Fill in this information to identify the case:

Debtor 1 Tricolor Holdings, LLC

Debtor 2 (Spouse, if filing) _____

United States Bankruptcy Court for the: Northern District of Texas

Case number 25-33487

# 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?**
   ANC Ventures, LTD.
   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?**
   ✓ No
   ☐ 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?** | **Where should payments to the creditor be sent?** (if different) |
|---|---|
| Jackson Walker LLP c/o Michael Held<br>Name | ANC Ventures, Ltd. c/o Valerie Tackett<br>Name |
| 2323 Ross Ave, Suite 600<br>Number Street | PO Box 29719<br>Number Street |
| Dallas TX 75201<br>City State ZIP Code | San Antonio TX 78229<br>City State ZIP Code |
| Contact phone (214) 953-5859 | Contact phone (210) 558-5323 |
| Contact email mheld@jw.com | Contact email vtackett@ancira.com |

Uniform claim identifier (if you use one):
_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

4. **Does this claim amend one already filed?**
   ✓ No
   ☐ 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?**
   ✓ No
   ☐ Yes. Who made the earlier filing? _____



25334872605270000000000001

**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?**
   - ✓ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. **How much is the claim?** $ 330,309.50 . **Does this amount include interest or other charges?**
   - — No
   - ☑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

   ***plus any additional fees, costs, and expenses allowed under applicable law.**

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 health care information.
   Lease of property

9. **Is all or part of the claim secured?**
   - ✓ No
   - ☐ Yes. The claim is secured by a lien on property.

   **Nature of property:**
   Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   — Motor vehicle
   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)_____%
   — Fixed
   ☐ Variable

10. **Is this claim based on a lease?**
    - No
    - ☑ Yes. **Amount necessary to cure any default as of the date of the petition.** $ 16,733.00

11. **Is this claim subject to a right of setoff?**
    - ✓ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check one:*

| | Amount entitled to priority |
|---|---|
| Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). | $ |
| 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). | $ |
| 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). | $ |
| Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). | $ |
| Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). | $ |
| 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 05/25/2026
MM / DD / YYYY

Tackett, Corp VP
Signature

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

Name: Valerie Tackett
First name Middle name Last name

Title: Corporate Vice President

Company: ANC Ventures, Ltd.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: PO Box 29719
Number Street

San Antonio TX 78229
City State ZIP Code

Contact phone: (210) 558-5323 Email: vtackett@ancira.com

Print | Save As... | Add Attachment | Reset

**Summary of Claim**

1. On September 10, 2025 (the "Petition Date"), Tricolor Holdings, LLC (and together with its affiliate chapter 7 debtors[1], the "Debtors") filed a voluntary petition under chapter 7 initiating Case No. 25-33487-mv17 in the Northern District of Texas, Dallas Division. This case is jointly administered under Case No. 25-33487-mv17, *In re Tricolor Holdings, LLC*.

2. Anne Elizabeth Burns (the "Trustee") is the duly appointed Chapter 7 trustee for the Debtors.

3. Prior to the Petition Date, ANC Ventures, LTD. (the "Landlord") and Tricolor Auto Group, LLC (the "Debtor Tenant") entered into that certain Commercial Lease Agreement dated September 21, 2020 (as amended as described hereinbelow, the "Lease") covering real property located at 3720 E. Saunders, Laredo, Texas 78041 (the "Premises"), which Lease was amended twice, (a) first pursuant to the First Amendment to the Commercial Lease Agreement dated September 14, 2020 which ensured that Landlord under the Laredo Lease was properly reflected as "ANC Ventures, LTD.," and (b) second pursuant to the Second Amendment to the Commercial Lease dated April 1, 2025, pursuant to which the Debtor Tenant exercised its first option to extend the Laredo Lease for a five year period commencing on October 1, 2025. The Original Lease, First Amendment, and Second Amendment are attached hereto as **Exhibits A, B, and C**, respectively, and are incorporated herein as if fully set forth in length.

4. As an Exhibit "B" to the Laredo Lease (and as specifically referenced in the Lease), ANC and the Debtor Tenant executed a Personal Property Lease Agreement (the "Personal Property Lease") pursuant to which the Debtor Tenant leased the following personal property, which is owned by the Landlord and located at the Laredo Premises:

- NITRO MACHINE NTF-515B;
- BOSCH BRAKE LATHE AND ADAPTER;
- SHOP EQUIP=4 LIFTS, WORK BENCHES, AIR SYSTEM;
- CANTU ELECT. 5 GFI'S FOR LIFTS > 5.31.24;
- PARTS TIRE CONTAINER;
- PARTS BIN SYSTEM;
- DATA/PHONE DROPS; and

[1] The Debtors in these chapter 7 cases are as follows: Tricolor Holdings, LLC, TAG Intermediate Holding Company, LLC, Tricolor Auto Group, LLC, Tricolor Auto Acceptance, LLC, Tricolor Insurance Agency, LLC, Tricolor Home Loans LLC dba Tricolor Mortgage, Tricolor Real Estate Services, LLC, TAG California Holding Company, LLC, Flexi Compras Autos, LLC, TAG California Intermediate Holding Company, LLC, Tricolor California Auto Group, LLC, Tricolor California Auto Acceptance, LLC, Risk Analytics LLC, Tricolor Tax, LLC, Tricolor Financial, LLC, Tricolor Auto Receivables LLC, Tricolor Asset Funding, LLC, and Apoyo Financial, LLC.

- DESKS/OFFICES/FILE CABINETS/SHOWROOM FURNITURE (collectively, the "Leased Personal Property").

5. As of the Petition Date, the Debtor Tenant was in arrears in the amount of **$16,733.00** for past due rent owed for the month of September 2025.

6. On November 3, 2025, the Court entered that certain *Stipulation and Agreed Order for Lease Rejection* ("Rejection Stipulation") [Docket No. 308]. Pursuant to the Rejection Stipulation, the Debtor rejected the Lease as of the Petition Date and has vacated the Premises.

7. Sections 4.1 and 19 of the Lease require the Debtor, among other things, "…*at its own expense, service, keep, maintain in good repair and replace as necessary all parts of the Premises and any improvements upon the Premises*" and upon the expiration of the terms of the Lease to deliver all keys to the Premises to the Landlord, respectively. After the rejection of the Lease and upon the surrender of the Premises to the Landlord, the Landlord discovered significant needed repairs (including, but not limited to building repairs, extensive light repairs, plumbing repairs, elevator repairs, and re-keying the Premises), mowing, clean-up and trash removal totaling **$9,454.32.** A true and correct copy of list setting forth each of the costs and expenses incurred by the Landlord to repair, re-key and remove trash from the Premises is attached hereto as **Exhibit D** and is incorporated herein as if fully set forth in length.

8. Further, Sections 14.2(f) and 14.4 of the Lease authorize the Landlord to recover from the Debtor, among other things, brokerage commissions to re-let the Premises and legal fees incurred by the Landlord after a material event of default by the Debtor. As a result of the Debtor's defaults, including but not limited to, the Debtor's failure to pay rent and related charges prior to, and after the Petition Date, the Landlord engaged a broker to re-let the Premises and engaged legal counsel to preserve, prosecute and protect the Landlord's claims and interests in the instant ch. 7 proceedings, resulting in (a) brokerage commissions to re-let the Premises in the amount of **$42,281.85** and (b) reimbursable legal fees and expenses in the amount of ($61,044.33). True and correct copies of summaries of the brokerage fees to re-let the Premises and legal fees incurred by the Landlord relative to the Lease are attached hereto as **Exhibits E** and **F**, respectively, and are incorporated herein as if fully set forth in length.

9. Pursuant to the rejection of the Lease, the Debtor owes the Landlord damages calculated pursuant to 11 U.S.C. §502(b)(6) as the greater of one year's rent reserved under the Lease, or 15% of the remaining rent reserved for the term of the Lease (not to exceed three years), following the earlier of the date upon which the Landlord repossessed the Premises and the date the petition was filed. The calculation for one year's worth of rent under lease following the date upon which the Debtor surrendered the Premises is $200,796.00 ($16,733.00/month x 12 months). Thus, Landlord's Section 502(b)(6) claim, plus unpaid pre-petition rent, plus the Landlord's claims for repairs, clean-up, brokerage commission and legal fees[2] (as detailed herein and as attached) total **$330,309.50.** The Landlord hereby reserves the right to amend this proof of claim to include

[2] The Landlord incurred legal fees totaling $122,088.65 (comprised of $23,112.65 from BVMC and $98,976.00 from JW) in connection with these bankruptcy cases for two distinct properties that share a common ownership. Out of an abundance of caution, Landlord has asserted half of the total legal fees herein, and the remainder in a separately filed claim by Bullish Resources, Inc.

any additional claims, including, but not limited to further claims for the repair and clean-up of the Premises not otherwise set forth herein.

10. This claim is not founded on an open account, except to the extent that the Lease is deemed such.

11. The amount of all payments of this claim has been credited and deducted for the purpose of making this proof of claim.

12. The total amount of the claim **$330,309.50 ,** plus any additional interest, fees, expenses or other costs allowed by contract or applicable law. The foregoing amount does not include interest, fees, expenses and other costs accrued after the Petition Date which Landlord may be entitled to subsequently assert, or any additional claims not already included herein for clean-up, repair or damages to the Premises resulting from the Debtor Tenant's and/or the Trustee's vacating same.

13. Landlord reserves, without limitation, all setoff, recoupment, netting, and other rights, under any applicable contract, statute, common law, or equitable principle. Landlord's Proof of Claim is filed to protect Landlord from any potential forfeiture of any part of its claim by reason of the bar date for claims in this case. Filing the Proof of Claim is not (a) a waiver or release of Landlord's rights or claims against any person, entity, or property; (b) a waiver or release of Landlord's right to trial by jury in any proceeding in any matter so triable, whether or not the same are designated legal or equitable rights in any case, controversy, or proceeding related thereto; (c) a waiver or release of Landlord's right to have any and all final orders in any and all non-core matters or proceedings entered only after *de novo* review by a United States District Court; (d) a waiver or release of the right to request withdrawal of the reference with respect to the subject matter of the Proof of Claim, and objection thereto or other proceeding commenced with respect thereto or any other proceeding that may be commended in this case against or otherwise involving Landlord; or (e) an election of remedy.

**Exhibit A**

**Original Lease**

COMMERCIAL LEASE AGREEMENT
BY AND BETWEEN

BULLISH RESOURCES, INC.

Landlord

and

TRICOLOR AUTO GROUP, LLC.,

Tenant

# COMMERCIAL LEASE AGREEMENT

This Commercial Lease Agreement is executed, binding and effective as of the 21th day of September, 2020, between the Landlord and Tenant, named below (the "Lease"). Pursuant to the terms of this Lease, Tenant hereby leases for from Landlord the Premises described below.

