

Fill in this information to identify the case:

Debtor 1 Tricolor Auto Group, LLC
Debtor 2 _____
(Spouse, if filing)
United States Bankruptcy Court Northern District of Texas
Case number: 25-33496

FILED
U.S. Bankruptcy Court
Northern District of Texas
11/10/2025
Stephen J. Manz, Clerk

Official Form 410
Proof of Claim

04/25

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents**; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>DP Real Estate, LP</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>DP Real Estate, LP</u> Name <u>511 Auto Sales, Ltd</u> <u>San Antonio, TX 78212</u> Contact phone <u>210-386-9564</u> Contact email <u>paul55@dpr-group.com</u> Uniform claim identifier (if you use one): _____	Where should payments to the creditor be sent? (if different) _____ Name _____ Contact phone _____ Contact email _____
	4. Does this claim amend one already filed? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
	5. Do you know if anyone else has filed a proof of claim for this claim? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____		
7. How much is the claim?	\$ 314553.00	Does this amount include interest or other charges? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).	
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as healthcare information. Prepetition Lease payments and rejection damages pursuant to 11 USC 502 and 11 USC 365 _____		
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. Nature of property: <input type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ _____ Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable		
10. Is this claim based on a lease?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ 20600.00		
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____		

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. <i>Check all that apply.</i>	Amount entitled to priority
A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.	<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
	<input type="checkbox"/> Up to \$3,800* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
	<input type="checkbox"/> Wages, salaries, or commissions (up to \$17,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
	<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
	<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
	<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(_) that applies	\$ _____
* Amounts are subject to adjustment on 4/01/28 and every 3 years after that for cases begun on or after the date of adjustment.		

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(3) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157 and 3571.

Check the appropriate box:

- ☐ I am the creditor.
☒ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this Proof of Claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this Proof of Claim and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 11/10/2025
MM / DD / YYYY

/s/ Ronald J. Smeberg
Signature

Print the name of the person who is completing and signing this claim:

Name	<u>Ronald J. Smeberg</u>		
	First name	Middle name	Last name
Title	<u>Attorney</u>		
Company	<u>Smeberg Law Firm, PLLC</u>		
Address	Identify the corporate servicer as the company if the authorized agent is a servicer		
	<u>4 Imperial Oaks</u>		
	Number Street		
	<u>San Antonio, TX 78248</u>		
Contact phone	City State ZIP Code		Email
	<u>8326056769</u>		<u>ron@smeberg.com</u>

COMMERCIAL LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made and entered into on this 26th day of August, 2024, by and between DP REAL ESTATE I.P, a Texas limited liability partnership (the "Lessor"), and TRICOLOR AUTO GROUP, LLC, a Texas limited liability company (the "Lessee").

Lessor leases to Lessee and Lessee leases from Lessor, upon and subject to the terms, conditions, covenants and provisions hereof, the building space (the "Building") situated at 11150 I-35 in the City of San Antonio, Bexar County, Texas, along with the real property upon which it is situated (the "Land"), more particularly described in Exhibit "A" attached hereto, along with the fixtures and equipment identified on Exhibit "B" (collectively "Equipment"). (The Building, Land, and Equipment shall collectively be referred to as the "Property".) Lessee acknowledges that all the equipment referenced on Exhibit "B" belongs to either Lessor or vendors, and disclaims any interest thereto.

I. **TERM.** The term of this Lease shall commence on September 1, 2024 (the "Commencement Date"), and end on August 30, 2029, unless terminated earlier as provided in this Lease.

Any holding-over shall be considered as tenancy-at-will and shall at the option of Lessor be at the rate of one hundred fifty percent (150%) of the rent in effect during the term just expired. Notwithstanding any other interpretation of the expiration of any term of this Lease, nothing herein shall be construed to permit the tenancy of the Lessee beyond the expiration of the current term.

II. **RENT.**

Beginning November 1, 2024, Lessee agrees to pay minimum base rental to Lessor of Twenty Thousand and 00/100 Dollars (\$20,000.00) per month during the term of this Lease. Rental payments shall be due and payable in advance on the 1st day of each and every month with time being of the essence. Lessee shall be liable for and Lessor may collect a late charge of \$600.00 if Lessee fails to pay the same within five (5) days after the date that such installment is due, such charge to be in addition to and not in lieu of any other remedy of Lessor hereunder. If applicable, the first monthly installment shall be pro-rated. Lessee's obligations to pay the minimum base rental and additional rent hereunder are absolute and unconditional, and except as expressly set forth hereinbelow shall not be subject to any abatements, offsets, discounts, or reductions of any kind whatsoever. The parties hereto specifically agree that Lessee's covenants to pay the minimum base rental or any other payments required of it hereunder, including additional rent, are independent of all other covenants and agreements herein contained, and no claimed breach or default on the part of Lessor will justify or excuse Lessee's failure to make the rental payments on the dates specified.

All rents and other moneys due to Lessor hereunder shall be payable at the notice address set forth below or at such other place as Lessor may, from time to time, designate in writing.

III. CHARACTER OF OCCUPANCY. The Property is leased for the purpose of operating a used auto sales business and only for such purpose. Without limitation of the foregoing, the Property shall not be used for (a) the purpose of operating any illegal gaming facility, including but not limited to the use of eight-liners for the distribution of cash or other prizes which have been deemed illegal or are otherwise prohibited under federal or state gaming laws, or (b) the sale, display, or use of synthetic drugs, water pipes, bongs, scales, hash oil, products or materials utilized for the making, using, or concealing drugs, or drug paraphernalia items as defined under the Texas Controlled Substances Act. The Property shall not be used in any manner that shall constitute nuisance, either public or private, affecting either the public or a private person property.

Lessee shall use and maintain the Property and all business conducted by Lessee within the Property in compliance with all laws, ordinances, building codes, rules and regulations, present or future, of all federal, state, municipal and other governmental authorities and their authorized agencies, including all of the foregoing pertaining to health, safety, disabled persons and the environment ("Applicable Laws"). Without limiting the foregoing, Lessee shall be responsible for determining that its proposed use of the Property is permitted by Applicable Laws, and Lessee shall procure at its sole expense any permits and licenses required for its use of the Property. At Lessor's request, Lessee shall deliver to Lessor copies of all such permits and licenses and proof of Lessee's compliance with all Applicable Laws.

IV. LIABILITY AND INDEMNIFICATIONS:

4.1 Lessor shall not be liable for any damage to or loss of Lessee's merchandise, fixtures, inventory, equipment or other personal property placed in, on or about the Property by Lessee or others, resulting from fire, theft, explosion, flood, windstorm or other casualty caused by Acts of God or by operations during construction of any public or quasi-public work. All property kept or stored within the Property shall be kept or stored at the risk of Lessee only, and Lessee shall hold Lessor harmless from any claims arising out of damage to the same, including subrogation claims by Lessee's insurer, if any.

4.2 Lessee shall give immediate notice to Lessor in the event of fire or theft, accidents or casualties within the Property, and further, Lessee shall give immediate notice to Lessor of any defects in any of the fixtures or equipment located within the Property.

