

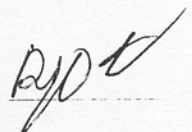
## RETAIL LEASE

THIS LEASE is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2002, between Multnomah County, a political subdivision of the State of Oregon ("Landlord"), and Subway Real Estate Corp., a Delaware corporation ("Tenant"). Landlord owns a building or buildings and other improvements on that certain property located at 9000 N. Lombard Street in the City of Portland, County of Multnomah, State of Oregon ("the Property"). Landlord hereby leases to Tenant and Tenant hereby leases from Landlord certain space on the Property consisting of approximately one thousand, two hundred thirty (1,230) square feet, as outlined on the attached Exhibit "A" (the "Premises") on the terms and conditions set forth in this lease.

**1. TERM.** The term of this Lease (the "Term") shall be for a period of five (5) years, commencing on the first to occur of the following dates: ninety (90) days following delivery of exclusive possession of the Premises upon substantial completion of the improvements to be constructed by Landlord as provided in Section 34 or the date on which Tenant begins to transact business on, at, or from the Premises (the "Commencement Date"). If the first day of the Term shall be a day other than the first day of a calendar month, then the Term shall be deemed extended by the number of days between the Commencement Date of this Lease and the first day of the first calendar month thereafter, so that the Term shall expire at the end of a calendar month. In the event Landlord allows Tenant the right to early possession of the Premises for the purpose of installation of Tenant's improvements to the Premises or for other purposes, Tenant's entry into the Premises shall be subject to all terms and conditions of this Lease except the payment of Rent. Tenant's entry shall mean entry by Tenant, its officers, contractors, employees, licensees, agents, servants, guests, invitees, and visitors. If Landlord, for any reason not attributable to Tenant, is unable to deliver possession of the Premises within one hundred twenty (120) days after written notification from Tenant to Landlord that Tenant has obtained necessary governmental approvals to use the Premises for the purposes stated in Section 6 of this Lease, but in no event later than one hundred eighty (180) days following full execution of this Lease, either party may terminate this Lease by written notice given prior to delivery of possession.

**2. RENT.** Beginning on the Commencement Date and continuing during the entire Term, Tenant shall pay to Landlord as rent for each "Lease Year" the "Base Rent" and "Additional Rent" as defined in this section. The term "Lease Year" shall mean each period of one year from the Commencement Date or anniversary date thereof during the Term.

**(a) Base Rent.** The minimum annual rent during the first thirty (30) months of the Term ("Base Rent") shall be eleven dollars (\$11.00) per square foot. The minimum monthly



rent during the second thirty (30) months of the Term ("Base Rent") shall be thirteen dollars (\$13.00) per square foot.

Base Rent shall be paid in advance on or before the first day of each calendar month during the Term, except for the first calendar month. Upon execution of this Lease, Tenant shall pay to Landlord Base Rent for the first full calendar month of the Term. If the first month of the Term shall be a partial month, Base Rent shall be prorated on a daily basis and the amount due for such partial month shall be paid on or before the first day of the first full calendar month following the Commencement Date.

**(b) Additional Rent.** Tenant shall pay to Landlord, as Additional Rent, all general real estate taxes and special assessments assessed to the Premises and paid by Landlord during the Term or any extension thereof, within Thirty (30) days after Landlord's invoice to Tenant for such payment.

**(c) No Partnership Created.** Landlord is not by virtue of this Section 2 a partner or joint venturer with Tenant in connection with the business carried on under this Lease, and shall have no obligation with respect to Tenant's debts or other liabilities.

**(d)** All references to "Rent" or "Rental" in this Lease shall mean Base Rent, Additional Rent, and all other payments required of Tenant under this Lease unless otherwise expressly specified.

**3. LANDLORD ACCESS.** Landlord hereby expressly reserves the right to enter the Premises and or any part thereof, at any time in the event of emergency. Furthermore, Landlord may enter the Premises after five (5) days written notice to make inspection and repairs and to perform any acts related to safety, protection, preservation, or improvement of the Premises.

#### **4. TAXES AND INSURANCE.**

**(a) Tenant's Taxes.** Tenant shall be responsible for and shall pay before delinquent all taxes assessed during the Term against any leasehold or personal property of any kind owned by or placed upon or about the Premises by Tenant.

**(b) Insurance.** During the Term, Landlord shall maintain in full force a policy or policies of fire insurance with standard extended coverage endorsements covering the building or buildings and other improvements (exclusive of Tenant's trade fixtures, tenant improvements and other property) situated on the Property.

**(c) Increases in Premiums.** This Lease is entered into on the basis that Tenant's occupancy will not affect the Property's classification for insurance rating purposes. If Tenant's initial intended use of the Premises results in higher insurance premiums for any buildings situated on the Property, Tenant shall pay for the increased costs of the premiums for insuring any such buildings against loss by fire with standard extended coverage endorsements during the Term. If the insurance premiums on any such buildings are increased during the Term as a result of the



installation of equipment on the Premises by Tenant, by reason of Tenant maintaining certain goods or materials on the Premises or as a result of other use or occupancy of the Premises by Tenant, Tenant shall pay the additional cost of the insurance for any such buildings (whether or not Landlord has consented to the activity resulting in the increased insurance premiums). Tenant shall refrain from any activity in its use of the Premises which would make it impossible to insure the Premises or the buildings advantage of the ruling of the Insurance Rating Bureau of the state in which the premises are situated or its successors allowing Landlord to obtain reduced premium rates for long term fire insurance policies, unless Tenant pays the additional cost of the insurance. All of Tenant's electrical equipment shall be U-L approved. If Tenant installs any electrical equipment that overloads the lines in the Premises or in any such buildings, Tenant shall at its own expense make whatever changes are necessary to comply with the requirements of the insurance underwriters and governmental authorities having jurisdiction. Any increase in fire insurance premiums attributable to Tenant's use or occupancy of the Premises during the Term shall be paid by Tenant to Landlord within thirty days after landlord bills Tenant for the same.

**(d) Indemnity; Tenant's Insurance.** Tenant shall indemnify and save harmless Landlord from any and all liability, damage, expenses, attorney's fees, causes of actions, suits, claims or judgments, arising out of or connected with (i) the use, occupancy, management, or control of the Premises, (ii) any failure of Tenant to comply with the terms of this Lease, and (iii) the acts or omissions of Tenant, its agents, officers, directors, employees, or invitees; provided, however, that Tenant shall not be liable for claims caused by the sole negligence of Landlord. Tenant shall, at its own cost and expense, defend any and all suits which may be brought against Landlord either alone or in conjunction with others upon any such above mentioned cause or claim, and shall satisfy, pay, and discharge any and all judgments that may be recovered against Landlord in any such action or actions in which Landlord may be a party defendant. Tenant shall at its own expense during the Term carry in full force and effect a comprehensive public liability insurance policy or blanket insurance policy with an insurance carrier satisfactory to Landlord, naming Landlord as an additional insured, combined limits for bodily injury and property damage of not less than \$1,000,000 per occurrence, and not less than \$1,000,000 in aggregate, insuring against any and all liability of Tenant with respect to the Premises and under this Lease, or arising out of the maintenance, use or occupancy of the Premises. Such policy shall provide that the insurance shall not be cancelable or modified without at least ten (10) days prior written notice to Landlord, and shall be deemed primary and noncontributing with other insurance available to Landlord. Tenant shall carry insurance which fully covers repair and replacement of broken store front windows. Such policy shall provide that the insurance shall not be cancelable or modified without at least ten (10) days prior written notice to Landlord, and shall be deemed primary and noncontributing with other insurance available to Landlord. On or before the Commencement Date, Tenant shall furnish Landlord with a certificate or other acceptable evidence that all such insurance is in effect. Tenant shall also provide and maintain insurance to comply with Worker's Compensation and Employer's Liability Laws.

**5. PLACE OF PAYMENT.** Tenant shall pay the Rent and other amounts required to be paid by Tenant hereunder to Landlord at the address for Landlord set forth on the last page of this Lease, or at such other place as Landlord may from time to time designate in writing.