## BASIC LEASE INFORMATION

| | | |
|---|---|---|
| A. | Premises: | 3720 E Saunders Laredo, in the City of Laredo , County of Webb, State of Texas as more formally described on Exhibit "A" |
| B. | Landlord: | Bullish Resources, Inc. |
| C. | Landlord Contact Information: | Mailing Address<br>Bullish Resources, Inc.<br>ATTN: Valerie Tackett<br>10855 IH-10 West<br>San Antonio, Texas 78230<br><br>Email - vtackett@ancira.com<br><br>Telephone Number - (210) 558-5323 |
| D. | Tenant: | Tricolor Auto Group, LLC. |
| E. | Tenant Contact Information: | Mailing Address<br>Tricolor Auto Group, LLC.<br>ATTN: Daniel Chu, CEO<br>1111 W. Mockingbird Ln., Suite 1500<br>Dallas, Texas 75247<br><br>Email – dchu@tricolor.com<br><br>Telephone Number – (214) 534-3600 |
| F. | Tenant's Trade Name: | Tricolor Auto |
| G. | Address of Premises: | 3720 E. Saunders, Laredo, Texas 78041 |
| H. | Guarantor: | Tricolor Holdings, LLC |
| I. | Mailing Address of Guarantor: | 1111 W. Mockingbird Ln., Suite 1500<br>Dallas, Texas 75247 |

J. Scheduled Commencement Date: September 21, 2020

K. Expiration Date: September 21, 2025

L. Permitted Use: For the operation of a business selling used automobiles.

M. Minimum Rent (Payable Monthly: See Paragraph 1.1): Minimum Rent per month for each month of the five year term of the Lease shall be $14,551.00

N. Initial CAM Charges (Payable Monthly: See Paragraph 6.9): $ None.

O. Initial Taxes: As provided for in Article 9

P. Initial Insurance Costs: As provided for in Article 10

Q. Security Deposit: 0

R. Prepaid Rental: 0

S. Approximate Floor Area of the Improvements: N/A

T. Approximate Floor Area of the Premises: N/A

U. Floor Level(s) of the Premises: N/A

V. Miscellaneous:

Lease conditioned upon no broker involvement with this Commercial Lease Agreement and no brokers commissions due and payable by Landlord.

Minimum Rent shall be abated from September 21, 2020 to October 15, 2020.

Tenant shall lease certain personal property identified in Exhibit B pursuant to the terms set forth in Exhibit B.

Tenant shall have two non-assignable options to renew the Lease for successive five (5) year periods, at prevailing market rental rates, to be determined as of the date each renewal option is exercised. The renewal options may be exercised only if the Tenant is not in default of any provision of the Lease. The second renewal option shall automatically terminate if the first renewal option is not timely exercised. Each renewal option must be exercised no later than 180 days prior to the Expiration Date of the then current term, all as set forth Exhibit "F".

References below to the "Basic Lease Information" are references to the information set out above and are an integral part of the Lease. If a conflict exists between the Basic Lease Information and the provisions below, the provisions below will control.

**ADDENDA**

The following addenda are attached to and made part of this Lease for all purposes:

| | |
|---|---|
| Exhibit A | Description of the Premises |
| Exhibit B | Personal Property Lease |
| Exhibit C | Certificate of Acceptance |
| Exhibit D | Hazardous Waste Indemnification Agreement |
| Exhibit E | Intentionally omitted |
| Exhibit F | Renewal Option |

## LEASE OF THE PREMISES

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord certain premises located at 3720 E Saunders Laredo, in the City of Laredo, County of Webb, State of Texas as more formally described on Exhibit "A" attached hereto (the "Premises") for the term, at the rental, and upon all the conditions and agreements set forth herein.

## TERM

The term of this Lease shall commence on September 21, 2020 (the "Commencement Dale"); and the term of this Lease shall expire on the expiration date specified in the Basic Lease Information (the "Expiration Date"). Such term is hereafter referred to as the "Primary Term" of this Lease. The Primary Term plus extensions thereof (if any) are sometimes referred to hereinafter as the "Lease Term" or the "Term of this Lease". At or before the Commencement Date Tenant shall sign and deliver a certificate upon request of Landlord in the form attached hereto as Exhibit C.

## SUPPLEMENTAL TERMS, COVENANTS AND CONDITIONS

Landlord leases the Premises to Tenant and Tenant accepts and agrees to use and possess the Premises on the following Supplemental Terms, Covenants and Conditions:

### 1. RENTAL

### 1.1 MINIMUM RENT

Tenant shall pay Landlord for each month in the Lease Term a guaranteed minimum monthly rental for the Premises ("Minimum Rent") as specified in the Basic Lease Information. Such Minimum Rent will be due in advance beginning on the Commencement Date, except to the extend of any abatement provided for in the Basic Lease Information, and continuing on the first day of each calendar month thereafter. It will be prorated on a daily basis for the first month if the Commencement Date is not on the first day of a calendar month and for the last month if the Expiration Date is not on the last day of a calendar month. Minimum Rent shall be payable without demand, deduction or offset at the address for Landlord set forth in the Basic Lease Information, or at such other place as Landlord may from time to time designate, in writing. The Prepaid Rental, if any, specified in the Basic Lease Information has been paid in advance by Tenant and shall be applied by Landlord to the first accruing installments of Minimum Rent due hereunder.

### 1.2 ADDITIONAL RENTAL

Any amount to be paid by Tenant to Landlord hereunder in addition to Minimum Rent is additional rental (whether or not so designated in the following provisions) payable upon demand or as otherwise provided herein.

## 2. CONDUCT OF BUSINESS BY TENANT

### 2.1 USE OF PREMISES AND TRADE NAME

Tenant shall use and occupy the Premises solely for the permitted use and under the trade name specified in the Basic Lease Information and for no other purposes or under any other name whatsoever without the prior written consent of Landlord. Tenant shall continuously and without interruption during the Lease Term conduct its business activity in the Premises during all business hours usual for Tenant's type of business.

### 2.2 PROHIBITED USES

(a) Without limiting the foregoing, Tenant shall not use or permit the Premises to be used for any purpose other than as stated above.

(b) Without Landlord's prior written approval, Tenant shall not cause or permit to be used any advertising materials or methods in or around the Premises that may be objectionable in Landlord's opinion, including, without limiting the generality of the foregoing, loudspeakers, music or other noise-making devices, the effect of which may be heard outside the Premises. Tenant shall not cause or permit any objectionable or unpleasant odors to emanate from the Premises.

(c) Tenant shall not permit the Premises to be used for any operation that is extra hazardous on account of fire or otherwise or for any operation that will increase insurance premiums on the fire insurance carried by Landlord or that may render void or voidable the insurance carried by Landlord; nor shall Tenant sell or permit to be kept, use or sold in or about the Premises any article which may be prohibited by standard fire insurance policies.

(d) The prohibited uses set out herein apply to Tenant's use of the Premises and do not in any way limit Landlord's rights with respect to the Premises. Failure of Landlord to enforce any use restrictions in this Lease shall be at Landlord's sole discretion and one or more delays or forbearance in enforcing any use restriction in this Lease shall not constitute a waiver and shall not impair Landlord's enforcement of such restrictions at any time.

### 2.3 COMPLIANCE WITH LAWS AND REGULATIONS

Tenant shall use and maintain the Premises in compliance with all laws, ordinances, building codes, rules and regulations, present or future, of all governmental authorities ("Applicable Laws"). Without limiting the foregoing, Tenant shall be responsible for determining that its proposed use of the Premises is permitted by Applicable Laws and shall obtain any permits required for such use.

### 2.4 CLEANLINESS, WASTE AND DELIVERIES

Tenant shall maintain the Premises, and adjoining sidewalks and alleys, in a neat and clean condition; shall store all garbage within the Premises and shall arrange for the regular pickup of

garbage unless Landlord elects to arrange and charge Tenant for such pickup as provided in Paragraph 6.7 below.

## 3. CONSTRUCTION

This section is intentionally omitted.

## 4. MAINTENANCE AND REPAIRS

### 4.1 OBLIGATION FOR REPAIRS

From and after Tenant's acceptance of possession of the Premises, landlord shall have no obligation to make any repairs, improvements or alterations to the Premises whatsoever, except those required under any express covenant or warranty that may be explained in Exhibit B. Notwithstanding the foregoing, Landlord shall not have to make any repairs required of it by this Lease, if any, until Tenant gives Landlord notice of the need therefore. Landlord shall not be obligated to make any Landlord required repairs, if any, if such repairs are made necessary, in whole or in part, by the acts or negligent omissions of Tenant, its agents, employees or invitees. Except as is specifically made the responsibility of Landlord hereunder, Tenant agrees that during the entire term of this Lease it shall promptly and at its own expense service, keep, maintain in good repair and replace as necessary all parts of the Premises and any improvements upon the Premises, including, but not limited to; 1) The roof, exterior and interior walls, structural members, foundation, plumbing (including the fire prevention sprinkler system, if any), piping, heating, air conditioning, ventilating, electrical and lighting facilities; equipment, fixtures, walls and wall coverings, ceilings, floors and floor coverings, windows, doors, and glass, plate glass, showcases and skylights of any structures on the Premises; 2) Driveways, parking areas, sidewalks, curbs, lot lighting, and irrigation systems; 3) Utility lines and related facilities (including sewer lines, drains, drainage systems, storm sewer systems,, and sanitary sewer systems; and, 4) Signs, monuments, marquees and pylons; Tenant shall also be responsible for keeping the Premises free of insects, rodents, vermin and other pests.

### 4.2 LANDLORD'S RIGHT TO REPAIR

If Tenant fails to perform its obligations under this Article 4, Landlord may at its option, after ten (10) days' written notice to Tenant (except in circumstances which Landlord deems to be an emergency, in which case no notice shall be required), enter upon the Premises and put the same in good order, condition and repair and the cost thereof shall become due and payable by Tenant to Landlord upon demand as additional rent.

## 5. ALTERATIONS BY TENANT

Tenant shall have the right to non-structural improvements without the consent of the Landlord; however, Tenant shall not make any structural alterations or additions to the Premises without first obtaining the written consent of Landlord. If Landlord gives its consent to structural alterations or additions to the Premises by Tenant, Tenant shall procure, at Tenant's expense, all necessary permits before undertaking such work. All such alterations and additions shall be done in

accordance with Applicable Laws, including applicable building codes and regulations.

## 6. COMMON AREAS

This section is intentionally omitted.

## 7. SIGNS

Before any item or sign visible from outside the Premises may be erected or altered by Tenant, Tenant shall first obtain the written approval of Landlord as to type, size, suitability and location thereof. Landlord expressly consents to the signage existing as of the Commence Date.

## 8. UTILITIES

Tenant shall pay all utility charges incurred by it in the use of the Premises whether supplied by Landlord or directly to Tenant by a utility company. If any such charges are not paid when due, Landlord may pay the same and any amount so paid by Landlord shall thereupon become due to Landlord from Tenant as additional rent. Regardless of whether Landlord supplies Tenant with any utility services, Landlord shall not be responsible for problems with respect to the quality, quantity or interruption of such services beyond its control, and failure or interruption of services shall not entitle Tenant to terminate this Lease or to any rent abatement..

## 9. TAXES

### 9.1 SUBSTITUTE TAXES

If during the term of this Lease any taxes or other charges shall be levied or assessed against the Premises, improvements upon the Premises, personal property upon the Premises, or the business or activity conducted upon the Premises or is charged to Landlord either as a rent tax or in lieu of or as a substitute for all or part of any present or contemplated ad valorem taxes or other taxes on the Premises, improvements upon the Premises, personal property upon the Premises, or the business or activity conducted upon the Premises, then for the purposes of this Lease such levies and assessments shall be treated the same as ad valorem taxes on the Premises and shall be paid by Tenant as additional rent.

### 9.2 TAXES ON TENANT'S PROPERTY

Tenant shall be liable for and promptly pay all taxes levied against personal property and trade fixtures on the Premises during the term of this Lease.