4.3 Excluding gross negligence or willful misconduct on the part of the indemnitee, Lessee shall and will indemnify, defend and save harmless Lessor from and against any and all liability, claims, demands, expenses, fees, fines, penalties, suits, proceedings, actions and, causes of action of any and every kind and nature arising or growing out of or in any way connected with Lessee's use, occupancy, management or control of the Property and Lessee's operations or activities whether or not occurring or resulting in damage or injury within the Property. SUCH INDEMNITY SHALL APPLY REGARDLESS OF ANY JOINT, CONCURRENT, COMPARATIVE OR CONTRIBUTORY NEGLIGENCE OF ANY INDEMNIFIED PERSON, AND REGARDLESS OF STRICT LIABILITY THAT MAY OTHERWISE BE IMPOSED ON ANY INDEMNIFIED PERSON, BUT WILL NOT APPLY IF AND TO THE EXTENT ANY

CLAIM RESULTS SOLELY FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNIFIED PERSON. This obligation to indemnify shall include reasonable legal and investigation costs and all other reasonable costs, expense and liabilities from the first notice that any claim or demand is to be made or may be made. Lessee acknowledges that the foregoing provisions shall apply to matters arising and become effective from, after the date Lessee or its agents enter the Property. Lessee's obligation to observe and perform any of the provisions of this Article 4.3 shall survive the expiration of the Term or the earlier termination of this Lease.

4.4 Anything in this Lease to the contrary notwithstanding, Lessor and Lessee hereby waive and release each other of and from any and all right of recovery, action or cause of action, against each other, their agents, officers and employees, for any loss or damage that may occur to the Property, improvements to the Building or personal property within the Building, by reason of fire or the elements, regardless of cause or origin, including negligence of Lessor or Lessee and their agents, officers and employees. Lessor and Lessee agree immediately to give their respective insurance companies which have issued policies of insurance covering all risk of direct physical loss, written notice of the terms of the mutual waivers contained in this Section, and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of the mutual waivers.

V. **UTILITY CHARGES.** Lessee shall pay promptly as they become due all charges for the furnishing of water, electricity, garbage service, sewer, natural gas, and other public utilities to the Property during the term of the Lease.

VI. **SURRENDER OF PROPERTY:** Lessee covenants and agrees that it will, at the termination of this Lease, in whatever manner such termination occurs, promptly surrender the Property and deliver same to Lessor thoroughly cleaned, and in good condition, ordinary wear and tear excepted. Any alterations, physical additions, improvements, and fixtures, including but not limited to trade fixtures, added to or installed by either party hereto shall remain upon and be surrendered with the Property and become the property of Lessor upon the expiration or earlier termination of this Lease without credit to Lessee; provided, however, Lessor, at its option, may require Lessee to remove any physical improvements or additions and/or repair any alterations in order to restore the Property to the condition existing at the time Lessee took possession, all costs of removal and/or alterations to be borne by Lessee. This clause shall not apply to moveable equipment, furniture or moveable trade fixtures owned by Lessee, which may be removed by Lessee at the end of the term of this Lease if Lessee is not then in default.

VII. **ALTERATIONS AND IMPROVEMENTS.** Lessee shall be permitted to make non-structural improvements up to \$250,000 without Landlord's consent; however, Lessee shall not make or allow to be made any structural alterations, physical additions or improvements in or to the Property without first obtaining the written consent of Lessor, which consent may not be unreasonably withheld. Prior to making any alterations or repairs to the premises which will involve the alteration or removal of plumbing, electrical wiring, air conditioning, heating or ventilation systems, or the fire sprinkler systems, Lessee shall furnish Lessor with a set of the plans and specifications for the alterations or repairs and shall not commence any such work without Lessor's express written approval. Any alterations, physical additions, improvements, and fixtures,

including but not limited to trade fixtures, added to or installed by either party hereto shall remain upon and be surrendered with the Property and become the property of Lessor upon the expiration or earlier termination of this Lease without credit to Lessee; provided, however, Lessor, at its option, may require Lessee to remove any physical improvements or additions and/or repair any alterations in order to restore the Property to the condition existing at the time Lessee took possession, all costs of removal and/or alterations to be borne by Lessee. This clause shall not apply to moveable equipment, furniture or moveable trade fixtures owned by Lessee, which may be removed by Lessee at the end of the term of this Lease if Lessee is not then in default. Lessee shall not have authority or power, express or implied, to create or cause any mechanic's or material men's lien, charge or encumbrance of any kind against the Property. Lessee shall promptly cause any such liens that have arisen by reason of any work claimed to have been undertaken by or through Lessee to be released by payment, bonding or otherwise within thirty (30) days after request by Lessor, and shall indemnify Lessor against losses arising out of any such claim (including, without limitation, reasonable legal fees and court costs).

Lessee shall hold harmless and indemnify Lessor from and against any and all loss, liability, damage and/or expenses which Lessor, its principals, agents, employees, or other Lessees may incur on account of death, bodily injury or property damage caused by, arising out of or occurring in relation to Lessee's work and/or the acts or omissions of Lessee, its contractors and its or their subcontractors.

VIII. CONDITION OF PREMISES. Lessee stipulates that they have examined the leased premises as well as all buildings and improvements located on the leased premises, and they are all, at the date of this Lease, in good order and repair and in a safe and clean condition. Lessee accepts the Property and Equipment in the "As Is" condition, with no warranties of any kind written or implied. Lessee shall pay for the filing fee and the necessary repairs for obtaining a certificate of occupancy. **EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS LEASE, LESSOR HAS NOT MADE, IS NOT MAKING AND SPECIFICALLY DISCLAIMS ANY WARRANTIES, REPRESENTATIONS, GUARANTEES OR ASSURANCES, EXPRESS OR IMPLIED, REGARDING THE PROPERTY AND EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, WARRANTIES, REPRESENTATIONS, GUARANTEES AND ASSURANCES REGARDING (I) ENVIRONMENTAL CONDITION, (II) QUALITY, NATURE, ADEQUACY OR PHYSICAL CONDITION, (III) VALUE, PROFITABILITY, SUITABILITY, MERCHANTABILITY, MARKETABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR AGAINST INFRINGEMENTS; OR (IV) COMPLIANCE WITH ANY GOVERNMENTAL CONSTITUTION, STATUTE, LAW, ORDINANCE, CODE, REGULATION, RULE, ORDER RULING, DECREES OR JUDGMENT OR ANY COVENANT, CONDITION, RESTRICTION OR OTHER ENCUMBRANCE. LESSEE (I) AGREES TO THE DISCLAIMER SET FORTH IN THIS PARAGRAPH, AND (II) ACCEPTS THE PROPERTY AND EQUIPMENT. "AS-IS, WHERE-IS", WITH ALL FAULTS AND DEFECTS (LATENT OR PATENT).**

LESSEE IS NOT RELYING (AND WILL NOT RELY IN THE FUTURE), AND HEREBY EXPRESSLY DISCLAIMS RELIANCE ON ANY STATEMENTS, FACTS OR REPRESENTATIONS, ORAL OR WRITTEN, EXCEPT FOR THOSE MATTERS

SPECIFICALLY SET FORTH IN THE LEASE.

Lessee shall comply at its sole cost and expense with all laws, ordinances, and regulations applicable to the leased premises. Lessee shall also comply at its expense with all laws and, ordinances, and regulations relating to the Americans with Disabilities Act (ADA).

