

FIRST LEASE AMENDMENT AND EXTENSION AGREEMENT

THIS FIRST LEASE AMENDMENT AND EXTENSION AGREEMENT ("Agreement") is made and entered into as of this 10th day of January, 2013 (the "Effective Date") by and between **EQYInvest Owner I, Ltd., L.L.P.**, a Texas limited liability partnership ("Landlord"), and **Survivor Gals Specialty Products and Salon, L.L.C.**, a Texas limited liability company d/b/a Survivor Gals Specialty Products and Salon ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into a certain lease dated October 31, 2008, the same may have been modified, amended and/or supplemented in writing (the "Lease"), pursuant to the terms of which Landlord leased and demised unto Tenant certain premises consisting of **1,738** square feet (the "Premises") more particularly described in the Lease and presently located in Space No. **190** in the **Parkwood Shopping Center** (the "Shopping Center"), said Shopping Center being located in Plano, Texas; and

WHEREAS, the Lease is set to expire on **February 28, 2014** and Tenant desires to extend the term of the Lease for a period of **three (3)** years; and

WHEREAS, Landlord agrees to consent to such extension and Tenant agrees to accept such extension according to the terms and conditions set forth herein; and

WHEREAS, Landlord and Tenant desire to further modify the Lease in the manner hereinafter set forth.

NOW, THEREFORE, for good and valuable considerations, the receipt, adequacy, and legal sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **EXTENSION OF TERM.** The term of said Lease is hereby extended for a period of **three (3)** years commencing **March 1, 2014** and expiring on **February 28, 2017** (the "Extension Term"). Tenant acknowledges and agrees that Tenant shall have no further right to renew or extend the term of the Lease unless agreed to in writing by the parties.

2. **MINIMUM RENT DURING EXTENSION TERM.** Tenant agrees to pay to Landlord, as Minimum Rent for the Premises during the Extension Term, without notice, demand, deduction, setoff or counterclaim, the sums set forth in the following schedule, plus all applicable sales, rent, use and/or other taxes thereon:

<u>Year of Extension Term</u>	<u>Annual PSF</u>	<u>Annual Minimum Rent</u>	<u>Monthly Minimum Rent</u>
1	\$13.33	\$23,167.54	\$1,930.63
2	\$13.66	\$23,741.08	\$1,978.42
3	\$14.00	\$24,332.00	\$2,027.67

Monthly installments of Base Rent at the rate set forth above shall be payable to Landlord in advance, on the first day of each calendar month during the Extension Term.

3. **PERCENTAGE RENT.** Tenant is not required to pay Percentage Rent or report Gross Sales.

4. **ADDITIONAL RENT.** In addition to the Minimum Rent and Percentage Rent, if any, payable as aforesaid, Tenant hereby further agrees to pay to Landlord during the Extension Term, all Additional Rent and other charges required to be paid by Tenant pursuant to the Lease, including, but not limited to, all Utility Charges and Tenant's Proportionate Share of Taxes, Insurance Premiums, Common Area maintenance expenses, and other Shopping Center Operating Costs.

5. **Tenant hereby agrees and acknowledges that any funds given to Landlord in association with this Agreement may be deposited into Landlord's financial institution immediately. Further, depositing of such funds shall not be deemed or interpreted by either party to be evidence of Landlord's acceptance of this Agreement.** In the event this Agreement is not accepted by Landlord, any funds deposited by Landlord shall be returned to Tenant within thirty (30) days of Landlord's rejection.