### 9.3 ESCROW OF TAXES

If at any time during the term of this Lease, Landlord shall require that anticipated taxes be held in escrow until payment thereof, then Tenant will pay Landlord the estimated taxes on a monthly basis at the time of and in addition to each installment of Minimum Rent due hereunder. In the event that such monthly payments are not sufficient to pay in full such taxes as same come due, Tenant shall also pay to Landlord the shortage thereof within twenty (20) days after

Landlord's written request therefore, In the event of monthly payments of estimated taxes, the Landlord will annually during the term of the Lease provide to Tenant a statement for such payments made and taxes incurred. Amounts paid monthly to Landlord for estimated taxes shall not be trust funds and may be comingled by Landlord with its own funds.

## 10. INSURANCE AND INDEMNITY

### 10.1 LIABILITY INSURANCE - PREMISES

From and after the Commencement Date Tenant shall keep in force commercial general liability insurance policy (including blanket contractual liability coverage) with limits of liability of not less than $1,000,000.00 (unless a greater or lesser minimum dollar amount of coverage is specified in the Basic Lease Information) for bodily injury, death or property damage occurring in any one accident. Landlord shall be designated as an additional insured under any such policy. Such insurance may be carried under a blanket policy covering the Premises and any other property of Tenant. All insurance required to be carried by Tenant shall be issued by companies, on forms and with endorsements satisfactory to Landlord. Such policy or a certificate of insurer evidencing the insurance with proof of payment of premiums and an endorsement which prohibits cancellation, termination or modification without at least ten day's prior written notice to Landlord shall be deposited with Landlord on or prior to the Commencement Date. Certificates of renewal thereof shall be deposited with Landlord ten days prior to the expiration of any such policy or renewal thereof. The Additional Insured status shall name Ancira Enterprises, Inc., et al, ATTN: Risk Manager, 10855 Interstate 10 W, San Antonio, TX 78230 upon each renewal.

### 10.2 OTHER INSURANCE

(a) During the occurrence of any improvements or construction or alterations to the Premises, or any improvement upon the Premises, Tenant shall keep in force "Builder's Risk" insurance, of its equivalent in amounts and coverages reasonably acceptable to Landlord, naming Landlord as an additional insured.

(b) Landlord shall keep in force such insurance against fire and standard extended coverage perils on buildings and improvements upon the Premises, but not on the trade fixtures and other equipment and property of Tenant situated on the Premises, as Landlord shall reasonably deem advisable. The premiums for such insurance coverage shall be paid by Tenant as additional rent when such premiums become due. If at any time during the term of this Lease, Landlord shall require that amounts for anticipated insurance premiums be held in escrow until payment thereof, then Tenant will pay Landlord the estimated insurance premiums on a monthly basis at the time of and in addition to each installment of Minimum Rent due hereunder. In the event that such monthly payments are not sufficient to pay in full such premiums as same come due, Tenant shall also pay to Landlord the shortage thereof within twenty (20) days after Landlord's written request therefore, In the event of monthly payments of estimated insurance premiums, the Landlord will annually during the term of the Lease provide to Tenant a statement for such payments made and premiums incurred. Amounts paid monthly to Landlord for estimated insurance premiums shall not be trust funds and may be comingled by Landlord with its own funds.

(c) Any Insurance carried by Landlord or Tenant against loss or damage to the building and other property situated on the Premises shall be carried for the benefit of Landlord to the extent of loss or damage to the building or improvements.

**10.5 INSURANCE CONCERNING TENANT'S USE OF THE PREMISES**

This section is intentionally omitted.

**10.6 INSURANCE COVERING TENANT'S PROPERTY AND BUSINESS**

Tenant shall, at its cost, maintain insurance covering: (i) its personal property, equipment and trade fixtures, including insurance providing protection against fire and extended coverage, perils, sprinkler damage, vandalism and malicious mischief, (ii) all plate glass on the Premises; and 3) Loss incurred as a result of business interruption. Such fire and extended coverage insurance will be in the amount of the full replacement value of the insured property; Tenant shall furnish Landlord with a certificate or certificates evidencing such insurance from the applicable insurer upon request.

**10.7 WAIVER OF CLAIMS**

The parties desire to avoid liability to each other's insurers. Thus, Landlord and Tenant each for itself and for any person or entity claiming through it (including any insurance company claiming by way of subrogation), hereby waives any and every claim which arises or may arise in its favor against the other party hereto and other party's officers, directors, and employees for any and all loss of or damage to property, to the extent (but only to the extent) that the waiving party who suffers such loss or damage is actually compensated by insurance or would be compensated by the insurance policies contemplated in this Article 10 if such policies were maintained as required hereby. Each party agrees to have such insurance policies properly endorsed so as to make them valid notwithstanding this waiver, if such endorsement is required to prevent a loss of insurance.

**10.8 INDEMNITY**

**TENANT AGREES TO INDEMNIFY AND SAVE LANDLORD HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, DAMAGES, LIENS, LIABILITIES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, IN CONNECTION WITH LOSS OF LIFE, PERSONAL INJURY AND/OR DAMAGE TO PROPERTY OCCURRING ON THE PREMISES OR ARISING FROM OR OUT OF TENANT'S OCCUPANCY OR USE OF THE PREMISES OR ANY PORTION THEREOF; AND TENANT SHALL PROMPTLY PAY OR OTHERWISE DISCHARGE ANY AND ALL SUCH CLAIMS, ACTIONS, DAMAGES, LIENS, LIABILITIES AND EXPENSES REGARDLESS OF LANDLORD'S NEGLIGENCE IN CONNECTION THEREWITH. THE INTENT OF THE PARTIES IS FOR THIS PROVISION TO BE DEEMED IN FULL COMPLIANCE WITH THE EXPRESS NEGLIGNECE DOCTRINE.10.9 EXCULPATION OF LANDLORD**

Except as may be caused primarily by the gross negligence or intentional misconduct of Landlord, Landlord shall not be liable for (i) injury or damage which may be sustained by Tenant, its agents, officers, directors, employees or invitees, or to their goods, wares, merchandise or property, caused by or resulting from the state of repair of the Premises ; (ii) injury or damage from fire, steam, electricity, gas, water or rain which may leak or flow from or into any part of the Premises; or (iii) the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures of the Premises. Landlord shall not be liable for any damages sustained by Tenant by reason of construction, repair or reconstruction, or widening of any private, public or quasi-public utility lines, streets, walkways or thoroughfares; nor shall the rent or other charges under this Lease be abated during any period that ingress, egress or traffic may be curtailed, blocked or hampered by reason of such activities

## 11. CASUALTY AND RESTORATION

### 11.1 ACTIONS REQUIRED FOLLOWING CASUALTY

If the building or other improvements on the Premises should be damaged or destroyed by fire or other casualty, Tenant shall give immediate written notice thereof to Landlord. If the Premises are damaged by fire or other insured casualty to the extent of less than one-third of the then value of the Premises and if the holder of any deed of trust, mortgage, or security interest covering the Premises does not require that the insurance proceeds payable on account of such fire or casualty be applied to reduce the indebtedness secured thereby, then Landlord shall repair such damage at its expense. However, if the Premises are damaged by fire or other casualty to the extent of more than one-third of the then value of the Premises, or if the holder of any deed of trust, mortgage or security interest covering the Premises applies or indicates that it may apply the insurance proceeds payable on account of such fire or other casualty to the indebtedness secured thereby, or if the casually or cause of damage or loss is one for which Landlord does not have insurance coverage, then Landlord may, at its option, terminate this Lease by giving written notice to Tenant within ninety days after Landlord is notified of the fire, other casualty or other cause of damage or loss. If this option is available but not exercised by Landlord, then Landlord shall proceed with reasonable diligence to collect any insurance proceeds not claimed by the holder of a deed of trust, mortgage or security interest on the Premises and to apply any or all of such proceeds as may be required to repair such damages.

### 11.2 EXCEPTION TO LANDLORD'S OBLIGATION TO RESTORE

Notwithstanding the preceding Paragraph 11.1, Landlord shall not be required to repair or rebuild after any fire or other casualty that occurs during the last year of the Primary Term or during the last year of any renewal or extension of the Primary Term; provided, however, that if Tenant shall, within thirty (30) days after such occurrence, exercise any option to extend the term of this Lease that may be available to Tenant and if because of the exercise of such option the term of this Lease shall be scheduled to last at least three years from the date of such occurrence, then Landlord's obligation to repair or rebuild shall not be affected by this Paragraph 11.2. If Landlord refuses to repair or rebuild the Premises pursuant to this Paragraph 11.2, Tenant shall be entitled, as its sole remedy, to terminate this Lease.

### 11.3 CASUALTY CAUSED BY TENANT; DAMAGE TO PREMISES

Notwithstanding the preceding provisions, if any damage to the Premises by fire or other casualty is due to any act or failure to act on the part of Tenant, Landlord may, at its option, terminate this Lease by giving written notice to Tenant within ninety days after Landlord is notified of the fire, other casualty or other cause of damage or loss.

### 11.4 CONTINUATION OF OPERATIONS

During the period of any repairs to or restoration of the Premises, Tenant shall continue the operation of its business to the extent reasonably practicable. There shall be no abatement of Minimum Rent or other charges during the period of such repairs or restoration.

### 11.5 EXTENT OF LANDLORD'S OBLIGATIONS

Landlord's obligation to repair or rebuild pursuant to this Article 11 shall be limited to the restoration of a "shell" building to the extent permitted by Applicable Laws, and to the replacement of any interior work in the Premises which may have originally been installed at Landlord's cost; and Tenant shall be obligated to complete the balance of the repairs or rebuilding required for the Premises. Upon completion of such restoration and replacement, Tenant shall promptly refixture and restock the Premises. If Landlord fails to complete any material rebuilding or repair required of it under this Article 11 within one hundred eighty working days (plus such time as such rebuilding or repairs are delayed by reason of strike, lockout, unavailability of material, fire or other casualty, governmental regulation, act of war, adverse weather or other condition beyond the Landlord's control) from the date Tenant notifies Landlord of the happening of the damage, then Tenant may give Landlord sixty (60) days written notice of its intent to terminate this Lease; and if the applicable rebuilding or repair is not substantially completed by the end of such sixty (60) days (or such time as said period may be extended because of delays beyond the Landlord's control), then Tenant may, as its sole remedy, terminate this Lease and thereafter no further rights or obligations will accrue to any party under this Lease.

## 12. EMINENT DOMAIN

### 12.1 SUBSTANTIAL TAKING

If during the term of this Lease, all or a substantial part of the Premises should be taken for any public or quasi- public use by eminent domain, or should be sold to the condemning authority under threat of condemnation, this Lease shall terminate and all rentals shall be abated during the unexpired portion of this Lease, effective as of the date when said taking or sale shall occur. "Substantial part", as used herein, means that the remainder of the Premises cannot be reconstructed or restored to make it reasonably tenantable and suitable for the uses for which the Premises are leased as defined in the Basic Lease Information.