IX. MAINTENANCE OF PREMISES BY LESSEE. During the term of this Lease, Lessor shall maintain and repair the roof of the Building, provided that any damages caused thereto by Lessee shall be the sole responsibility of Lessee. During the term of this Lease, Lessee shall maintain and repair all other aspects of the Property and Equipment at Lessee's own cost and expense, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, including but not limited to the foundation, plate glass, plumbing, , lines and , electrical, heating, air conditioning, parking lot, walls, pipes and fixtures belonging thereto and the signs and facie in, on and around the Building and will keep same in good repair and condition. Lessor and its agents may enter upon and inspect the Property at any time during the term of this Lease at any reasonable hour. When used in this Article IX the term "repair" shall include all necessary replacements, renewals, alterations, additions and betterments. All repairs shall be equal in quality and class to the original work. If Lessee fails, refuses or neglects to make repairs or maintain the Property in a manner reasonably satisfactory to Lessor in accordance with the terms of this Lease, Lessor shall have the right, upon giving Lessee five (5) days written notice, to complete such repairs. In such event said work shall be paid for by Lessee as additional rent immediately upon receipt of a bill therefore.

Lessee covenants and agrees that it will at all times keep the Property in a clean, neat and sanitary condition and it will comply with all laws, ordinances, rules and regulations made by any governmental authority applicable to the occupancy or use of the Property including all laws, rules and regulations respecting fire and fire hazards.

X. EQUIPMENT. Lessee agrees that all furniture, fixtures, and equipment located at the Property including but not limited to the Equipment, will be used by Lessee for the ordinary and usual work for which it is designed. During the term of this Lease, Lessee will be responsible for and will pay all charges for upkeep, repair, replacement, and maintenance of the Equipment and will keep the same in proper condition and good running order, ordinary wear and tear to the condition excepted. At the end of the Lease term or upon any other termination, Lessee shall redeliver the Equipment (or its replacements) to Lessor in the same condition as when delivered to Lessee, ordinary wear and tear excepted. It being understood that Lessee is responsible for damage caused by accident, negligence, fire, the elements, or other cause, or by failure by Lessee to make repairs or replacements of the Equipment as needed.

XI. INSURANCE.

11.1 (a) During the Term of this Lease, Lessee shall at Lessee's sole cost and expense procure and maintain in full force and effect with respect to the Building and/or Property, as applicable: (i) a policy or policies of property insurance against all risk of loss or damage (including loss or damage by fire and other perils included within the classification "All Risks of Physical Loss", vandalism and malicious mischief, collapse, lightning, windstorm, hail, explosion,

riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke and water damage and against such other risks as are normally or customarily insured against by owners or operators of similar properties, or to the extent Lessor reasonably deems prudent and/or to the extent required by any mortgagee); and (ii) a policy of commercial liability insurance insuring Lessor's activities with respect to the Property for loss, damage or liability for personal injury or death of any person or loss or damage to property occurring in, upon or about the Property. All such coverage shall be in amounts at all times sufficient to prevent Lessor or Lessee, as applicable, from becoming a co-insurer under the terms of the applicable policies, but in any event in amounts not less than the replacement value of the Building. Each policy or policies shall contain a replacement cost endorsement. At Lessor's option, Lessor may obtain the insurance required hereinabove and Lessee shall reimburse Lessor for all insurance described within this Section 11.1(a) within 30 days of receiving a written request from Lessor along with documentation sufficient to support the amount requested to be reimbursed.

(b) Lessee shall, at its sole cost and expense (in addition to the minimum monthly base rental), provide commercial general liability insurance, written on an occurrence basis, protecting and indemnifying Lessor, Lessee, any mortgagee and others having an insurable interest, against any and all claims (including all costs and expenses of defending against same) for bodily injury, disease or death and for damage or injury to or destruction of property (including loss of the use) occurring on, in or about the Property, which insurance shall have a general aggregate and an each occurrence limit of not less than \$2,000,000.00, and shall include liquor liability coverage.

(c) Lessee shall maintain insurance against loss or damage to such furniture, furnishings, fixtures, equipment and other items (whether personally or fixtures) at the Property, including the Equipment and any personal property owned by Lessee from time to time, to the extent applicable, in the amount of the cost of replacing the same. Each policy or policies shall contain a replacement cost endorsement.

11.2 All insurance required pursuant to the terms hereof shall be for a term of not less than one (1) year and shall be effected under valid and enforceable policies in form and substance reasonably satisfactory to Lessor and shall be issued by insurers of recognized responsibility which are permitted and authorized to write policies in the State in which the Property are located. Each policy shall provide that it may not be materially changed or cancelled as to the interest of Lessor and its beneficiaries (and where such policies cover a mortgagee, as to the interest of such mortgagee), until at least thirty (30) days after receipt by Lessor and such mortgagee of registered or certified mailing of notice of such change or cancellation and shall further provide that any loss otherwise payable under the policy shall be payable notwithstanding any negligent act or omission of Lessor or Lessee which might, absent such agreement, result in a forfeiture of all or part of the payment of such loss. Each such policy shall name Lessor as the loss payee (with respect to damage and destruction to the Property) and as an additional insured (with respect to liability coverage) and shall also contain such loss payee and mortgagee endorsements as Lessor shall require.

Originals or "ACORD" certificates of all policies required pursuant to Section 11.1 above, properly executed or certified by the insurers, shall be promptly delivered to Lessor. In the case of a renewal or replacement policy, the copy shall be delivered to Lessor at least 30 days prior to

expiration of the existing policy. On request, Lessee shall furnish receipted bills or other proof, reasonably satisfactory to Lessor, of the payment of the premiums for all insurance policies at any time required to be effected and maintained under this Lease.

Except to the extent of any deductibles under an insurance policy, Lessor and Lessee hereby release each other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any of the extended coverage or supplementary contract casualties, even if such fire or other casualty shall have been caused by the fault or negligence of the other party or anyone for whom such party may be responsible. All fire and extended coverage insurance carried either by Lessor or Lessee covering losses arising out of the destruction of or damage to the premises or its contents shall provide for a waiver of rights of subrogation against Lessor and Lessee on the part of the insurance carrier.

11.3 At Lessor's option, all payments for hazard insurance shall be paid in monthly installments in accordance with the requirements of Article 28.12 below.

XII. EVENTS OF DEFAULT, REMEDIES, AND DAMAGES

12.1 The following events shall be deemed to be an "Event of Default" by Lessee under this Lease:

(a) Failure of Lessee to pay when due any installment of rent or any other sums or charges due under this Lease, and failure to cure such failure within seven (7) days after written notice of such failure, provided that notice and opportunity to cure shall only be afforded to the Lessee once in any calendar year.

(b) Failure of Lessee to comply with any term, provision, or covenant of this Lease, other than those set forth in Articles 12.1(a), (c), (d), (e), (f), (g) or (h) and the failure to cure or commence to cure that breach within fifteen (15) days after written notice of the breach to Lessee.

(c) Insolvency of Lessee, a transfer by Lessee in fraud of creditors, or assignment by Lessee for the benefit of creditors.