**6. USE OF PREMISES.** The Premises shall be used for the maintenance and operation of a restaurant or for any other lawful purpose, subject to Landlord's reasonable approval, and for no other purpose without the Landlord's reasonable review and consent. In connection with the use of Premises, Tenant shall:

(a) Conform to all applicable laws and regulations of any public authority affecting the Premises and the use of the Premises and correct, at Tenant's own expense, any failure of compliance created through Tenant's fault or by reason of Tenant's use, unless such failure is due to Landlord's default in the performance of the agreements set forth in this Lease to be kept and performed by landlord;

(b) Refrain from any activity which would be reasonably offensive to Landlord, to other tenants in any buildings situated on the Property, or to owners or users of the adjoining premises, or which would tend to create a nuisance or damage the reputation of the Premises or of any such buildings. Without limiting the generality of the foregoing, Tenant shall not permit any objectionable noise or odor to escape or be emitted from the Premises nor permit the use of flashing (strobe) lights. Landlord acknowledges that the normal operation of Tenant's business will create certain aromas which shall not be considered a violation of this provision;

(c) Refrain from loading the floors beyond the point considered safe by a competent engineer or architect selected by landlord and refrain from using water, sewer, and plumbing systems in any harmful way. Tenant shall use drain protection devices as needed to avoid such harmful use;

(d) Construct its improvements to the exterior of the Premises in accordance with standard Subway décor, provided that Tenant shall refrain from making any marks on or attaching any sign, insignia, antenna, window covering, aerial or other device to the exterior walls, window exteriors or roof of the premises without the written consent of Landlord, which consent shall not be unreasonably withheld. Landlord need not consent to any sign which fails to conform to the general design concept of the Property. Notwithstanding Landlord's consent to any signs, Tenant shall comply with all applicable laws and regulations related to such signs and remove such sign upon expiration or termination of this Lease and repair any damage to the Premises caused thereby;

(e) Comply with any reasonable rules respecting the use of the Premises promulgated by Landlord from time to time and communicated to Tenant in writing;

(f) Recognizing that it is in the interest of both Tenant and Landlord to have regulated hours of business, Tenant shall keep the Premises open for business and cause Tenant's business to be conducted therein during those days and hours as is customary for businesses of like character in the city or county in which the Premises are situated, except to the extent that the use of the Premises is interrupted or prevented by causes beyond Tenant's reasonable control. Tenant may remain open seven (7) days per week and twenty four (24) hours per day. Landlord acknowledges that Tenant shall have the right to close the business temporarily in order to retake the Premises from the franchisee;



(g) If Tenant is a retailer, Tenant shall maintain on the Premises an adequate stock of merchandise and trade fixtures to service and supply the usual and ordinary requirements of its customers.

(h) Not permit the use of any part of the Premises for a second-hand store, nor for an auction, distress or fire sale, or bankruptcy or going-out-of-business sale or the like;

(i) Not commit or suffer any strip or waste of the Premises including without limitation the improvements thereon or any part thereof; and Tenant shall keep the Premises in a neat, clean, sanitary, and orderly condition; and

(j) Not generate, release, store, or deposit on the Premises any environmentally hazardous or toxic substances, materials, wastes, pollutants, oils, or contaminants, as defined by any federal, state, or local law or regulation (collectively, "Hazardous Substances"). Tenant shall indemnify and hold harmless Landlord from and against any and all claims, losses, damages, response costs and expenses of any nature whatsoever (including without limitation attorneys', experts', and paralegals' fees) arising out of or in any way related to the generation, release, storage, or deposit of Hazardous Substances on the Premises by Tenant or any other person or entity other than Landlord;

(k) Comply with any no smoking (or other health related) policies and procedures established by Landlord from time to time;

(l) Refrain from any use of any area on the Property which is outside of the Premises unless such use is specifically permitted in writing by Landlord in advance.

**7. TENANT IMPROVEMENTS AND ALTERATIONS.** Unless otherwise specified in any other provision or Exhibit to this Lease, Tenant shall pay for all tenant improvements, whether the work is performed by Landlord or by Tenant. Tenant shall make no improvements or alterations on the Premises of any kind, including the initial work to be performed by Tenant in the Premises, without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Prior to the commencement of any work by Tenant, Tenant shall first submit the following to Landlord and obtain Landlord's written consent to all of the following, which consent shall not be unreasonably withheld: Tenant's plans and specifications; Tenant's estimated costs; and the names of all of Tenant's contractors and subcontractors. If Landlord is to perform the work for some or all of such work, Landlord shall have the right to require Tenant to pay for the cost of the work in advance or in periodic installments. If the work is to be performed by Tenant, Landlord shall have the right to require Tenant to furnish adequate security to assure timely payment of the contractors and subcontractors for such work. All work performed by Tenant shall be done in strict compliance with all applicable building, fire, sanitary, and safety codes, and other applicable laws, statutes, regulations, and ordinances, and Tenant shall secure all necessary permits for the same. Tenant shall keep the Premises free from all liens in connection with any such work. All work performed by the Tenant shall be carried forward expeditiously, shall not interfere with Landlord's work or the work to be performed by or for other tenants, and

shall be completed within a reasonable time. Landlord or Landlord's agents shall have the right at all reasonable times to inspect the quality and progress of such work. All improvements, alterations and other work performed on the Premises by either Landlord or Tenant shall be the property of Landlord when installed, except for Tenant's trade fixtures, and may not be removed at the expiration of the Lease unless applicable Landlord's consent specifically provides otherwise. Notwithstanding Landlord's consent to improvements or alterations by Tenant, all such improvements, alterations or other work to be performed by Tenant shall be at the sole cost and expense of Tenant.

## **8. REPAIRS AND MAINTENANCE.**

**(a) Landlord's Responsibilities.** The following shall be the responsibility of Landlord, and Landlord shall maintain all of the following in good condition and repair:

(i) Structural repairs and maintenance and repairs necessitated by structural disrepair or defects;

(ii) Repair and maintenance of the exterior walls, roof, gutters, downspouts and the foundation of the building in which the Premises are located. This shall not include maintenance of the operating condition of doors and windows or replacement of glass, nor maintenance of the store front; and

(iii) Repair of interior walls, ceilings, doors, windows, floors and floor coverings when such repairs are made necessary because of failure of Landlord to keep the structure in repair as above provided in this Section 8(a).

**(b) Tenant's Responsibilities.** The following shall be the responsibility of Tenant, and Tenant shall maintain all of the following in good condition and repair:

(i) The interior of the Premises including any interior decorating;

(ii) Any repairs necessitated by the negligence of Tenant, its agents, employees and invitees and their use of the Premises;

(iii) Maintenance and repair of the Premises heating and air conditioning systems and sprinkler systems, if any. However, Landlord reserves the right to contract with a service company for the maintenance and repair of the foregoing systems, or any of them; and Tenant's share of such expenses shall be paid by Tenant to Landlord monthly.

(iv) Maintenance and repair of the interior walls and floor coverings (both hard surfaces and carpeting);

(v) Any repairs or alterations required under Tenant's obligation to comply with the laws and regulations as set forth in this Lease; and

(vi) All other repairs or maintenance to the Premises which Landlord is not expressly required to make under Section 8(a) above, which includes, without limiting the



generality of the foregoing, the replacement of all glass which may be broken or cracked during the Term with glass of as good or better quality than that in use at the commencement of the Term, the store front, wiring, plumbing, drainpipes, sewers, and septic tanks including without limitation, repairs outside of the Premises if the need for the repair arises from Tenant's use of the Premises. All of Tenant's work shall be in full compliance with then-current building code and other governmental requirements. Tenant shall contract with a qualified pest extermination company for extermination services as needed to keep the Premises free of pests, vermin, and rodents.

**(c) Inspections.** Landlord shall have the right to inspect the Premises at any reasonable time or times, upon twenty four (24) hours' notice, to determine the necessity of repair. Whether or not such inspection is made, the duty of Landlord to make repairs as outlined above in any area in Tenant's possession and control shall not mature until a reasonable time after Landlord has received from Tenant written notice of the necessity of repairs, except in the event emergency repairs may be required and in such event Tenant shall attempt to give Landlord appropriate notice considering the circumstances.

**(d) Landlord's Work.** All repairs, replacements, alterations or other work performed on or around the Premises by Landlord shall be done in such a way as to interfere as little as reasonably possible with the use of the Premises by Tenant. Tenant shall have no right to an abatement of Rent nor any claim against Landlord for any inconvenience or disturbance resulting from Landlord's performance of repairs and maintenance pursuant to this Section 8.

