such Lender shall be liable for the obligations of Tenant under this Lease only for the period of time that

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such Lender remains Tenant. Such Lender shall have the right to assign this Lease at any time after becoming Tenant, subject to the approval of Landlord, and shall be fully released from liability under the Lease from and after the date of such assignment.

17.9 Should Landlord terminate this Lease by reason of any default by Tenant hereunder, Landlord shall, upon written request by a Lender given within thirty (30) days after such termination, immediately execute and deliver a new lease of the Property to such Lender, or its nominee, purchaser, assignee or transferee, for the remainder of the Term with the same agreements, covenants and conditions (except for any requirements which have been fulfilled by Tenant prior to termination) as are contained herein and with priority equal to that hereof; provided, however, that such Lender shall promptly cure any defaults of Tenant susceptible to cure by such Lender and that such Lender's right to possession of the Property under the new lease shall commence only upon Tenant's vacating of the Property. Upon execution and delivery of such new lease Landlord, at the expense of the new lessee, which expenses shall be paid by the new Tenant as they are incurred, shall take such action as shall be necessary to cancel and discharge this Lease and to remove Tenant named herein from the Property.

17.10 Landlord and Tenant will cooperate in including in this Lease by suitable amendment from time to time any provision which may reasonably be necessary to implement the provisions of this Section 18; provided, however, that such amendment shall not in any way affect the Term hereby demised nor affect adversely in any material respect any rights of Landlord under this Lease.

### 18. Insurance.

18.1 Throughout the life of this Lease, Tenant and each of its contractors and subcontractors shall pay for and maintain in full force and effect all insurance as required in the attached Exhibit "B" or as may be authorized or required in writing by Landlord's Risk Manager or his/her designee at any time and in his/her sole discretion.

18.2 If at any time during the life of this Lease or any extension, Tenant or any of its contractors or subcontractors fail to maintain any required insurance in full force and effect, all Tenant's activities under this Lease shall be discontinued immediately, until notice is received by Landlord that the required insurance has been restored to full force and effect and that the premiums therefor have been paid for a period satisfactory to Landlord. Any failure to maintain the required insurance shall be sufficient cause for Landlord to terminate this Lease. No action taken by Landlord pursuant to this section shall in any way relieve Tenant of its responsibilities under this Lease. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by Landlord that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that insurer is insolvent.

18.3 The fact that insurance is obtained by Tenant shall not be deemed to release or diminish the liability of Tenant, including, without limitation, liability under the indemnity provisions of this Lease. The duty to indemnify indemnitees (as defined in this Lease) shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Tenant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Tenant, or its contractors or subcontractors.

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18.4 Upon request of Landlord, Tenant shall immediately furnish Landlord with a complete copy of any insurance policy required under this Lease, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Lease.

18.5 Tenant is also responsible for the compliance of Tenant's consultants, contractors and subcontractors with the insurance requirements in this section, except that any required certificates and applicable endorsements shall be on file with Tenant and Landlord prior to the commencement of any work or services by the respective contractor or subcontractor.

19. Mechanics' and Other Liens. Tenant shall promptly discharge or remove by bond or otherwise prior to foreclosure thereof any and all mechanics', materialmen's and other liens for work or labor done, services performed, materials, appliances, teams or power contributed, used or furnished to be used in or about the Property for or in connection with any operations of Tenant, any alterations, improvements, repairs or additions which Tenant may make or permit or cause to be made, or any work or construction by, for or permitted by Tenant on or about the Property, and to save and hold Landlord and all of the Property and all buildings and improvements thereon free and harmless of and from any and all such liens and claims of liens and suits or other proceedings pertaining thereto. Tenant covenants and agrees to give Landlord written notice not less than twenty (20) days in advance of the commencement of any construction, alteration, addition, improvement or repair costing in excess of Twenty Five Thousand Dollars (\$25,000) in order that Landlord may post appropriate notices of Landlord's non-responsibility.

20. Indemnity.

20.1 To the furthest extent allowed by law, Tenant shall indemnify, hold harmless and defend Landlord and its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by Landlord, Tenant or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of Tenant's: (i) occupancy, maintenance, use, renovation and/or improvement of the Property; or (ii) performance of, or failure to perform, this Lease. Tenant's obligations under the preceding sentence shall apply to any negligence of Landlord, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or by the willful misconduct, of Landlord.