(d) Commencement by or against Lessee proceedings in bankruptcy, or for reorganization of Lessee, or for the re-adjustment or arrangement of Lessee's debts, whether under the Bankruptcy Act of the United States of America or under any other law, whether State or Federal, now or hereafter existing for the relief of debtors, or commencement of any analogous statutory or nonstatutory proceeding involving Lessee. The acceptance by Lessor of Lessee's monthly payment as provided in this Lease subsequent to the occurrence of any such event of default, or that set forth in subparagraph (c) below, shall be as compensation for use and occupancy of the leased premises, and shall in no way constitute a waiver by Lessor of its right to exercise any of the remedies provided below on the occurrence of any event of default.

(e) Appointment of a Receiver or Trustee for all or substantially all of the assets of Lessee.

(f) If Lessee fails to comply with the covenants of Article 26 herein.

(g) Default by Lessee under that certain promissory note of even date herewith payable to the order of Howdy Partners, Inc. in connection with the purchase of the business located upon the Property.

12.2 This Lease and the term and estate hereby granted and the demise hereby made are subject to the limitation that if and whenever any Event of Default shall occur, after such notice, if any, as is provided in Section 12.1, Lessor may, at its option, in addition to all other rights and remedies given hereunder or by law or equity, do any one or more of the following:

(a) Terminate this Lease or Lessee's right to possession of the leased premises; in either event, Lessee shall immediately surrender possession of the leased premises to Lessor; or

(b) Enter upon and take possession of the leased premises and expel or remove Lessee and any other occupant therefrom, with or without having terminated the Lease; or

(c) Alter locks and other security devices at the leased premises. In the event Lessor exercises its rights to alter the locks at the leased premises, Lessor shall only be required to provide Lessee with a new key during Lessor's regular business hours, provided that in no event shall Lessor be required to provide Lessee a new key until such time as Lessee cures all defaults under the Lease (whether Lessee has been previously notified of such defaults and whether any applicable cure period has expired) and, if required by Lessor, Lessee pays to Lessor as a security deposit an amount equal to twice the monthly minimum base rental due hereunder.

Exercise by Lessor of any one or more remedies granted or otherwise available shall not be deemed to be an acceptance of surrender of the leased premises by Lessee, whether by agreement or by operation of law, it being understood that such surrender can be effected only by the written agreement between Lessor and Lessee.

Upon the occurrence of an Event of Default, provided Lessor has given the notice required in this Lease, Lessor shall not be obligated to give any additional notice prior to exercising any available remedy. Lessee hereby waives any and all notices required under statutory or common law in favor of the notices set forth herein. To the extent of any inconsistency between this Lease and any statutory or common law, and to the extent permitted under applicable law, this Lease shall prevail.

If Lessee should fail to make any payment or cure any default hereunder within the time herein permitted, Lessor, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account of Lessee (and enter the leased premises for such purpose), and thereupon Lessee shall be obligated to, and hereby agrees to pay Lessor, upon demand, all costs, expenses and disbursements incurred by Lessor in taking such remedial action.

12.3 In the event Lessor elects to terminate this Lease due to an Event of Default or in the event Lessor elects to terminate Lessee's right to possession of the leased premises without terminating this Lease, Lessee shall be liable for all rent and other indebtedness accrued to the date of such termination, plus such future rent and other indebtedness as would otherwise have been required to be paid by Lessee to Lessor during the balance of the Lease. Actions to collect amounts due may be brought from time to time during the aforesaid period, on one or more occasions, without the necessity of waiting until expiration of such period. In case of an Event of Default, Lessee shall be liable for and shall pay to Lessor, in addition to all other amounts due under this Lease: (i) broker's fees incurred by Lessor in connection with reletting the whole or any part of the leased premises; and (ii) the costs of repairing or otherwise putting the leased premises into condition acceptable to a new Lessee or Lessees; and (iii) all reasonable expenses incurred by Lessor in enforcing Lessor's remedies.

12.4 In the event Lessor shall have recaptured possession of the leased premises due to an Event of Default Lessor, shall have a duty to make a "reasonable attempt" to relet the leased premises. Lessor shall not be liable, nor shall Lessee's obligations hereunder be diminished, because of Lessor's failure to actually relet the leased premises or collect rent due with respect to such reletting so long as Lessor has fulfilled its duty under this Section. Lessor shall be deemed to have made a "reasonable attempt" to relet the leased premises by doing the following: (i) posting a "For Lease" sign on the leased premises that includes Lessor's telephone contact number; and (ii) showing the availability of the leased premises for lease on Lessor's internal computer system so as to alert Lessor's leasing executives. Lessor shall not be required to give any preference or priority to the leasing of the leased premises over any other space that Lessor may have available. Lessor shall not be required to: (a) accept any proposed Lessee unless such Lessee has a credit-worthiness acceptable to Lessor in its sole discretion; or (b) accept any proposed Lessee unless such Lessee leases the entire leased premises upon terms and conditions satisfactory to Lessor, in Lessor's sole discretion, having taken into consideration all expenditures for requested Lessee improvements, broker's commissions and any other leasing cost. Any proceeds received from reletting the leased premises shall first be applied toward any costs or expenses incurred by Lessor as a result of the Event of Default, including but not limited to leasing and brokerage fees (including expenses to third party brokers, to Lessor's affiliates or employees of Lessor and its affiliates), attorney fees, and construction expenses (whether paid to a third party contractor or given as a construction allowance to the successor occupant of the leased premises). In no event shall Lessee be entitled to any excess of rent (or rent plus other sums) obtained by reletting the leased premises over and above the rent herein reserved.

XIII. **LANDLORD'S LIEN** Lessee hereby grants to Lessor a valid first security interest on all the goods, inventory, chattels, furniture, trade fixtures, and property that Lessee may own and have on the leased premises at any time or times during the term of this Lease, as well as on the proceeds of any insurance accruing to Lessee by reason of any destruction of or damage to any such property, to secure all rents and other sums due or to become due Lessor under this Lease, any and all exemption laws being expressly waived in favor of the security interest. It is agreed that this express security interest shall not be construed as a waiver of any statutory or other liens given or that may be given to Lessor, but shall be in addition to any such statutory or other lien. It is agreed that in the event of default by Lessee under this Lease, Lessor shall have and be entitled

to exercise all right and remedies provided or granted to a secured party after default under the Uniform Commercial Code with respect to any and all personal property on the premises, including, without limitation, the right to take and retain possession of any or all such property and to sell or otherwise utilize such property at public or private sale or in any other manner authorized or provided in the Uniform Commercial Code. On request by Lessor, Lessee agrees to execute and deliver to Lessor from time to time such UCC Financing Statements as Lessor may deem necessary to perfect the security interest of Lessor in the property described above and the proceeds of such property under the provisions of the Uniform Commercial Code in force in the State of Texas.

XIV. NO WAIVER OF DEFAULT: No acceptance of rent (whether with or without the aforesaid charges for late payment of rent) by Lessor or delay in enforcing any obligation shall be construed as a waiver of any default then, therefore, or thereafter existing in the performance of any other obligation undertaken by Lessee. No forfeiture of this Lease shall release Lessee from responsibility or liability to Lessor for rents therefore due and unpaid or from the performance of any covenants, agreements or stipulations herein by Lessee undertaken to be kept and performed.

