

## FIFTH AMENDATORY LEASE AGREEMENT

*Subway Store #54068*

**THIS FIFTH AMENDATORY LEASE AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation and home rule city of the State of Colorado, hereinafter referred to as the “City”, and **SUBWAY REAL ESTATE, LLC**, a Delaware Limited Liability Company, whose address is 325 Sub Way, Milford, Connecticut 06461 (the “Lessee”). The City and the Lessee may each be referred to as a “Party” and collectively as “the Parties”.

### RECITALS:

**WHEREAS**, the City leased certain real property and improvements located at The Justice Center, 434 West 14th Ave, Denver, Colorado (the “Property”) to the Lessee by a Lease Agreement dated **January 5, 2012** (City Clerk File No. 11-1005) to operate a sandwich shop at the Property; and as amended by a First Amendment to Lease Agreement dated **January 5, 2015** (City Clerk File No. 201101016-01), a Second Amendment to Lease Agreement dated **June 15, 2020** (City Clerk File No. FINAN202054763-02), a Third Amendment to Lease Agreement dated **August 27, 2020** (City Clerk File No. FINAN202054763-03), and a Fourth Amendment to the Lease Agreement dated **January 5, 2021** (City Clerk File No. FINAN-202054763) (collectively referred to as the “Agreement”); and

**WHEREAS**, the Mayor declared a state of local disaster emergency on **March 12, 2020**, pursuant to C.R.S. 24-33.5-701, et seq. (“City Emergency Declaration”), due to the spread of COVID-19, as may be amended, the Governor of the State of Colorado declared a Disaster Emergency (D 2020 003) dated **March 11, 2020**, as may be amended, on the same basis, and the President of the United States issued a Declaration of Emergency on **March 13, 2020**, due to the COVID-19 crisis (“Nationwide Emergency Declaration”); and

**WHEREAS**, the City Council, pursuant to Proclamation No. 20-0350 passed on **April 13, 2020**, urged and supported a moratorium on rent because many people are unable to pay as a result of repercussions from the COVID-19 crisis; and

**WHEREAS**, the Parties now desire to amend the Agreement to provide for the forgiveness of base rent payments for an additional three months in 2021 and to extend the term of the Agreement for three months beyond the current expiration date of the Agreement term.

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants and obligations set forth herein, the Parties agree as follows:

1. **Article 2** of the Agreement, entitled “**TERM**,” is hereby amended in part to read as follows:

“2. **TERM:**

- a. The term of this Agreement shall begin on **April 1, 2011** and expire on **March 31, 2022**, unless terminated earlier pursuant to the terms of this Lease Agreement. Lessee shall retain the option to renew the Agreement for a third five (5) year term (“Third Option Term”) upon expiration of the Second Option Term, unless sooner terminated pursuant to the same terms and conditions of this Agreement.
- b. Notwithstanding the foregoing, the City shall have one (1) option to extend the Term of the Lease (the “Extension Option”) for an additional six (6) months beyond the

then-current expiration date, for a new expiration date of **September 30, 2022** (the “Extended Term”) on the same terms and conditions as set forth in the Agreement except as provided in Article 3 below. The City, through the sole discretion of the Director of the Division of Real Estate, may exercise this Extension Option by providing the Lessee with written notice no less than thirty (30) days prior to the expiration of the then-current Term. In the event the City exercises the Extension Option, the monthly rent for the Extended Term shall be as prescribed below in Article 3.”

2. **Article 3** of the Agreement, entitled “**RENT**,” is hereby amended by adding the following to the end of the existing contents of Article 3:

“3. **RENT:**

- a. The Lessee shall be excused from paying its base rent for the months of **January 2021 through March 2021**, equal to **\$1,799.03** per month. For the three-month period of the extended Term, **January 2022 through March 2022**, Lessee shall pay the City the monthly rent amount due during the last year of the Term equal to **\$1,799.03** per month.
  - b. In the event the City exercises its Extension Option to further extend the Term as provided above, the rent of **\$1,799.03** per month shall be deferred for the months of **April 2021 through June 2021** and Lessee shall then pay **\$1,799.03** per month from **April 2022 through September 2022.**”
3. Except as herein amended, the Agreement is revived, affirmed and ratified in each and every particular.
  4. This Fifth Amendatory Lease Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver.

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**SIGNATURE PAGES FOLLOW THIS PAGE**

**Contract Control Number:** FINAN-202054763-05  
**Contractor Name:** SUBWAY REAL ESTATE, LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_


\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

FINAN-202054763-05  
SUBWAY REAL ESTATE, LLC

By:  \_\_\_\_\_

Christopher Kan  
Name: \_\_\_\_\_  
(please print)

vice President  
Title: \_\_\_\_\_  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)