**9. LIENS.** Tenant shall keep the Premises free from all liens, including mechanic's liens, arising from any act or omission of Tenant or those claiming under Tenant. Landlord shall have the right to post and maintain on the Premises or the building in which the Premises are situated such notices of non-responsibility as are provided for under the lien laws of the state in which the Premises are located.

**10. UTILITIES.** Tenant shall pay promptly for all gas and electrical services, including heat and light, garbage collection, recycling and all other facilities services used by Tenant in operation of the Premises or provided to the Premises during the Term, excluding water and sewer services. Tenant shall arrange for regular and prompt pickup of trash and garbage and shall store such trash and garbage in only those areas designated by Landlord. However, if Landlord elects to arrange for garbage collection on a cooperative basis for Tenant and other tenants, Tenant shall pay its proportionate share of the garbage collection charges, within ten days after billings therefor. Tenant shall comply with any recycling programs required by any law or reasonably required by Landlord.

**11. ICE, SNOW AND DEBRIS.** Tenant shall keep the walks in front of the Premises free and clear of ice, snow, rubbish, debris, and obstructions. Tenant shall save and protect Landlord from any injury whether to Landlord or Landlord's property or to any other person or property caused by Tenant's failure to perform Tenant's obligations under this Section 11. Tenant's obligations under this Section 11 shall be performed at Tenant's cost and expense.

**12. WAIVER OF SUBROGATION.** Neither party shall be liable to the other for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, including sprinkler leakage insurance, if any. All claims or rights of recovery for any and all such loss or damage, however caused, are hereby waived, provided that this waiver shall not be applicable if it has the effect of invalidating any insurance coverage of Landlord or Tenant. Without limiting the generality of the foregoing, said absence of liability shall exist whether or not such loss or damage is caused by the negligence of either Landlord or Tenant or by any of their respective agents, servants or employees.

**13. INJURY TO TENANT'S PROPERTY.** Landlord shall not be liable for any injury to the goods, stock, merchandise or any other property of Tenant or to any person in or upon the Premises resulting from fire or collapse of the building in which the Premises are located or any portion thereof or any other cause, including but not limited to damage by water, gas or steam, or by reason of any electrical apparatus in or about the Premises.

**14. DAMAGE OR DESTRUCTION.**

**(a) Partial Destruction.** If the Premises shall be partially damaged by fire or other cause, and Section 14(b) below does not apply, the damages to the Premises shall be repaired by Landlord, and all Base Rent until such repair shall be made shall be apportioned according to the part of the Premises which is useable by Tenant, except when such damage occurs because of the fault of Tenant. The repairs shall be accomplished with all reasonable dispatch. Landlord shall bear the cost of such repairs unless the damage occurred from a risk which would not be covered by a standard fire insurance policy with an endorsement for extended coverage, including sprinkler leakage, and the damage was the result of the fault of Tenant, in which event Tenant shall bear the expense of the repairs.

**(b) Substantial Damage.** If the buildings situated on the Property or the building in which the Premises are located or the Premises, or any of them, are fifty percent 50% or more destroyed during the Term by any cause, Landlord may elect to terminate the Lease as of the date of damage or destruction by notice given to Tenant in writing not more than forty five (45) days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination. In the absence of an election to terminate, Landlord shall proceed to restore the Premises, if damaged, to substantially the same form as prior to the damage or destruction, so as to provide Tenant useable space equivalent in quantity and character to that before the damage or destruction. Work shall be commenced as soon as reasonably possible, and thereafter proceed without interruption, except for work stoppages on account of matters beyond the reasonable control of Landlord. From the date of damage until the Premises are restored or repaired, Base Rent shall be abated or apportioned according to the part of the Premises useable by Tenant, unless the damage occurred because of the fault of Tenant. Landlord shall bear the cost of such repairs unless the damage occurred from a risk which would not be covered by a standard fire insurance policy with an endorsement for extended coverage, including sprinkler leakage, and the damage was the result of the fault of Tenant, in which event Tenant shall bear the expense of the repairs.



(c) **Restoration.** If the premises are to be restored by Landlord as above provided in this Section 14, Tenant, at its expense, shall be responsible for the repair and restoration of all items which were initially installed at the expense of Tenant (whether the work was done by Landlord or Tenant), together with Tenant's stock in trade, trade fixtures, furnishings, and equipment; and Tenant shall commence the installation of the same promptly upon delivery to it of possession of the Premises and Tenant shall diligently prosecute such installation to completion.

## 15. EMINENT DOMAIN.

(a) **Partial Taking.** If a portion of the Premises is condemned and neither Section 15(b) nor Section 15(c) applies, the Lease shall continue in effect. Landlord shall be entitled to all the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of condemnation. Landlord shall proceed as soon as reasonably possible to make such repairs and alterations to the Premises as are necessary to restore the remaining Premises to the condition as comparative as reasonably practicable to that existing at the time of condemnation. Base Rent shall be abated to the extent that the Premises are untenable during the period of alteration and repair. After the date on which title vests in the condemning authority, Base Rent shall be reduced commensurately with the reduction in value of the Premises as an economic unit on account of the partial taking.

(b) **Substantial Taking of the Property.** If a condemning authority takes any substantial part of the Property or any substantial part of the building in which the Premises are located, the Lease shall, at the option of Landlord, terminate as of the date title vests in the condemning authority. In such event all rights and obligations of the parties shall cease as of the date of termination. Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

(c) **Substantial Taking of Premises.** If a condemning authority takes all of the premises or a portion sufficient to render the remaining Premises reasonably unsuitable for Tenant's use, the Lease shall terminate as of the date title vest in the condemning authority. In such event all rights and obligations of the parties shall cease as of the date of termination. Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

(d) **Definition.** Sale of all or any part of the Premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purpose of this Lease as a taking by condemnation.

16. **BANKRUPTCY.** Subject to Section 17, this Lease shall not be assigned or transferred voluntarily or involuntarily by operation of law. It may, at the option of Landlord, be terminated, if Tenant be adjudged bankrupt or insolvent, or makes an assignment for the benefit of creditors, or files or is a party to the filing of a petition in bankruptcy, or commits an act of bankruptcy, or in case a receiver or trustee is appointed to take charge of any of the assets of tenant or sublessees or assignees in or on the Premises, and such receiver or trustee is not removed within 30 days after the date of his appointment, or in the event of judicial sale of the

personal property in or on the Premises upon judgment against Tenant or any sublessees or assignee hereunder, unless such property or reasonable replacement therefore be installed on the Premises. To the extent permitted by law, this Lease or any sublease hereunder shall not be considered as an asset of a debtor-in-possession, or an asset in bankruptcy, insolvency, receivership, or other judicial proceedings.

**17. DEFAULT.** The following shall be events of default:

(a) Failure of Tenant to pay any Rent when due or failure of Tenant to pay any other charge required under this Lease within ten (10) days after it is due.

(b) Failure of Tenant to comply with any term or condition or fulfill any obligation of this Lease (other than the payment of Rent or other charges), within ten (10) days of written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such nature that it cannot be completely remedied within the ten (10) day period, this provision shall be complied with if Tenant begins correction of the default within the ten (10) day period, and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

(c) The abandonment of the Premises by Tenant or the failure of Tenant for fifteen (15) days or more to occupy the premises for one or more of the designated purposes of this Lease unless such failure is excused under other provisions of this Lease.

(d) The bankruptcy or insolvency of Tenant or the occurrence of other acts specified in Section 16 of this Lease which give Landlord the option to terminate.

**18. REMEDIES ON DEFAULT.** In the event of a default, Landlord may, at Landlord's option, exercise any one or more of the rights and remedies available to a landlord in the state in which the Premises are located to redress such default, consecutively or concurrently, including the following (see attached Rider):

(a) Landlord may elect to terminate Tenant's right to possession of the Premises or any portion thereof by written notice to Tenant. Following such notice, Landlord may re-enter, take possession of the Premises and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages. To the extent permitted by law, Landlord shall have the right to retain the personal property belonging to Tenant which is on the Premises at the time of re-entry, or the right to such other security interest therein as the law may permit, to secure all sums due or which become due to Landlord under this Lease. Perfection of such security interest shall occur by taking possession of such personal property or otherwise as provided by law.