XV. ASSIGNMENT AND SUBLETTING: Lessee shall not assign, pledge or encumber this Lease, or sublet the whole or any part of the premises without the prior written consent of Lessor, which consent may withheld at Lessor's sole and absolute discretion. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law. In the event of any assignment or subletting of this Lease made with or without Lessor's consent, Lessee, as well as any guarantor of Lessee's obligations, shall nevertheless remain liable for the performance of all of the terms, conditions, and covenants of this Lease. Any such assignment or subletting without the prior written consent of Lessor shall be void, shall constitute a default of the Lease by Lessee, and shall entitle Lessor to exercise its rights and remedies under Section 12.2, including termination of the Lease.

If Lessee is a corporation, partnership or other entity and if at any time during the term of this Lease the person or persons who own a majority of either the outstanding voting rights or the outstanding ownership interests of Lessee at the time of the execution of this Lease cease to own a majority of such voting rights or ownership interests or otherwise lose control (except as a result of transfers by devise or descent), the loss of a majority of such voting rights or ownership interests will be deemed an assignment of this Lease by Lessee and, therefore, subject in all respects to the provisions of Article 15 hereinabove. The previous sentence does not apply, however, if at the time of the execution of this Lease, Lessee is a corporation and the outstanding voting shares of capital stock of Lessee are listed on a recognized security exchange or over-the-counter market.

XVI. ATTORNEY'S FEES. If, on account of any breach or default by Lessee in Lessee's obligations under this Lease, it shall become necessary for Lessor to employ an attorney to enforce or defend any of Lessor's rights or remedies, Lessee agrees to pay any reasonable attorney's fees incurred by Lessor for that purpose.

XVII. CONDEMNATION. If during the term hereof, all of the buildings Leased to Lessee shall be taken for public or quasi-public purposes, this Lease shall there upon terminate and the rent shall be prorated to the date of said termination; however, if only a part of said building

be taken and such partial taking does not in Lessee's reasonable judgment interfere with Lessee's business, this Lease shall cease only as to the part of the building so taken and shall continue as to the part not taken and the rent herein reserved shall be abated in the proportion that the value of the portion so taken bears to the value of the total area of the building hereby leased.

All awards arising from a total or partial taking of the Property and the leasehold estate, or a taking for temporary use, shall belong to and be the property of Lessor without any participation by Lessee. Lessee shall not be entitled to, and expressly waives all claim to, any such compensation. Lessee shall have the right to make an independent claim for Lessee's trade fixtures, removable personal property, and any improvements Lessee has constructed or installed upon the site.

XVIII. TAXES; LESSEE'S BUSINESS TAXES, LICENSES AND PERMITS.

Lessee shall pay prior to delinquency, all real estate and other ad valorem taxes and assessments of every kind and nature with respect to the Property. All tax payments required herein shall be paid in advance in monthly installments in accordance with the requirements of Article 28.12 below.

Lessee shall, at its expense, procure and keep in full force and effect, any and all governmental licenses and permits required for the conduct of Lessee's business on the Property, and shall at all times, comply with the requirements of each such license and/or permit.

Lessee shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, as well as upon its leasehold interest, trade fixtures, furnishings, equipment, leasehold improvements made by Lessee, alterations, changes and additions made by Lessee, merchandise and personal property of any kind owned, installed or used by Lessee in, on or upon the Property, including but not limited to the Equipment.

If there is presently in effect or hereafter adopted any nature of sales tax or use tax or other tax on rents or other sums received by Lessor under this Lease (herein referred to as "Rent Sales Tax"), then in addition to all rent and other payments to be made by Lessee as provided above, Lessee will also pay Lessor a sum equal to the amount of such Rent Sales Tax. Any Rent Sales Tax shall be due and owing and paid to Lessor at the same time that the rent or other sums for which such Rent Sales Tax is assessed becomes due and payable. The term "Rent Sales Tax" shall not include any income taxes applicable to Lessor.

Lessee agrees that it is solely responsible and shall pay as it becomes due all personal property taxes on the contents and inventory during the term of this Lease, including but not limited to the Equipment.

XIX. DAMAGE BY CASUALTY. If all or any part of the Building is damaged by fire or other casualty, Lessee will immediately notify Lessor in writing. Lessor will have the right to terminate this Lease if (1) the Building is damaged so that, in Lessor's judgment, substantial alteration or reconstruction of the Building will be required (whether or not the leased premises have been damaged), (2) Lessor is not permitted by Law to rebuild the Building in substantially

the same form as existed before the fire or casualty, (3) the premises have been materially damaged and there are less than two years of the Term (excluding any unexercised renewal options) remaining on the date of the casualty, (4) any mortgagee requires that the insurance proceeds be applied to the payment of the mortgage debt, or (5) an uninsured loss of the Building occurs. Lessor may exercise its right to terminate this Lease by notifying Lessee in writing within 60 days after the date of the casualty. If Lessor does not terminate this Lease under this Section, Lessor will commence and proceed with reasonable diligence to repair and restore the Building or the premises to substantially the same condition as existed immediately before the date of damage; however, Lessor will only be required to reconstruct building standard leasehold improvements existing on the premises as of the date of damage, and Lessee will be required to pay the cost for restoring any other leasehold improvements. In no event will Lessor be required to spend more than the insurance proceeds received by Lessor.

If all or any part of the Building is damaged as a result of fire or other casualty, Lessor will, with reasonable promptness, cause an architect or general contractor to provide Lessor and Lessee with a written estimate of the amount of time required to substantially complete the repair and restoration of the Premises, using standard working methods ("Completion Estimate"). If the Completion Estimate indicates that the Premises cannot be made leaseable within one hundred eighty (180) days after the date of damage, then regardless of anything hereinabove to the contrary, either party will have the right to terminate this Lease by giving written notice to the other within ten (10) days after receiving the Completion Estimate. Lessee, however, shall not have the right to terminate this Lease if the casualty was caused by the negligence or intentional misconduct of Lessee, Lessee's employees, members, officers, directors, invitees, contractors, subcontractors, customers, or any Lessee related parties. If neither party terminates this Lease under this Section, Lessor will repair and restore the Premises in accordance with the proceeding paragraph.

Lessor shall allow Lessee a fair diminution of the minimum monthly rental during the time the premises are unfit for occupancy in proportion to the unuseable square footage in the Building; provided, that if such casualty was caused by Lessee, its agents, employees, licensees or invitees, minimum monthly rental shall be abated only to the extent Lessor is compensated for such minimum monthly rental by loss of rents insurance, if any. There shall be no abatement of any other amounts payable by Lessee under the terms of this Lease. Lessor will not be liable for any loss or damage to Lessee's property or to the business of Lessee resulting in any way from the fire or other casualty or from the repair and restoration of the damage. Lessor and Lessee waive the provisions of any Law relating to the matters addressed in this Article and agree that their respective rights for damage to or destruction of the premises will be those specifically provided in this Lease.

XX. **TEXAS LAW.** This Lease shall be construed under and in accordance with the law of the State of Texas, and all obligations of the parties created under this Lease are performable in Bexar County, Texas.

XXI. **LEGAL CONSTRUCTION.** In case any one or more of the provisions contained in the 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 provision of this Lease, and this Lease must be construed as if the invalid, illegal, or unenforceable provision had never

been contained in this Lease.