### 12.2 LESS THAN SUBSTANTIAL TAKING

If less than a substantial part of the Premises shall be taken for any public or quasi-public use by eminent domain, or should be sold to the condemning authority under the threat of condemnation, this Lease shall not terminate and Landlord shall, at its sole expense, restore and reconstruct the building and other Improvements situated on the remaining part of the Premises so as to make the remaining part reasonably tenantable and suitable for the uses set out in the Basic Lease Information; provided, however, that Paragraphs 11.2, 11.4 and 11.5 above shall apply as if the part taken or sold were destroyed by a fire or other casualty. Notwithstanding the preceding sentence, Landlord may, at its option, terminate this Lease rather than restore and reconstruct the Premises after less than a substantial portion of the Premises are taken or sold as aforesaid if the cost of such restoration and reconstruction can be expected to exceed the damages or other consideration that Landlord will receive because of the partial taking or sale of the Premises.

### 12.3 AWARD OF DAMAGES

All damages awarded for any taking of all or any part of the Premises by eminent domain, and all proceeds of a sale in lieu of such a taking, shall belong to and be the property of Landlord, whether compensation for the diminution in value of the Tenant's leasehold or for the fee of the Premises. However, Landlord shall not be entitled to any separate award made to Tenant for loss or damage to Tenant's removable personal property. Nor will Landlord be entitled to any award for damages for cessation or interruption of Tenant's business to the extent that such cessation or interruption damages are awarded exclusive of and separate and apart from damages for diminution in value of the Tenant's leasehold.

## 13. ASSIGNMENT AND SUBLETTING

### 13.1 REQUIREMENT OF LANDLORD'S CONSENT

Tenant may not, either voluntarily or by operation of law, without the prior written consent of Landlord, assign this Lease, sublet the whole or any part of the Premises, sell, encumber, pledge or otherwise transfer all or any part of Tenant's leasehold estate hereunder, or permit the Premises to be possessed by anyone other than Tenant or Tenant's employees. Landlord's decision to consent to any subletting or assignment by Tenant shall be within Landlord's sole and exclusive discretion and Landlord may refuse to give such consent based upon, but not limited to, factors pertaining to:

(a) the similarity of the business of any proposed subtenant or assignee with the business conducted on the Premises by Tenant;

(b) the financial statement, credit and ability of any proposed subtenant or assignee to meet the obligations, terms and conditions of this Lease; and

(c) the reputation of the proposed subtenant or assignee and its principles (owners, shareholders, members, officers, directors, managers, etc.,) if the proposed subtenant or assignees not a nature person) within the business community where the Premises are located and/or within the business community were the proposed subtenant or assignee conducts any business.

Notwithstanding any permitted assignment or subletting, Tenant and any guarantor of Tenant's obligations under this Lease shall at all times remain fully responsible and liable for the payment of the rent herein specified and for compliance with all of Tenant's other obligations under the terms, provisions and covenants of this Lease. As a condition precedent to any subletting or assignment by Tenant hereunder, Tenant agrees to furnish Landlord with a copy of the proposed assignment or sublease, together with a description of the business to be conducted at the Premises by such proposed assignee or subtenant, current financial statements of such proposed assignee or subtenant, and such other information as Landlord may request, all at least thirty days prior to the date on which the proposed assignment or sublease is to be executed. Tenant further agrees to furnish Landlord with an executed copy of such assignment or sublease immediately after such instrument is executed. Landlord shall have the option, exercisable within seven days from the submission of Tenant's written request for consent to any assignment or subletting, to cancel this Lease as of the proposed date of the commencement of such assignment or subletting; however, failure to exercise such option shall not imply that Landlord has consented to or approved such proposed assignment or sublease. In the event Landlord exercises its option to cancel this Lease, then the term, tenancy and occupancy of the Premises hereunder or otherwise shall forthwith cease and expire as if the effective date of cancellation was the original termination date of this Lease. Any permitted assignment or subletting shall be subject to all the terms and conditions of this Lease including the provisions of the Basic Lease Information and Article 2 relating to the use of the Premises. Even if Landlord shall consent to a sublease or any assignment of this Lease, no further subleases or assignments may be made without the prior written consent of Landlord. If for any reason a court of competent jurisdiction declares that Landlord may not withhold its consent to a proposed subletting or assignment after Landlord has, in fact, withheld such consent, Tenant's sole remedy shall be to have the proposed assignment or subletting declared valid as if Landlord's consent had been given.

### 13.2 ASSIGNMENT BY OPERATION OF LAW

In the event Tenant shall be a corporation or other entity, any amalgamation such as a merger, consolidation or any transfer, sale, pledge or other disposition of the controlling stock or other evidence of ownership or majority of the assets of Tenant shall be deemed an assignment of this Lease and if done without Landlord's consent, shall constitute a violation of this Article 13. Tenant will at all times be the operator and manager of the Premises and Tenant shall not attempt to use a management contract, concession agreement or any other arrangement without Landlord's consent whereby the operation of the business on the Premises will be other than by Tenant. Any such attempt shall be deemed an assignment or sublease and shall constitute a violation of this Article 13. If there is more than one Tenant and there is any change in the composition of Tenant, such change shall be deemed an assignment and shall be a violation of this Article 13 if made without Landlord's consent. If a Tenant is an individual and dies, Landlord shall have the option to cancel this Lease. In the event Landlord does not exercise its option to cancel this Lease, Landlord shall be furnished with the court order or letters testamentary evidencing who has authority to act on behalf of the estate of Tenant.

### 13.3 COSTS AND REVENUES ASSOCIATED WITH ASSIGNMENT

In the event that Landlord shall be asked to consent to a sublease or assignment hereunder, Tenant shall reimburse Landlord for all attorney's fees and expenses incurred by Landlord in connection therewith. In the event of an assignment of the leasehold estate created hereby or a sublease of the Premises, the assignor or sub-lessor shall have no right to any rental or other revenues generated thereby in excess of the rental herein reserved, which excess rental and other revenues shall belong to Landlord and shall be promptly paid to Landlord as it becomes due and payable.

## 14. DEFAULTS AND REMEDIES

### 14.1 DEFAULT BY TENANT

The occurrence of any one of the following events shall be an event of default by Tenant under this Lease:

(a) Tenant shall fail to pay any rental or other sum of money when due hereunder, which failure continues for more than three (3) days after written notice to Tenant, provided however, that Landlord shall not be required to give more than two (2) such notices in any one twelve (12) month period.

(b) Tenant shall fail to perform or observe any term, condition, covenant or agreement of this Lease (other than a failure to timely pay rent or other charges) and Tenant shall not cure such failure within twenty (20) days after notice thereof is given by Landlord, but if such failure is of a nature that it cannot be cured within such twenty (20) day period, Tenant shall not have committed an event of default if Tenant commences the curing of the failure within such twenty (20) day period and thereafter diligently pursues the curing of same without interruption and completes such cure within sixty days; provided, however, that if Tenant shall fail to perform or observe any term, condition, covenant or agreement of this Lease two (2) or more times in any twelve (12) month period, then notwithstanding that such defaults have been cured by Tenant, any further similar failure shall be deemed an event of default without notice or opportunity to cure.

(c) Tenant or any guarantor of Tenant's obligations under this Lease shall become insolvent, shall admit in writing its inability to pay its debts when due, shall make a transfer in fraud of its creditors, shall make a general assignment or arrangement for the benefit of creditors, or all or substantially all of Tenant's assets or the assets of any guarantor of Tenant's obligations under this Lease or Tenant's interest in this Lease are levied on by execution or other legal process.

(d) A petition shall be filed by or against Tenant or any guarantor of Tenant's obligations under this Lease to have Tenant or such guarantor adjudged a bankrupt, or a petition for reorganization or arrangement under any law relating to bankruptcy shall be filed by or against Tenant or such guarantor.

(e) A receiver or trustee shall be appointed for all or substantially all of the assets of Tenant or of any guarantor of Tenant's obligations under this Lease or for Tenant's interest in this Lease.

(f) Tenant shall abandon or vacate any substantial portion of the Premises after Tenant's initial occupancy.

(g) An event of default by Tenant shall occur under any other lease presently in effect or entered into in the future by and between Landlord (or any entity owned in whole or in part by a partner or stockholder of Landlord) and Tenant including, without limitation, the personal property lease referred to in the Basic Lease Information section above.

(h) The Landlord's choice to grant leniency in any case will in no way infringe upon the Landlord's right to fully execute its rights and protections afforded by the lease at any future time, with or without notice.

**14.2 REMEDIES OF LANDLORD**

(a) Upon the occurrence of any event of default by Tenant, Landlord shall have the option, without any notice to Tenant (except as expressly provided below) and with or without judicial process, to pursue any one or more of the following remedies:

(i) Landlord may terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord.

(ii) Landlord may enter upon and take custodial possession of the Premises by picking the locks if necessary, lock out or remove Tenant and any other person occupying the Premises and alter the locks and other security devices at the Premises, all without Landlord being deemed guilty of trespass or becoming liable for any resulting loss or damage and without causing a termination or forfeiture of this Lease or of the Tenant's obligation to pay rent. Landlord shall not, in the event of a lockout by changing the locks, be required to furnish new keys to Tenant.

(iii) Landlord may enter the Premises and take possession of and remove any and all trade fixtures and personal property situated in the Premises, without liability for trespass or conversion. Landlord may retain control over all such property for the purpose of foreclosing the liens and security interests described in Article 15 below by public or private sale. If Landlord takes possession of and removes personal property from the Premises, then prior to any disposition of the property by sale or until Tenant reclaims the property if no foreclosure by public or private sale is contemplated, Landlord may store it in a public warehouse or elsewhere at the cost of and for the account of Tenant without the resort to legal process and without becoming liable for any resulting loss or damage.

(iv) Landlord may perform on behalf of Tenant any obligation of Tenant under this Lease which Tenant has failed to perform and the cost of the performance will be deemed additional rental and will be payable by Tenant to Landlord upon demand.

Landlord's pursuit of any remedy specified in this Lease will not constitute an election to pursue that remedy only, nor preclude Landlord from pursuing any other remedy available at law or in equity, nor constitute a forfeiture or waiver of any rent or other amount due to Landlord as described below.

(b) In the event Landlord enters and takes possession of the Premises without electing to cause a termination of this Lease, Landlord will have the right to relet the Premises for Tenant, in the name of Tenant or Landlord or otherwise, on such terms as Landlord deems advisable and Tenant hereby appoints Landlord its attorney-in-act for such purposes. Landlord will not be required to incur any expense to relet the Premises and the failure of Landlord to relet the Premises shall not reduce Tenant's liability for monthly rentals and other charges due under this Lease or for damages. Landlord will not be obligated to relet for less than the then market value of the Premises or to relet the Premises when other comparable rental space in the Shopping Center is available. Without causing a termination or forfeiture of this Lease after an event of default by Tenant, Landlord may: (i) relet the Premises for a term or terms to expire at the same time as, earlier than, or subsequent to, the expiration of the Lease Term; (ii) remodel or change the use and character of the Premises; (iii) grant rent concessions in reletting the Premises, if necessary in Landlord's judgment, without reducing Tenant's obligation for rentals specified in this Lease; and (iv) relet all or any portion of the Premises as a part of a larger area. Subject to the next subparagraph 14.2 (c), Landlord may retain the excess, if any, of the rent earned from reletting the Premises over the rentals specified in this Lease.

