

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into as of this _____ day of _____, 2011 by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation and home rule city of the State of Colorado (the "City" or "Lessor"), and **SUBWAY® Real Estate LLC.**, a limited liability company formed under the laws of Delaware and authorized to do business in the State of Colorado, with offices located at 325 Bic Drive, Milford, Connecticut, 06461 (the "Lessee");

WITNESSETH:

WHEREAS, the City is the owner of certain property located at 434 West 14th Avenue in Denver, Colorado 80204 (the "Property" or "Justice Center Garage"); and

WHEREAS, the City is willing to grant lease rights for the operation of a sandwich shop upon that portion of the Property which is located on the southeast corner of 14th Avenue and Elati Street ("Lease Space") to the Lessee.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter contained, the City and the Lessee agree as follows:

1. **LEASE RIGHTS GRANTED:** The City hereby grants to the Lessee, subject to all of the terms, covenants and conditions of this Lease Agreement, the right, privilege and obligation to occupy, equip, furnish, operate and maintain a sandwich shop in and upon the Lease Space more particularly described and depicted on **Exhibit A** attached hereto and incorporated herein by this reference "Lease Space", consisting of approximately 1,734 square feet of space, more or less, and one (1) parking stall in the Denver Justice Center Garage.

The Lessee agrees that its use of the Lease Space shall be for the sole purpose of offering for sale submarine and deli style sandwiches, salads, pizza, soup, and other food items as set forth on Lessee's national menu and for no other purposes, unless otherwise authorized in writing by the City's Director, Division of Real Estate (the "Director"), or his authorized representative. The Lessee acknowledges the City fully retains the right to provide facilities and services for making available to its employees, and to the general public, food products, coffee and other beverages, and other goods or services, whether such facilities and services are provided directly by the City itself or through its separate contractors, licensees or other providers.

The Director, or his authorized representative, shall be responsible for administering this Agreement for the City and will serve as the Lessee's point of contact in regard to its day to day operations. In accordance with the Director's responsibility for administering this Agreement, the Director is authorized to sign any and all documents which may be necessary or helpful regarding the administration and operation of the Agreement on behalf of the City, including, but not limited to, the Notice of Completion of City Improvements, agreements regarding subordination and the like, and other document reasonably utilized in the administration and operation of this Lease Agreement as determined by the Director: however, the Director may not alter the basic terms of this Agreement. The Lessee agrees that, as directed in writing from time to time by the Director, it will coordinate its activities hereunder, or any portion thereof, with any building management consultant engaged by the City to assist the City in the management of City facilities.

2. **TERM**: The term of this Lease Agreement shall commence upon completion of the City's construction of its required improvements related to the Lease Space, as further described herein and as depicted on **Exhibit B** ("City Improvements"). Upon Completion of the City Improvements, the City and Lessee shall execute a Notice of Completion in substantially the form attached hereto as **Exhibit C**, which shall set forth the date upon which the parties agree that the lease term shall commence (the "Commencement Date"). This Lease Agreement shall expire five (5) years after the first day of the month after the Commencement Date, unless the Commencement Date occurs on the first day of a month, in which case termination of the Lease Agreement shall be five (5) years after the Commencement Date. The last day of the five (5) year term, or the last day of any extended option term, shall be the "Expiration Date". Lessee shall have the option to renew the Lease Agreement for an additional term five (5) year term ("First Option Term"), unless sooner terminated pursuant to the terms of this Lease Agreement. In the event the Lessee renews this agreement for the First Option Term, the Lessee may renew this agreement for a second five (5) year term ("Second Option Term") upon expiration of the First Option Term, unless sooner terminated pursuant to the same terms and conditions of this Lease Agreement.

Lessee's right to renew this Lease Agreement for the First Option Term and the Second Option Term, if applicable, shall each be exercised by providing written notice six months prior to the then effective Expiration Date to the Director of its intention to renew the term of this

agreement for the First Option Term or the Second Option Term.

If, however, the Lessee violates any term or condition of this agreement and fails to cure said default per the provisions herein, the City may terminate this Lease Agreement after the cure periods given in Section 24.

3. **COMPENSATION AND FEES:** Lessee covenants and agrees that it shall pay to the City and the City hereby reserves unto itself as compensation hereunder for the rights and privileges herein granted the amounts set forth below, commencing upon the Commencement Date and continuing throughout the term hereof.

The rental amounts set forth below include a charge of \$2.00 per square foot for common area maintenance charges. Lessee agrees that it shall pay to the City monthly amounts as follows for the initial term:

(A) For the period extending from the Commencement Date through the 12th month thereafter, the rate of Zero Dollars (\$0.00) per square foot or the monthly amount of Zero Dollars (\$0.00).

(B) For the period extending from the 13th month through the 24th month from the Commencement Date, the rate of Twelve Dollars (\$12.00) per square foot or the monthly amount of One Thousand Seven Hundred Thirty Four Dollars (\$1,734.00).

(C) For the period extending from the 25th month through the 36th month from the Commencement Date, the rate of Thirteen Dollars (\$13.00) per square foot or the monthly amount of One Thousand Eight Hundred Seventy Eight Dollars and Fifty Cents (\$1,878.50).

(D) For the period extending from the 37th month through the 48th month from the Commencement Date, the rate of Fourteen Dollars (\$14.00) per square foot or the monthly amount of Two Thousand Twenty Three Dollars and No Cents (\$2,023.00).

(E) For the period extending from the 49th month through the 60th month after the Commencement Date, the rate of Fifteen Dollars (\$15.00) per square foot or the monthly amount of Two Thousand One Hundred Sixty Seven Dollars and Fifty Cents (\$ 2,167.50).

In the event the Lessee elects to renew the term hereof, it shall pay a monthly rental during the renewal period at a negotiated market rental rate which shall not be lower than the previous year's rent, however, such rate shall not increase by more than 4% per year. In the event the City and Lessee cannot agree upon a rental rate within 30 days after expiration of the Lease Term, the rental rate shall increase by 4% per year.

4. **PARKING:** The Lessee shall have the option of leasing one (1) parking stall in the Denver Justice Center Garage at the prevailing market rates.

5. **TIME OF PAYMENT:** The monthly rent shall be payable in advance and without demand by the first day of each month throughout the term of the Lease Agreement, and shall be considered delinquent if not paid by the 5th day of the month. For any period of less than one calendar month that this Agreement shall be in effect, the monthly rental amount shall be pro-rated.

Any payments not made to the City when due shall accrue interest, commencing upon the forty fifth day from the date when such payment was due, payable to the City by the Lessee at the rate of 18% per annum (“Past Due Interest Rate”) from such due date.

6. **PLACE AND MANNER OF PAYMENTS:** In all instances where the Lessee is required by this Agreement to pay fees or other charges or to make other money payments to the City, such payments shall be made without notice or invoice, payable to the City's Manager of Finance. Each payment shall be delivered to the Office of the Division of Real Estate, 201 West Colfax Avenue, 10th Floor, Denver, Colorado 80202, or at such other place in the City and County of Denver as the Director may hereafter designate by notice in writing to the Lessee, and shall be made in legal tender of the United States. Any check given to the City shall be received by it subject to collection and the Lessee agrees to pay any charge incurred by the City for such collection.

7. **BOOKS OF ACCOUNT AND AUDITING:** The Lessee agrees that any duly authorized representative of the City, including the City Auditor, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine accounting books of the Lessee and Sublessee, in any way related to this Agreement and to the Lease Space.

8. **OPERATION OF FOOD SERVICES:** In the operation of the business herein authorized and in the manner and method of the conduct thereof Lessee shall maintain the highest degree and standards of quality of products, shall furnish prompt, courteous and efficient service adequate to meet all reasonable requests therefore and shall ensure professional conduct and demeanor on the part of its representatives, agents, servants and employees.

Lessee agrees that its operation of its business hereunder at all times shall comply with **Exhibit D**, “Standards of Operation” attached hereto and incorporated herein by reference.

Lessee further agrees that Exhibit D may be revised from time to time by the City upon reasonable notice to the Lessee, and that in the event of such revisions Lessee will conduct its operations hereunder in conformity with such revised Standards of Operation.

Lessee shall comply with all applicable federal, state and local laws and regulations governing food service establishments. Lessee agrees to obtain at its own expense, and to maintain at all times, all licenses and certificates necessary for the operation of a food service establishment and to comply with all applicable health, safety and sanitary laws, regulations and inspections concerning same.