XXII. PRIOR AGREEMENTS SUPERSEDED. This Lease constitutes the only agreement of the parties to this Lease and supersede any prior understandings or written or oral agreements between the parties respecting this subject matter.

XXIII. NOTICES. Notices to be given hereunder shall be deemed so given when delivered to such other party personally, or two (2) days subsequent to the deposit of the matter in the United States Mail, Certified Mail Return Receipt Requested. Notice to be given by any party hereto shall be in writing and shall be given or addressed if to Lessor at 511 West French Place; San Antonio, Texas 78212 ; and if to Lessee at 6021 Connection Dr, 4th Floor, Irving, Texas 75039; or to such other addresses as the respective parties may in writing designate.

XXIV. ENVIRONMENTAL ISSUES AND INDEMNITY. During the term of this Lease and any extensions hereof, Lessee shall not transport, store, treat or dispose, nor allow or arrange for any third parties to transport, store, treat or dispose of Hazardous Materials (as defined hereinbelow) or other waste upon the Property, except in compliance with Applicable Environmental Laws (as defined hereinbelow). LESSEE HEREBY INDEMNIFIES, DEFENDS, AND HOLDS LESSOR, LESSOR'S LENDER(S), PARTNERS, REPRESENTATIVES, ATTORNEYS, EMPLOYEES AND ANY OTHER PARTIES HAVING AN OWNERSHIP INTEREST IN THE PROPERTY ("LESSOR PARTIES"), HARMLESS FROM AND AGAINST, AND AGREES TO REIMBURSE LESSOR WITH RESPECT TO, ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LOSS, DAMAGE, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEY'S FEES AND COURT COSTS) OF ANY KIND OR CHARACTER, KNOWN OR UNKNOWN, FIXED OR CONTINGENT, ASSERTED AGAINST OR INCURRED BY LESSOR OR THE LESSOR PARTIES UNDER ANY APPLICABLE ENVIRONMENTAL LAWS ARISING FROM THE ACTS, OMISSIONS OR OPERATIONS OF LESSEE. This indemnification includes any matters arising out of any act, omission, event, circumstance involving Hazardous Materials and occurring on or in relationship to the Property or the operation of the Property (including the presence on the Property or the release from or on the Property or delivery to the Property, of any Hazardous Materials) regardless of whether the act, omission, event, or circumstance constituted a violation of any Applicable Environmental Laws at the time of existence or occurrence and regardless of whether such act, omission or operation of Lessee occurred before, during or after the Term. The term "Hazardous Materials" means any substance, material, or waste that is or becomes regulated under any public health or environmental law by any local authority, the State of Texas, or the United States Government, including any material or substance (i) designated as "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Sect. 1251 et. seq. (33 U.S.C. Sect. 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Sect. 1317); (ii) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sect. 6901-6991i (42 U.S.C. Sect. 6903) or (iii) defined as a "hazardous waste" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sect. 9601-9675 (42 U.S.C. Sect. 9601), including asbestos and polychlorinated biphenyls; and (iv) petroleum or a petroleum distillate. The statutes cited in this paragraph, together with any other federal, state or local law or regulation relating to health or the environment, and applicable to either Lessee or the Property, or both, are hereinafter referred to as "Applicable Environmental

Laws." Lessee's indemnity obligation shall continue after the termination of this Lease.

Lessee shall, at its sole cost and expense, comply with all Applicable Environmental Laws. Lessee shall promptly provide Lessor with copies of all written communications, permits, reports, sampling results, or agreements with and/or from any governmental authority or agency (federal, state, local, or foreign) or any other person or entity relating in any way to the presence, release, threatened release, placement on or in the Property, or the manufacturing, emission, generation, transportation, storage, treatment, handling or disposal at or from the Property, of any Hazardous Materials, including without limitation, the improper or unpermitted discharge of any substance into the local publicly owned water treatment facility (if any). If Lessor reasonably believes that Lessee has not complied or is not complying with any applicable Applicable Environmental Laws, rules or permits relating in any way to the presence of Hazardous Materials on the Property, and Lessor has requested and Lessee has failed, within thirty (30) days after written request therefor by Lessor, to furnish Lessor with results of appropriate tests, then, Lessor and its agents and employees shall have the right to enter the Property and/or conduct appropriate audits or evaluations (including, without limitation, soil and/or surface or groundwater sampling) for the purpose of ascertaining that Lessee complies with this Section 24. Any such entry and audits or evaluations shall be done in a manner reasonably intended to minimize interference with Lessee's normal business operations and upon not less than two (2) days prior written notice.

If the presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment, or disposal at or from the Property of any Hazardous Materials (a) gives rise to liability (including, but not limited to, a response action, remedial action, removal action, or enforcement action) under the Applicable Environmental Laws, or any common law theory based on nuisance or strict liability, (b) causes or is deemed by applicable governmental regulatory authorities to cause or contribute to a public health threat or harm, or (c) pollutes or threatens to pollute the environment, Lessee shall promptly take any and all remedial, removal, or other action required by any governmental authorities or by any order of a court or arbitration panel to clean up or remediate the Property, mitigate exposure to liability arising from such Hazardous Materials, as required by law, or cease taking or cause requisite corrective action(s) to be taken to preclude any or further (as the case may be) adverse environmental effects, regulatory enforcement actions or civil or criminal actions or proceedings. If a violation of the Applicable Environmental Laws occurs during the term of this Lease, Lessee shall promptly take any and all remedial, removal, or other actions required by such regulatory authorities to correct the violation.

Lessor shall have the right but not the obligation, prior or subsequent to an event of default without in any way limiting Lessor's other rights and remedies under this Lease, to enter onto the Property or to take such other actions as it deems reasonably necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials or a violation of Applicable Environmental Laws at the Property. Any entry on the Property or other action taken by Lessor must be done in a manner so as not to unreasonably interfere with Lessee's business at the Property as prescribed by this Lease. If such entry has been made necessary by the failure of Lessee to perform its obligations under other portions of this section, all reasonable costs and expenses paid or incurred by Lessor in the exercise of any such rights shall be payable by Lessee within thirty (30) days after demand.

Lessee shall maintain such written records as are required by any applicable rules of any governmental authorities for each calendar year (including, without limitation, originals or copies of invoices of all third parties involved in any manner with disposal of Hazardous Materials from the Property) of the method of disposition thereof and, to the extent such disposition is by offsite disposal, all reports, invoices, and other written materials pertaining to such offsite disposition. Lessee shall make such records available for review by Lessor on request and shall furnish a complete set of records for the calendar year in question to Lessor within thirty (30) days after the end of each calendar year or on expiration or earlier termination of each calendar year.