6. **PREMISES ACCEPTED BY TENANT "AS IS", ETC.** Tenant acknowledges and agrees: (a) that Tenant has been in occupancy of the Premises for an extended period of time; (b) that Tenant is fully familiar with the Premises and the Shopping Center and accepts the same now, and at the commencement of the Extension Term, in their "AS IS" condition, with all faults; (c) that Landlord has not made and does not make any representations or warranties (express or implied) regarding the condition of the Premises or the Shopping Center (including, but not limited to any express or implied warranties of MERCHANTABILITY, HABITABILITY, SUITABILITY, FITNESS FOR ANY PURPOSE OR ANY OTHER WARRANTY IN RESPECT OF THE PREMISES OR THE SHOPPING CENTER – each and all of which are hereby explicitly disclaimed by the Landlord), (d) that Landlord has no responsibility or liability for making any renovations, alterations or improvements in or to the Premises; (e) that all further renovations, alterations or improvements in or to the Premises are the sole responsibility of Tenant and shall be undertaken and completed at Tenant's expense and strictly in accordance with the provisions of the Lease; and (f) that any rent free periods, rental concessions, inducements, allowances and other similar items applicable prior to the commencement of the Extension Term will not apply during the Extension Term. Tenant expressly warrants and represents that no promise or agreement which is not herein expressed has been made to it and hereby disclaims any reliance upon any such alleged promise or agreement. This provision was freely negotiated and played an important part in the bargaining process for this Lease. Tenant has agreed to disclaim reliance on Landlord and to accept the Leased Premises "AS-IS" with full awareness that the Leased Premises' prior uses or other matters could affect its condition, value, suitability or fitness; and Tenant confirms that Tenant is hereby assuming all risk associated therewith. Tenant understands that the disclaimers of reliance and other provisions contained herein could limit any

legal recourse or remedy Tenant otherwise might have. Tenant acknowledges that it has sought and has relied upon the advice of its own legal counsel concerning this provision. Provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

7. **TAXES.** Landlord and Tenant hereby agree that as of the Effective Date, the definition of Taxes in Section 5(A) of the Lease is hereby deleted in its entirety and replaced with the following:

"Taxes" shall mean and include: general real estate taxes, general and special assessments, parking surcharges, owners association charges, and other governmental charges and assessments related to real property and improvements constituting fixtures thereon which shall, during the Lease Term, become due and payable (and/or are assessed for a period of time during the Lease Term). Taxes shall not include any inheritance, estate, succession, transfer or gift tax or any net income tax, excess or profit tax imposed on Landlord. A copy of any official tax bills with respect to a governmental tax or assessment shall be conclusive evidence of the amount of a Tax. Additionally, if there shall be levied, assessed or imposed upon Landlord or the Leased Premises a capital levy or other tax on the rents received therefrom or a franchise or margin tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents and/or other revenue of Landlord, then all such taxes, assessments, levies and/or charges, or the part thereof so measured or based, shall be deemed to be included within the term "Taxes" for the purpose hereof and Tenant shall pay that portion of such tax attributable to the Leased Premises. The foregoing sentence shall be construed to specifically include franchise taxes and/or margin taxes assessed against the Landlord pursuant to Tex. Tax Code Ann. 21.02 (Vernon 2001 & Supp. 2006), as same may be hereafter modified or amended, in the definition of real estate taxes for all purposes under the Lease. In the event such tax or excise is levied or assessed directly against Tenant, then Tenant shall be responsible for and shall pay the same at such times and in such manner as the taxing authority shall require. Landlord and Tenant acknowledge and agree that as of the date of the Lease, the State of Texas does not have a statute mandating re-assessment for taxes in connection with a change in ownership.

8. **LANDLORD'S ADDRESSES.**

"Landlord's Notice Address": EQYInvest Owner I, Ltd., L.L.P.
c/o Global Realty & Management TX, Inc.
15866 Champion Forest Drive
Spring, Texas 77379
Attention: Property Management Department
(281) 840-5363

"Address for Payment of Rent": EQYInvest Owner I, Ltd., L.L.P.
c/o JP Morgan Chase
P. O. Box 730373
Dallas, Texas 75373-0373

9. **USA PATRIOT ACT.**

a. **Certification.** Pursuant to *Executive Order 13224*, signed by President George W. Bush on September 24, 2001, each party hereby certifies that: (i) it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, **"Specially Designated National and Blocked Person,"** or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity, or nation.

b. **Indemnification.** Each party hereby agrees to defend, indemnify and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the foregoing certification.

c. **Tenant's breach.** Tenant's breach of any representation or covenant set forth in this Section 9 shall constitute a breach of the Lease by Tenant, entitling Landlord to any and all remedies hereunder, or at law or in equity.