(b) Following re-entry by Landlord, Landlord may relet the Premises for a term longer or shorter than the Term and upon any reasonable terms, including the granting of rent concessions to the new tenant. Landlord may alter, refurbish or otherwise change the character or use of the Premises in connection with such reletting. Landlord shall not be required to relet for



any use or purpose which Landlord may reasonably consider injurious to its property or to any tenant which Landlord may reasonably consider objectionable. No such reletting by landlord following a default by Tenant shall be construed as an acceptance of the surrender of the Premises. If rent received upon such reletting exceeds the Rent received under this Lease, Tenant shall have no claim to the excess.

(c) Following re-entry Landlord shall have the right to recover from Tenant the following damages:

(i) All unpaid or other charges for the period prior to re-entry, plus interest at a rate equal to five percentage points in excess of the discount rate, including any surcharge on the discount rate, on 90-day commercial paper declared by the Federal Reserve Bank in the Federal Reserve district in which Portland, Oregon is located on the date the charge was due. (the "Interest Rate").

(ii) An amount equal to the Rent lost during any period during which the Premises are not relet, if Landlord uses reasonable efforts to relet the Premises. If Landlord lists the Premises with a real estate broker experienced in leasing commercial property in the metropolitan area in which the Premises are located, such listing shall constitute the taking of reasonable efforts to relet the Premises.

(iii) All costs incurred in reletting or attempting to relet the Premises, including but without limitation, the cost of cleanup and repair in preparation for a new tenant, the cost of correcting any defaults or restoring any unauthorized alterations and the amount of any real estate commissions or advertising expenses.

(iv) The difference between the Rent reserved under this Lease and the amount actually received by Landlord after reletting, as such amounts accrue.

(v) Reasonable attorney's fees incurred in connection with the default, whether or not any litigation is commenced.

(d) Landlord may sue periodically to recover damages as they accrue throughout the Term and no action for accrued damages shall be a bar to a later action for damages subsequently accruing. To avoid a multiplicity of actions, Landlord may obtain a decree of specific performance requiring Tenant to pay the damages stated in Section 18(c) above as they accrue. Alternatively, Landlord may elect in any one action to recover accrued damages plus damages attributable to the remaining Term equal to the difference between the Rent under this Lease and the reasonable rental value of the Premises for the remainder of the Term, discounted to the time of the judgment at the rate of six percent (6%) per annum.

(e) In the event that Tenant remains in possession following default and Landlord does not elect to re-enter, Landlord may recover all back Rent and other charges, and shall have the right to cure any non-monetary default and recover the cost of such cure from Tenant, plus interest from the date of expenditure at the Interest Rate. In addition, Landlord shall be entitled to

recover attorney's fees reasonably incurred in connection with the default, whether or not litigation is commenced. Landlord may sue to recover such amounts as they accrue, and no one action for accrued damages shall bar a later action for damages subsequently accruing.

(f) The foregoing remedies shall not be exclusive but shall be in addition to all other remedies and rights provided under applicable law, and no election to pursue one remedy shall preclude resort to another remedy.

## 19. SURRENDER AT EXPIRATION.

(a) Condition of Premises. Upon expiration of the Term or earlier termination Tenant shall deliver all keys to Landlord and surrender the Premises in first-class condition and broom clean. Improvements and alterations constructed by Tenant shall not be removed or restored to the original condition unless the terms of Landlord's consent provides otherwise or unless Landlord requests Tenant to remove such improvements or alterations, in which event Tenant shall remove the same and restore the Premises. Depreciation and wear from ordinary use for the purpose for which the Premises were let need not be restored, but all repair for which Tenant is responsible shall be completed to the latest practical date prior to such surrender. Tenant's obligations under this Section 19 shall be subject to the provisions of Section 14 relating to damages or destruction.

### (b) Fixtures.

(i) All fixtures placed upon the Premises during the Term, other than Tenant's trade fixtures, shall, at Landlord's option, become the property of Landlord. Movable furniture, decorations, floor covering other than hard surface bonded or adhesively fixed flooring, curtains, drapes, blinds, furnishing and trade fixtures shall remain the property of tenant if placed on the Premises by Tenant.

(ii) If Landlord so elects, Tenant shall remove any or all fixtures which would otherwise remain the property of Landlord, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the rate of six percent (6%) per annum. Tenant shall remove all furnishings, furniture and trade fixtures which remain the property of Tenant. If Tenant fails to do so, this shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease. Landlord may effect a removal and place the property in public or private storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, transportation to storage, with interest on all such expenses from the date of expenditure at the rate of six percent (6%) per annum.

(iii) The time for removal of any property or fixtures which Tenant is required to remove from the Premises upon termination shall be as follows:

(1) On or before the date the Lease terminates because of expiration of the Term or because of a default under Section 17.





(2) Within 30 days after notice from Landlord requiring such removal where the property to be removed is a fixture which Tenant is not required to remove except after such notice by Landlord, and such date would fall after the date on which Tenant would be required to remove other property.

**(c) Holdover.**

(i) If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month-to-month, subject to all of the provisions of this Lease except the provision for the Term, and except the Base Rent provided herein shall double during the period of the month-to-month tenancy. Failure of Tenant to remove fixtures, furniture, furnishings or trade fixtures which Tenant is required to remove under this Lease shall constitute a failure to vacate to which this Section 19(c) shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

(ii) If a month-to-month tenancy results from a holdover by Tenant under this Section 19(c), the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than ten (10) days prior to the termination date which shall be specified in the notice. Tenant waives any notice which would otherwise be provided by law with respect to a month-to-month tenancy.

**20. ASSIGNMENT AND SUBLETTING.** Tenant shall not assign this Lease or sublet all or any part of the Premises without the written consent of Landlord, which consent will not be unreasonably withheld, and any attempt to do so without such prior written consent shall be void and, at Landlord's option, shall terminate this Lease. If Tenant requests Landlord's consent to any Transfer, Tenant shall promptly provide Landlord with a copy of the proposed agreement between Tenant and its proposed transferee and with all such other information concerning the business and financial affairs of such proposed transferee as Landlord may request. Landlord may withhold such consent unless the proposed transferee (i) is satisfactory to Landlord as to credit, managerial experience, net worth, character and business or professional standing, (ii) is a person or entity whose possession of the Premises would not be inconsistent with Landlord's commitments with other tenants or with the mix of uses Landlord desires at the Property, (iii) will occupy the Premises solely for the use authorized under this Lease, (iv) expressly assumes and agrees in writing to be bound by and directly responsible for all of Tenant's obligation hereunder, (v) will conduct a business which does not adversely impact the use of the Property's common areas. Landlord's consent to any such Transfer shall in no event release Tenant from its liabilities or obligations hereunder nor relieve Tenant from the requirement of obtaining Landlord's prior written consent to any further Transfer. Landlord's acceptance of rent from any other person shall not be deemed to be a waiver by Landlord of any provision of the Lease or a consent to any Transfer.

Notwithstanding the above paragraph, Tenant may assign this Lease or sublet the Premises to any bona-fide Subway licensee/franchisee of Doctor's Associates, Inc., without the prior consent of

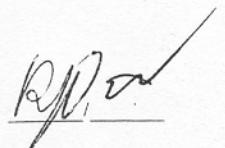
the Landlord. Such assignment or subletting shall not alter Tenant's responsibility to Landlord under this Lease. Landlord agrees to accept Rent from the Tenant, its assignee or sublessee.

**21. SUBORDINATION.** Tenant's interest hereunder shall be subject and subordinate to all mortgages, trust deeds, and other financing and security instruments placed on the Premises by Landlord from time to time ("Mortgages") except that no assignment or transfer of Landlord's rights hereunder to a lending institution as collateral security in connection with a Mortgage shall affect Tent's right to possession, use and occupancy of the Premises so long as Tenant shall not be in default under any of the terms and conditions of this Lease. The provisions of this Section 21 shall be self-operating. Nevertheless, Tenant agrees to execute and acknowledge an instrument in recordable form which expressly subordinates Tenant's interest hereunder to the interests of the holder of any Mortgage. As an accommodation to Landlord and at its request, Tenant shall furnish Landlord current and past balance sheets and operating statements in the form requested by the holder of any Mortgage to which Landlord applies for financing concerning the Property.

