

FIFTH AMENDATORY LEASE AGREEMENT

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 **COFFEE ETCETERA, LLC**, a Colorado Limited Liability Company, whose address is 3401 Quebec Street, Suite 9350, Denver, CO 80207 (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 502 West Colfax, Denver, Colorado (the “Property”) which is a judicial courthouse, to the Lessee by a Lease Agreement dated **May 23, 2010** (City Clerk File No. 11-356) to operate a food and beverage concession area at the Property; as amended by an Amendatory Agreement dated **September 21, 2015** (City Clerk File No. 11-356-A); and a Second Amendatory Agreement dated **June 8, 2020** (City Clerk File No. FINAN-202054776-02); a Third Amendatory Agreement dated **August 19, 2020** (City Clerk File No. FINAN-202054776-03); and a Fourth Amendatory Agreement dated **January 5, 2021** (City Clerk File No. FINAN-202054776-04) (collectively, 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 beyond the current term expiration date.

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 **March 1, 2011** and expire on **April 30, 2022**, unless terminated earlier pursuant to the terms of this Lease 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 **October 31, 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(a)** of the Agreement, entitled “**RENT AND OPERATING EXPENSES**,” is hereby amended by adding the following to the end of Article 3(a):

“**3(a). RENT AND OPERATING EXPENSES:** The Lessee shall be excused from paying its base rent for the months of **February 2021 through April 2021**, at a rate of **\$1,075.00** per month. For the extended Term period of **October 2021 through April 2022**, Lessee shall pay the City the monthly rent amount due during the last year of the Term in the amount of **\$1,075.00** per month. Lessee shall be required to pay percentage rent, if applicable, and the cost of utilities, if applicable, for the months of **February 2021 through April 2021**.

In the event the City exercises its Extension Option to further extend the Term as provided above, the rent of \$1,075.00 per month shall be deferred for the months of **May 2021 through July 2021** and Lessee shall then pay \$1,075.00 per month from **May 2022 through October 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.

THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK

SIGNATURE PAGES FOLLOW THIS PAGE

Contract Control Number: FINAN-202054776-05
Contractor Name: COFFEE ETCETERA

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-202054776-05
COFFEE ETCETERA

By: *Please see next page for signature* _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

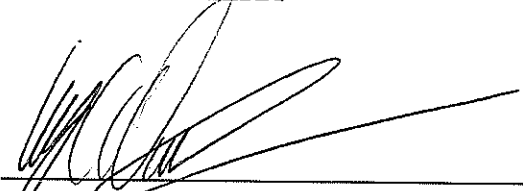
By: _____

Name: _____
(please print)

Title: _____
(please print)

Contract Control Number:
Contractor Name:

FINAN-202054776-05 / ALF-RC15001-05
COFFEE ETCETERA

By:  _____

Name: WAYNE VADEN
(please print)

Title: MANAGER
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)