20.2 If Tenant should contract any work on the Property or subcontract any of its obligations under this Lease, Tenant shall require each consultant, contractor and subcontractor to indemnify, hold harmless and defend Landlord and its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

20.3 Tenant's occupancy, maintenance, use, renovation and improvement of the Property shall be at Tenant's sole risk and expense. Tenant accepts all risk relating to Tenant's: (i) occupancy, maintenance, use, renovation and/or improvement of the

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Property; and (ii) the performance of, or failure to perform, this Lease. Landlord shall not be liable to Tenant or Tenant's insurer(s) for, and Tenant and his insurer(s) hereby waives and releases Landlord from, any and all loss, liability, fines, penalties, forfeitures, costs or damages resulting from or attributable to an occurrence on or about the Property in any way related to the Tenant's operations and activities. Tenant shall immediately notify Landlord of any occurrence on the Property resulting in injury or death to any person or damage to property of any person.

20.4 The provisions of this Section 19 shall survive the expiration or termination of this Lease.

### 21. Eminent Domain.

21.1 If all of the Property or the use thereof is taken by power of eminent domain, condemned or sold in lieu of condemnation proceedings, this Lease shall automatically terminate on the earlier to occur of (i) the date on which title to the Property vests in the condemning authority; or (ii) the date on which Landlord is dispossessed of the Property.

21.2 If a portion of the Property or the use thereof is taken by power of eminent domain, condemned or sold in lieu of condemnation proceedings and such taking materially affects Tenant's ability to utilize the Property, Tenant shall have the right to terminate this Lease effective as of the earlier to occur of (i) the date on which title to the condemned portion of the Property vests in the condemning authority; or (ii) the date on which Tenant is dispossessed of the portion of the Property, by giving written notice to Landlord within 60 Days after Tenant's receipt of notice of the partial condemnation from Landlord.

21.3 If a portion of the Property or the use thereof is taken by power of eminent domain, condemned or sold in lieu of condemnation proceedings and Tenant does not terminate this Lease pursuant to the terms and conditions of the preceding paragraph, then (i) this Lease shall be deemed terminated with respect to only the condemned portion of the Property or use thereof; (ii) the Rent payable hereunder shall be equitably reduced, as determined by the Parties in good faith.

21.4 Each Party shall have the right to seek, at its sole cost and expense, any award to which it might be entitled as a result of any condemnation of all or any portion of the Property or the use thereof. Neither Party shall have any rights to any award made to the other. Notwithstanding anything to the contrary in this Lease, if Tenant has paid the rent due and otherwise substantially complied with the terms of this Lease, Tenant shall be considered the owner of the Property and the Improvements for the purposes of determining the parties' respective entitlement to any eminent domain award.

21.5 If all or a portion of the Property or the use thereof is temporarily condemned, this Lease shall remain in full force and effect, but all of Tenant's Rent payment obligations hereunder shall abate on a pro rata basis and constitute a Rent credit hereunder.

22. Landlord's Right of Inspection. Landlord may, at any reasonable time and from time to time during the Term, enter upon the Property for the purpose of inspecting the buildings or improvements now or hereafter located thereon and for such other purposes as may be necessary or proper for the reasonable protection of its interests.