**22. ESTOPPEL CERTIFICATE.** Tenant shall from time to time, upon not less than fifteen (15) days prior notice, submit to Landlord, or to any person designated by Landlord, a statement in writing, in the form submitted to Tenant by landlord, certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, identifying the same by the date thereof and specifying the nature thereof), that to the knowledge of Tenant no uncured default exists hereunder (or if uncured default does exist, specifying the same), the dates to which the Rent and other sums and charges payable hereunder have been paid, that Tenant has no claims against Landlord and no defenses or offsets to rental except for the continuing obligations under this Lease (or if Tenant has any such claims, defenses or offsets, specifying the same), and any other information concerning this Lease as Landlord reasonably requests.

**23. PERFORMANCE BY LANDLORD.** Landlord shall not be deemed in default for the nonperformance or for any interruption or delay in performance of any of the terms, covenants and conditions of this Lease if the same shall be due to any labor dispute, strike, lockout, civil commotion or like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain labor, services or materials, through acts of God, or other cause beyond the reasonable control of Landlord, providing such cause is not due to the willful act or neglect of Landlord.

**24. LANDLORD'S RIGHT TO CURE DEFAULT.** If Tenant shall fail to perform any of the covenants or obligations to be performed by Tenant, Landlord, in addition to all other remedies provided herein, shall have the option (but not the obligation) to cure such default after thirty days' written notice to Tenant. All of Landlord's expenditures incurred to correct the default shall be reimbursed by Tenant upon demand with interest from the date of expenditure at rate of six percent (6%) per annum. Landlord's right to cure defaults is for the sole protection of Landlord and the existence of this right shall not release Tenant from the obligation to perform all of the covenants herein provided to be performed by Tenant, or deprive Landlord of any other right which Landlord may have by reason of such default by Tenant.

Handwritten signature or initials, possibly "R.P.", written in dark ink over a horizontal line.



**25. INSPECTION.** Landlord, Landlord's agents and representatives, shall have the right to enter upon the Premises at reasonable times, upon twenty four (24) hours' notice, for the purpose of inspecting the same, for the purpose of making repairs or improvements to the Premises or the building in which the Premises are located, for showing the Premises during the final ninety days of the Term, or for any other lawful purpose.

**26. FOR SALE AND FOR RENT SIGNS.** During the period of ninety days prior to the date for the termination of this Lease, Landlord may post on the Premises or in the windows thereof signs of moderate size notifying the public that the Premises are "for sale" or "for rent" or "for lease".

**27. ATTORNEY'S FEES.** In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Lease or with respect to any dispute relating to this Lease, the prevailing or non-defaulting party shall be entitled to recover from the losing or defaulting party its attorney's, paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or reviews, and shall be in addition to all other amounts provided by law.

**28. NOTICES.** Any notice required or permitted under this lease shall be in writing and shall be deemed given when actually delivered or when deposited in the United States mail as certified or registered mail, addressed to the addresses set forth on the last page of this Lease or to such other addresses as may be specified from time to time by either of the parties in the manner above provided for the giving of notice.

**29. BROKERS.** Tenant covenants, warrants and represents that it has not engaged any broker, agent or finder who would be entitled to any commission or fee in connection with the negotiation and execution of this Lease. Tenant agrees to indemnify and hold harmless Landlord against and from any claims for any brokerage commissions and all costs, expenses and liabilities in connection therewith, including attorney's fees and expenses, arising out of any charge or claim for a commission or fee by any broker, agent or finder on the basis of any agreements made or alleged to have been made by or on behalf of Tenant. The provisions of this Section 29 shall not apply to any brokers with whom Landlord has an express written brokerage agreement. Landlord shall be responsible for payment of any such brokers.

**30. LATE CHARGES.** Tenant acknowledges that late payment by Tenant to Landlord of any Base Rent due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs may include, without limitation, processing and accounting charges and late charges which may be imposed on Landlord under the terms of any Mortgage. Accordingly, if any Rent is not received by Landlord within ten (10) days after it is due, Tenant shall pay to Landlord a late charge equal to five percent 5% of the overdue amount. The parties hereby agree that such late charge represents a fair and

reasonable estimate of the costs incurred by Landlord by reason of the late payment by Tenant. Acceptance of any late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to the overdue amount in question, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

**31. MISCELLANEOUS PROVISIONS.** This Lease does not grant any rights of access to light or air over any part of the Property. Time is of the essence of this Lease. The acceptance by Landlord of any Rent or other benefits under this Lease shall not constitute a waiver of any default. Any waiver by Landlord of the strict performance of any of the provisions of this Lease shall not be deemed to be a waiver of subsequent breaches of the same character or of a different character, occurring either before or subsequent to such waiver, and shall not prejudice Landlord's right to require strict performance of the same provision in the future or of any other provision of this Lease. This Lease contains the entire agreement of the parties. This Lease shall not be amended or modified except by agreement in writing, signed by the parties hereto. Subject to the limitations on the assignment or transfer of Tenant's interest in this Lease, this Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors, and assigns. No remedy herein conferred upon or reserved to Landlord or Tenant shall be exclusive of any other remedy herein provided or provided by law, but each remedy shall be cumulative. In interpreting or construing this Lease, it is understood that Tenant may be more than one person, that if the context so requires, the singular pronoun shall be taken to mean and include the plural, and that generally all grammatical changes shall be made, assumed, and implied to make the provisions hereof apply equally to corporations, partnerships, and individuals. Section headings are for convenience and shall not affect any of the provisions of this Lease. If any provision of this Lease or the application thereof to any person or circumstance is, at any time or to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law all agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required prior to the expiration or earlier termination of this Lease, shall survive the expiration or earlier termination of this Lease and be fully enforceable thereafter. This Lease and performance hereunder shall be governed by the laws of the State of Oregon.

**32.** Tenant at its sole cost and expense shall make all such changes, alterations, modifications and additions in and to the Premises and furnish such facilities and accommodations therein as are required to be made and/or furnished under the provisions of the Americans with Disabilities Act of 1990 and all similar state and local laws, statutes, ordinances, codes, rules and regulations now or hereafter enacted, excepting the improvements to be provided by Landlord in accordance with Section 34 of this Lease.

**33. EXHIBITS AND ADDITIONAL PROVISIONS.** Exhibits A and B, which are referred to in this Lease, are attached hereto and by this reference incorporated herein. Additional provisions, if any, are set forth in Riders, attached hereto and by this reference incorporated herein.



**34. IMPROVEMENTS.** Landlord shall construct the improvements to the Premises as called for in the Work Letter attached hereto as Exhibit B. Landlord shall construct these improvements to Tenant's specifications, subject to Landlord's reasonable approval. Tenant will be responsible for performing all other work required to make the Premises ready for Tenant's use, at Tenant's expense. Prior to performing such other work, Tenant shall submit plans and specifications therefor to Landlord for Landlord's approval, which shall not be unreasonably withheld.

**35. QUIET ENJOYMENT.** Landlord covenants, warrants and represents that, upon commencement of the lease term, Landlord has full right and power to execute and perform this Lease, and to grant the estate demised herein; and that Tenant, upon the payment of the Rent herein reserved and performance of the covenants and agreements hereof, shall peaceably and quietly have, hold and enjoy the demised Premises and all right, easement, covenants and privileges belonging or in any way appertaining thereto, during the Term of this Lease. In the event the Landlord transfers its interest in the Property, it is understood that the transferee shall assume the responsibilities of Landlord under this Lease for the remainder of the Term of this Lease.

**36. OPTION TO RENEW RIDER.** Tenant shall the option to renew this Lease for three (3) additional terms of five (5) years each, on the same terms and condition contained in this Lease, except for the Base Rent, which shall be at Fair Market Value.