In particular, Lessee shall at all times during the term of this Agreement strictly comply with the following conditions and requirements:

A. Quality of Food and Beverages/Merchandise. In the operation of the food and beverage business herein authorized, the Lessee agrees that the Lessee shall handle only the highest quality products and those which are safe, free of adulteration, sanitary and properly labeled and advertised in accordance with Subway restaurant product standards. Upon written notice to the Lessee by the Director of any violation of this provision, Lessee shall forthwith correct the condition objected to, and if not corrected within five (5) business days after receipt of such notice, or within a reasonable period of time for corrections requiring more than five (5) business days, the City may terminate or cancel this Agreement.

B. Menus and Pricing Schedules. The City agrees that Lessee's menus, including its schedules of prices, charges and rates for its food and beverages, shall be consistent with prices of other Subway operators in the Denver metropolitan area and such prices as are set or maintained by the Subway franchisor.

C. Access to Lease Space. The City will provide the Lessee with locks and keys allowing access to the Lease Space by the Lessee. The City reserves a right of access to the Lease Space hereunder at any time upon reasonable notice to the Lessee, and during emergencies or other situations requiring immediate attention the City shall have a right of access without prior notice to the Lessee.

D. Personnel. Lessee will, in the operation of the Lease Space and services under this Agreement, employ or permit the employment of only such personnel who possess all applicable food handler certifications and as will assure a high standard of service to the public. All such personnel while on or about the Lease Space shall be clean, neat in appearance and

courteous at all times and shall be appropriately attired, with badges or other suitable means of identification, in such instances as are appropriate. No personnel employed by Lessee, while on or about the Lease Space, shall act in a loud, boisterous or otherwise unprofessional way or be permitted to solicit business in an unprofessional manner.

(1) Director and Responsible Representative. The Lessee shall select and appoint, subject to approval of the Director, a corporate officer or employee who shall serve as managing director of Lessee's operations at the Property. Such person must be an outstanding, highly qualified and experienced manager or supervisor of high quality food and beverage serving and dispensing facilities, vested with full power and authority to accept service of all notices provided for herein and with full power and authority regarding operation of the Lease Space and business herein authorized, including the quality and prices of products sold, served and dispensed and the appearance, conduct and demeanor of Lessee's agents, servants and employees. Said managing director shall be assigned to the Denver Justice Center where he shall ordinarily be available during regular business hours and at all times during his absence a responsible subordinate shall be in charge and available.

(2) Employees' Health. To the extent permitted by applicable federal and state law, the Lessee shall not knowingly employ nor permit any person to work for it in the processing, handling, preparation and dispensing of food, food products or beverages of any kind who is infected with any disease or sickness in a communicable form, who is a carrier of any such disease or sickness or who has infectious sores on any exposed body areas. For each such employee, Lessee at all times shall have in its possession a record of a valid health card and food handler's certificate issued to such employee, as well as all medical clearances for all personnel, as required by local, state and/or federal law.

(3) Employees' Clothing and Hygiene. Lessee shall require all its employees engaged in the handling, processing, preparing and serving of food, food products and beverages of all kinds to wear clean clothing, to be clean in their personal habits while on duty and to thoroughly wash their hands before beginning work and immediately after each visit to the washroom.

The Lessee shall actively operate the facilities covered by this Agreement during the hours of 6:30 A.M. to 6:00 P.M. Monday through Friday of each week during the term hereof. Landlord acknowledges that Tenant shall have the right to close the business temporarily

in order to retake the premises from the Franchisee.

E. Signs, Advertising, Displays. Lessee shall erect signage consistent with applicable zoning regulations and requirements of the Justice Center Garage Owners Association. Lessee shall not erect, construct, paint or place any signs, advertisements or displays pertaining to its business upon any portion of the Justice Center Garage other than upon the Lease Space. Prior to the erection, construction or placing of any such signs, painting, advertising matter or displays, including window displays, Lessee shall submit to the Director, or his authorized representative, for approval in writing, drawings, sketches, design dimensions and type and character of the proposed sign, advertising matter or display and any conditions, restrictions or limitations in respect to the use thereof specified by said Director in his written approval shall become conditions hereof as if specifically set forth at length herein. The Lessee may use standard Subway neon tubing/banding and window advertising, including but not limited to LED “open” signs and static clings provided such LED signs and advertising are approved in advance in writing by the Zoning Administrator.

Upon the termination, cancellation or expiration of this Agreement, Lessee shall remove, obliterate or paint out, as the Director may direct, any and all of its signs, advertising and displays on the Lease Space and in connection therewith, shall restore said space and improvements thereto to the same condition as prior to the placement of any such signs, advertising or displays. In the event that there is a failure by Lessee to comply with this provision, the Director may, at his option, cause to be performed the necessary work at the expense of the Lessee.

F. Sanitary Condition of Lease Space and Equipment. The Lease Space and all equipment and materials used by Lessee shall at all times be clean and sanitary and free from rubbish, refuse, food scraps, garbage, dust, dirt, offensive or unclean materials, flies and other insects, rodents and vermin. All apparatus, appliances, utensils, devices, equipment and piping used by Lessee shall be constructed so as to facilitate the cleaning and inspection thereof, shall be thoroughly and properly cleaned after each period of use with pressurized live steam, or in the alternative, with hot water and suitable soap, detergents and sterilizing agents and shall be rinsed by flushing with hot water. Sewer lines shall be cleaned at least monthly up to the nearest clean out on the sewer line outside the Lease Space. Kitchen exhaust fans, hoods and ducts shall be cleaned at least monthly. All trays, dishes, crockery, glassware, silverware, cutlery and other

equipment shall be cleaned after use.

(1) Removal of Garbage and Refuse. Lessee shall strictly comply with all rules and regulations regarding the disposition of trash and garbage and shall be responsible for regularly removing at frequent intervals all rubbish, refuse, food scraps and garbage from the Lease Space to the main building garbage or refuse disposal area in such location(s) designated by the City. Accumulation of boxes, cartons, barrels or other similar items shall not be permitted in any public area at the Property.

(2) Noise, Odors, Vibrations and Annoyances. The Lessee shall conduct its operations in an orderly and proper manner so as not to commit any nuisance or waste in the Lease Space nor to annoy, disturb or be offensive to others and shall take all reasonable measures, using the latest known and practicable devices and means, to eliminate any vibrations tending to damage the Lease Space and to eliminate any unusual, nauseous or objectionable smoke, gases, vapors or odors, except that odors associated with onions and the baking of bread shall not be considered objectionable hereunder. Lessee agrees to maintain the lowest possible sound level in its operations.

9. **PROHIBITED ACTS:** Lessee shall not:

A. Do or permit to be done anything which may interfere with the effectiveness or accessibility of utility, heating, ventilating or air conditioning systems or portions thereof on the Lease Space or elsewhere in the Justice Center Garage, nor do or permit to be done anything which may interfere with free access and passage in the Lease Space or the public areas adjacent thereto, nor hinder police, firefighting or other emergency personnel in the discharge of their duties.

B. Do or permit to be done anything which may interfere with the effectiveness or accessibility of elevators or escalators in or adjacent to the Lease Space, including lines, pipes, wires, conduits and equipment connected with or appurtenant thereto.

C. Overload any floor, wall or ceiling in the Lease Space.

D. Place any additional lock of any kind upon any window or interior or exterior door in the Lease Space, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefore is maintained within the Lease Space, nor refuse, upon the expiration or sooner termination of this Agreement, to surrender to the Director any and all keys to the interior or exterior doors of the Lease Space, whether said keys were furnished to

or otherwise procured by Lessee, and in the event of the loss of any keys furnished by the Director, Lessee shall pay the City, on demand, the cost for replacement thereof.

E. Do or permit to be done any act or thing upon the Lease Space which will invalidate, suspend or increase the rate of any fire insurance policy required under this Agreement, or carried by the City, covering the Lease Space, or the buildings in which the same are located or which, in the opinion of the Director, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement.

If, by reason of any failure on the part of Lessee after receipt of notice in writing from the City to comply with the provisions of this subparagraph, any fire insurance rate on the Lease Space, or any part thereof, or on the buildings in which the same are located, shall at any time be higher than it normally would be, then Lessee shall pay the City, on demand, that part of all fire insurance premiums paid by the City which have been charged because of such violation or failure of Lessee; provided, however, that nothing contained herein shall preclude Lessee from bringing, keeping or using on or about the Lease Space such materials, supplies, equipment and machinery as are appropriate or customary in carrying on it business, or from carrying on said business in all respects as is customary.

F. Allow any sale by auction upon the Lease Space.

G. Permit undue loitering on or about the Lease Space.

H. Use the Lease Space, or any part thereof, for lodging or sleeping purposes.

I. Use or allow the Lease Space to be used for any improper, immoral or objectionable purposes. The Lessee shall not permit the Lease Space to be used for any purpose prohibited by the laws of the United States of America, the State of Colorado, or the Charter or ordinance of the City and County of Denver.

