

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 **DAZBOG DENVER BLDG. LLC**, a Colorado limited liability company, whose address is 1090 Yuma Street, Denver, Colorado 80204 (the “Concessionaire”). The City and the Concessionaire 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 201 W. Colfax, Denver, Colorado 80202 (the “Property”) to the Concessionaire by a Concession Agreement dated **June 12, 2018** (City Clerk File No. 201840933-00) to operate a coffee kiosk, and a First Amendment to Concession Agreement dated **June 8, 2020** (City Clerk File No. FINAN202054775-01), a Second Amendment dated **August 24, 2020** (City Clerk File No. FINAN202054775-02), a Third Amendment dated **January 5, 2021** (City Clerk File No. FINAN202054775-03), a Fourth Amendment dated **April 8, 2021** (City Clerk File No. FINAN202054775-04), and exercised an option to extend the Agreement on **April 15, 2021** (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 five months in 2021 and to extend the term of the Agreement for five 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**: The term of this Agreement shall begin on **May 1, 2019** and expire on **December 31, 2025** (the “Term”) unless terminated earlier pursuant to the terms of this Agreement.”

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

“3. **COMPENSATION AND FEES**:

- a. The Concessionaire shall be excused from paying its base rent for the months of **August 2021 through December 2021**, at a rate equal to \$800.00 per month.

Starting in May 2024 and continuing through the end of this Lease, Lessee agrees to pay a rental rate of \$900 per month.”

3. Article 3 titled “**EMPLOYEE BENEFITS**” enacted in the First Amendatory Agreement is stricken as follows:

“3. EMPLOYEE BENEFITS:

~~a.— Concessionaire shall give the City a list of all people that it employed at the Property as of March 12, 2020. The list shall include both full time and part time employees. Such list may use employee identification numbers or some other system that will protect the rights of the employees (“List”). Any employees that were laid off by Concessionaire due to a lack of business related to the COVID-19 pandemic shall be eligible to be rehired by Concessionaire at such time that Concessionaire re-opens or expands its business on the following basis:~~

~~i.— Concessionaire shall offer an employment position to past employees on the List prior to offering such position to any other person and shall hold such position open for a minimum of three business days after making an offer.~~

~~ii.— A position must be offered to a past employee on the List who is qualified to perform the duties of such position.~~

~~iii.— Concessionaire shall offer any open position to qualified past employees in the order of their seniority based on their first date of hire.~~

~~iv.— Concessionaire shall keep records of offers made to past employees, the date of such offer, and the response of such person.~~

~~v.— Concessionaire’s obligation to offer to re-hire past employees shall end as of one year from the Effective Date of this Lease Amendment.~~

~~In the event Concessionaire violates the re-hire provision set forth above, the City may assess \$1,000 against the Concessionaire as an amount of liquidated damages for violating such provision. A second violation, or any further violation, may result in a \$2,000 assessment of liquidated damages. The Parties acknowledge that it is difficult to calculate damages for violation of the re-hire provision; therefore, they have agreed to the amount of liquidated damages set forth herein.~~

~~b.— Concessionaire shall note on the List the employees who were receiving health insurance through Concessionaire’s business as of March 12, 2020. In the event Concessionaire continues to pay such employees health insurance during the three-month rent deferral period, Concessionaire shall receive a credit against future rents due to the City in an amount equal to the Concessionaire’s portion of such health insurance upon providing adequate documentation of such payment to the City.~~

~~[Note: In the event any of our Concessionaire’s employees are subject to a collective bargaining agreement, such agreement would take precedence over the above provisions. So, if anyone tells us they are subject to a CBA we will delete provision or add a note.]~~

~~c.— Reporting Requirements.~~

~~Concessionaire shall provide a quarterly report to the Director, starting with the quarter ending June 30, 2020 and continuing as long as the rehire provision set forth above is in effect, detailing the following:~~

- ~~i. What is the status of operation of business;~~
 - ~~i. How many employees were hired during the previous quarter;~~
 - ~~iii. How many of such employees were furloughed or re-hired in accordance with the procedure set forth above;~~
 - ~~iv. A complete list of all offers made to past employees on the List including:
 - ~~a. The date of such offer and to whom made;~~
 - ~~b. Was the offer made for the same position the employee had prior to the pandemic closure;~~
 - ~~c. The date of and substance of the response by such employee;~~
 - ~~d. The dates any rehired employees returned to work.~~~~
4. Except as herein amended, the Agreement is revived, affirmed and ratified in each and every particular.
5. 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:
Contractor Name:

FINAN-202054775-05 / ALF FINAN-201840933
DAZBOG DENVER BLDG 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-202054775-05 / ALF FINAN-201840933
DAZBOG DENVER BLDG LLC

By: *Please see next page for signature*

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

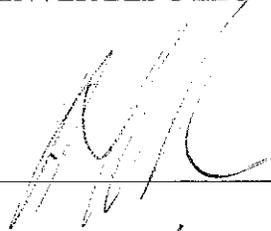
Name: _____
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Title: _____
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Contract Control Number:
Contractor Name:

FINAN-202054775-05 / ALF FINAN-201840933
DAZBOG DENVER BLDG LLC

By: _____



Name: Anatoly YOFFA
(please print)

Title: MEMBER
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)