Notwithstanding the foregoing, under no circumstances shall Tenant's Base Rent during any renewal term be less than the monthly Base Rent paid during the twelve (12) month period prior to the commencement of the renewal term. In no event shall renewal option rent increase more than ten percent (10%) from the previous term rent. The parties shall have thirty (30) days from the date Landlord received Tenant's notice of exercise in which to agree on the amount constituting the fair market rate. If Landlord and Tenant agree on the amount of the fair market rate, they shall immediately execute an amendment to this lease setting forth the amount of the Base Rent to be paid by Tenant during the Option Period. If Landlord and Tenant are unable to agree on the amount of the fair market rate within such time period, then, at the request of either party, the fair market rate shall be determined in the following manner: (i) within ten (10) days of the request of either party, Landlord and Tenant shall each select a licensed real estate broker or appraiser with not less than five (5) years experience in the business of retail leasing of property of the same type and use and in the same geographic area, as the Premises; (ii) within fifteen (15) days of their appointment, such two real estate brokers or appraisers shall select a third broker or appraiser who is similarly qualified; (iii) within thirty (30) days from the appointment of the third broker or appraiser, the three brokers or appraisers so selected shall, acting as a board of arbitrators, then determine the amount of the fair market rate, basing their determination on standard procedures and tests normally employed in determining market rates and applying the factors included within the definition of fair market rate set forth in subparagraph (c) below. The decision of the majority of said brokers or appraisers providing such majority fully agreed on a fair market rate shall be final and binding upon the parties hereto. If a majority of the brokers or appraisers are unable to agree on the fair market rate within the stipulated period of time, the three opinions of the fair market rate shall be added together and their total divided by three; the

resulting quotient shall be the fair market rate. If, However, the low opinion and/or the high opinion are/is more than fifteen percent (15%) lower and/or higher than the middle opinion, the low opinion and/or the high opinion, as the case may be, shall be disregarded. If only one opinion is disregarded, the remaining two opinions shall be added together and their total divided by two and the resulting quotient shall be the fair market rate. If both the low opinion and the high opinion are disregarded as stated in this paragraph, the middle opinion shall be the fair market rate. If a party does not appoint a qualified broker or appraiser within the required time period, the broker or appraiser appointed by the other party shall be the sole broker or appraiser and shall determine the fair market rate. If the two brokers or appraisers appointed by the parties are unable to agree on the third broker or appraiser either of the parties to the lease, by giving ten (10) days notice to the other party, can apply to the then president of the county real estate board of the county in which the Premises are located or to the presiding judge of the court of that county, for the selection of a third broker or appraiser who meets the qualifications stated in this paragraph. Each party shall pay the expenses and charges of the brokers or appraisers appointed by it and the parties shall pay the expenses and charges of the third broker or appraiser in equal shares. When the fair market rate has been so determined, Landlord and Tenant shall immediately execute an amendment to this lease stating the basic rent for the Option Period.

As used herein, the "market rate" shall be the monthly rental rate then obtained for five (5) year leases with comparable terms for comparable space within buildings in the same geographical area of similar type, identity, quality and location as the Property.

Tenant shall not assign or otherwise transfer this option or any interest therein and any attempt to do so shall render this option null and void. Tenant shall have no right to extend the term beyond Option Period. If Tenant is in default under this lease at the date of delivery of Tenant's notice of exercise to Landlord, then such notice shall be of no effect and this lease shall expire at the end of the initial term; if Tenant is in default under this lease at the last day of the initial term, then Landlord may in its sole discretion elect to have Tenant's exercise of this option be of no effect, in which case this lease shall expire at the end of the initial term.

The rights contained in this paragraph 36 shall be personal to the originally named Tenant and may be exercised only by the originally named Tenant (and may not be transferred or assigned or exercised by any assignee, sublessee, or other transferee of Tenant's interest in this lease) and only if the originally named Tenant occupies the entire Premises as of the date it exercises this option in accordance with the terms of this paragraph 36. Tenant may exercise any such option only if Tenant is not in default under the Lease at the time the option is exercised and at the time the renewal term is set to commence.

Tenant may exercise its renewal option by irrevocable written notice given to Landlord at least ninety (90) days before expiration of the previous Term. The renewal term shall commence on the day following expiration of the initial Term. The renewal term shall commence on the day following expiration of the initial Term.

**37. COMPETITION.** Landlord agrees not to sell, lease, let, use or permit to be used, the leased Premises or the Property in which the Premises are located, now or at any time during



the period of this Lease or any extension, to any entity which sells submarine sandwiches for on or off premises consumption. Further, Landlord agrees that the aforementioned restrictive covenant shall apply to any and all existing Tenants' menu modifications.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease in duplicate as of the day and year first above written, any corporate signature being by authority of the Board of Directors of the corporation.

Multnomah County, a political  
subdivision of the State of Oregon

By: \_\_\_\_\_  
Diane M. Linn, Multnomah County Chair  
Date: \_\_\_\_\_

401 N. Dixon Street  
Portland, Oregon 97227

Phone: 503-988-3322

**REVIEWED:**  
THOMAS SPONSLER, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY

BY Thomas Sponsler  
ASSISTANT COUNTY ATTORNEY  
DATE 8/13/02

APPROVED MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # \_\_\_\_\_ DATE \_\_\_\_\_  
DEB BOGSTAD, BOARD CLERK

Subway Real Estate Corp.,  
a Delaware corporation

By: \_\_\_\_\_  
Date: 7/26/02

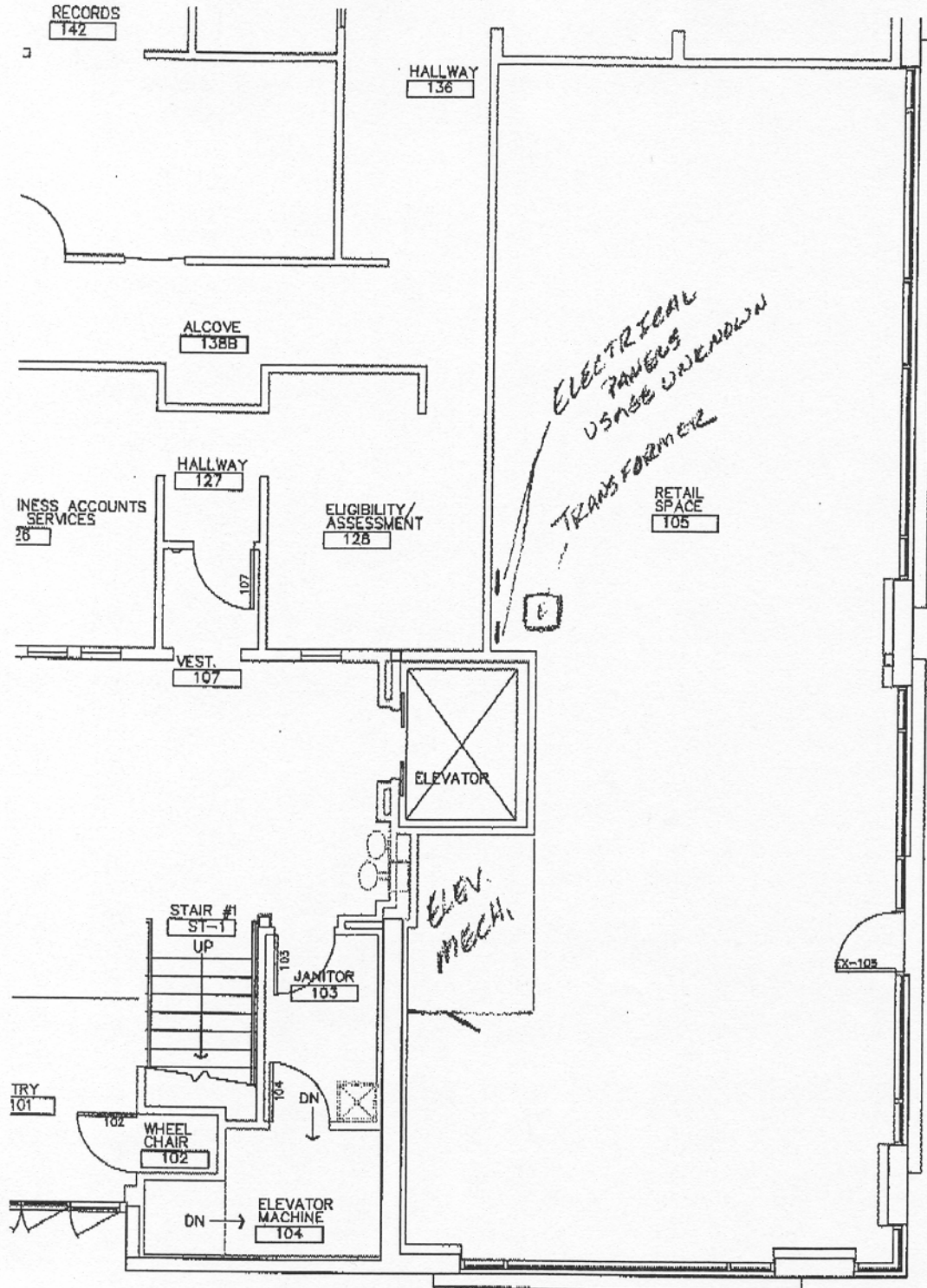
325 Bic Drive  
Milford, Connecticut 06460-3059

Phone: \_\_\_\_\_

Additional addresses for notices:

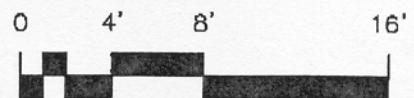
Subway Development Corporation  
29783 Town Center Loop West  
Wilsonville, Oregon 97070

And the demised Premises.