10. **UTILITIES AND OTHER SERVICES:**

A. Heating and Air Conditioning (HVAC). Lessee, at its expense and with the prior approval of the Director, shall furnish, install and maintain any duct work, connections or other equipment within or leading into its Lease Space beyond that in place at the time of its initial occupancy hereunder which is required to connect the HVAC system from the Justice Center Garage central system to Lessee's facilities (See Exhibit B).

B. Water Service. The City is required to provide a water meter and a cold

water supply line capped and stubbed into the Lease Space up to the demising wall (See Exhibit B). Lessee will be provided a monthly water invoice by the City and Lessee agrees it shall pay all costs for water used within the Lease Space. Lessee shall be responsible for any extension or relocation of the water line from the place where it is capped and stubbed into the Lease Space and for all water hook-up of its equipment.

C. Electricity. The City is required to provide main electrical service of 225 amps, 120/208 volts, three phase to the finished demising wall of the Lease Space. Lessee at its sole cost and expense shall provide for any relocation of the main panel and shall furnish, install and maintain all power circuits and connections required for equipment and mechanical systems used in the Lease Space.

D. Lighting. Lessee at its expense shall furnish, install and maintain all lighting fixtures and wiring for general illumination of the Lease Space. Levels of illumination and wattage requirements shall be subject to approval by City.

E. Janitorial Services and Maintenance. Lessee at its sole expense shall be responsible for all janitorial services for the Lease Space. Lessee at its sole expense shall maintain the Lease Space in a first-class condition, including redecoration, painting and repair and replacement of worn furnishings as the conditions and as the Director or his authorized representative may require.

F. Window Washing and Structural Maintenance. The City at its expense shall provide exterior window washing and maintain all structural parts of the Justice Center Garage building, including exterior glass, walls and roof but specifically excluding Lease Improvements made by Lessee.

G. Common Use Services: The Director may establish common use services at the Justice Center Garage, including but not limited to trash and refuse removal, industrial waste handling, recycling and security guards. The Director reserves the right to establish charges for such common use services based upon documented actual costs. Trash and such other services will be common use services which Lessee may be required to use and pay its pro-rata actual share, however, other common use services may be utilized at Lessee's option. Lessee agrees to pay the charges for those common use services which are utilized by Lessee.

H. Interruption of Services. The City makes no warranty as to the mechanical and electrical systems within the Lease Space, and the Lessee accepts them on an "as

is" basis without further recourse against the City for their condition. Lessee agrees that the City shall not be liable for failure to supply any utility services. The City reserves the right to temporarily discontinue utility services for periods not to exceed thirty days as may be necessary by reason of accident, unavailability of employees, repair, alterations or improvements or whenever by reason of strikes, lockouts, riots, acts of God or any other happenings beyond the control of the City, the City is unable to furnish such utility services. The City shall not be liable for damages to persons or property for any such discontinuance, nor shall such discontinuance in any way be construed as cause for abatement of compensation or operate to release the Lessee from any of its obligations hereunder, except to the extent the Lessee is unable to perform its non-monetary obligations hereunder as a result of the interruption of utilities.

I. Subsequent Changes to Utilities and other Services within the Lease Space. All changes to utilities and other services which vary from the initial plans approved by the City shall not be installed by the Lessee without the prior written approval of the City's Director

11. **REPAIRS, MAINTENANCE AND OTHER SERVICES:** The Lessee shall pay for and make all repairs and shall provide all maintenance necessary for the proper use and enjoyment of the Lease Space except as otherwise expressly provided herein. Lessee agrees that the City may provide such maintenance, repairs, janitorial, trash removal or any other services for the Lease Space or the Lessee's operations therein if the Lessee fails to do so within a reasonable time after having received notice from the City of a deficiency, and Lessee agrees it will pay the City for such services at the City's actual cost multiplied by one hundred fifty percent.

12. **CONSTRUCTION OF IMPROVEMENTS:** The Lessee at its sole cost and expense shall construct and install Lease improvements consisting of new construction, equipment, finishes, fixtures, systems, furnishings and furniture (the "Improvements"), with the exception that all water, sewer, electric and heating/cooling will be brought to the demising wall which it deems necessary or desirable for its operation of the Lease hereunder. All Improvements constructed or installed by the Lessee shall be approved in advance in writing by the Director of Facilities Planning and Management and the Director and shall be constructed pursuant to the City's building permit process and the customary terms and conditions thereof. Lessee agrees that it shall submit to the Director, at least thirty days prior to the commencement of any

construction, at least three full sets of complete construction plans and specifications.

Lessee shall, unless otherwise instructed, complete its design, obtain building permits, and complete construction and installation of Improvements no later than January 31, 2012. Such period may be extended by the Director if installation has been delayed through no fault of the Lessee; however, in no event shall such extension affect the date upon which compensation is due. Lessee agrees that it will open the Lease Space to the public for regular operations within five days of the date of receiving a certificate of occupancy, or within five days of the completion of its initial improvements, whichever is later.

Lessee shall construct initial Improvements sufficient to provide all facilities necessary for the operation of its business and Lease Space hereunder. Thereafter, Lessee agrees not to alter, add to, remove or demolish any of the Improvements on the Lease Space without the prior written approval of the Director; provided, however that approval shall not be required for trade fixtures, furniture or movable equipment which is not affixed to the building. All such initial Improvements and subsequent alterations or changes shall be made as follows:

A. Compliance with Laws and Regulations. The Lessee agrees to comply with and to require its contractors to comply with all applicable federal, state and local laws and all general rules and regulations applicable to Lessee's construction in the Lease Space, including but not limited to the requirements of Denver Revised Municipal Code § 49-161 et seq. pertaining to a permit for the design and construction of public improvements; payment of prevailing wages and sales and use taxes; and compliance with the Americans with Disabilities Act, 42 USC 12,000 et seq. and its regulations.

The Lessee and its contractors additionally shall comply with all City rules and regulations and design standards regarding site access, use of site, signage, safety, security, design and construction and shall obtain and pay for all related permits. Failure to comply will be grounds for denial of access and/or suspension of construction activities.

B. Payment of Prevailing Wage Rates. The Lessee shall require its contractor and all of its subcontractors to pay every worker, laborer or mechanic employed by them in the performance of the construction of the Improvements prevailing wages, including fringe benefits or their cash equivalent, for the same class and kind of work in the City and County of Denver as determined by the Career Service Board under the provisions of Section 20-76 of the Denver Revised Municipal Code. The wages shall be those prevailing at the time of the contractor's final

bid, and the Lessee shall require the contractor to submit with its bid the wage schedule applicable. The Contractor shall post in a prominent and easily accessible place at the site of the improvements the scale of wages to be paid by the contractor and all subcontractors at any tier working under the contractor.

The Contractor shall furnish to the Auditor, or his authorized representative, each week during which work is in progress, a true and correct copy of the payroll records of all workers employed to perform the work. All payroll records shall include information showing the number of hours worked by each worker, the hourly pay of such worker, any deductions made from pay, and the net amount of pay received by such worker for the period covered by the payroll. The payroll record shall be accompanied by a sworn statement of the accuracy of the records as to all workers performing the work, either for the contractors or subcontractors, that payments were made to the workers as set forth in the payroll records, that no deductions were made other than those set forth in such records, and that all workers were paid the prevailing wages as of the contractor's final bid for the work. Compliance with above requirements shall be deemed a work "specification" as such word is used in Section 49-173, Denver Revised Municipal Code. Violation of the prevailing wage requirement and its documentation, hereinabove set forth, shall result in an order from the Manager of Public Works for the work to cease until there is satisfactory evidence that the violation has been remedied and will not reoccur. The issuance of a stop-work order shall not relieve the contractor's surety of any liability on contractor's bond, but such a stop-work order shall be deemed a default by the contractor and insofar as said surety's obligation is concerned shall be deemed a default by the contractor.

C. Limitation on Liability. Lessee agrees that no liability shall attach to the City for any damages or losses incurred or claimed by Lessee or any other person or party on account of the construction or installation of Improvements to the Lessee's site. Lessee agrees that no liability shall attach to the City for any interference or delay caused by construction in adjacent areas or the operations of City agencies, including without limitation damages or losses in the nature of delay damages, lost labor productivity and impact damages, provided, however, that any delay or interference in the Lessee's performance of its obligations hereunder, caused by the City's delay or interference, shall not constitute a default of the Lessee of the terms and provisions of this Agreement. Lessee agrees to indemnify, defend and hold harmless the City

from any loss, cost, damage or expense incurred, claimed, asserted or arising in connection with Lessee's or its contractors' or agents' construction or installation of Improvements to the site.