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23. Tenant's Defaults and Landlord's Remedies. It shall be an event of default hereunder (each an "Event of Default") if (i) default shall be made by Tenant in the punctual payment of any rent or other moneys due hereunder and shall continue for a period of ten (10) days after written notice thereof to Tenant; (ii) default shall be made by Tenant in the performance or observance of any of the other agreements, covenants or conditions of this Lease on the part of Tenant to be performed and observed and such default shall continue for a period of thirty (30) days after written notice thereof to Tenant, or, in the case of a default which cannot be cured by the payment of money and cannot be cured within thirty (30) days, shall continue for an unreasonable period after such written notice; (iii) Tenant shall abandon the Property; (iv) Tenant shall admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation under any law or statute of the federal government or any state government or any subdivision of either now or hereafter in effect, make an assignment for the benefit of its creditors, consent to, or acquiesce in the appointment of a receiver of itself or of the whole or any substantial part of the Property; (v) a court of competent jurisdiction shall enter an order, judgment or decree appointing a receiver of Tenant or of the whole or any substantial part of the Property, and such order, judgment or decree shall not be vacated, set aside or stayed within sixty (60) days from the date of entry of such order, judgment or decree, or a stay thereof be thereafter set aside; (vi) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Tenant under any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation law or statute of the Federal government or any state government or any subdivision of either now or hereafter in effect, and such order judgment or decree shall not be vacated, set aside or stayed within sixty (60) days from the date of entry of such order, judgment or decree, or a stay thereof be thereafter set aside; or (vii) under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of Tenant or of the whole or any substantial part of the Property, and such custody or control shall not be terminated within sixty (60) days from the date of assumption of such custody or control. Upon the occurrence of any Event of Default by Tenant hereunder, Landlord shall have the following rights and remedies, in addition to all other rights and remedies of Landlord provided hereunder or by law:

23.1 The right to terminate this Lease, in which event Tenant shall immediately surrender possession of the Property, and pay to Landlord all rent and all other amounts payable by Tenant hereunder to the date of such termination;

23.2 The remedies described in California Civil Code Section 1951.2, including, without limitation, the right to recover 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 such rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subdivision (b) of section 1951.2 of the California Civil Code;

23.3 The remedies described in California Civil Code Section 1951.4, including, without limitation, the right to collect, by suit or otherwise, each installment of rent or other sums that become due hereunder, or to enforce, by suit or otherwise,

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performance or observance of any agreement, covenant or condition hereof on the part of Tenant to be performed or observed; or

23.4 The right to cause a receiver to be appointed in any action against Tenant to take possession of the Property or to collect the rents or profits therefrom. Neither appointment of such receiver nor any other action taken by Landlord shall constitute an election on the part of Landlord to terminate this Lease unless written notice of termination is given to Tenant.

24. Nonwaiver. If any action or proceeding is instituted or if any other steps are taken by Landlord or Tenant, and a compromise part payment or settlement thereof shall be made, either before or after judgment, the same shall not constitute or operate as a waiver by Landlord or Tenant of any agreement, covenant or condition of this Lease or of any subsequent breach thereof. No waiver of any default under this Lease shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege, or option under this Lease shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege, or option hereunder. No waiver of any provision hereof by Landlord or Tenant shall be deemed to have been made unless and until such waiver shall have been reduced to writing and signed by Landlord or Tenant, as the case may be. The receipt by Landlord of rent with knowledge of any default under this Lease shall not constitute or operate as a waiver of such default. Payment by Tenant or receipt by Landlord of a lesser amount than the stipulated rent or other sums due Landlord shall operate only as a payment on account of such rent or other sums. No endorsement or statement on any check or other remittance or in any communication accompanying or relating to such payment shall operate as a compromise or accord and satisfaction unless the same is approved in writing by Landlord, and Landlord may accept such check, remittance or payment without prejudice to its right to recover the balance of any rent or other sums due by Tenant and pursue any remedy provided under this Lease or by law.

25. No Merger.

25.1 There shall be no merger of the leasehold estate created by this Lease with any other estate in the Property, including the fee estate, by reason of the fact that the same person may own or hold the leasehold estate created by this Lease, or an interest in such leasehold estate, and such other estate in the Property, including the fee estate, or any interest in such other estate; and no merger shall occur unless and until Landlord, Tenant and any Lender shall join in a written instrument effecting such merger and shall duly record the same.

25.2 No termination of this Lease shall cause a merger of the estates of Landlord and Tenant, unless Landlord so elects and any such termination shall, at the option of Landlord, either work a termination of any sublease in effect or act as an assignment to Landlord of Tenant's interest in any such sublease. Notwithstanding the foregoing, in the event of the termination of this Lease and the execution of a new lease with Lender or its nominee pursuant to Section 15(i) above, the termination of this Lease shall neither work a merger of estates nor a termination of any subleases in effect unless Lender so elects.

26. No Partnership. It is expressly understood and agreed that Landlord does not, in any way or for any purpose by executing this Lease, become a partner of Tenant in the



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conduct of Tenant's business, or otherwise, or a joint venturer or a member of a joint enterprise with Tenant.

