

## NINTH AMENDATORY LEASE AGREEMENT

*Subway Store #27758*

**THIS NINTH 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 "Concessionaire"). The City and the Concessionaire may each be referred to as a “Party” and collectively as “the Parties”.

### RECITALS:

**WHEREAS**, the City granted concession rights for the operation of a sandwich shop upon a portion of the real property and improvements located at Civic Center Office Building, 201 W. Colfax Avenue, Denver, Colorado (“Property”) to the Concessionaire in the Concession Agreement dated **November 12, 2002** (City Clerk File No. 02-949); as amended by an Amendatory Concession Agreement dated **November 6, 2007** (City Clerk File No. 02-949-A); as amended by a Second Amendatory Concession Agreement dated **August 23, 2013** (City Clerk File No. 02-949-B); as amended by a Third Amendatory Concession Agreement dated **June 15, 2020** (City Clerk File No. FINAN-202054772-03); as amended by a Fourth Amendatory Concession Agreement dated **August 27, 2020** (City Clerk File No. FINAN-202054772-04); as amended by a Fifth Amendatory Agreement dated **January 5, 2021** (City Clerk File No. FINAN-202054772-05), as amended by a Sixth Amendatory Agreement dated **April 8, 2021** (City Clerk File No. FINAN-202054772-06), exercised an option to extend the Agreement on **April 15, 2021**, as amended by a Seventh Amendatory Agreement dated **December 6, 2021** (FINAN-202054772-07) and as amended by an Eighth Amendatory Agreement dated **April 20, 2022** (FINAN-202054772-08). (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 Parties now desire to amend the Agreement to provide for new terms pertaining to rent and termination notice requirements.

**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, titled “**TERM**,” is hereby amended in part to read as follows:

“**2. TERM**: The term of this Agreement shall begin on **November 12, 2002** and expire on **February 28, 2025** unless terminated earlier pursuant to the terms of this

Agreement. However, Concessionaire may terminate the lease at any time prior to the Agreement's term end date, so long as it provides sixty (60) days' written notice to the City's Director of the Division of Real Estate at the following address:

City and County of Denver  
Attn: Director of Real Estate  
201 W Colfax Ave, Dept 1010  
Denver, CO 80202

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

**"3. RENT:** Starting on **April 1, 2022** and continuing through the expiration of the Agreement on **February 28, 2025**, rent will be equal to nine percent (9%) of monthly gross revenues. Concessionaire shall submit a gross revenue report and corresponding rent payment for the prior month no later than the 15th of each month.

As used herein, 'gross revenues' shall mean all billing and receipts from sales or service or doing business on and from the Property, whether for cash or for credit, regardless of collection in the case of the latter, and whether for retail or wholesale, but excludes meals furnished to officers and employees of the Concessionaire. It shall include all transactions whether placed by telephone, over the internet, by persons or by mail and regardless of point of actual delivery. There shall be allowed, when properly recorded and accounted for, as a reduction from gross revenues bona fide returns for credit, discounts provided by the Concessionaire to employees for their purchases, sales taxes collected for remittance to the City or State, and Federal excise taxes collected that must be separately stated, collected from the customer and remitted to the Federal Government by the Concessionaire. There shall not be allowed from gross revenues any reduction for bad debts, loss from theft or any deduction except as herein defined." City agrees that Gross Sales for the purpose of the calculation of percentage rent shall not include the purchase price for Subway gift cards until redeemed.

3. **Article 8, Section E** of the Concession Agreement (CCN: RC25021), titled "**Hours of Operation**" is hereby amended as follows:

**"E. Hours of Operation:** Concessionaire shall not divert or cause, allow or permit to be diverted any business from the Concession Space and shall take all reasonable measures, in every proper manner, to develop, maintain, and increase the business conducted by it under this Agreement. Further, the Concessionaire shall actively operate the facilities covered hereby during the hours of operation as mutually agreed upon in writing between Director of Real Estate and Concessionaire. Concessionaire agrees that its concession shall be closed to business on holidays recognized by the City. Concessionaire agrees that the City from time to time may change the Concessionaire's hours of operation upon thirty days prior written notice to the Concessionaire from the Director of the Division of Real Estate. Any operation outside of these hours will require

written authorization of the Director of the Division of Real Estate at least three weeks in advance of such operations. Access to the Concession space outside of the operating hours will be limited to doors which open to the outside of the building. Concessionaire shall be excused from its obligations as set forth above in the event that its operations are closed or curtailed, in whole or in part, by reason of a strike, lockout or other cause beyond its reasonable control.”

4. Except as herein amended, the Agreement is revived, affirmed and ratified in each and every particular.

5. This Ninth 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-202054772-09/ Alfresco RC25021-09  
**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-202054772-09/ Alfresco RC25021-09  
SUBWAY REAL ESTATE LLC

By: DocuSigned by:  
*Christopher J. Kan*  
\_\_\_\_\_ 61F4AF5BEAB642A...

Name: Christopher J. Kan  
(please print)

Title: Vice President  
(please print)

ATTEST: [if required]

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

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

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