D. Design Procedures. Approval by the Director extends to and includes consideration of architectural, structural, mechanical, electrical, specialty systems, site, signage, landscaping and aesthetic matters, and the City reserves the right to reject any design submitted and to require Lessee to resubmit designs and layout proposals until they meet with the approval of the Director. No substantial changes or alterations shall be made in said drawings or specifications after approval by the Director, and no alterations or improvements shall be made to or upon the Lessee's site without prior approval.

In addition to the above, the Lessee is responsible for coordination with the Denver Building Inspection Division, Zoning, Fire Department, Wastewater Management, Consumer Protection, Health and Hospitals and other agencies of government as may require permits. Prior to proceeding with work on the Lease Space, Lessee shall obtain and pay for all approvals, licenses and permits required for the Improvements. Whenever a conflict arises between state or local law, ordinances or regulations and federal law or regulations, the most stringent law or regulations applicable to this Agreement shall control.

E. Design Standards. First-class standards of design and construction are required and all Improvements shall conform with applicable statutes, ordinances, building codes and regulations. The approval given by the Director shall not constitute a representation or warranty as to such conformity; therefore, responsibility remains with the Lessee at all times.

F. Construction Procedures. The City shall at all times have a right of access to the construction site to monitor and inspect the construction of all Improvements and to ensure that all Improvements are constructed and installed in compliance with approved drawings and specifications. All installations made by the Lessee shall be subject to inspection and approval by the Director and shall be removed and replaced as she shall require. The City shall have the right to halt construction of the Improvements or to deny access to the site at any time if construction is at variance from the approved drawings and specifications, until such variance is corrected.

In order to assist the City in monitoring and inspecting construction, the Lessee shall submit or cause to be submitted for information and record, copies of all field test reports, certificates of insurance, waivers of liens, material certificates, shop drawings and submittals for

review for compliance with City design and construction standards, contractor application for payment requests, construction progress reports, notification of substantial completion of Improvements and final acceptance, copies of maintenance and operation manuals, as-built documents, and any other documents related to the construction of the Improvements which may be reasonably requested by the City.

Lessee is responsible for all temporary utilities required during construction. Lessee, at its sole cost and expense, shall obtain and make utility connections, hook-ups or taps as necessary, securing all necessary applications or permits and paying all associated fees. Lessee at its sole cost and expense shall provide meters, calibrated by the utility company, and maintain equipment as required to provide accurate measurement of usage and consumption. The City makes no warranty as to the location of structures, wiring, fixtures or systems, and Lessee accepts them on an "as is" basis without further recourse against the City as to their location, number or suitability for the particular purposes of the Lessee.

Lessee is responsible for maintaining a clean, orderly and safe construction site, free of accumulated construction debris and waste materials, and shall be responsible for lawful removal of such debris and waste materials. Construction shall be accomplished without interfering with City operations or adjoining construction, providing barricades and/or construction enclosures as required.

G. Modifications and Alterations. Modifications and alterations to improvements installed by Lessee throughout the term of this Agreement are subject to the same requirements and provisions as initial improvements installed by Lessee at the commencement of the term of this Agreement.

H. As-Built Documents. Not later than sixty days after completion of all work for the Improvements, Lessee shall provide the City complete sets of as-built documents prepared in accordance with City requirements. If Lessee fails to provide as-built documents after written notice from the City, the City may elect to have the documents completed and charge the Lessee for the costs associated therewith. The Lessee agrees that, upon request of the City, Lessee will inspect the Improvements jointly with the City to verify as-built documents.

13. **TITLE TO IMPROVEMENTS.** Lessee agrees that all improvements to the Lease Space, including approved changes and renovations, which are affixed to the realty, shall become the property of the City.

14. **REMOVAL OF LESSEE'S EQUIPMENT**: Lessee shall retain title to and shall remove, at its sole cost, prior to the expiration or termination of this Agreement, all of Lessee's Equipment, as hereinafter defined. "Lessee's Equipment" shall mean all equipment, apparatus, machinery, signs, furnishings, trade fixtures and personal property provided and installed by Lessee and used in the operation of the business of Lessee which is listed on an annual inventory list submitted by Lessee and approved by the City and maintained in the office of the Director of Real Estate.

If such removal shall injure or damage the Lease Space, Lessee agrees, at its sole cost and expense, at or prior to the expiration or termination of this Agreement, to repair such injury or damage in good and workmanlike fashion and to place the Lease Space in the same condition as existed at the time of occupancy of the facility by the at the commencement of the term of this Agreement. If Lessee fails to remove any of Lessee's Equipment by the expiration or termination of this Agreement, the City may, at its option, keep and retain any such Lessee's Equipment or dispose of the same and retain any proceeds therefrom, and the City shall be entitled to recover from the Lessee any costs of the City in removing the same and in restoring the Lease Space in excess of the actual proceeds, if any, received by the City from disposition thereof.

15. **PATENTS AND TRADEMARKS**: Lessee represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under this Agreement. Lessee agrees to save and hold harmless the City, its officers, employees and agents from and against any damages in connection with any actual or alleged infringement or any unfair competition or other similar claim arising out of the operations of Lessee under this Agreement.

16. **SECURITY**: Lessee shall cause its officers, contractors, agents and employees to comply with any and all security requirements adopted or promulgated from time to time by the Director of Real Estate or otherwise applicable to City-owned buildings. Lessee agrees that it will require its employees to submit to background checks at the request and expense of the City.

17. **ADMINISTRATIVE HEARING**: Disputes arising out of this Agreement shall be resolved by administrative hearing before a hearing officer under contract with the City, following the procedures outlined in Denver Revised Municipal Code Section 56-106, except

that the responsible agency head shall be the Manager of the City's Department of General Services; provided, that the City shall retain its right to obtain an order of eviction in accordance with applicable state law. It is further agreed that no cause of action shall be brought against the City until there has been full compliance with the terms of this paragraph.

18. **ASSIGNMENT AND RIGHT TO SUBCONTRACT:** The Lessee may assign this Lease Agreement to, or subcontract with, any bona-fide licensee/franchisee doing business as a SUBWAY® sandwich shop without the prior consent of, but with subsequent written notice to, the City. Lessee guarantees that any such assignment or subcontracting shall be to a franchisee who has completed the required training to run a Subway Franchise in a professional manner, and who has the financial ability to purchase the Franchise. Such assignment or subcontracting shall not alter the Lessee's responsibility to the City under this Lease Agreement. Further, such assignees and sublessees may assign this Lease Agreement back to the lessee or cease operations under this Agreement at any time without notice to or approval by the City. The City agrees to accept compensation from the Lessee, its assignee or sublessee.

19. **TAXES:** The Lessee will duly pay and discharge all taxes, assessments and other governmental charges, if any, including without limitation any possessory use taxes, which are lawfully imposed upon the Lease Space or the Lessee's operations hereunder.

20. **DEFENSE AND INDEMNIFICATION:**

A. Lessee hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Lessee or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

B. Lessee's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Lessee's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole

cause of claimant's damages.

C. Lessee will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Lessee under the terms of this indemnification obligation. The Lessee shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

21. **INSURANCE:**

A. **General Conditions:** Lessee agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Lessee shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." Additionally, Lessee shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Lessee. Lessee shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen

or limit the liability of the Lessee. The Lessee shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

B. **Proof of Insurance:** Lessee shall provide a copy of this Agreement to its insurance agent or broker. Lessee may not commence services or work relating to the Agreement prior to placement of coverage. Lessee certifies that the certificate of insurance attached as **Exhibit E**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Lessee's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

C. **Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella, Lessee and sublessee's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

D. **Waiver of Subrogation:** For all coverages, Lessee's insurer shall waive subrogation rights against the City.

E. **Sublessees and Subcontractors:** All sublessees and subcontractors (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Lessee. Lessee shall include all such sublessees as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors maintain the required coverages. Lessee agrees to provide proof of insurance for all such sublessees and subcontractors upon request by the City.

F. **Workers' Compensation/Employer's Liability Insurance:** Lessee shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Lessee expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement,

that none of the Lessee's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

G. **Commercial General Liability:** Lessee shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

H. **Business Automobile Liability:** Lessee shall maintain Business Automobile

Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement

I. **Additional Provisions:**

(1) For all Commercial General Liability and Excess Liability, the policies must provide the following:

- (a) That this Agreement is an Insured Contract under the policy;
- (b) Defense costs in excess of policy limits;
- (c) A severability of interests, separation of insureds or cross liability provision;
- (d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City;
- (e) No exclusion for sexual abuse or molestation.