27. Covenants Run With Land.

27.1 The agreements, covenants and conditions in this Lease contained are and shall be deemed to be covenants running with the land and the reversion and shall be binding upon and shall inure to the benefit of Landlord and Tenant and their respective successors and assigns and all subsequent Landlords and Tenants respectively hereunder.

27.2 All references in this Lease to "Tenant" or "Landlord" shall be deemed to refer to and include successors and assigns of Tenant or Landlord, respectively, without specific mention of such successors or assigns.

28. Notices. Except as otherwise provided hereunder; any notice or communication to Landlord, Tenant or Lender shall be in writing and be mailed by certified mail, postage prepaid. Notices or communications shall be addressed to Landlord at:

City of Fresno  
2600 Fresno Street  
Fresno, California 93721  
Attention: City Manager

or such other address or addresses as Landlord shall from time to time designate, or to such agent of Landlord as it may from time to time designate, by notice in writing to Tenant. Notices or communications shall be addressed to Tenant at:

Garreks, Inc.  
9468 N Sommerville Drive  
Fresno CA 93720

or such other address or addresses as Tenant shall from time to time designate, or to such agent of Tenant as it may from time to time designate, by notice in writing to Landlord. Notices or communications to Lender shall be addressed to Lender at such address as Lender shall from time to time designate by notice in writing to Landlord. Any notice mailed in the manner above set forth shall be deemed to have been received unless returned to the sender by the post office.

29. Limitation of Landlord's Liability. In the event of any transfer of Landlord's interest in this Lease, the Landlord herein named (and in case of any subsequent transfer, the then transferor) shall be automatically freed and relieved from and after the date of such transfer of all personal liability for the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed; provided, however, that any funds in the hands of Landlord or the then transferor at the time of such transfer, in which Tenant has an interest shall be turned over to the transferee and any amount then due and payable to Tenant by Landlord or the then transferor under any provision of this Lease shall be paid to Tenant; and provided, further, that upon any such transfer, the transferee shall expressly assume, subject to the limitations of this Section 28, all of the agreements, covenants and conditions in this Lease to be performed on the part of Landlord, it being intended hereby that the covenants and obligations contained in this Lease on the part of Landlord shall, subject

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as aforesaid, be binding on each Landlord, its successors and assigns, only during its period of ownership.

30. Estoppel Certificates. Tenant or Landlord, as the case may be, will execute, acknowledge and deliver to the other and/or to Lender, promptly upon request, its certificate certifying (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications), (b) the dates, if any, to which the Minimum Rent, Percentage Rent, and other monetary obligations have been paid, (c) whether there are then existing any charges, offsets or defenses against the enforcement by Landlord of any agreement, covenant or condition hereof on the part of Tenant to be performed or observed (and, if so, specifying the same), and (d) whether there are then existing any defaults by Tenant in the performance or observance by Tenant of any agreement, covenant or condition hereof on the part of Tenant to be performed or observed and whether any notice has been given to Tenant of any default which has not been cured (and, if so, specifying the same). Any such certificate may be relied upon by a prospective purchaser, mortgagee or trustee under a deed of trust of the Property or any part thereof.

31. Holding Over. This Lease shall terminate without further notice upon the expiration of the Term, and any holding over by Tenant after the expiration of the Term shall not constitute a renewal hereof or give Tenant any rights hereunder or in or to the Property, except as otherwise herein provided, it being understood and agreed that this Lease cannot be renewed, extended or in any manner modified except in writing signed by Landlord and Tenant.

32. Late Charge. Tenant acknowledges that Tenant's failure to pay any rent, or any other amounts due under this Lease as and when due may cause Landlord to incur costs not contemplated by Landlord when entering into this Lease, the exact nature and amount of which would be extremely difficult and impracticable to ascertain. Accordingly, if any rent, or any other amount due under the Lease is not received by Landlord as and when due, then, without any notice to Tenant, Tenant shall pay to Landlord an amount equal to 10 percent (10%) of the past due amount, which the parties agree represents a fair and reasonable estimate of the costs incurred by Landlord as a result of the late payment by Tenant.