XXV. SUBORDINATION AND STATEMENT OF CONDITION OF LEASE

25.1 Subordination. Lessee accepts this Lease subject and subordinate to any mortgage or deed of trust presently existing or hereafter placed upon the premises, the entire project, or any part thereof, and to any renewals and extensions thereof; but Lessee agrees that any mortgagee shall have the right at any time to subordinate such mortgage to this Lease on such terms and subject to such conditions as the mortgagee may deem appropriate in its discretion. This subordination shall be self-operative without the necessity of the execution of any further instruments by Lessee, but upon the request of any present or future mortgagee, Lessor is hereby irrevocably vested with full power and authority if it so elects at any time to subordinate this Lease to any mortgage hereafter placed upon the premises or upon the entire premises by executing a written subordination instrument as attorney-in-fact for Lessee, and Lessee agrees, upon demand, to execute such further instruments subordinating this Lease as Lessor may request. The subordination provided for in this paragraph is made and accepted upon the express conditions, and Lessee hereby agrees, (a) that upon foreclosure, exercise of power of sale, or other exercise of the mortgagee's rights, and upon the election of the mortgagee or the purchaser at such sale, Lessee's possession of the premises shall not be disturbed so long as Lessee shall continue to perform all of the covenants and conditions of this Lease, and Lessee shall attorn to the mortgagee or any purchaser at such sale as Lessee's new lessor; and (b) that Lessee's obligation to perform such covenants and conditions shall not be in any way diminished thereby.

25.2 Condition of Lease. Lessee shall execute, acknowledge and deliver to Lessor, without any charge, at any time within ten (10) days after request by Lessor, a written statement or estoppel certificate as may be reasonably requested by Lessor or as may be required by any mortgagee of the premises, to the effect that this Lease, as of said date, 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), the date of commencement of the Lease, the dates on which rental has been paid, and such other information as Lessor shall reasonably request. Any such statement by Lessee shall be used by Lessor for delivery to and reliance upon by prospective purchasers and lenders whose security will consist of liens upon the premises and buildings of which the premises are a part and shall not affect Lessee's right to later assert any subsequent default or modification.

XXVI. CONTINUOUS BUSINESS OPERATIONS. Lessee binds and obligates itself to occupy and use the Property continuously during the Term for the purpose provided in this Lease and according to the generally accepted standards for the operation of the same or similar businesses including, without limitation: maintaining a sufficient staff of employees and a reasonable business inventory, and remaining open for business during regular business hours on

regular business days (in any case at least 8 hours per day, five days per week).

XXVII. OPTION TO EXTEND TERM. Provided that the Lease has not otherwise been terminated, Lessee may extend the term of this Lease for two (2) additional terms of five years each (September 1, 2029 through August 31, 2034 for the first option term and September 1, 2034 through August 31, 2039 for the second and final option term) under the same terms and conditions and subject to all additional payments and covenants, with the exception that the monthly minimum rental (subject to additional payments for impositions, including taxes and insurance, as applicable) shall be increased as follows, if Lessee properly exercises its option:

- Base Rent will increase 2.5% annually from the previous year rent during the entire extended term

Provided, however, that if at the date of expiration of the then current term of the lease, Lessee is in default beyond any grace period provided in this Lease in the performance of any of the terms or provisions of this Lease, the renewal option shall be null and void. Lessee may exercise its option to extend this Lease by giving notice of its intention to do so to Lessor, not later than one hundred twenty (120) days prior to the expiration of the then current term of the Lease. To constitute effective notice of an intention to exercise an option under this Agreement, the notice must be sent by certified mail to Lessor. Time is of the strictest essence with respect to the notice to extend.

XXVIII. MISCELLANEOUS.

28.1 This Lease and all of the terms, provisions and covenants contained herein, shall apply to, be binding upon and inure to the benefit of the parties hereto, their respective heirs, assigns, successors, executors and administrators.

28.2 All rental and other sums which one party hereunder may become obligated to pay to the other shall bear interest at the lesser of 18 percent per annum or at the highest legal rate per annum, compounded annually, from date when the same shall become due.

28.3 Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, or of partnership, or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any of the acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than that of Lessor and Lessee.

28.4 The captions employed in this Lease are for convenience only and are not intended to in any way limit or amplify the terms and provisions of this Lease. Whenever herein the singular numbered is used, the same shall include the plural and words of any gender shall include each other gender wherever the context requires. This Lease shall not be construed against either party more or less favorably by reason of authorship or origin of language.

28.5 Upon any termination of the Lease, either through natural expiration, early

termination or a termination by default, all of the improvements on the Premises including trade fixtures, equipment, antiques, decorative items, furnishings, etc., shall become the sole property, except for personal property and inventory owned by Lessee, of Lessor and Lessee shall make no claim thereafter to such improvements. The Premises shall be delivered to Lessor in the same condition as it was at the time of initial occupancy by Lessee, wear and tear excepted.

28.6 Lessee will not create any environmental hazard nor commit any act that would violate any federal, state or other governmental, environmental law or regulation and Lessee will clean up any environmental or hazardous waste coming on to the property during Lessee's tenancy.

28.7 The taking of possession of the Property by Lessee shall be conclusive evidence as against Lessee that it accepts the Property as suitable for the purpose for which the same are leased.

28.8 With the exception of Landlord's obligation to maintain and repair the roof of the Building, it is the intention of Lessor and Lessee that the Rent shall be triple net to Lessor; that costs, expenses, and obligations relating to Lessee's use, occupancy, and possession of the Property, which may arise or become due during the term hereof shall be paid by Lessee; and that Lessor shall be indemnified by Lessee against all such costs, expenses, and obligation, such indemnity to survive the expiration or termination of this Lease.

28.9 If any provision of this Lease should, for any reason, be held violative of any applicable law, and so much of this Lease be held unenforceable, then the invalidity of such a specific provision in this Lease shall not be held to invalidate any other provisions in this Lease, which other provisions shall remain in full force and effect unless removal of this invalid provisions destroys the legitimate purposes of this Lease, in which event this Lease shall be canceled.

28.10 Whenever a period of time is herein prescribed for action to be taken by Lessor or Lessee, the party taking the action shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, global pandemic, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of such party; provided, however, in no event shall the foregoing apply to the financial obligations of either Lessor or Lessee to the other under this Lease, including Lessee's obligation to pay minimum base rental, additional rent, or any other amount payable to Lessor hereunder.

28.11 Lessee shall not create, or permit to be created or to remain, and will discharge by payment or bond, any lien (including, but not limited to, the liens of mechanics, laborers, artisans, or materialmen for work or materials alleged to be done or furnished in connection with the Property), encumbrance, or other charge upon the Property or any part thereof, upon Lessor's interest therein, or upon Lessee's leasehold interest; provided, that Lessee shall not be required to discharge any such liens, encumbrances, or charges as may be placed upon the Property by the act of Lessor.

28.12 Lessee shall pay to Lessor as an advanced monthly deposit, 1/12th of the prior year's real estate taxes for the Property and, at Lessor's option, 1/12th of the insurance premiums

for the current year. All taxes and insurance deposits shall be paid on the 1st day of each and every month in arrears, which deposits shall be applied by Lessor for the payment of such items. Such deposits shall not bear interest and may be offset against any sums due to Lessor. Lessor shall refund any tax overage on February 1st of each year. Likewise, any deficiencies shall be paid by Lessee on or before February 1st of each year. The tax and insurance escrow shall be adjusted on an annual basis in accordance with increases or decreases in said amounts. The initial estimated monthly deposit for taxes only for the year 2024 shall be \$_____, subject to adjustment as provided hereinabove. At Lessor's option, Lessor may require Lessee to escrow 1/12th of the insurance premiums in addition to the initial tax escrow, all in accordance with the provisions hercof.