1 North Portland Health Clinic — Retail Space

Exhibit "A"



RJD

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**Exhibit B**  
**(Section 34 Improvements – Subway Shell Requirement)**

Landlord at its own cost shall supply and install the following interior and exterior Property and Premises improvements or additions to standard Subway specification provided by Tenant and to meet state, local and other applicable agency standards.

1. Five (5) tons of air conditioning with at least five (5) supplies, three (3) air returns and a digital tamper-proof thermostat. One 500 CFM exhaust fan located to Tenant's specifications.
2. Demising walls, built to roofline, insulated and sealed to prevent outside odors. All interior walls to be non-textured, smooth sheetrock finish.
3. Concrete floor, level and smooth finished.
4. Two (2) complete handicapped-accessible bathrooms to current ADA specifications located for optimum space usage and per Tenant's plan.
5. T-bar ceiling suspended ten (10) feet above concrete floor, 2' X 2' brass grid, with white, non-directional design, one-hour fire rated acoustical reveal type tiles.
6. 2' X 2' electrical ballasted, three (3) lamp troffers to meet current electrical energy specifications.
7. Standard retail glass storefront with existing entry doors.
8. Handicap access to the Premises.
9. 200 amp / 3 phase electrical panel.
10. Tenant recognizes that Landlord needs to have a provision for access to the elevator mechanical room door and step down transformer. The Landlord will provide 24 hours' notice in this event, except in case of emergency.



Rider to Lease dated the     day of     2002, made by and between     , ("Landlord") and Subway Real Estate Corp., ("Tenant"). Premises will be known as:

9000 North Lombard, Portland, OR

Notwithstanding any clause in this lease to the contrary, the following provisions shall prevail:

#### Definitions


The following terms when used hereinafter shall be defined as follows:

**Property:** The Landlord's property (including the land), of which demised premises comprise a portion.

**Premises:** The portion of the Building which is leased to Tenant.

R1. Tenant may assign this lease or sublet the premises to any bona-fide licensee/franchisee of Doctor's Associates, Inc. doing business as a SUBWAY ~ sandwich shop, without the prior consent of or written notice to the Landlord. Such assignment or subletting shall not alter the Tenant's responsibility to the Landlord under this lease. Landlord agrees to accept rent from the Tenant, its assignee or sublessee.

R2. LANDLORD RECOGNIZES AND ACKNOWLEDGES THAT THE TENANT IS A DELAWARE CORPORATION AND THAT TENANT'S ASSETS CONSIST ALMOST EXCLUSIVELY OF LEASES, SUBLEASES, AND OPTIONS TO PURCHASE LEASED PREMISES. LANDLORD ALSO RECOGNIZES AND ACKNOWLEDGES THAT THE TENANT WAS ORGANIZED PRINCIPALLY FOR THE PURPOSE OF NEGOTIATING AND DRAFTING LEASES WITH A VIEW TOWARDS SUBLETTING THE LEASED PREMISES TO FRANCHISEES / LICENSEES OF DOCTOR'S ASSOCIATES INC. ("DAI"). LANDLORD RECOGNIZES AND ACKNOWLEDGES THAT IT HAS BEEN ADVISED THAT DAI IS A FLORIDA CORPORATION THAT OWNS ALL RIGHTS TO AWARD FRANCHISES FOR SUBWAY® SANDWICH SHOPS, AND THAT LANDLORD HAS ALSO BEEN ADVISED THAT THE TENANT HAS NO RIGHTS WHATSOEVER TO AWARD FRANCHISES FOR SUBWAY SANDWICH SHOPS OR COLLECT ANY FRANCHISE RELATED ROYALTIES FROM ANY PROSPECTIVE SUBLESSEE OF THE DEMISED PREMISES. LANDLORD ACKNOWLEDGES THAT TENANT DOES NOT, AS A MATTER OF POLICY, PROVIDE FINANCIAL STATEMENTS IN CONNECTION WITH THE FINANCIAL CONDITION OF TENANT, AND NOTWITHSTANDING THE FOREGOING, LANDLORD HAS DECIDED TO EXECUTE THIS LEASE. LANDLORD FURTHER RECOGNIZES AND ACKNOWLEDGES THAT NO PERSON OR ENTITY OTHER THAN THE TENANT HAS MADE ANY REPRESENTATIONS OF ANY KIND WITH REGARD TO THE ABILITY OF THE TENANT TO PERFORM THE TENANT OBLIGATIONS HEREUNDER. THE LANDLORD ALSO RECOGNIZES AND ACKNOWLEDGES THAT THE TENANT INTENDS TO SUBLEASE THE PREMISES TO A PERSON(S) WHO HAS OR WILL BE AWARDED A FRANCHISE/LICENSE FOR A SUBWAY® SANDWICH SHOP FROM DAI, UNDER WHICH SUBLEASE THE SUBLESSEE WILL PAY RENT AND OTHER CHARGES DIRECTLY TO THE LANDLORD SO THAT THE RENTAL PAYMENT FROM SUCH SUBLESSEE WILL NORMALLY NOT BE RECEIVED OR HELD BY THE TENANT. ALTHOUGH THE SUBLESSEE MAY OPEN A BUSINESS OPERATION DOING BUSINESS AS A SUBWAY~ SANDWICH SHOP AND MAY HAVE FRANCHISE AND OTHER BUSINESS RELATIONSHIPS WITH CORPORATIONS RELATED TO OR ASSOCIATED BY THE GENERAL PUBLIC WITH "SUBWAY", AS IT IS COMMONLY KNOWN, THE LANDLORD RECOGNIZES AND ACKNOWLEDGES THAT THE SOLE AND EXCLUSIVE PERSON OR ENTITY AGAINST WHICH IT MAY SEEK DAMAGES OR ANY REMEDIES, UNDER THIS OR ANY OTHER DOCUMENT IN WHICH THE LANDLORD AND TENANT OR LANDLORD AND SUBLESSEE ARE PARTIES, WHETHER FOR UNPAID RENT AND ASSOCIATED DAMAGES, CLAIMS OF UNJUST ENRICHMENT, CLAIMS OF UNFAIR TRADE PRACTICES, OR ANY OTHER THEORY OF

RJO 



RECOVERY OF ANY KIND OR NATURE, IS THE TENANT. FURTHER, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THERE WILL NOT BE ANY CONTRACTURAL LIABILITY WHATSOEVER UNDER THIS DOCUMENT AGAINST (A) DAI, ITS SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES AND/OR AGENTS, AND/OR (B) ANY PERSONS AND ENTITIES WHO ARE THE SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AND/OR AGENTS OF THE TENANT. SUCH EXCULPATION OF LIABILITY UNDER THIS DOCUMENT SHALL BE ABSOLUTE AND WITHOUT ANY EXCEPTION WHATSOEVER.

  
\_\_\_\_\_  
Tenant Initials

\_\_\_\_\_  
Landlord Initials

R3. Landlord shall approve Tenant's standard Subway signage so long as it meets all allowable maximums per building and city codes and does not conflict with the general character and look of the building. Landlord's approval shall not be unreasonably withheld.

R4. If Tenant's operation or use is at any time impaired by the closing, or vacation of any street adjoining the Premises, Tenant may, at its option, either terminate this lease, or reduce the rent payable by 50% during the period of such impairment. Either of these options may be implemented upon thirty (30) days written notice to the Landlord.

R5. Tenant shall provide the Landlord with written notice of its intention to renew this lease at least ninety (90) days prior to the expiration of the then current term.