(2) For claims-made coverage:

- (a) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier

(3) Lessee shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other

aggregate limits have been reduced below the required per occurrence limit, the Lessee will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

22. **LOSS OR DAMAGE**: The City shall not be liable or responsible to the Lessee for any loss or damage to any property or person occasioned by theft, fire, Act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of any governmental entity other than the City.

In the event of a fire or other casualty in or to the Lease Space, the Lessee shall immediately give notice thereof to the City. If the Lease Space, through no fault or neglect of the Lessee, its agents, employees, invitees or visitors shall be partially destroyed by fire or other casualty so as to render the Lease Space uninhabitable for the purposes of this Agreement, and the City elects to repair the same, the compensation provided for herein shall abate until such time as the Lease Space is made habitable by the City.

In the event of the total destruction of the Lease Space without fault or neglect of the Lessee, its agents, employees, invitees or visitors, or if from any cause the Lease Space shall be so damaged that the City shall decide not to rebuild (which decision the City may make in its sole discretion), then all compensation owed up to the time of such destruction or termination shall be paid by the Lessee and this Lease Agreement shall cease and come to an end.

23. **COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS**: Lessee in conducting any activity on the Lease Space shall comply with all applicable local, state and federal environmental rules, regulations, statutes, laws and orders (collectively "Environmental Requirements"), including but not limited to Environmental Requirements regarding the storage, use and disposal of Hazardous Materials or Special Wastes to the environment. For purposes of this Agreement the terms "Hazardous Materials" shall refer to those materials, including without limitation asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), oil or any other petroleum products, natural gas, source material, pesticide, and any hazardous waste, toxic substance or related material, including any substance defined or treated as a "hazardous substance," "hazardous waste" or "toxic substance" (or comparable term) in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 et seq. (1990), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq. (1990), and any rules and regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

Lessee shall comply with City Ordinance 196, as amended on March 18, 1991 (amendments to the City Uniform Public Code related to water conservation fixtures).

Lessee shall acquire all necessary federal, state and local environmental permits and comply with all applicable federal and state environmental permit requirements.

Lessee agrees to ensure that its Lease Space is designed, constructed, operated and maintained in a manner that minimizes environmental impact through appropriate preventive measures and complies with all federal, state and local environmental requirements. Lessee agrees to evaluate methods to reduce the generation and disposal of waste materials. Wastewater from maintenance or operational activities shall be pretreated with sand and grease traps.

In the case of a release, spill or leak as a result of Lessee's construction, operation or maintenance activities, Lessee shall immediately control and remediate the contaminated media to applicable federal, state and local standards. Lessee shall reimburse the City for any penalties and all costs and expenses, including without limitation attorney's fees, incurred by the City as a result of the release or disposal by Lessee of any pollutant or hazardous material in or about the Lease Space.

24. **DEFAULT:**

A. Default by Lessee. Notwithstanding anything in this Lease Agreement to the contrary, the City may terminate this Agreement if:

(1) Any installment payment is in arrears and remains unpaid for a period of forty-five days, upon the giving by the City of ten days prior written notice to the Lessee of its intention to so terminate, unless the payment is made within the ten day period commencing upon the giving of such notice; or

(2) The Lessee fails to perform or observe any other provision of this Lease Agreement and such failure continues for thirty days after the City delivers written notice thereof to the Lessee, or for such longer period as may be reasonably required to cure such default, but not to exceed ninety days if the Lessee's failure is of such nature that it cannot be cured within a thirty day period; provided that the Lessee commences such cure within the thirty day period and diligently prosecutes such cure to completion thereafter.

B. Default by the City: Notwithstanding any provision to the contrary in this Lease Agreement, in the event that the City:

(1) Fails to discharge fully any of its obligations imposed under this

Lease Agreement;

- (2) Fails to pay real estate taxes and assessments affecting the Lease Space; or
- (3) Fails to make any repairs that this Lease Agreement or any law requires it to make, then the Lessee shall have the following remedies in addition to all other remedies at law and equity:

If an event of a default by the City occurs, the Lessee shall give written notice to the City in the manner herein set forth and shall afford the City a reasonable opportunity to cure any such default. If the City fails to cure any such default within thirty days, then the Lessee may terminate this Lease Agreement provided, however, that if the default cannot be cured within thirty days and the City is diligently attempting to cure the default, it shall provide written notice to the Lessee of the date, which shall not exceed ninety days from the date that it receives that Lessee's notice, that it will have fully cured such default. If notice of termination is so given, the City and the Lessee shall not be relieved of any obligations to be performed up to the date of termination.

25. **MECHANIC'S LIENS:** The parties acknowledge that no right of lien against public buildings exists under Colorado law.

Nonetheless, in the event that any liens are filed or recorded against the Property or the Lease Space on account of work done for or materials supplied to or on behalf of the Lessee, or should any action affecting the title to the Property or the Lease Space be commenced, the Lessee shall cause such liens to be released of record within thirty days after receipt of notice thereof or may, in good faith, contest the validity of any such liens. If the Lessee desires to contest the validity of any claim of lien, it shall cause the lien to be released of record by the posting of adequate security with a court of competent jurisdiction as may be provided by applicable law. If a final judgment establishing the validity of the contested amount is entered by a court of competent jurisdiction, then the Lessee shall pay and satisfy any such adverse judgment that may be rendered against the Property or the Lease Space before the enforcement of any judgment against the City.

26. **RIGHT TO ENTER:** The City and its authorized agents or employees may at any reasonable time upon 24 hours notice, except in the case of an emergency, enter the Lease Space to inspect and examine the Lease Space, to make and perform improvements, to comply

with applicable laws, ordinances, rules, orders or other governmental regulations, and to post notices of nonresponsibility including but not limited to those provided for by C.R.S. §38-22-105(2), as may be amended from time to time.

27. **SURRENDER OF POSSESSION**: The Lessee agrees to surrender possession of the Lease Space to the City at the expiration or sooner termination of this Lease Agreement, or upon the expiration of any renewal or holdover, in as good repair and condition as when the Lessee obtained the Lease Space excepting only ordinary wear and decay, or damage by the elements or by Act of God, or by insurrection, riot, invasion or commotion, or of military or usurped power. Upon the expiration or sooner termination of this Lease Agreement, the Lessee shall remove all of its furniture, fixtures and other personal effects from the Lease Space.

28. **WAIVER**: No waiver of any default by either party shall be deemed to constitute a waiver of any succeeding or other default.

29. **HOLDING OVER AFTER TERMINATION**: If, after the expiration of this Lease Agreement, the Lessee, without the consent of the Director, remains in possession of the Lease Space without a written agreement, then such holding over shall be deemed to be at a monthly compensation calculated at a rate which corresponds to double the amount of compensation which was paid by the Lessee for the prior twelve months, prorated to a monthly basis, payable in advance on the first day of each month, all other terms and conditions of this Lease Agreement shall remain the same.

30. **CONDITION OF LEASE SPACE**: The Lease Space shall be maintained by the Lessee in compliance with the Denver Building Code, as amended, and in compliance with the Americans with Disabilities Act, concerning building accessibility for physically challenged citizens.

31. **PRIOR AGREEMENTS SUPERSEDED**: This Lease Agreement supersedes any and all prior written or oral agreements and there are no covenants, conditions or agreements between the parties except as set forth herein. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendment executed and approved pursuant to the Charter and Revised Municipal Code of the City. In the event of any conflict, variance or disagreement, the terms and provisions of this Lease Agreement shall supersede,

govern and control those of any addenda, exhibits or attachments.

32. **NO DISCRIMINATION**: In connection with the performance of work under this Lease Agreement, the Lessee agrees not to refuse to hire, nor to discharge, promote or demote, nor to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

33. **VENUE, GOVERNING LAW**: This Lease Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, without regard to the choice of law thereof, and the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations, and Executive Orders enacted or promulgated pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Lease Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Lease Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

34. **TOBACCO PRODUCTS AND SMOKING POLICY**: There shall be no sale or advertising of tobacco products on the Lease Space or in facilities owned or operated or controlled by the City and County of Denver. "Sale" includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. "Advertising" includes the display of commercial and noncommercial promotion of the purchase or use of tobacco products through any medium whatsoever but does not include any advertising and sponsoring which is a part of a performance or show or event displayed or held in City facilities.

The Lessee and its officers, agents and employees agree that they will cooperate and comply with the provisions of Denver Executive Order No. 99 prohibiting smoking in all indoor City Buildings and facilities.

35. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS**: The Lessee, its officers, agents and employees shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring the Lessee from City facilities or participating in City operations.