33. Default Interest. In the event that Tenant shall fail to pay any amount of Minimum Rent, Annual Rent, or any other monetary obligations owed to Landlord hereunder within 10 days of the date that such amounts are due and payable, Tenant shall pay to Landlord, in addition to such amounts, interest thereon at 2% above the "prime rate" of interest, or the maximum interest rate permitted by law, whichever is less, from the first day of the month in which such monetary obligation was payable to the date of actual payment thereof by Tenant to Landlord.

34. Severability. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Lease, but this Lease shall be construed as if such invalid, illegal, or unenforceable provisions had not been contained herein.

35. Time of the Essence. Time is of the essence of each and all of the agreements, covenants, and conditions of this Lease.

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36. Consents. Whenever in this Lease the consent or approval of either Landlord or Tenant is required or permitted, the party requested to give such consent or approval will act promptly and will not unreasonably withhold its consent or approval.

37. Short Form of Lease. Contemporaneously with the execution of this Lease, Landlord and Tenant will execute and acknowledge for recordation in the Official Records of the County of Fresno a Short Form Lease in the form of Exhibit C hereto.

38. Specific Enforcement. In the event that Tenant exercises its right of first refusal to purchase the Property from Landlord on the terms and conditions set forth in Section 6 hereof, Landlord and Tenant intend that Tenant's rights under such Section shall be specifically enforceable, without limitation on the right of Tenant to resort to any other remedy available at law.

39. Attorney Fees. In the event of any action or proceeding at law or in equity between Landlord and Tenant to enforce any provision of this Lease or to protect or establish any right or remedy of either party hereunder, the unsuccessful party to such litigation shall pay to the prevailing party all costs and expenses, including reasonable attorney fees, incurred therein by such prevailing party, and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorney fees shall be included in and as a part of such judgment.

40. Integration. This instrument constitutes the entire agreement between Landlord and Tenant with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral or written. This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Landlord, Tenant and, if required by any Lender, by Lender.

41. Rent. All monetary obligations of Tenant to Landlord under the Lease, including but not limited to the Minimum Rent and Annual Rent, shall be deemed rent.

42. Amendments. This Lease may be modified only in writing and only if signed by the parties at the time of the modification.

43. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of California. Venue shall be Fresno County.

44. Force Majeure. If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the party obliged (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing in this paragraph shall excuse Tenant from the prompt payment of any rental or other charge required of Tenant hereunder except as may be expressly provided elsewhere in this Lease.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first written above.

**LANDLORD:**  
City of Fresno, a Municipal Corporation

By:  
Its:

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**TENANT:**

GARREKS, INC., a  
California corporation

**BY:**  
**ITS:**

**ATTEST:**  
YVONNE SPENCE, CMC  
City Clerk

By  
(Deputy)

**APPROVED AS TO FORM:**  
DOUGLAS T. SLOAN  
City Attorney

By  
(Deputy/Assistant)

Exhibit A: Description of the Property  
Exhibit B: Insurance Requirements  
Exhibit C: Memorandum of Lease  
Exhibit D: Purchase Agreement  
Schedule 1: Project Description

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**EXHIBIT A**

**Legal Description of the Property**

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**EXHIBIT "B"**  
**INSURANCE REQUIREMENTS**  
**Lease between City of Fresno ("City")**  
**and GARREKS, INC. ("Tenant")**  
***Minimum Scope of Insurance***

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for Property and operations, products and completed operations, fire legal liability and contractual liability (including, without limitation, indemnity obligations under the Lease).
2. Property insurance with a Cause of Loss – Special or All Risk Form. **Only required of Tenant and not of Tenant's consultants, contractors or subcontractors.**
3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.

***Minimum Limits of Insurance***

Tenant shall maintain limits of liability of not less than:

1. General Liability:
  - \$2,000,000 per occurrence for bodily injury and property damage
  - \$1,000,000 per occurrence for personal and advertising injury
  - \$4,000,000 aggregate for products and completed operations
  - \$4,000,000 general aggregate applying separately to the work performed under the Lease
2. Property: Limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation).