(c) After any failure by Tenant to pay rent, Landlord may, whether or not it has chosen to re-enter and take possession of the Premises, but only if it has not then notified Tenant of its election to terminate this Lease, collect from and require Tenant to pay an amount (a "Rental Deposit") equal to the then present value of all Minimum Rent specified herein for the balance of the Lease Term. However, if Landlord has relet the Premises or relets thereafter without first terminating this Lease, Landlord will apply any future rentals from reletting (but not rental representing reimbursement for CAM Charges, Taxes or Insurance Costs or rental allocable to any area outside the Premises or rental allocable to the period following the Lease Term) in the following manner: First, to reduce any amounts then due from Tenant, including but not limited to attorneys' fees, brokerage commissions and other expenses Landlord may have incurred in connection with the collection of any rent, recovery of possession, and redecorating, altering, dividing, consolidating with adjoining premises, or otherwise preparing the Premises for reletting; and, second, to the repayment of any Rental Deposit collected from Tenant. The balance, if any, of the future rentals from reletting shall be retained by Landlord as compensation for reletting the Premises. Tenant will not be entitled to any repayment of the Rental Deposit except as provided herein, but Tenant will be relieved of its obligation to make future payments of any Minimum Rent with respect to which it has paid a Rental Deposit to Landlord. Landlord will notify Tenant if Landlord elects to collect a Rental Deposit after an event of default by Tenant, whereupon the Rental Deposit will be immediately due and payable and may be collected by Landlord by a suit to enforce payment.

(d) No re-entry or reletting of the Premises or any filing or service of an unlawful detainer action or similar action will be construed as an election by Landlord to terminate or accept

a forfeiture of this Lease or to accept a surrender of the Premises after an event of default by Tenant, unless a written notice of such intention is given by Landlord to Tenant; but notwithstanding any such action without such notice, Landlord may at any time thereafter elect to terminate this Lease by notifying Tenant. In the event, however, Landlord terminates this Lease after collecting a Rental Deposit as provided in the preceding subparagraph 14.2(c), Landlord will reimburse Tenant for the excess (if any) of (i) that portion of the Rental Deposit collected and attributable to the Minimum Rent for the period following such termination, over (ii) the amount that, notwithstanding the termination, Landlord would have been entitled to recover from Tenant with respect to such period if Landlord had not collected the Rental Deposit.

(e) Upon the termination of this Lease, Landlord will be entitled to recover all unpaid rentals that have accrued through the date of termination plus the costs of performing any of Tenant's obligations (other than the payment of rent) that should have been but were not satisfied as of the date such termination. In addition, if the termination follows a material event of default (as described below in this subparagraph), Landlord will be entitled to recover, not as rent or a penalty but as compensation for Landlord's loss of the benefit of its bargain with Tenant, the difference between (i) an amount equal to the present value of the rental and other sums that this Lease provides Tenant will pay for the remainder of the Lease Term and for the balance of any then effective extension of the Lease Term, and (ii) the present value of the future rentals (net of leasing commissions and other costs of reletting) for such period that will be or with reasonable efforts could be collected by Landlord by reletting the Premises. For purposes of determining what could be collected by Landlord by reletting under the preceding sentence, it will be assumed that Landlord is not required to relet when other comparable space in the Shopping Center is available for lease and that Landlord will not be required to incur any cost to relet, other than customary leasing commissions. As used herein, a material event of default shall mean (i) any failure to pay rent described in Paragraph 14.1(a) above; (ii) any failure to maintain insurance required by this Lease; or (iii) any other events of default, individually or in the aggregate, which Landlord reasonably determines to be material.

(f) After a material event of default by Tenant, Landlord may recover from Tenant from time to time and Tenant shall pay to Landlord upon demand, whether or not Landlord has relet the Premises or terminated this Lease, (i) such expenses as Landlord may incur in recovering possession of the Premises, terminating this Lease, placing the Premises in good order and condition and altering or repairing the same for reletting; (ii) all other costs and expenses (including brokerage commissions and legal fees) paid or incurred by Landlord in exercising any remedy or as a result of the event of default by Tenant; and (iii) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result from such failure.

(g) In the event that any future amount owing to Landlord or offsetting an amount owing to Landlord is to be discounted to present value under this Lease, the present value shall be determined by discounting at the rate of seven percent per annum.

(h) Any Minimum Rent or additional rental or other amounts required to be paid by Tenant hereunder which shall not be paid when due shall bear interest at the Lease Interest Rate.

"Lease Interest Rate" as used herein means three percent above the Wall Street Journal US Prime Rate (WSJ US Prime Rate from time to time charged, announced or published by the Wall Street Journal., but in no event shall such interest rate exceed the highest rate permitted by the laws of the state where the Premises are located. Any payment of the ten percent charge described in the next subparagraph shall be credited against interest otherwise accruing under this subparagraph 14.2(h).

(i) Tenant hereby acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord by the terms of any mortgage or deed of trust covering the Premises. Accordingly, if an event of default by Tenant shall arise because any installment of rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee on the date such amount shall be due, Tenant shall pay to Landlord a late charge equal to ten percent of such overdue amount. The parties hereby agree that such late charge does not represent interest, but rather represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall not constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. The failure of Tenant to pay such late charge as herein stated shall be an event of default hereunder.

This Paragraph 14.2 shall be enforceable to the extent not prohibited by applicable law, and the unenforceability of any provision in this Paragraph shall not render any other provision unenforceable. To the extent permitted by law, Tenant and Landlord agree that paragraphs (a), (b), (c), (e), (f) and (g) of Section 93.002 of the Texas Property Code shall not apply to this Lease. However, as provided in Section 93.008(d) of the Texas Property Code, Tenant will be presumed to have abandoned the Premises if goods, equipment, or other property, in an amount substantial enough to indicate a probable intent to abandon the Premises, is being or has been removed from the Premises and the removal is not within the normal course of Tenant's business.

**14.3 DEFAULT BY LANDLORD**

If Landlord should be in default in the performance of any of its obligations under this Lease, Landlord shall have thirty days to cure such default after receipt by Landlord of written notice from Tenant specifying such default; or if such default is of a nature to require more than thirty days to remedy, landlord shall have the time reasonably necessary to cure it. Tenant agrees to also serve any notice of claimed default or breach by Landlord under this Lease upon the lender holding a first mortgage or deed of trust against the Premises, provided Tenant has any right to terminate this Lease because of a default by Landlord before allowing such lender the same period following such notice to cure the claimed default or breach as is allowed Landlord. But this Paragraph 14.3 will not be interpreted as creating or broadening any right of Tenant to terminate this Lease because of a default by Landlord. Tenant waives any statutory lien it may have against rents due under this Lease or against Landlord's property in Tenant's possession.

**14.4 ATTORNEYS' FEES**

If Landlord incurs attorneys' fees because of Tenant's failure to cure a breach of this Lease within any permitted cure period or because of any request by Tenant for the consent or approval of Landlord to any matter requiring Landlord's consent or approval under this Lease, then Tenant will reimburse Landlord for such fees upon demand.

### 14.5 WAIVERS

No waiver by landlord of any provision of this Lease will be deemed a waiver of any other provision or of any subsequent breach by Tenant. Landlord's consent to or approval of any act will not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant. Landlord's acceptance of rent will not constitute a waiver of any preceding breach by Tenant of this Lease, regardless of Landlord's knowledge of the preceding breach at the time Landlord accepts the rent. Any payment by Tenant or receipt by Landlord of a lesser amount than the Minimum Rent and additional rental stipulated in this Lease will be deemed to be on account of the earliest stipulated rental. Notwithstanding any endorsement or statement on any check or any letter accompanying any check or payment of Minimum Rent or additional rental, Landlord may accept such check or payment without prejudice to Landlord's right to hold the Tenant in default and recover the balance of any Minimum Rent or additional rental due and pursue any other remedy provided in this Lease. Landlord's failure to take any action in regard to Tenant's default, regardless of how long will not constitute a waiver of such default. Any waiver of Tenant's default must be in writing and signed by Landlord to be effective. Any written waiver by Landlord will constitute a waiver only in the specific circumstances described in the waiver.

## 15. LANDLORD'S LIEN AND SECURITY INTEREST

To secure the payment of all rental and other sums of money due and to become due hereunder and the faithful performance of this Lease by Tenant, Tenant hereby grants to Landlord an express first and prior contractual lien upon and security interest in all property (including fixtures, equipment, chattels and merchandise) which may be placed on the Premises by Tenant and all proceeds thereof, including proceeds of any insurance which may accrue to tenant by reason of destruction of or damage to any such property. Such property shall not be removed from the Premises without the written consent of Landlord until all arrearages in rent and other sums of money then due to Landlord hereunder shall first have been paid. All exemption laws are hereby waived in favor of said lien and security interest. This lien and security interest are given in addition to any Landlord's statutory lien and shall be cumulative thereto. Upon the occurrence of an event of default, this security interest may be foreclosed with or without court proceedings by public or private sale provided Landlord gives Tenant at least fifteen days' notice of the time and place of said sale, and Landlord shall have the right to become the purchaser, upon being the highest bidder at such sale. Contemporaneously with the execution of this Lease (or thereafter if requested by Landlord), Tenant shall execute and deliver to Landlord uniform commercial code financing statements in sufficient form so that when properly filed, the security interest hereby granted shall be perfected. Upon request by Landlord, Tenant shall also execute and deliver to Landlord uniform commercial code financing statement change instruments in sufficient form to reflect any proper amendment or modification in or extension of the contractual lien and security interest hereby granted. A carbon, photographic or other reproduction of this Lease will suffice

and may be filed as a financing statement. Landlord shall, in addition to all of its rights hereunder, also have all of the rights and remedies of a secured party under the uniform commercial code as adopted in the state in which the Premises are located.

## 16. SECURITY DEPOSIT

**16.1** If Tenant has deposited the Security Deposit with the Landlord as security for Tenant's satisfactory performance of the terms, covenants and conditions of this Lease including the payment of Minimum Rent and Additional Rent.

(a) **Application of Security Deposit.** Landlord may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any Minimum Rent and Additional Rent or any other sum as to which Tenant is in default or for any sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this Lease including any damages or deficiency in the re-letting of the demised premises or other reentry by Landlord.

(b) **Replenishment of Security Deposit.** If Landlord uses, applies or retains the whole or any part of the security Tenant shall replenish the security to its original sum five (5) days after being notified by the Landlord of the amount due. Tenant shall be in default of this Lease if the amount due is not paid within the required time period.

(c) **Transfer of Property.** In the event of a sale or leasing of the real property or any part thereof, of which the demised Premises form a part, Landlord shall have the right to transfer the security to the vendee or lessee and Landlord shall ipso facto be released by Tenant from all liability for the return of said security; and Tenant agrees to look solely to the new Landlord for the return of said security; and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new landlord.

(d) **Prohibition on Tenant Assignment.** Tenant covenants that it shall not assign or encumber the security deposit given to Landlord pursuant to this Lease. Neither Landlord, its successors nor assigns shall be bound by any such assignment or encumbrance or any attempted assignment or encumbrance.

(e) **When Returned.** In the event that Tenant shall fully and faithfully comply with all the terms, covenants and conditions of this Lease, any part of the security not used or retained by Landlord shall be returned to Tenant after the Expiration Date of the Lease and after delivery of exclusive possession of the demised premises to Landlord.

## 17. QUIET ENJOYMENT AND SUBORDINATION

## 17.1 COVENANT OF QUIET ENJOYMENT

Tenant, upon payment of the rents herein reserved and performance of the terms, conditions, covenants and agreements herein contained, may peaceably and quietly have, hold and enjoy the Premises during the full term of this Lease, including any extension thereof, without hindrance or interruption by Landlord or any other person or entity lawfully claiming an interest in the Premises by, through, or under Landlord, subject, however, to the terms and conditions hereof and subject and subordinate to any mortgage, ground lease, deed of trust or other liens, restrictions, encumbrances, easements and zoning now or at any time hereafter affecting the Premises.