36. **CONFLICT OF INTEREST**: The parties agree that no official, officer or

employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Lessee further agrees not to hire or contract for services any official, officer or employee of the City or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions C5.13 and C5.14.

37. **PARAGRAPH HEADINGS**: The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

38. **NO THIRD PARTY BENEFICIARIES**: It is expressly understood and agreed that enforcement of the terms and conditions of this Lease Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City, the Lessee, and any sublessee, and nothing contained in this Lease Agreement shall give or allow any such claim or right of action by any other or third person on such Lease Agreement. It is the express intention of the City and the Lessee that any person other than the City, the Lessee and any sublessee receiving services or benefits under this Lease Agreement shall be deemed to be an incidental beneficiary only.

39. **FORCE MAJEURE**: Neither party shall be liable to the other, nor shall either party have any right to terminate this Lease Agreement, abate any payments or obligations or assert a claim against the other due to the other party's failure to perform any of its obligations under this Lease Agreement, if the failure is due to reasons beyond the non-performing party's reasonable control, including but not limited to strikes or other labor difficulties, inability to obtain necessary government permits or approvals due to delay on the part of a governmental entity, unavailability of materials, war, riot, civil insurrection, accidents, acts of God or governmental preemption in connection with a national emergency.

40. **NOTICES**: All notices required to be given to the Lessee hereunder shall be given by certified or registered mail, addressed to the Lessee at the address provided above; all notices required to be given to the City hereunder shall be given by certified or registered mail, addressed to the Director of Real Estate, 201 West Colfax Avenue, Tenth Floor, Denver, Colorado 80202. Either of the parties may designate in writing from time to time substitute addresses or persons in connection with the said notices.

41. **EXAMINATION OF RECORDS**: The Lessee agrees that any duly authorized

representative of the City, including the City Auditor and any of his designated representatives, until the expiration of three years after final payment under this Lease Agreement, shall have access to and the right to examine any directly pertinent books, documents and records of the Lessee and each of its sublessees and providers of operations services, involving matters directly related to this Lease Agreement.

42. **NOT PARTNERSHIP:** It is expressly understood and agreed that the City shall not be construed or held to be a partner, associate or joint venturer of the Lessee in the conduct of its business, but the Lessee shall at all times have the status of an independent contractor without the right or authority to impose tort or contractual liability upon the City.

43. **CITY EXECUTION OF AGREEMENT:** This Lease Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been approved by the Denver City Council and fully executed by all signatories of the City and County of Denver.

44. **EXHIBITS:** Any exhibit attached hereto is expressly incorporated herein by this reference.

45. **TIME OF THE ESSENCE:** Time is of the essence with respect to this Lease Agreement and for each and every provision contained herein.

46. **LEGAL AUTHORITY:**

A. The Lessee assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Lease Agreement.

B. The person or persons signing and executing this Lease Agreement on behalf of the Lessee do hereby warrant and guarantee that he/she or they have been fully authorized by the Lessee to execute this Lease Agreement on behalf of the Lessee and to validly and legally bind the Lessee to all the terms, performances and provisions herein set forth.

C. The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Lease Agreement if there is a dispute as to the legal authority of either the Lessee or the person signing this Agreement to enter into this Lease Agreement. The City shall not be obligated to pay Lessee for any performance of the provisions of this Lease Agreement after the City has suspended or terminated this Lease Agreement as provided in this paragraph.

47. **SEVERABILITY**: It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

48. **LITIGATION COSTS AND ATTORNEYS' FEES**: In the event of any litigation or other action between the City and the Lessee to enforce any provision of this Lease Agreement or otherwise with respect to the subject matter hereof, each party shall bear all of its own costs and expenses, including attorneys' fees.

49. **COUNTERPARTS OF AGREEMENT**: This Lease Agreement shall be executed in two counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

50. **GREEN RETAIL PRACTICES**: The Lessee shall use its best efforts, but makes no promises, to comply with the green retail practices.

51. **RIDER TO LEASE**: A Rider to Lease will be executed contemporaneously with this Lease Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first set forth above.

ATTEST:

CITY AND COUNTY OF DENVER

DEBRA JOHNSON, Clerk and Recorder,
Ex-Officio Clerk of the
City and County of Denver

By _____
Mayor

RECOMMENDED AND APPROVED:

APPROVED AS TO FORM:
DOUGLAS J. FRIEDNASH,
Attorney for the City and County of Denver

By _____
Director of Real Estate

REGISTERED AND COUNTERSIGNED:

By _____
Assistant City Attorney

By _____
Manager of Finance
Contract Control No. 201101016

By _____
Auditor

“CITY”

ATTEST:

SUBWAY REAL ESTATE, LLC, a
Delaware limited liability company

By _____

By _____

Title _____

Title _____

“LESSEE”

EXHIBITS

Exhibit A – Lease Space

Exhibit B - City Improvements

Exhibit C – Notice of Completion (Exhibit C to the Rider to Lease, Letter of Possession, shall be utilized as the Notice of Completion)

Exhibit D – Standards of Operation

Exhibit E – Certificate of Insurance

Contract Control Number:

Vendor Name:

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:

By _____

By _____

By _____



IN WITNESS WHEREOF, the parties have executed this Lease as of the date first set forth above.

ATTEST:

CITY AND COUNTY OF DENVER

DEBRA JOHNSON, Clerk and Recorder,
Ex-Officio Clerk of the
City and County of Denver

By _____
Mayor

APPROVED AS TO FORM:
DOUGLAS J. FRIEDNASH,
Attorney for the City and County of Denver

RECOMMENDED AND APPROVED:

By 
Director of Real Estate

REGISTERED AND COUNTERSIGNED:

By _____
Assistant City Attorney


By _____
Manager of Finance
Contract Control No. 201101016


By _____
Auditor

"CITY"

ATTEST:

**SUBWAY REAL ESTATE, LLC, a
Delaware limited liability company**

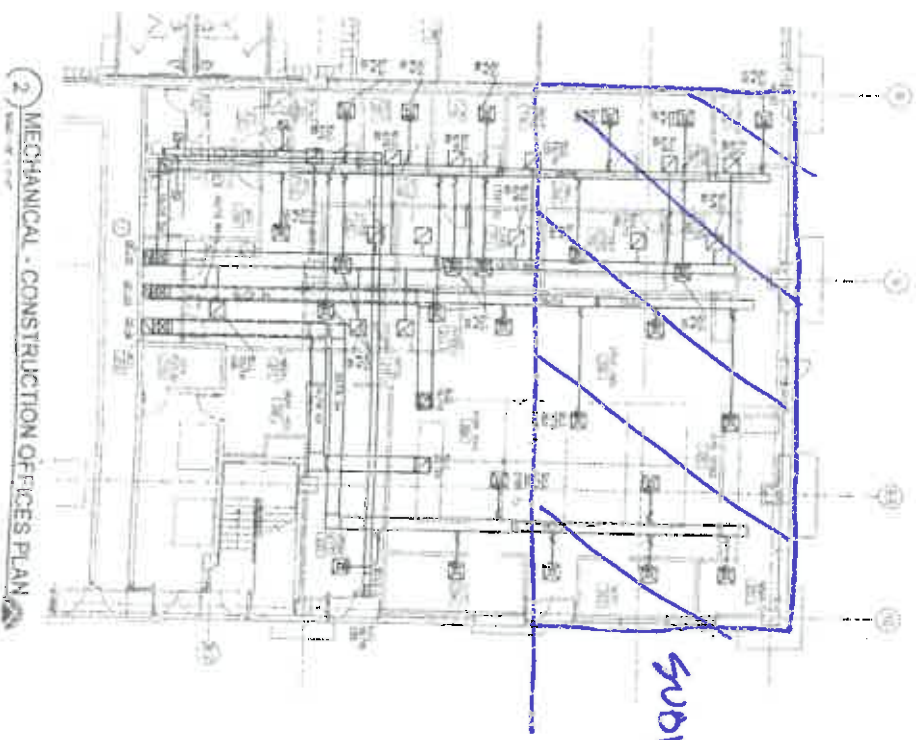
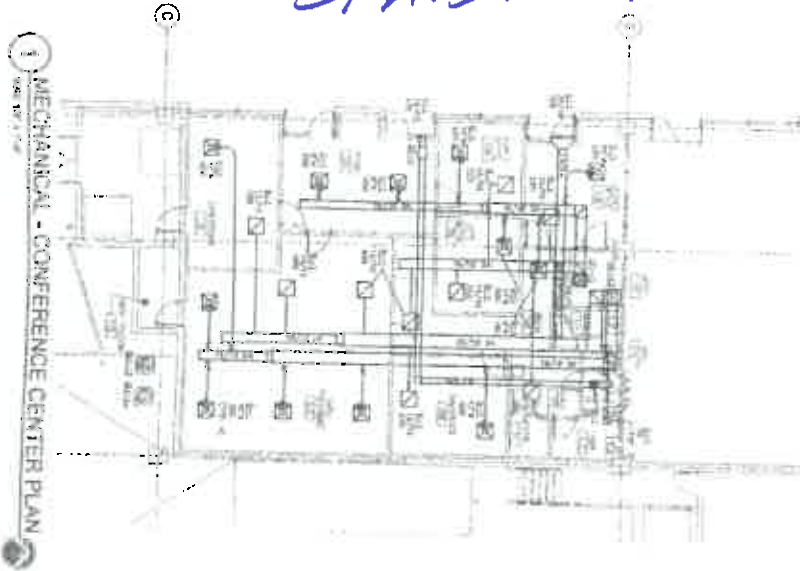
By 
Madelyn Molyneux
Title Duly Authorized