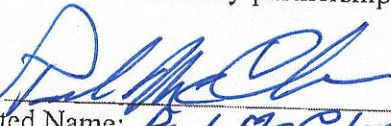
28.13 LESSEE WAIVES ITS RIGHTS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41 *ET SEQ.* OF THE TEXAS BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF ITS OWN SELECTION, LESSEE VOLUNTARILY CONSENTS TO THIS WAIVER.

28.14 Security Services. LESSOR MAKES NO REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, THAT ANY SECURITY WILL BE PROVIDED TO THE PROPERTY. LESSEE HEREBY ACKNOWLEDGES AND AGREES THAT IT SHALL BE RESPONSIBLE AT ITS SOLE COST AND EXPENSE FOR THE INSTALLATION, MAINTENANCE, AND OPERATION OF ANY AND ALL SURVEILLANCE EQUIPMENT AND/OR SECURITY MEASURES AT THE PROPERTY TO THE EXTENT THAT THE SAME IS DEEMED NECESSARY BY LESSEE. SUCH SECURITY MEASURES SHOULD BE MAINTAINED AS DEEMED REASONABLE AND NECESSARY BY LESSEE, IN A MANNER AS TO PROVIDE A SAFE AND SECURE PREMISES FOR LESSEE'S AGENTS, EMPLOYEES, INVITEES, LICENSEES, AND CUSTOMERS. LESSOR SHALL NOT BE LIABLE FOR, AND LESSEE HEREBY WAIVES ANY RIGHT TO ANY CLAIM AGAINST LESSOR FOR (I) ANY UNAUTHORIZED OR CRIMINAL ENTRY OF THIRD PARTIES INTO THE PROPERTY, (II) ANY DAMAGE TO PERSONS OR PROPERTY, OR (III) ANY LOSS OF PROPERTY IN AND ABOUT THE PROPERTY, BY AND FROM ANY UNAUTHORIZED OR CRIMINAL ACTS OF THIRD PARTIES, REGARDLESS OF ANY ACTION, INACTION, FAILURE, BREAKDOWN, MALFUNCTION OR INSUFFICIENCY OF THE SECURITY SERVICES PROVIDED BY LESSOR, UNLESS CAUSED BY LESSOR'S GROSS NEGLIGENCE. LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT LESSOR DOES NOT GUARANTEE ANY LEVEL OF SECURITY AND IS RELEASED FROM ANY RESPONSIBILITY FOR ANY CLAIMS BASED UPON ASSERTIONS THAT LESSOR FAILED TO PROVIDE ADEQUATE SECURITY TO THE PROPERTY.

28.15 LESSOR AND LESSEE WAIVE THEIR RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LESSOR AND LESSEE, LESSEE'S USE OF OR OCCUPANCY OF THE PROPERTY AND EQUIPMENT, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY

OR STATUTORY REMEDY.

LESSOR:
DP REAL ESTATE LP,
a Texas limited liability partnership

By: 
Printed Name: Paul McClintock
Its: CFO

LESSEE:
TRICOLOR AUTO GROUP, LLC,
a Texas limited liability company

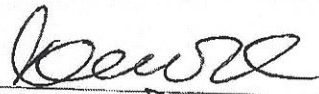
By: 
Printed Name: Daniel Ch...
Its: CFO

EXHIBIT "A"-LEGAL DESCRIPTION

A 1.608 acre tract of land out of Lot 41, NCB 14946, Gunn Auto Park Subdivision Unit 3, San Antonio, Bexar County, Texas, as recorded in Volume 9534, Page 61 of the Deed and Plat Records of Bexar County, Texas and being more particularly described as follows:

BEGINNING: At a 1/2" iron pin found on the Southeast Right-of-Way line of Interstate Highway 35 for the Northwest corner of Lot 38, NCB 14946, said point also being the most Northerly East corner of said Lot 41 and the herein described tract;

THENCE: S 16° 13' 58" E, a distance of 241.79 feet along the West line of said Lot 38, to a 1/2" iron pin set for the northeast corner of a 2.531 acre tract out of said Lot 41, as recorded in Volume 7819, Page 1342, said point also being the most Easterly South corner of this tract;

THENCE: the following calls along the North line of said 2.531 acres with a chain link fence:

S 72° 02' 17" W, a distance of 51.73 feet to a fence post found for an interior corner of this tract;

S 22° 53' 54" E, a distance of 6.92 feet to a fence post found for an interior corner of this tract;

S 57° 18' 14" W, a distance of 89.73 feet to a fence post found for an angle point of this tract;

S 73° 45' 46" W, a distance of 150.64 feet to a P.K. Nail set on the East line of a 0.675 acre tract out of said Lot 41, as recorded in Volume 7819, Page 1342 for the Northwest corner of said 2.531 acres and for the most Southerly West corner of this tract;

THENCE: N 16° 06' 25" W, a distance of 3.23 feet along the East line of said 0.675 acres to a 1/2" iron pin set for an angle point of this tract;

THENCE: N 36° 40' 16" W, a distance of 174.30 feet along the East line of said 0.675 acres to a 1/2" iron pin set at a point of curvature to the right for this tract;

THENCE: Along a curve to the right, having a radius of 5.00 feet and an interior angle of 93° 45' 53", a distance of 8.18 feet to a 1/2" iron pin set on the Southeast Right-of-Way line of Interstate Highway 35 for the most Northerly East corner of said 0.675 acres and for the most Northerly West corner of this tract;

THENCE: N 57° 13' 00" E, a distance of 360.10 feet along the Southeast Right-of-Way line of Interstate Highway 35 to the POINT OF BEGINNING and containing 1.608 acres, more or less.

TOGETHER WITH those certain easement rights, including, without limitation, all easement rights for pedestrian and/or motor vehicle ingress, egress and regress, and all other rights and interests in real property set forth in and created by that certain Non-Exclusive Easement dated October 22, 2004, between Curtis C. Gunn, Ltd. ("Grantor") and James M. Day, Jr. ("Grantee"), recorded in Volume 11043, Page 2021, Real Property Records of Bexar County, Texas.

EXHIBIT "B" LIST OF LESSOR/VENDOR OWNED EQUIPMENT

Lessor's Equipment

Service Department west side of office:

- 6 quality Lifts
- One Port a Cool Water Cooler
- One Shop press
- One Engine lift
- One Parts Cleaner.

Service Department east side of Office:

- 2 Quality Lifts and one Rotary Lift
- One Strut Tamer
- One Tire Mounter
- One Front end Balancer
- One Polar Cool Fan
- One Parts Cleaner
- One shop Press.

Calculation of Rent Damages for DP Real Estate, LP for 11150 IH 35, San Antonio, Texas

Lease Term Remaining Post Petition	47 Months	Lease Ends 9/30/25
Monthly Rent	\$20,000	
Prepetition Rent Owed	\$20,000	Sep-25
Taxes Owed for 2024	\$12,669.15	
Taxes owed for 2025	\$31,283.78	
Late Fees	\$600	

Past Due Rent	\$20,000
Past Due Taxes	\$43,952.93
12 Months Rent	\$240,000
Estimated Property Damage	\$10,000
Late Fees	\$600

<u>Total</u>	<u>\$314,553</u>
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2029