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3. Workers' Compensation Insurance as required by the State of California, with Statutory Limits of no less than \$1,000,000 per accident for bodily injury or disease (for lessees with employees)
4. Employer's Liability:
  - \$1,000,000 each accident for bodily injury
  - \$1,000,000 disease each employee
  - \$1,000,000 disease policy limit

### ***Umbrella or Excess Insurance***

In the event Tenant purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

### ***Deductibles and Self-Insured Retentions***

Tenant shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Tenant shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) Tenant shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

### ***Other Insurance Provisions***

The General Liability insurance policy is to contain, or be endorsed to contain, the following provisions:

1. City, its officers, officials, employees, agents and volunteers are to be covered as additional insureds.
2. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers.
3. Tenant's insurance coverage shall be primary and no contribution shall be required of City.

The Property insurance policy is to contain, or be endorsed to contain, the following provisions:

1. City shall be named as a loss payee.
2. The coverage shall contain:
  - (i) No coinsurance penalty.
  - (ii) No limitations or exclusions for vacancy.
  - (iii) No special limitations on the scope of protection afforded to City.

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The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: Tenant and its insurer shall waive any right of subrogation against City, its officers, officials, employees, agents and volunteers.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Tenant shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Tenant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

### **Acceptability of Insurers**

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide.

### **Verification of Coverage**

Tenant shall furnish City with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Lease and before work commences.



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EXHIBIT C  
MEMORANDUM OF LEASE

**RECORDED AT THE REQUEST OF  
AND WHEN RECORDED RETURN TO:**

City of Fresno  
Attn: City Manager  
2600 Fresno Street  
Fresno, CA 93721

---

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Memorandum of Lease Agreement is recorded at the request and for the benefit of the City of Fresno and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

MEMORANDUM OF LEASE  
(INCLUDING PURCHASE OPTION)

This Memorandum of Lease is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between the City of Fresno, a municipal corporation, as landlord (the "City") and Garreks, Inc. as tenant ("Tenant").

On \_\_\_\_\_, City and Tenant entered into that certain Lease Agreement (the "Lease") by which Tenant agreed to lease the subject real property and improvements from Landlord (collectively, the "Premises"). Pursuant to the Lease, Tenant has an option to purchase the Premises. The Premises is located at the real property commonly known as the southwest corner of N. Brawley and West Herndon Avenues, Fresno, California, and is more specifically described on Exhibit A.

This Memorandum of Lease does not constitute the Lease and is only an abbreviated form containing a summary of only a few of the terms. In the event that there is any inconsistency between this Memorandum of Lease and the Lease, the terms of the Lease shall prevail over the terms of this Memorandum of Lease.

City of Fresno, a Municipal Corporation

By:  
Its:

**DRAFT**

GARREKS, INC., a  
California corporation

BY:  
ITS:

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

By  
(Deputy)

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By  
(Deputy/Assistant)

**DRAFT**

Exhibit A

Legal Description of the Property

DRAFT

EXHIBIT D  
PURCHASE AGREEMENT  
**AGREEMENT FOR DISPOSAL AND SALE OF PROPERTY  
AND ESCROW INSTRUCTIONS**  
**Southwest Corner of N. Brawley and W. Herndon Avenues**

**Garreks, Inc.**, hereinafter called the "Buyer," without regard to number or gender, hereby offers to purchase from the CITY OF FRESNO, a municipal corporation, (Seller) hereinafter called the "City," the hereinafter described property which is being purchased in fee simple on the following terms and conditions:

1. The City is currently the fee simple owner of that certain parcel of land situated in the City of Fresno, State of California, more particularly described as Assessors' Parcel Number 507-030-12 with a more generally known as of the southwest corner of N. Brawley and W. Herndon Avenues (the "Subject Property"). The Subject Property consists of 2.726+/- acres, and is more fully described in Exhibit "A" and depicted on Exhibit "B", made part of this agreement by this reference.

2. Consideration for the property having otherwise been paid pursuant to the Ground Lease between Buyer and Seller, the purchase price for the subject property shall be the sum of ONE AND 00/100 DOLLARS (\$1.00).