By 
Ernest A. Cliver, Jr.
Manager

"LESSEE"



EXHIBIT A - LEASE SPACE



PROJECT NO.	1001 N. DELAWARE
DATE	10/15/04
BY	J. LAWRENCE
CHECKED BY	J. LAWRENCE

LAWRENCE

1001 N. Delaware
Denver, CO 80202

Project Name
 General Contractor
 1001 N. Delaware
 Denver, CO 80202
 Project Location
 1001 N. Delaware
 Denver, CO 80202
 425 Grand Ave.
 Denver, CO 80202



TENANT FINISH:
HP CONSTRUCTION OFFICES
 1001 N. Delaware
 DENVER, CO 80202

MECHANICAL

EXHIBIT B

Description of City Improvements

- Construct demising wall
- provide conduit to allow for electricity to be pulled, tele-data, and fire alarm
- bringing HVAC duct work to demising wall; relocating existing thermostat

**EXHIBIT C
LETTER OF POSSESSION
(NOTICE OF COMPLETION)**

Re: Delivery of Possession, Subway® restaurant located at _____.

Dear Lessee:

In accordance with the Lease Agreement between the parties dated _____, 2011, the parties agree that Lessor's construction obligations under the lease are complete and the premises are hereby delivered to Lessee on _____ 20 , which date shall be the Commencement Date pursuant to the Lease Agreement. Execution of this Letter of Possession by Lessor and Lessee shall signify the delivery of possession and acceptance of same by Lessee and satisfy the obligations of Exhibit B of the Lease Agreement.

Sincerely,

Lessor

Date

I, the undersigned, hereby accept the delivery of the Premises from Lessor to Lessee.

Lessee

Date

EXHIBIT D
STANDARDS OF OPERATION

1. Service shall be prompt, courteous, and efficient. Lessee shall employ at all times sufficient number of personnel necessary to assure prompt service.
2. A full time experienced manager must be appointed to represent and act on behalf of the Lessee in all matters pertaining to its business operation.
3. Premises shall be kept in a clean, neat, business-like, and orderly condition at all times and the Lessee shall provide for timely disposal of trash and debris.
4. Lessee shall be responsible for the conduct, demeanor, and appearance (properly uniformed and/or identified) of its officers, agents, employees, suppliers, and representatives.
5. Appropriate signage necessary to operate the coffee cart/kiosk to the level expected will be provided by the Lessee.
6. Lessee shall be responsible for providing quality products with reasonable shelf life. It is the responsibility of the Lessee to consistently check the expiration date of all items to be sold and ensure the utmost quality. Nothing older than “day old” food should be for sale, and a reasonable discount should be offered for any “day old” product.
7. Lessee is responsible for cleanup of any spillage during business in a timely manner to prevent any damage to City property and avoid risk of injury.
8. Lessee shall be responsible for transporting all trash to City designated refuse chutes, recycling bins, and compaction points in a manner satisfactory to the Director.
9. Delivery of supplies, cash, and coin to the concession premises shall be made at such times, by such routes/modes and at such locations as the City may reasonably approve.
10. Lessee will comply with the City’s sustainability efforts, including, but not limited to energy and water conservation, recycling and biodegradable containers.

Rider to Lease dated the _____ day of _____ 2011, made by and between CITY AND COUNTY OF DENVER, a municipal corporation and the home rule city of the State of Colorado (the "City" or "Lessor"), and Subway Real Estate, LLC, ("Lessee").

Premises will be known as:

434 West 14th Avenue, Denver CO 80204

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:

Building: The Lessor's property (including the land), of which demised premises comprise a portion.

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

R1. LESSOR RECOGNIZES AND ACKNOWLEDGES THAT LESSEE IS A DELAWARE LIMITED LIABILITY COMPANY AND THAT LESSEE'S ASSETS CONSIST ALMOST EXCLUSIVELY OF LEASES, SUBLEASES, AND OPTIONS TO PURCHASE LEASED PREMISES. LESSOR ALSO RECOGNIZES AND ACKNOWLEDGES THAT LESSEE 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. LESSOR 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 LESSOR HAS ALSO BEEN ADVISED THAT LESSEE HAS NO RIGHTS WHATSOEVER TO AWARD FRANCHISES FOR SUBWAY® SANDWICH SHOPS OR COLLECT ANY FRANCHISE RELATED ROYALTIES FROM ANY PROSPECTIVE SUBLESSEE OF THE PREMISES. LESSOR RECOGNIZES AND ACKNOWLEDGES THAT IT HAS BEEN GIVEN AN OPPORTUNITY, WHETHER BY ITSELF OR WITH THE ASSISTANCE OF ITS PROFESSIONAL ADVISORS, TO MAKE INQUIRY OF LESSEE'S FINANCIAL STATUS AND TO EVALUATE SAID STATUS TO ITS SATISFACTION. LESSOR HAS EITHER MADE SUCH INQUIRY AND IS SATISFIED WITH THE RESPONSE TO SUCH INQUIRY OR HAS AFFIRMATIVELY AND VOLUNTARILY DETERMINED NOT TO DO SO. LESSOR FURTHER RECOGNIZES AND ACKNOWLEDGES THAT NO PERSON OR ENTITY OTHER THAN LESSEE HAS MADE ANY REPRESENTATIONS OF ANY KIND WITH REGARD TO THE ABILITY OF LESSEE TO PERFORM LESSEE'S OBLIGATIONS HEREUNDER. LESSOR ALSO RECOGNIZES AND ACKNOWLEDGES THAT LESSEE INTENDS TO SUBLEASE THE PREMISES TO A PERSON(S) WHO HAS OR WILL BE AWARDED A FRANCHISE/LICENSE FOR A SUBWAY® SANDWICH SHOP FROM DOCTOR'S ASSOCIATES, INC., UNDER WHICH SUBLEASE THE SUBLESSEE WILL PAY RENT DIRECTLY TO LESSOR SO THAT THE RENTAL PAYMENT FROM SUCH SUBLESSEE WILL NORMALLY NOT BE RECEIVED OR HELD BY LESSEE. 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, LESSOR 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 LESSOR AND LESSEE OR LESSOR 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 RECOVERY OF ANY KIND OR NATURE, IS LESSEE OR SUBLESSEE. FURTHER, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THERE WILL NOT BE ANY LIABILITY WHATSOEVER AGAINST (A) DOCTOR'S ASSOCIATES, INC., 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 LESSEE. SUCH EXCULPATION OF LIABILITY SHALL BE ABSOLUTE AND WITHOUT ANY EXCEPTION WHATSOEVER.

R2. Lessor shall, at his expense, maintain the exterior of the Building, including the roof, walls, foundations, walks, driveways, parking areas, and the structural portion of the Premises, in good condition and repair, except when damaged by Lessee.

R3. Lessor states that to the best of its knowledge, the Premises including the heating and air conditioning systems, plumbing, hot water heater, and electrical systems on the Premises are 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. Lessee has been given the opportunity to inspect the Premises and all systems and accepts them in an as-is condition.

R4. Subject to compliance with all applicable local, city, and government codes and ordinances, and subject to the prior approval of the Director of Real Estate, Lessee may construct the Premises in accordance with standard SUBWAY® decor and erect standard SUBWAY® signs on the building. Lessee may use standard SUBWAY® window advertising including but not limited to LED "open" signs and static cling(s).