## 17.2 SUBORDINATION

This Lease is subject and subordinate to any mortgage, deed of trust or ground lease which now or may in the future affect the Premises or any interest of Landlord in the Premise, and to all increases, renewals, modifications, consolidations, replacements, and extensions thereof. This Paragraph is self operative. No further instrument is required to effect the subordination of this Lease to any such mortgage, deed of trust or ground lease. In confirmation of the subordination, however, Tenant agrees to execute, acknowledge, and deliver promptly any certificate or instrument requested by Landlord that evidences the subordination. Tenant hereby irrevocably appoints Landlord its attorney-in-fact to execute, acknowledge and deliver any such certificate or instrument for Tenant. Tenant agrees that if the Premises are sold at foreclosure under any such mortgage or deed of trust or are transferred in lieu of foreclosure, or if the lessor repossesses the Premises under any such ground lease, Tenant will attorn to the purchaser, transferee or lessor (as the case may be, the "Applicable Successor") upon request. Tenant will recognize such Applicable Successor as the landlord under this Lease if the Applicable Successor elects to keep this Lease in effect. Even if the Applicable Successor does elect to keep this Lease in effect, the Applicable Successor shall not be:

(a) liable under this Lease or otherwise for any act or omission of any prior landlord (including the original Landlord named above); or

(b) subject to any offsets or defenses which Tenant might have against any prior Landlord (including landlord) with respect to the rent and other amounts payable under this Lease and the other obligations of Tenant hereunder; or

(c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord); or

(d) liable for construction of or payment for tenant improvements to the Premises or any part thereof; or

(e) bound by any amendment or modification of this Lease made without its consent; or

(f) bound by any expansion option, right of first refusal or similar rights, or exclusive

use rights provided to Tenant by this Lease or otherwise, to the extent the same is not consistent with the rights claimed by, through or under other tenants in the Shopping Center.

This Lease and all rights of Tenant are further subject and subordinate to all other existing title matters that affect the Premises, including all utility easements and agreements.

## 18. RIGHTS RESERVED BY LANDLORD

Landlord reserves the following rights, exercisable without notice and without liability to Tenant and without causing an eviction (constructive or actual) or giving rise to any claim for setoff or abatement of rent:

(a) to enter upon the Premises at reasonable hours to inspect, clean or make repairs or alterations (without implying any obligation to do so) and to show the Premises to prospective lenders or purchasers or, during the last 6 months of the Term, prospective tenants and, if the Premises are vacated, to prepare them for reoccupancy;

(b) to retain and use in appropriate instances keys to all doors into and within the Premises (Tenant shall not change or add locks without the prior written consent of Landlord);

## 19. SURRENDER OF PREMISES AND HOLDING OVER

Upon the expiration of the terms hereof Tenant shall deliver all keys to the Premises to Landlord and shall surrender the Premises to Landlord in as good order and condition as at the commencement of the Lease Term except for ordinary wear and tear and damage by fire and other standard extended coverage perils. In the event Tenant continues to occupy the Premises after the expiration of the Lease Term, such occupancy shall be considered a tenancy from month-to-month at a monthly rental equal to twice the highest amount of Minimum Rent and additional rental due for any calendar month of the Lease Term and such tenancy shall be upon and subject to all of the other terms, provisions, covenants and agreements set forth herein, except that Tenant shall have no right to renew this lease or to extend or continue possession hereunder nor have any other option that may be hereby granted to Tenant. Upon the expiration or termination of this Lease, if Tenant is not then in default, Tenant may remove, at its expense, any trade fixtures and unattached personal property previously placed in the Premises by Tenant; but any damage to the Premises caused by such removal shall be repaired by Tenant at the time of the removal. All other installations (including air conditioning equipment, duct work, electric and water connections and electric lighting fixtures) and all repairs, improvements, replacements and alterations to the Premises made by Tenant shall, upon being installed, become the property of Landlord. However, Tenant shall promptly remove any alterations or improvements to the Premises made by it if requested to do so by Landlord, and shall repair any damage to the Premises resulting from such removal. Tenant shall continue to pay all rent until Tenant has made all alterations and corrections as are required herein by Tenant, and until the additions and improvements Tenant is entitled or

required to remove have been removed, and until all repairs required to be made by Tenant have been made. If, after the occurrence of an event of default, or upon the expiration or termination of this Lease, Tenant moves out or is dispossessed and fails to remove any trade fixtures, signs or other personal property placed on the Premises by Tenant prior to such moving out or dispossession, then and in any such events the said fixtures, signs and property shall at Landlord's option be deemed abandoned by Tenant and become the property of Landlord, Landlord shall not be liable for trespass, conversion or negligence by reason of its acts or the acts of anyone claiming under it or by reason of the negligence of any other person with respect to the acquisition and/or disposition of such property, whether or not deemed to be abandoned by Tenant.

## 20. DELAYS BEYOND LANDLORD'S CONTROL

Whenever a period of time is provided in this Lease or in any exhibit hereto for Landlord to do or perform any act or thing, Landlord shall not be liable or responsible for any delay due to acts of God, strikes, lockouts, unavailability of materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, the act, failure to act, or default of Tenant or other tenants, or due to war or any other reason beyond Landlord's reasonable control. In the event of any such delay, time for performance shall be extended for a period equivalent to the period of such delay.

## 21. SHORT FORM LEASE, ESTOPPEL CERTIFICATE AND FINANCIAL STATEMENTS

### 21.1 SHORT FORM LEASE

Tenant shall not record this Lease or any memorandum referring to this Lease without Landlord's prior written consent, and such recordation shall, at Landlord's option, constitute a non-curable event of default of Tenant hereunder. Tenant and Landlord will, on request of Landlord, execute a short form of this Lease in form permitting its recording, which short form will contain the names of the parties, the legal description and term of this Lease.

### 21.2 ESTOPPEL CERTIFICATE

Tenant shall from time to time, within ten days after receipt of written request by Landlord, deliver a statement in writing certifying:

a) that this lease is unmodified and in full force and effect (or if modified that this Lease as so modified is in full force and effect);

(b) the Commencement Date of the Lease Term, the term of this Lease and the monthly Minimum Rent and additional rental, and the amount of any advance rental payments made or security deposits in the possession of Landlord;

(c) that Landlord is not in default under any provision of the lease (or if in default, the nature thereof in detail) and a statement as to any outstanding obligations on the part of Landlord or Tenant;

(d) that, if requested by Landlord or Landlord's mortgagee or assignee, Tenant will not pay rent for more than one month in advance; and

(e) that no modification (except as described in such statement) or termination of this Lease executed or effected by Tenant shall be binding upon any mortgagee holding a mortgage or deed of trust covering the Shopping Center granted by Landlord without notice to and approval of such mortgagee.

Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) that there are no uncured defaults in Landlord's performance hereunder, and (iii) that not more than one month's rent has been paid in advance hereunder; and, at Landlord's option, Tenant's failure to deliver such statement within such time shall constitute a noncurable event of default by Tenant.

### 21.3 FINANCIAL STATEMENTS

Tenant will also furnish Landlordon a reasonable basis, within ten days after receipt of a written request, current financial statements of Tenant and of any guarantor of Tenant's obligations hereunder, which are certified by Tenant or by an independent certified public accountant to have been prepared in accordance with generally accepted accounting principles or on some other basis acceptable to Landlord. Any such financial statements and sales reports provided by Tenant may be relied upon by any prospective purchaser or mortgagee of the Land or any interest therein.

## 22. LANDLORD'S LIABILITY

Landlord shall not be personally liable to Tenant for the breach by Landlord of any covenant, representation or warranty made by Landlord in connection with this Lease; or for any other claim which Tenant may ever have against Landlord, and Tenant agrees that any judgment for damages rendered in favor of Tenant for any such breach by or obligation of Landlord if not timely paid by Landlord, shall be satisfied only by levy of execution upon Landlord's interest in the Premises and that Tenant will not seek to hold Landlord personally liable for such breach or obligation or to levy execution upon any other property or assets of Landlord to satisfy such judgment.

## 23. OVERHEAD AND ADMINISTRATIVE EXPENSES

In determining any costs that Landlord pays or incurs to make any repairs required of Tenant or to perform any other obligation of Tenant, which Tenant fails to make or perform, Landlord shall be entitled to add 15% to its direct costs to cover its overhead and administrative expenses. Further, a 15% overhead and administrative charge will be added to any costs paid or incurred by Landlord to provide Tenant with special services or facilities that are not required, by the terms of this Lease, to be provided at Landlord's expense. Thus, for example, if Landlord incurs any cost to make repairs required of Tenant pursuant to Paragraph 4.2, Landlord shall be entitled to charge Tenant such costs plus 15% to cover Landlord's overhead and administrative

expenses.

## 24. RELOCATION

This section is intentional omitted.

## 25. MISCELLANEOUS

### 25.1 GOVERNING LAW

THIS LEASE SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND APPLICABLE FEDERAL LAW, WITHOUT GIVING EFFECT TO ITS CONFLICT OF LAW PRINCIPLES. .

### 25.2 NOTICES

Any notice or document required or permitted to be delivered hereunder shall be in writing and shall be deemed to be delivered, whether actually received or not, upon first attempted delivery when postmarked by the U.S. Postal Service prepaid, registered or certified mail, return receipt requested, or sent by courier or Express Mail where evidence of delivery is retained, addressed to the parties at the respective mailing addresses set out in the Basic Lease Information, or at such other address as they have at least ten days therefore specified by written notice delivered in accordance herein.

### 25.3 This paragraph is intentionally omitted.

### 25.4 SUCCESSORS AND ASSIGNS

The conditions, covenants and agreements contained in this Lease shall be binding upon and, subject to the restrictions herein concerning assignment and subletting, inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors and assigns.

### 25.5 JOINT AND SEVERAL LIABILITY

If Tenant is more than one person or entity, all such persons or entities shall be jointly and severally liable hereunder for the obligations of Tenant.

### 25.6 TIME IS OF THE ESSENCE

Subject to Article 20 above, time is of the essence with respect to the performance of every provision of this Lease in which time of performance is specified.

### 25.7 SEVERABILITY

A determination that any term or provision of this Lease, or the application thereof to any

person or circumstance, is invalid or unenforceable, will not affect the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable. Each term and provision of this Lease will be valid and enforced to the fullest extent permitted by law.

**25.8 BROKERAGE FEES**

Tenant warrants and represents that Landlord will not be responsible for and Tenant shall indemnify, defend and hold Landlord harmless against any brokerage or leasing commission or finder's fee claimed by any party in connection with this Lease, except any such claim made pursuant to a separate written agreement executed by Landlord and the party making such claim.

**25.9 PARAGRAPH HEADINGS**

The paragraph headings contained in this Lease are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several provisions.

**25.10 NO MERGER**

There shall be no merger of this Lease or of Tenant's leasehold estate with the fee estate in the Premises by reason of the fact that the same person may acquire or hold, directly or indirectly, both all or any interest in this Lease or the leasehold estate and all or any interest in the fee estate.

**25.11 CONSTRUCTION OF LEASE PROVISIONS**

Tenant acknowledges that it has read and negotiated this Lease in its entirety and is familiar with and understands all its terms and provisions. Accordingly, Tenant agrees that if a dispute arises, this Lease will not be construed in favor of either party, nor shall the authorship of this Lease be a factor in any such construction.