10. Landlord and Tenant hereby agree that as of the Effective Date, the following is hereby added as Section 28(U):

(U) **Texas Architectural Barriers Act.** Tenant shall at its sole cost and expense comply with the Texas Architectural Barriers Act (Article 9102, T.C.S.) to the extent same applies to any finish-out, remodeling or other construction work performed by Tenant, or on Tenant's behalf, at the Leased Premises, including, but not limited to, obtaining any required inspections and paying any inspection fees in connection therewith. In the event Landlord obtains said inspections, pays the fees therefor and/or incurs any other costs related thereto, Tenant shall immediately upon demand from Landlord, reimburse Landlord for such costs. Tenant agrees to hold harmless and indemnify Landlord from any and all costs, damages, injuries and expenses, including, but not limited to, reasonable attorney's fees and court costs, arising out of its obligations hereunder. The foregoing is hereby considered to be a part of the Lease for all purposes.

11. **CONFIDENTIALITY.** Tenant agrees not to disclose any of the terms or provisions of this Agreement to other present or future tenants or prospective tenants of the Shopping Center or their respective representatives, nor to anyone else, excepting professionals (i.e., attorneys and accountants) who require knowledge thereof in furtherance of Tenant's bona fide interests.

12. **MISCELLANEOUS.** Unless otherwise indicated, capitalized terms used herein shall have the meanings, respectively, ascribed to them in the Lease. Landlord and Tenant hereby ratify and confirm the Lease, as amended by this Agreement, and expressly acknowledge and agree that the Lease, as amended by this Agreement remains and shall continue in full force and effect upon and subject to the terms and conditions thereof. In the event of any conflict between the terms and provisions of the Lease and the terms and provisions of this Agreement, the terms and provisions of this Agreement shall take precedence and control. The Lease and this Agreement constitute the entire agreement between Landlord and Tenant. **As a material inducement to Landlord's agreement to enter into this Agreement, and as additional consideration to Landlord therefor, Tenant hereby expressly represents and warrants to Landlord that to the best of Tenant's knowledge and belief following due inquiry, Landlord is not in default in any respect under the Lease (or, if any such default exists, Tenant hereby irrevocably and unconditionally waives same).** Tenant further acknowledges and agrees that neither Landlord nor Landlord's Agent has made and is not making any warranties, representations, promises or statements, except to the extent that the same are expressly set forth in the Lease and this Agreement. This Agreement and all the terms and provisions hereof shall inure to the benefit of and be binding upon all parties hereto, their respective heirs, personal representatives, administrators, executors, successors and assigns, provided, however, that the foregoing reference to heirs, personal representatives, administrators, executors, successors and assigns shall not be deemed to imply any consent or agreement on the part of Landlord to any assignment or transfer of the Lease (in whole or in part), or any subletting of the Premises (in whole or in part) except if and to the extent expressly permitted by the Lease. This Agreement may be executed in counterparts, each of which shall be deemed an original; and such counterparts, when taken together shall constitute but one agreement.

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IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the day and year first written above.

LANDLORD:

EQYInvest Owner I, Ltd., L.L.P.,

a Texas limited liability partnership

By: EQYInvest Owner I GP, L.L.C.,

**a Delaware limited liability company,
general partner**

By: 

Name/Title: **Rafi Zitvar, Vice President**

TENANT:

Survivor Gals Specialty Products and Salon, L.L.C.,

a Texas limited liability company

By: 

Name/Title: **Jennifer Grunwald -**
Owner

GUARANTY JOINDER

The undersigned guarantors hereby joins in this Agreement for the purpose of consenting to the terms contained herein and ratifying the unconditional guarantee of the Tenant's obligations as set forth in the Lease and this Agreement.

Guarantor:


Jennifer Grunwald

Address: 3008 Padre Court
Plano, Texas 75075

Social Security No. 423-82-5704

Guarantor:


Ronald Grunwald

Address: 3008 Padre Court
Plano, Texas 75075

Social Security No. 460-67-2569