

## LEASE AGREEMENT

This Lease Agreement is made by and between **Hilton, LLC** ("Landlord") and **Subway Real Estate, LLC** ("Tenant").

The Landlord does hereby lease and let unto the Tenant, upon the terms and conditions set forth below, the following:

The premises located at **8549 Almeda Rd, BUILDING A, Houston, Texas 77054**, consisting of **approximately 1,500 square feet**, to be used only for the following purpose and none other: **Subway®-franchised sandwich shop** (the "Premises").

### 1. Rent

- (a) Tenant shall pay to Landlord, at the address provided herein, as rent for the Premises, without any setoff, abatement or deduction whatsoever, the sum of **\$4,050.00 per month** for the term of this Lease Agreement, which rent shall be paid in advance without demand on the first day of each month during the Lease Term.

If the Commencement Date of the Lease Agreement falls on a day other than the first day of a month, or if this Lease Agreement terminates on a day other than the last day of a month, then the monthly installment of rent shall be prorated based on the number of days in such month. All installments of rent not received by Landlord when due shall bear interest at the rate of 18% per annum or the maximum non-usurious rate allowed by law, whichever is less, from the due date (i.e. the first day of the month) until paid.

- (b) In addition to the foregoing, Tenant shall pay to Landlord as "Additional Rent" on the first day of each calendar month of the Lease Term, Tenant's proportionate share of Landlord's estimated Total Operating Expenses. If the Lease Term begins on a day other than the first day of the month, Tenant shall pay, in advance, its prorated share of Landlord's Total Operating Expenses for such partial month.

Tenant's proportionate share of Landlord's Total Operating Expenses shall be determined by a fraction, the denominator of which shall be the total number of leasable square feet in the Building, and the numerator shall be the total number of leased square feet in the Premises hereunder. The "Building" is the entire structure(s) built or to be built by Landlord on the site where the Premises are located. The accounting period for determining Landlord's Total Operating Expenses shall be the calendar year, except that the first accounting period shall commence on the Commencement Date and the last accounting period shall end on the date the lease term expires or terminates.

Total Operating Expenses shall mean all sums paid or incurred by Landlord for the maintenance and operation of the Building, including both costs allocable to the buildings and all common areas. Such costs shall include, without limitation, the costs and expense attributable to the following: repair and maintenance of the buildings and improvements constituting the Building; resurfacing, repainting and restriping parking areas; cleaning, sweeping, trash removal and other janitorial services, policing and security services; the purchase, construction, and maintenance of refuse receptacles; installing and maintaining plantings and landscaping, directional signs and other markers, car stops and the like; the costs of power, lighting and any other utilities furnished to the common areas; premiums on insurance including, fire, public liability and property damage insurance; and all Taxes (as defined below). Within ten (10) days of receipt of a written request from Tenant, Landlord shall substantiate all Common Area expenses to Tenant's satisfaction.

After ten (10) days written notice to Tenant, Landlord reserves the right to perform any obligations that are otherwise Tenant's obligations under this Lease Agreement, in which event Tenant shall promptly reimburse Landlord for the entirety of such costs of performance.

- (c) Landlord agrees to pay all taxes, assessments, and governmental charges (collectively referred to herein as "Taxes") that accrue against the Premises, and/or the land and/or improvements of which the Premises are a part, and Tenant shall be liable for Tenant's proportionate share of the same. If at any time during the term of this Lease Agreement, there shall be levied, assessed or imposed on Landlord a capital levy or other tax directly on the rents received therefrom and/or a franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents from the Premises and/or the land and improvements of which the Premises are a part, then all such taxes, assessments, levies or charges, or the part thereof so measured or based, shall be deemed to be included within the term "Taxes" for the purposes hereof. The Landlord shall have the right to employ a tax consulting firm to attempt to assure a fair tax burden on the building and grounds within the applicable taxing jurisdiction. Tenant agrees to pay its proportionate share of the cost of such consultant. Tenant hereby waives and/or assigns to Landlord any rights it may have in connection with the determination of the taxable value of the building of which the Premises are a part, including, without limitation, any rights Tenant may have to receive notice of any appraisal or reappraisal of the value of the building of which the Premises are a part, or to protest the value of such building pursuant to Section 41.413 of the Texas Property Tax Code. Tenant further acknowledges and agrees that Landlord shall have no obligation to protest or appeal the valuation of the building or land of which the Premises are a part or to provide notice to Tenant of any such protest or appeal or any appraisal or reappraisal of such building or land. Tenant shall be liable for all taxes levied or assessed against any personal property or fixtures placed in the Premises. If any such taxes are levied or assessed against Landlord or Landlord's property and (i) Landlord pays the same or (ii) the assessed value of Landlord's property is increased by the inclusion of such personal property and fixtures and Landlord pays the increased taxes, then, upon demand, Tenant shall pay to Landlord such taxes.
- (d) If Tenant's proportionate share of the actual Total Operating Expenses for the preceding accounting period exceeds the estimated payments made by Tenant, then Tenant shall pay any deficiency to Landlord within ten (10) days after Tenant's receipt of Landlord's statement. Should the estimated payments made by Tenant during the preceding accounting period exceed Tenant's proportionate share of the Total Operating Expenses, such excess shall be carried forward and credited against subsequent payments due. Landlord shall furnish to Tenant at the commencement of each accounting period an estimate of the Total Operating Expenses reasonably anticipated by Landlord for the ensuing accounting period, and Tenant's monthly proportionate share thereof. Within sixty (60) days after the end of each accounting period, upon request Landlord shall furnish to Tenant a statement showing the actual Total Operating Expenses for such period, Tenant's proportionate share thereof, and the sum of the actual payments made by Tenant during such period.
- (e) During the first full calendar year of the Lease Term, Landlord agrees that the Total Operating Expenses shall not be more than \$.60 per square foot.