**25.12 REPRESENTATIONS, WARRANTIES AND COVENANTS OF TENANT**

Tenant represents, warrants and covenants that it is now in a solvent condition; that no bankruptcy or insolvency proceedings are pending or contemplated by or against Tenant or any guarantor of Tenant's obligations under this Lease; that all reports, statements and other data furnished by Tenant to Landlord in connection with this Lease are true and correct in all material respects; that the execution and delivery of this Lease by Tenant does not contravene, result in a breach of, or constitute a default under any contract or agreement to which Tenant is a party or by which Tenant may be bound and does not violate or contravene any law, order, decree, rule or regulation to which Tenant is subject; and that there are no judicial or administrative actions, suits, or proceedings pending or threatened against or affecting Tenant or any guarantor of Tenant's obligations under this Lease. If Tenant is a corporation, partnership or other entity, each of the persons executing this Lease on behalf of Tenant represents and warrants that Tenant is duly organized and existing, is qualified to do business in the state in which the Premises are located, has full right and authority to enter in this Lease, that the persons signing on behalf of Tenant are authorized to do so by appropriate corporate or partnership action and that the terms, conditions

and covenants in this Lease are enforceable against Tenant. If Tenant is a corporation, Tenant will deliver certified resolutions to Landlord, upon request, evidencing that the execution and delivery of this Lease has been duly authorized and properly executed, and will deliver such other evidence of existence, authority and good standing as Landlord shall require.

**25.13 CONFIDENTIALITY**

Tenant shall not, without Owner's prior written consent, disclose any of the terms of this Lease or of any future modification of this Lease or of any waiver by Landlord of Tenant's obligations under this Lease to any other tenant or prospective tenant or other third party, provided that this provision shall not preclude disclosures to Tenant's attorneys or accountants as reasonably required to permit Tenant to enforce this Lease or to prepare tax returns or other reports required by law.

**25.14 SUBMISSION OF LEASE**

**THE SUBMISSION OF THIS LEASE FOR EXAMINATION DOES NOT CONSTITUTE AN OFFER TO LEASE, AND THIS LEASE BECOMES EFFECTIVE ONLY UPON EXECUTION HEREOF BY TENANT AND BY A REPRESENTATIVE OF LANDLORD AUTHORIZED TO EXECUTE THE LEASE.**

**25.15 RELEASE AND WAIVER OF CLAIMS**

In consideration of the agreement of Landlord to enter into this Lease with Tenant, Tenant hereby **RELEASES, RELINQUISHES** and forever **DISCHARGES** Landlord, as well as its predecessors, successors, assigns, agents, officers, directors, employees and representatives, of and from any and all claims, demands, actions and causes of action of any and every kind or character, past or present, which Tenant, its predecessors, successors or assigns may have against Landlord and its predecessors, successors, assigns, agents, officers, directors, employees and representatives arising out of or with respect to (a) any right or power to bring any claim against Landlord in connection with the Premises or prior leases in which Tenant had an interest, or to pursue any cause of action against Lender based on any claim of usury, and (b) any and all transactions relating to the Lease occurring prior to the date hereof, including any loss, cost or damage, of any kind or character, arising out of or in any way connected with or in any way resulting from the acts, actions or omissions of Landlord, and its predecessors, successors, assigns, agents, officers, directors, employees and representatives, including any breach of fiduciary duty, breach of any duty of fair dealing, breach of confidence, breach of commitment, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, malpractice, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander or conspiracy, claims with regard to hazardous or toxic materials, claims for indemnity or contribution, but in each case only to the extent permitted by applicable law.

**25.16 ENTIRE AGREEMENT; AMENDMENTS**

This Lease and the Addenda which are part of this Lease supersede any prior agreements between the parties concerning the Premises, and no oral statements, representations or prior written matter relating to the subject matter hereof, but not contained in this Lease, shall have any force or effect. Nothing contained in this Lease, (including Exhibits) shall give rise to duties or covenants on the part of the Landlord, express or implied, other than the express duties and covenants set forth herein. **ANY REPRESENTATION OF LANDLORD'S AGENTS OR ANY THIRD PARTY LEASING BROKER OR LEASING AGENT WHICH IS NOT INCORPORATED IN THIS LEASE SHALL NOT BE BINDING UPON LANDLORD AND SHOULD BE CONSIDERED AS UNAUTHORIZED.** Nothing herein contained shall be construed to create any partnership or joint venture between the parties, it being intended that the only relationship between the parties created by this Lease is a landlord/tenant relationship. This Lease shall not be amended or added to in any way except by written instruments executed by duly authorized representatives of both parties and their respective successors in interest.

**IN WITNESS WHEREOF,** this Lease has been duly executed by the parties hereto as of the day and year first written above.

**LANDLORD:**
**Bullish Resources, Inc.,**
**a Texas Corporation**

By: Tackett

Name: Valerie Tackett

Title: Corporate Vice President

**TENANT:**
**Tricolor Auto Group, LLC**
**a Texas Limited Liability Company**

By:

Name: Daniel Chu

Title: CEO

**EXHIBIT B**
**PERSONAL PROPERTY LEASE**

PERSONAL PROPERTY LEASE AGREEMENT
BY AN BETWEEN

BULLISH RESOURCES, INC.

Lessor

and

TRICOLOR AUTO GROUP, LLC.,

Lessee

Bullish Resources, Inc., "Lessor," whose mailing address is 10855 IH-10 West San Antonio, Texas 78230, does lease, and Tricolor Auto Group, LLC., "Lessee," whose mailing address is 1111 W. Mockingbird Ln., Suite 1500, Dallas, Texas 75247, does hire from Lessor, for use at lessee's place of business at 3720 E Saunders, Laredo, Texas (the "Premises"), subject to the following terms, provisions, conditions, and covenants, for the term of five years from September 21, 2020, the machinery and personal property as described herein below (the "Personal Property").

1. DESCRIPTION OF THE PERSONAL PROPERTY

NITRO MACHINE NTF-515B

BOSCH BRAKE LATHE AND ADAPTER

SHOP EQUIP-4 LIFTS, WORK BENCHES, AIR SYSTEM

CANTU ELECT. 5 GFI'S FOR LIFTS > 5.31.24

PARTS TIRE CONTAINER

PARTS BIN SYSTEM

DATA/PHONE DROPS

DESKS/OFFICES/FILE CABINETS/SHOWROOM FURNITURE

The Personal Property is leased and accepted by Lessee in its "**AS IS**" condition without any warranty or guarantee and **Lessor specifically disclaims any warranty of marketability or fitness for a particular purpose or intended use.** By signing and returning the attached Certificate of Acceptance Lessee acknowledges that it has thoroughly inspected the Personal Property and finds it to be in usable and acceptable condition.

2. MONTHLY RENTAL FEE

The monthly rental fee of $750.00 shall be paid by Lessee to Lessor in advance at Lessor's mailing address, or such other address as Lessor shall designate in writing, on or before the first day of each month. Monthly Rental Fee shall be abated during the period September 21, 2020 to October 15th, 2020.

3. TAXES OR CHARGES

Should any tax, fee or charge be imposed by any governmental authority on this transaction, or on the use or ownership of the Personal Property then Lessee agrees to pay Lessor on demand the full amount of any such taxes, fee or charge.

4. TITLE TO THE PERSONAL PROPERTY

Title to the Personal Property that is the subject matter of this lease shall be and remain in Lessor at all times during the term of this lease. Lessee shall not remove any of the Personal Property from the Premises, or permit to be removed, any serial number, model, name, or other indicia showing ownership.

5. MAINTENANCE OF THE PERSONAL PROPERTY

Lessee guarantees, at its own cost and expense, to keep the Personal Property in good working condition during the term of this lease. Lessee shall at all times during the term of this lease exercise reasonable care in using the machinery, and shall make good to Lessor for any damage to the Personal Property caused by fire, theft, accident, neglect, or abuse, and at the end or other termination of this lease, Lessee shall surrender the Personal Property to Lessor in as good order and condition as it is now, reasonable wear and tear resulting from the proper use of the machinery alone excepted.

6. INSURANCE

Lessee shall at all times during the term of this lease, and at its own expense, keep the Personal Property insured to the amount of at least $1,000,000, for all risks of loss, with carriers acceptable to Lessor, for Lessor's benefit. Lessee will deliver the policies of insurance to lessor, and lessor shall be entitled to receive all insurance proceeds collected under the policies for any loss of or to any of the Personal Property.

7. INDEMNITY

Lessee shall indemnify Lessor against, and hold Lessor harmless from, all claims, actions, proceedings, costs, damages, and liabilities, including attorney's fees, arising out of, connected with, or resulting from the leased Personal Property, including without limitation the manufacture, selection, delivery, possession, use, operation, or return of the Personal Property..

8. REMOVAL OR ASSIGNMENT

Without Lessor's previous written consent, Lessee shall not remove any of the Personal Property from the Premises, or part with its possession, or suffer the removed from its possession. Further Lessee shall not assign this lease or underlet any of the Personal Property; and Lessee shall keep machinery free of all taxes, liens, and encumbrances.

9. INSPECTION BY LESSOR

For the purpose of examining and inspecting the condition of Personal Property, Lessor may from time to time enter the Premises at all reasonable times.

10. LESSEE'S RIGHT TO POSSESSION

Lessee shall have the right to retain possession of the Personal Property only so long as Lessee shall not be in default under this Lease or under the Commercial Lease Agreement by and between Bullish Resources, Inc. and Tricolor Auto Group, LLC of even date herewith for the leasing of real property located at 3720 E Saunders, Laredo, Texas (the "Real Property Lease"). Punctuality in the payment of the rent shall be deemed to be the essence of this lease.

11. INTENTIONALLY LEFT BLANK

12. DEFAULT BY LESSEE

If Lessee shall default in punctually paying any rent due as described above, or if Lessee shall allow any security interest to attach to any of the Personal Property, or if any execution or other writ or process shall be issued in any action or proceeding against the Lessee, where the Personal Property may be seized or taken or distrained, or if Lessee shall enter into any arrangement or composition with Lessee's creditors, or if Lessee should breach any other term, covenant, or condition of this lease, or if Lessee shall be in default under the Real Property Lease, then and in any such event, Lessor shall have the right to retake immediate possession of the Personal Property, may render the Personal Property inoperable, and for such purpose Lessor may enter upon any premises where the Personal Property may be and with or without notice of its intention to retake the Personal Property, without being liable to any suit or action or proceeding by Lessee.

13. TERMINATION OF LEASE

Upon the renewal of the initial term of the lease for a second term, assuming no event of Default then exists, Lessee shall retain use of FF&E from Lessor for the 2nd term at a sum of $0.00 monthly charge. Upon renewal of the 3rd term of the lease, assuming no event of Default then exists, Lessee shall be permitted to purchase FF&E from the landlord at a sum of $10.00 transferred via a Bill of Sale agreement. It is the intent of the Lessor to preserve the relet value of the premises for its original purpose. Upon conclusion and absent a subsequent renewal, Lessor reserves right of first refusal to repurchase the FF&E at current fair market value as mutually agreed upon expiration of lease term.