R5. Lessee's use shall be defined as a restaurant for on and off premises consumption or for any other lawful purpose. Lessor acknowledges that Lessee's menu consists primarily of sandwiches wraps, salads and related items and that from time to time Lessee may add test items to its menu. Lessor further agrees that Lessee may add, delete and/or change its menu without the prior consent of the Lessor provided that Lessee complies with all local codes and ordinances, and that the Lessor has no preexisting agreements prohibiting such menu additions. Lessee may sell fruit smoothies and/or yogurt. In no event shall Lessee's menu be construed as limited to sandwiches and salads. Lessee may, but shall not be required to remain open seven (7) days per week twenty-four (24) hours per day. Lessor acknowledges that the normal operation of Lessee's business will create certain aromas including but not limited to the aroma of baking bread. No changes or additions by the Lessor will inhibit access to or visibility of the Premises.

R6. Lessor and Lessee acknowledge that it is extremely important that rent be paid in a timely manner as required by this Lease. Since Lessee may sublet the Premises to a licensee/franchisee of Doctor's Associates Inc. and the licensee/franchisee may pay rent directly to Lessor, Lessee 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, Lessor agrees to give written notice to Lessee within one hundred eighty (180) days of any failure to perform any of the terms or conditions of this Lease by Lessee, its sublessee, or assignee. Failure of Lessor to give such notice will constitute a waiver of monetary and non-monetary claims against Lessee. Any notice which is to be given to Lessee shall be deemed sufficiently given if sent by Certified or Registered Mail, postage prepaid, addressed as follows:

- Lessee:
- (1) Subway Real Estate, LLC
325 Bic Drive
Milford, CT 06461,
 - (2) To the Development Agent at:
Clearstone Development Inc
3510 Hartsel Dr
Colorado Springs CO 80920
 - (3) And the demised premises.

Lessor address for notice is:
Director of Real Estate

201 West Colfax Avenue, Tenth Floor
Denver Colorado 80202

Lessor tax identification numbers_____.

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

R7. For good and valuable consideration, Lessor agrees to the following provision: In the event of a default by the Lessee, Lessor acknowledges an affirmative duty to mitigate damages and shall in no event accelerate rent due to the remainder of the term. Further, Lessor and Lessee agree that Lessee's liability upon default shall not exceed twelve (12) month's base rent, \$40,000, or the remainder due pursuant to this Lease, whichever is less. Notwithstanding the foregoing, Lessee's cap on liability shall only apply to Lessee, and shall not apply to Lessee's sublessee. Upon the termination of this Lease, whether in accordance with this section or otherwise, Lessee 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.

WITNESS:

WITNESS:

311

Lessor: CITY AND COUNTY OF DENVER

**Lessee:
SUBWAY REAL ESTATE, LLC**

Signature: _____

Name (please print): _____

Title (please print): _____

Exhibit A
MEMORANDUM OF LEASE
[Example, please do not sign]

This is a Memorandum of Lease for the Lease executed on the _____, between **Subway Real Estate, LLC** (Grantee) a limited liability company organized under the laws of the State of Delaware, having its principal office at 325 Bic Drive, Milford, CT 06461, hereinafter called "the Lessee," and _____ (Grantor), a _____ organized under the laws of the State of _____, having its principal office at: _____, hereinafter called "the Lessor."

For the purpose of this document and/or the Lease, as well as the exhibits/schedules executed by the Lessor and Lessee, the terms "Lessor" and "Lessor" as used shall be deemed synonymous and the terms "Lessee" and "Lessee" as used shall be deemed synonymous.

The Lessor leases to the Lessee the premises as described in the Lease:

1. Premises:

Store Number: _____

Located at: _____

Legal Description attached as Exhibit (If applicable)

Parcel Identification Number _____

State of _____ County of _____

2. Term:

The Lease is for a term of _____ years

3. Renewal (Option) Periods:

The Lessee shall have the right to renew this lease for: _____ period(s) of _____ year(s)

In Witness whereof the "LESSOR" has hereunto executed this document this _____ day of _____, 20 .

LESSOR: _____

Store Number: _____

Located at: _____

Signature

Printed Name

Title

Witness

Witness

Printed Witness Name

Printed Witness Name

STATE OF _____

COUNTY OF _____

On this the _____ day of _____ in the Year _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____

_____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledge to me that he/she/they executed the same in his/her, their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

(Notary Seal)

My Commission Expires: _____

In Witness whereof the "LESSEE" has hereunto executed this document this _____ day of _____, 20 .

LESSEE: Subway Real Estate, LLC

Title

Witness: _____

Witness: _____

Printed Name

Printed Name

STATE OF CONNECTICUT

COUNTY OF NEW HAVEN

On this the _____ day of _____ in the Year _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ duly authorized by Subway Real Estate, LLC and personally known to me to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledge to me that he/she/they executed the same in his/her, their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public
County of New Haven

(Notary Seal)

My Commission Expires: _____

EXHIBIT B
ESTOPPEL CERTIFICATE
 [Example, please do not sign]

The undersigned represents that he is the Lessor, or the legal representative of the Lessor, of the premises located at _____ . The undersigned further represents that the following is a true and accurate statement of rent due, related charges, security deposit and last month's rent held by the Lessor for the above-mentioned premises.

The fixed or minimum monthly rental presently payable under the terms of the Lease is \$ _____ per month and has been paid through _____, _____.

All rent, escalation rent, charges for taxes, maintenance and common areas, cost of living increases payable under the terms of the Lease has been paid through _____, _____ and the Lessee is not presently in default of any of the terms or conditions of the Lease.

All other additional rent, if any, payable under the terms of the Lease has been paid through _____, 20____.

As of this date, _____, Lease arrears are as follows:

Type	Amount Due	As Of
Rent	_____	_____
Taxes thru	_____	_____
Common Area	_____	_____
Assessments	_____	_____
Insurance	_____	_____
Advertising	_____	_____
Other	_____	_____
TOTAL	_____	_____

The amount of the security deposit under the Lease is \$ _____.

Other than as stated above, there are no monies owed under the Lease for the premises between _____ and _____ dated _____ nor are there any defaults of the Lease by the Lessee as of such date.

The expiration date of the term of said Lease is _____. The Master Lease provides for _____ renewal terms. In the event the Master Lease provides for renewal options, notification of renewal or non-renewal must be sent to the Lessor no later than:
 (Dates of Notification) _____

The Master Lease has been modified, supplemented, or amended _____ time(s). (Copies of the documents must be attached hereto)

The following applies to the aforementioned Master Lease (check one):

- _____ The undersigned is the owner, or agent of the owner of the premises, and no other Master Lease exists, or;
- _____ Another Master Lease/Ground Lease for the premises exists between the undersigned and _____ dated _____, a copy of which is attached.

The undersigned Lessor/representative of the Lessor hereby acknowledges that the Master Lease and any Amendments to it remain unchanged and in full force and effect. The Lessor understands that pursuant to the terms of the Master Lease that all changes must be agreed to by the parties to that document in writing.

LESSOR: _____ (Please Print)

ADDRESS: _____ PHONE: _____

CITY: _____ STATE: _____ ZIP: _____

LESSOR'S SIGNATURE: _____ DATE: _____ (REV. 1/10)

NOTARIZATION FOR AN INDIVIDUAL

STATE OF _____)
)ss:
COUNTY OF _____)

On this ____ day of _____, 20____ before me appeared _____ to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Notary Public

My Commission Expires:

NOTARIZATION FOR A CORPORATION

STATE OF _____)
)ss:
COUNTY OF _____)

On this ____ day of _____, 20____ before me personally came _____, to me known, who, by me duly sworn, did depose and say that deponent resides at _____ that deponent is the _____ of, the corporation described in, and which executed the foregoing Agreement, that deponent knows the seal of the corporation, that the seal affixed to the agreement is the corporate seal, that it was affixed by order of the Board of Directors of the corporation; and the deponent signed deponent's name by like order.

Notary Public

My Commission Expires:

NOTARIZATION FOR A PARTNERSHIP

STATE OF _____)
)ss:
COUNTY OF _____)

On this ____ day of _____, 20____ before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____ known to me to be the person who executed the within instrument as a Partner of _____, partnership, and acknowledged to me that the partnership executed the same.

Notary Public

My Commission Expires:

EXHIBIT C
LETTER OF POSSESSION

Re: Delivery of Possession, Subway® restaurant located at _____.

Dear Lessee:

In accordance with the Lease Agreement between the parties dated _____, 20____, the parties agree that Lessor's construction obligations under the lease are complete and the premises are hereby delivered to Lessee on _____ 20____, which date shall be the Commencement Date pursuant to the Lease Agreement. Execution of this Letter of Possession by Lessor and Lessee shall signify the delivery of possession and acceptance of same by Lessee and satisfy the obligations of section ____ of the lease.

Sincerely,

Lessor

Date

I, the undersigned, hereby accept the delivery of the Premises from Lessor to Lessee.

Lessee

Date