## 2. Term of Lease Agreement

The term of this Lease Agreement (the "Lease Term") shall commence one hundred twenty (120) days after the later of: 1) Landlord's delivery of possession (as further defined in R1 of the Subway Rider); or 2) Tenant receives the Certificate of Occupancy for the Premises (the "Commencement Date") and shall expire **60 months** from the Commencement Date (the "Termination Date") unless sooner terminated as provided in this Lease Agreement.

Should Tenant not vacate the Premises by the Termination Date, this Lease Agreement shall automatically continue beyond the Lease Term on a month-to-month basis at a rate of 150% of the monthly rent set forth in Section 1(a) above. The month-to-month term shall continue until either party gives the other party written notice of termination, such termination to be effective at the end of the month following the month in which such written notice is given. If Tenant should fail to vacate the Premises after the expiration of the monthly period in which such notice has been timely given, or after this Lease has been terminated pursuant to the provisions of this Lease, then Tenant shall be a tenant at sufferance, and shall be obligated to pay Landlord 150% the monthly rent set forth in

Section 1(a) above, during such tenancy at sufferance. Tenant shall be obligated to pay all Additional Rent, as well, during any monthly term or tenant at sufferance term.

Tenant has the option of extending this Lease Agreement for two (2) consecutive periods of five (5) years each. Such Options shall exercise automatically unless Tenant shall provide Landlord with written notice of its intention NOT to renew this Lease Agreement at least ninety (90) days prior to the expiration of the then current term.

The terms and conditions for each renewal period shall be the same as those contained herein, except for the Rent which shall be increased as follows:

Option Period 1 (Yrs 6 - 10):       \$3.00 per sq. ft/month.  
Option Period 2 (Yrs 11 - 15):     \$3.30 per sq. ft/month.

**3. Right of Entry**

Landlord shall have the right, at all times, after 24 hours' notice, except in case of emergency, to enter the Premises, to view the Premises, to make repairs and to ascertain if the provisions of this Lease Agreement are being complied with, and to enforce any provision of this Lease Agreement. Tenant, further, agrees that Landlord or its agent may show the Premises to prospective purchasers of the Premises or to lending institutions or their representatives at any reasonable time, or if notice of termination of this tenancy has been given to either party, and during the last 60 days of the Lease Term, to prospective lessees during the period prior to the Termination Date. This right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations, or additions which do not conform to the terms of this Lease Agreement, or with the rules and regulations of any governmental body having jurisdiction from time to time.

**4. Utilities**

Tenant shall, at Tenant's own expense, pay all charges when due for electricity, water, sewer, gas, telephone, and for any other utility used by Tenant for the Premises (excluding any tap-in or impact fees). Tenant shall arrange to have the utilities bill Tenant directly for such services.

Except if caused by the negligence of the Landlord, its agents or employees, Landlord shall not be responsible or liable in any way whatsoever for the quality, quantity, capacity, impairment, interruption, stoppage, or other interference with any utility service and the same shall not render Landlord liable in any respect nor be construed as an eviction of Tenant (constructive or otherwise) nor work an abatement of rent, nor relieve Tenant from the obligation to fulfill any covenant or provision of this Lease Agreement.

**5. Signs, Displays, and Storage**

Tenant shall have the right throughout the Lease Term, at Tenant's own cost and expense, and subject to the provisions of this Section, to erect and maintain interior and exterior signs advertising its business; however, before any graphics, outside or window signs, awnings, or displays are erected, attached or placed on the exterior or interior of the Premises, or any portion thereof, Tenant shall first obtain the prior written approval of Landlord as to such graphics and signage, including, but not limited to, the design, type, size, nature, suitability, and location thereof. Landlord may withhold approval (in Landlord's sole and absolute discretion) of any graphics, sign, awning or display which Landlord determines to be of a type, nature, design, location, or size detrimental or unsuitable to the appearance of the Premises or to be improper or dangerous. Tenant shall not have the right to erect any sign on the roof of the Premises or in the parking areas. Tenant shall not display any merchandise or show cases or other obstructions on the outside of the Premises, nor store any property outside of the Premises, nor shall Tenant maintain or install any loudspeaker or any noise making device in such a manner as to be audible to anyone outside of the Premises. Tenant agrees that any signage installed by Tenant shall conform to all local codes and ordinances and is solely responsible for obtaining all necessary permits for such.