14. EFFECT OF WAIVER

No delay or omission to exercise any right, power, or remedy accruing to lessor on any breach or default by lessee under this lease shall impair any such right, power, or remedy of lessor, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of any similar breach or default occurring thereafter; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default. Any waiver, permit, consent, or approval of any kind or character on the part of lessor of any breach or default under this lease, or any waiver on the part of lessor of any term, provisions, condition, or covenant of this lease, must be in writing,

and shall be effective only to the extent in such writing specifically set forth. All remedies, either under this lease or by law, or otherwise afforded to lessor, shall be cumulative and not alternative.

15. ATTORNEYS' FEES

In the event of any action filed in relation to this lease, Lessee, in addition to all other sums that Lessee might be called on to pay, will pay to Lessor a reasonable amount for Lessor's attorney's fees.

16. APPLICABLE LAW

This lease shall be governed by and construed under the laws of the State of Texas and venue for any proceeding to enforce this lease shall be in Bexar County, Texas. .

17. LEASE AS ENTIRE AGREEMENT; SEVERABILITY

This lease embodies the entire agreement between the parties with respect to the Personal Property.

It may not be modified or terminated except as provided in this lease or by other written agreement signed by the parties. If any provision of this lease is invalid, it shall be considered deleted from this lease, and shall not invalidate the remaining provisions of this lease.

18. EXECUTION OF LEASE

This lease is not binding until executed by a proper officer of Lessor and until the receipt and acceptance by the Lessor of the initial monthly rental fee provided for under this lease.

19. EFFECTIVE PERIOD OF LEASE

This lease shall continue in full force and effect during the period set forth and afterwards for successive months until one of the parties to the lease notifies the other party in writing of its election to terminate this lease. Such notice shall be given at least 30 days prior to the effective date of termination.

20. MANNER OF GIVING NOTICE

Any notice or document required or permitted to be delivered hereunder shall be in writing and shall be deemed to be delivered, whether actually received or not, upon first attempted delivery when postmarked by the U.S. Postal Service prepaid, registered or certified mail, return receipt requested, or sent by courier or Express Mail where evidence of delivery is retained, addressed to the parties at the respective mailing addresses set forth above, or at such other address as they have at least ten days therefore specified by written notice delivered in accordance herein.

**IN WITNESS WHEREOF,** this Lease has been duly executed by the parties hereto as of the day and year first written above.

**LANDLORD:**
**Bullish Resources, Inc.,**
**a Texas Corporation**

By: _____

Name: Valerie Tackett

Title: Corporate Vice President

**TENANT:**
**Tricolor Auto Group, LLC**
**a Texas Limited Liability Company**

By: _____

Name: Daniel Chu

Title: CEO

**EXHIBIT C**

**CERTIFICATE OF ACCEPTANCE**

This certificate is being executed by and on behalf of Tricolor Auto Group, LLC, Tenant, under the Commercial Lease Agreement with even effective date (the "Commercial Lease Agreement"), and shall become a part of such Commercial Lease Agreement for all purposes.

Tenant certifies to and agrees with Landlord and Landlord's successors, assigns, prospective purchasers and prospective lenders that:

1. Tenant has thoroughly inspected the premises located at 3720 E Saunders, in the City of Laredo , County of Webb, State of Texas (the "Premises") and is thoroughly familiar with the condition of the Premise and all improvements upon the Premises.

2. Tenant acknowledges that the Premises and all improvements upon the Premises are in good condition and working order and suitable for Tenant's use and purposes in operating a business for the sale and servicing of automobiles.

3. Tenant acknowledges and agrees that it takes the Premises and all improvements upon the Premises in their current **"AS IS"** condition, without any warranty or guarantee. **All warranties of marketability and fitness for intended use having been disclaimed by Landlord.**

Executed, acknowledged, agreed to and certified as of the 11th day of Sept, 2020.

**TENANT:**
**Tricolor Auto Group, LLC**
**a Texas Limited Liability Company**

By: _____
Name: Daniel Chu
Title: CEO

**Exhibit B**

**First Amendment**

# FIRST AMENDMENT TO THE

# COMMERCIAL LEASE AGREEMENT

# BY AND BETWEEN

**BULLISH RESOURCES, INC.**

**and**

**ANC VENTURES, LTD.**

**and**

**TRICOLOR AUTO GROUP, LLC.,**

**FIRST AMENDMENT TO THE COMMERCIAL LEASE AGREEMENT**

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree that the Commercial Lease Agreement executed, binding and effective as of the 14th day of September, 2020, between the Bullish Resources, Inc, as Landlord, and Tricolor Auto Group, LLC., as Tenant, (the "Lease") is hereby amended as follows:

**Item B and C of the Basic Lease Information:** Item B and Item C of the Basic Lease Information is amended to substitute ANC Ventures, LTD. as the Landlord as if ANC Ventures, LTD. had been originally designated as the Landlord. It is the intent of the parties that ANC Ventures, LTD. be and is the Landlord under the Lease.

**Exhibit B of the Lease:** Exhibit B of the Lease shall be amended to substitute ANC Ventures, LTD. as the Lessor as if ANC Ventures, LTD. had been the original Lessor designated. It is the intent of the parties that ANC Ventures, LTD. be and is the Lessor under the Lease and the Personal Property Lease Agreement to be effective as of September 14, 2020 which shall take the place of the original version of the Personal Property Lease. The original version of the Personal Proerty Lease shall be null and void as of the execution of this First Amendment to the Commercial Lease Agreement and the attached Exhibit B.

**IN WITNESS WHEREOF,** this First Amendment to the Commercial Lease Agreement is agreed to and has been duly executed by the parties hereto as of the day and year first written above.

**BULLISH RESOURCES, INC.,**
**a Texas Corporation**

By: Tackett
Name: Valerie Tackett
Title: Corporate Vice President

**ANC VENTURES, INC.**
**a Texas Corporation**

By: Tackett
Name: Valerie Tackett
Tittle: Corporate Vice President

**TRICOLOR AUTO GROUP, LLC.**
**a Texas Limited Liability Company**

By: _____
Name: _____
Title: President

**Exhibit C**

**Second Amendment**

Docusign Envelope ID: 8188B3E4-6FE5-4B29-9764-EBD528218EC1

# SECOND AMENDMENT TO THE COMMERCIAL LEASE AGREEMENT

**WHEREAS** Bullish Resources, Inc, as Landlord, and Tricolor Auto Group, LLC., as Tenant, entered into the Commercial Lease Agreement executed and effective as of the 14th day of September, 2020, and amended by that one certain First Amendment to the Commercial Lease Agreement to ANC Ventures, Ltd., as Landlord, collectively the "Lease," and

**WHEREAS** the Lease grants to Tenant a total of two (2) options to extend the term of this Lease for a period of five (5) years each upon the same terms, covenants and conditions as contained in the Lease, except as to minimum guaranteed rentals which under the Lease and option are to be agreed to between Landlord and Tenant within sixty (60) days after Tenant's notification of the exercise of any option period; and

**WHEREAS** on March 4, 2025, Landlord received written notice of Tenant's exercise of its first option to extend the lease for the first five year option period; and

**WHEREAS** Landlord and Tenant have agreed that the Minimum Rent provided for in Item M. of the Basic Lease Information and referred to in Section 1.1 of the Lease, as original written, is revised and increase to $16,733 per month for each month of the five year period of the first option term under the first option.

**NOW THEREFORE IT IS HEREBY AGREED** that for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree that Tenant has exercised the first of its two five year renewal periods and that Item M. of the Basic Lease Information and referred to in Section 1.1 of the Lease, as original written, is revised and increased to $16,733 per month, commencing October 1, 2025, which is due on the 1st day of the month for each month of the five year period of the first option term under the first option.

**IT IS FURTHER AGREED** that except as expressly stated in this Second Amendment to the Commercial Lease Agreement, the terms, covenants and conditions as contained in the September 14, 2020 Commercial Lease Agreement remain unchanged.

**IN WITNESS THEREOF,** this Second Amendment to the Commercial Lease Agreement is agreed to and has been duly executed by the parties hereto as of the 1 day of April 2025.

**ANC VENTURES, LTD**
**a Texas Corporation**

By: Tackett
Name: Valerie Tackett
Title: Corporate Vice President

**TRICOLOR AUTO GROUP, LLC**
**A Texas Limited Liability Company**

By: [signature]
Name: Daniel Chu
Title: CEO

**Exhibit D**

**Repair Costs**

**TRICOLOR EXPENSES - 3720 E SAUNDERS, LAREDO**

| Date | Pymnt Ref# | Amount` | Vendor Paid | Description |
|---|---|---|---|---|
| 11/5/2025 | 775595 | 81.00 | RENTAL UNIT | Rental for VT - trip to Laredo |
| 1/8/2026 | CK#9000056 | 7,382.65 | ALPHA OMEGA ELECTRICAL SERVICES | Extensive light repairs @ 3720 E Saunders - Laredo |
| 1/14/2026 | CK#4236 | 863.20 | PRIME LOCKSMITH | Reky building @ 3720 E Saunders - Laredo |
| 1/14/2026 | CK#4236 | 487.13 | OLYMPIA LANDSCAPE DEVELOPMENT | Mowing & cleanup @ 3720 E Saunders - Laredo |
| 1/14/2026 | CK#4236 | 97.43 | ACE LOCKSMITH | Duplicate keys @ 3720 E Saunders - Laredo |
| 1/14/2026 | CK#4236 | 218.15 | CHAVARRIA'S PLUMBING | Plumbing repairs @ 3720 E Saunders - Laredo |
| 1/14/2026 | CK#4236 | 324.76 | BENNY BUILDING MAINTENANCE SERVICES | Building repairs @ 3720 E Saunders - Laredo |
| | | **$ 9,454.32** | | |

**Exhibit E**

**Summary of Brokerage Fees**

KW COMMERCIAL℠

**INVOICE NO. 02566**
**12/01/2025**

BILLED TO:
KELLER WILLIAMS LAREDO
6910 MCPHERSON RD. SUITE 4
LAREDO, TX 78041

| DESCRIPTION | LEASE TOTAL | COMMISSION AMT |
|---|---|---|
| YEAR 1 | $180,000.00 | $7,200.00 |
| YEAR 2 | $216,000.00 | $8,640.00 |
| YEAR 3 | $216,000.00 | $8,640.00 |
| YEAR 4 | $220,320.00 | $8,812.80 |
| YEAR 5 | $224,726.40 | $8,989.05 |

**TOTAL**

**$42,281.85**

**Exhibit F**

**Summary of Legal Fees**

## Jackson Walker LLP

| Invoice | Date | Fees |
|---|---|---|
| 2082838 | 10/9/2025 | $13,814.00 |
| 2097565 | 12/10/2025 | $42,583.50 |
| 2101655 | 12/30/2025 | $24,033.50 |
| 2103214 | 1/9/2026 | $1,764.00 |
| 2109017 | 2/11/2026 | $3,906.00 |
| 2115571 | 3/11/2026 | $252.00 |
| 2121671 | 4/10/2026 | $4,189.50 |
| Current WIP | As of 5/18/2026 | $8,453.50 |
| **TOTAL** | — | **$98,976.00** |

## Benjamin, Vana, Martinez & Cano LLP

| | Date | Amount |
|---|---|---|
| | 12/10/2025 | $1,620.00 |
| | 12/10/2025 | $7,380.00 |
| | 1/9/2026 | $4,346.65 |
| | 4/9/2026 | $9,766.00 |
| **TOTAL** | | **$23,112.65** |