In the event Landlord does not receive Tenant's notice as stated above, Tenant shall not lose its option to renew unless and until the Tenant has had at least ten (10) days after receipt of written notice from Landlord in which to exercise its option to renew.

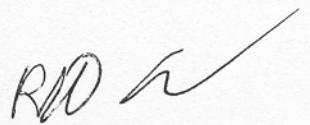
For the purpose of this section only, notification via (facsimile) fax will be deemed sufficient, provided a copy of such notice is also sent via regular mail.

R5. In order to clarify the parties' notice responsibilities for renewals, and for no other purpose, Landlord and Tenant agree that this lease shall commence on December 1 2002 and the initial term shall expire on November 30 2007 Any and all option terms shall be determined from these stipulated dates.

R6. Landlord and Tenant acknowledge that it is extremely important that rent be paid in a timely manner as required by this lease. Since the Tenant may be subletting the premises to a licensee/franchisee of Doctor's Associates Inc. and the licensee/franchisee may be paying rent directly to the Landlord, the Tenant does not receive rental income and will not know if rent has not been paid. Since the parties recognize that time is of the essence in this matter, Landlord agrees to give written notice to Tenant within thirty (30) days of any default committed under this lease by a Sublessee or Assignee of Tenant. Failure of Landlord to give such notice will constitute a waiver of monetary and non-monetary claims against the Tenant based upon such default of which such notice has not been given. Any notice which is to be given to Tenant shall be deemed sufficiently given if sent by Certified or Registered Mail, postage prepaid, addressed as follows:

Tenant: (1) Subway Real Estate Corp.  
325 Bic Drive  
Milford, CT 06460-3059,

(2) To the Development Agent at:  
  
Subway Development Corporation  
14511 Westlake Drive, Suite 200  
Lake Oswego, OR 97035



(3) And the demised premises.

Landlord address for notice is: Multnomah County Property Management, 401 N. Dixon Street, Portland, OR 97227.

The customary receipt shall be conclusive evidence of service, and notices shall be effective as of the date of mailing thereof. Landlord agrees to accept rent at the above-referenced address.

Any change in the entity to whom rent is due must be authorized in writing by the named Landlord, its mortgagor, or by court order. Absent such acceptable authorization, Tenant shall not be in default of this lease if it continues to pay rent as specified herein.

~~R7.~~

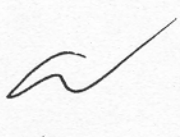
~~Landlord warrants that the Premises including the heating and air conditioning systems, plumbing, hot water heater, and electrical systems on the Premises will be in compliance with all building codes, in good working order, and that the roof will be free of leaks for the term of this lease.~~

~~R6. Landlord hereby gives its consent to the Tenant to construct the Premises in accordance with standard SUBWAY decor and to erect standard SUBWAY signs/awnings on the building. The phrase "standard SUBWAY signs" shall be deemed to include pole signs and awnings. Tenant's signs shall measure at least 36" high and extend the length of the fascia. Additionally, Tenant may use standard SUBWAY neon tubing and window advertising including but not limited to neon "open" signs and static cling(s).~~

R7. For good and valuable consideration, Landlord agrees to the following provision: In the event of a default by the Tenant, Landlord acknowledges an affirmative duty to mitigate damages and shall in no event accelerate rent due to the remainder of the term. Further, Landlord and Tenant agree that Tenant's liability upon default shall not exceed twelve (12) month's base rent or the remainder due pursuant to this lease, whichever is less, plus the unamortized portion of Landlord's cost of construction of improvements to the Premises required under Section 34 of this Retail Lease, such cost to be born through separate agreement by and between the franchisee and the Landlord. Upon the termination of this lease, whether in accordance with this section or otherwise, Tenant shall be permitted access to the Premises to remove any and all logo or trademark items. Such items shall include, but shall not be limited to, signage and murals.

R8. Tenant share of real estate taxes and assessments, if any, shall not include any interest or penalties which arise from Landlord failure to pay the taxes or assessment in a timely manner. In no event shall Tenant be liable for any tax related to income, transfer, sale, excise taxes or inheritance tax imposed upon the Landlord. Should the Landlord choose to contest the imposition of any tax or assessment, the cost of maintaining any such action shall be borne solely by the Landlord, and shall not be reflected in any later charge to the Tenant. Should the Tenant be named as a party in any lawsuit involving real property tax or assessments, the Landlord shall indemnify the Tenant for any and all costs, including, but not limited to legal fees, which may be incurred in the defense of, or arising out of any such action.

R9. If the Landlord does not execute this lease within thirty (30) days of execution by Tenant, this lease shall automatically be deemed null and void. Within three (3) business days, Landlord shall return any and all monies paid and all leases executed by Tenant. Tenant further reserves the right to cancel this lease within said thirty (30) day period by notifying the Landlord in writing.

RJP 



R10. Landlord represents that there are no oral agreements affecting this lease; this lease, exhibits and rider, if any, attached hereto and forming a part hereof, supersede and cancel any and all previous negotiations, arrangements, letters of intent, lease proposals, brochures, agreements, representations, promises, warranties and understandings between the parties as stated by, including but not limited to, Tenant's agent(s), employee(s), SUBWAY® franchisee(s), and/or SUBWAY® Development Agent(s) of Doctor's Associates Inc. No alteration, amendment, change or addition to this lease shall be binding upon either party unless reduced to writing and signed by each party.

WITNESS:

Landlord:

WITNESS:

Madelyn Leonard

Diane M. Linn, Multnomah County Chair

Tenant:

SUBWAY REAL ESTATE CORP.

[Signature] 7/25/02

Vice President

Duly Authorized Signatory

REVIEWED:

THOMAS SPONSER, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY

BY

[Signature]  
ASSISTANT COUNTY ATTORNEY

DATE

8/14/02

R/10

[Signature]

LEASE COMMENCEMENT AGREEMENT

TO LEASE DATED THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_\_\_  
BETWEEN \_\_\_\_\_,  
LANDLORD, AND SUBWAY REAL ESTATE CORP., TENANT,  
DEMISING \_\_\_\_\_ SQUARE FEET AT \_\_\_\_\_  
\_\_\_\_\_.

PURSUANT TO THE PROVISIONS OF THE ABOVE LEASE, LANDLORD AND TENANT,  
INTENDING TO BE LEGALLY BOUND HEREBY, AGREE THAT THE TERM OF SAID  
LEASE COMMENCED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_\_\_  
AND RENT COMMENCED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_\_\_  
AND LEASE SHALL END AT MIDNIGHT ON THE DAY \_\_\_\_\_ OF  
\_\_\_\_\_, 19\_\_\_\_, UNLESS SOONER TERMINATED OR EXTENDED AS  
THEREIN PROVIDED. THE "COMMENCEMENT DATE" PROVIDED HEREIN SHALL BE  
USED, TO DETERMINE THE OPTION PERIOD(S) AND FOR OTHER PURPOSES.  
TENANT AGREES THAT, AS OF AND THROUGH THE DATE HEREOF, LANDLORD HAS  
FULLY AND TIMELY COMPLIED WITH AND PERFORMED EACH AND EVERY OF ITS  
OBLIGATIONS AS SET FORTH IN THE LEASE AND THAT TENANT HAS NO CLAIM(S)  
OR CAUSE(S) OF ACTION AGAINST LANDLORD WHATSOEVER AND HAS NO RIGHT TO  
ANY SETOFF(S) AGAINST ANY AND ALL SUMS DUE LANDLORD.  
LANDLORD AGREES THAT, AS OF AND THROUGH THE DATE HEREOF, TENANT HAS  
FULLY AND TIMELY COMPLIED WITH AND PERFORMED EACH AND EVERY OF ITS  
OBLIGATIONS AS SET FORTH IN THE LEASE AND THAT LANDLORD HAS NO  
CLAIM(S) OR CAUSE(S) OF ACTION AGAINST TENANT WHATSOEVER.

WITNESSES:

LANDLORD:

\_\_\_\_\_  
\_\_\_\_\_  
(AS TO LANDLORD)

WITNESSES:

TENANT:

SUBWAY REAL ESTATE CORP.

\_\_\_\_\_  
VICE PRESIDENT

\_\_\_\_\_  
(SEAL)

R/P A