3. The sale shall be completed through an escrow to be opened at Fidelity National Title Company, 8050 N. Palm Avenue, Suite #110, Fresno, Ca 93711. Phone number is 559-431-8050. Bernadette Watson is the escrow officer. Said escrow shall be opened upon the following terms and conditions, and the Buyer and City by their signature to this Agreement make this paragraph their escrow instructions:

- a. Buyer shall deposit the entire sum specified in Paragraph 2 of this Agreement in escrow upon receipt of a demand and statement from Fidelity National Title Company.
- b. Escrow and title fees to be paid as customary. Escrow fee shall be paid by Buyer. City shall provide and pay for a CLTA insurance policy. Buyer has the option to pay for an ALTA policy. Recording fees to be paid for as customary.

- c. It is understood that Buyer shall be responsible for the payment of all taxes, penalties, redemptions, and costs allocable to the subject property from the date escrow closes.
  - d. Buyer fully understands the purchase of the subject property is an “**as is**” transaction. Buyer has the option of performing any environmental, pest, structural, roof, asbestos, lead paint or any other inspection at Buyer’s cost. Further Buyer has the option of making any necessary repairs or alterations at Buyer’s expense.
  - e. Disbursements of the purchase price to be in the amounts, at the times, and in all respects in accordance with the terms and conditions and subject to the limitations of this Agreement.
4. Miscellaneous Provisions:
- a. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provision of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
  - b. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement any rights and duties hereunder shall be in Fresno, California.
  - c. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

- d. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability or any one provision in this Agreement shall not affect the other provisions.
- e. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but rather by construing the terms in accordance with their generally accepted meaning.
- f. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
- g. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment.
- h. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- i. Exhibits and Attachments. Each Exhibit and Attachment referenced herein is by such reference incorporated into and made a part of this Agreement for all purposes.
- j. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

## DRAFT

This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Sellers.

5. Environmental Indemnity - Buyer shall indemnify, hold harmless, and defend the City, its officers, agents, employees, and volunteers from any liability, loss, fines, penalties, forfeitures, claims, expenses, and costs, whether incurred by the Buyer, or any other party, arising directly or indirectly from the release, presence or disposal of any hazardous substances or materials (as now or hereafter defined in any law, regulation, or rule) in, on, or about the Property during the Escrow Period. This indemnity shall include, without limitation, any claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), or any other federal, state or local law whether statutory or common law, ordinance, or regulation. Costs or losses covered will include, without limitation, consultants, engineering, investigator fees, clean up or disposal costs and attorneys' fees, and damages. Upon written notice from the City, the Buyer, at Buyer's sole cost and expense, shall immediately assume the defense of any claims, suit or action brought against the City by any public body, individual, partnership, corporation or other legal entity, relating to any matter covered by this paragraph. Buyer's obligations under this indemnity shall survive the close of escrow and the recording of the grant deed.

6. Time is of the essence of each and every term, condition, and covenant hereof.

7. It is understood and agreed that as a condition precedent hereto, this Agreement shall have no force and effect until approved by the Council for the City of Fresno. Upon its duly authorized execution within said time by the City, this Agreement shall become a contract for the sale and purchase of the subject property binding upon Buyer and City, their heirs, executors, administrators, successors in interest, and assigns.

**DRAFT**

This Agreement is executed by the City of Fresno by and through the City Manager or his designee of said City pursuant to authority granted by the Council of the City of Fresno on \_\_\_\_\_.

**SELLER**  
City of Fresno

**BUYER**  
Garreks, Inc., a California corporation

BY: \_\_\_\_\_  
Bruce Rudd, City Manager  
City of Fresno

BY: \_\_\_\_\_  
ITS: \_\_\_\_\_

Date \_\_\_\_\_

Address of City:  
City of Fresno  
2600 Fresno Street  
Fresno, CA 93721

Address of Buyer:  
Garreks, Inc.  
9468 N. Sommerville Drive  
Fresno, CA 93720

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By \_\_\_\_\_  
Deputy

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

By \_\_\_\_\_  
Deputy

APN 507-030-12



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## SCHEDULE 1

The project will consist of a gas station, convenience store and a mechanical car wash. All structures will share a common architectural theme, complimentary color palette and landscaping. Among other typical commodities, the convenience store will sell beer and wine. No adult magazines will be sold. Signage will be similar of such facilities. It is anticipated the project will meet all applicable development standards.

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