Notwithstanding the above, Tenant may use the Franchisor's standard logo and colors, and Tenant may use standard Subway® window advertising including LED "open" signs and static clings without seeking Landlord's prior approval.

**6. Insurance**

During the Lease Term, Tenant shall maintain in full force and effect a policy of comprehensive general liability insurance with respect to the activities of Tenant in or about the Premises, issued by an insurance company licensed to do business in the State of Texas and with an "Excellent" financial rating as determined by Moody's or an A.M. Best rating of A-/IX, which names Landlord as an additional insured and with premiums thereon fully paid on or before the due date. Such insurance shall afford minimum protection of not less than \$2 million for personal injury to any one person, \$2 million for personal injury arising out of any one accident, and \$4 million combined single limit coverage for property damage. Fire damage legal liability should be no less than \$2 million. Failure to maintain such policy shall be an Event of Default hereunder. Upon the delivery of Possession by Landlord to Tenant, and thereafter, at Landlord's request, Tenant shall provide Landlord with satisfactory evidence of the existence and maintenance of such insurance either in the form of an insurance certificate showing that such insurance is in full force and effect and fully paid for and providing that such insurance may not be canceled without at least 30 days prior written notice to Landlord, or in the form of duplicate original insurance policies.

**7. Safeguarding of Premises**

Tenant shall be solely responsible for: (a) safeguarding the Premises and contents of the Premises, (b) keeping the Premises locked, and (c) safeguarding the keys to the Premises. Tenant agrees that all personal property placed on or moved into the Premises shall be at the sole risk of Tenant or the owner thereof and that Landlord shall have no responsibility for any damage caused to any such property, except only such damage as may be caused by the intentional misconduct of Landlord.

**8. Maintenance**

During the Lease Term, Landlord shall maintain the roof and exterior of the Premises, provided, however, that the Landlord shall be under no obligation to make repairs to the roof or the exterior of the Premises until given written notice of the need thereof by Tenant, and Landlord shall have a reasonable period of time after receipt of such notice to commence and complete such repairs deemed necessary by Landlord. Further, Landlord shall not be obligated to make any repairs to the roof or the exterior of the Premises which result from the acts or negligence of Tenant or any of Tenant's employees, agents, guests, invitees, or licensees, and Tenant shall be obligated to make all such repairs. Tenant shall maintain in good condition, and repair the interior of the Premises, including, but not limited to, all interior and exterior walls and doors to the Premises and all plate glass windows, plumbing, fixtures, the heating and air conditioning system and electrical system. At the end of the Lease Term, Tenant shall deliver the Premises to Landlord in as good condition as of the Commencement Date of this Lease, normal wear and tear excepted. Tenant shall, also, deliver all keys to the Premises to Landlord, including any duplicates of such keys made by Tenant. If Tenant should fail to surrender the Premises to Landlord as required herein, or if Tenant should fail to deliver to Landlord all keys to the Premises, Landlord shall have the right, at Tenant's expense, to restore the Premises to the required condition and/or to change the locks to the Premises, and Tenant shall reimburse Landlord for its resulting expenses and disbursements therefore within ten (10) days of receiving written request for payment from Landlord. If such is not paid within ten days as required herein, then Landlord may charge interest thereon at the rate of 18% per annum or the maximum non-usurious rate, whichever is less, from the date of any expenditure by Landlord to the date of reimbursement. Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease Agreement.

**9. Duty to Repair**

Tenant will, at Tenant's own expense, immediately repair to Landlord's reasonable satisfaction, any damage to the Premises, and any damage to the parking areas and any other property of Landlord resulting from or caused by any use by or act of Tenant, or any employee, agent, invitee or licensee of Tenant. Tenant shall be solely responsible for compliance with the Americans with Disabilities Act within the interior of the Premises. Tenant shall not make any alterations, additions, modifications, or changes to the Premises (whether structural or non-structural, and including any painting or redecorating) without the express prior written consent of Landlord, which may be granted or withheld by Landlord at Landlord's sole and absolute discretion. Notwithstanding anything to the contrary, Tenant may use the Franchisor's standard interior decor. Tenant shall have no right to subject the Premises to a construction or materialman lien, or to make repairs to the Premises at Landlord's expense. Any approved alterations, modifications, or additions shall be accomplished at Tenant's sole cost and expense, and they shall become the property of Landlord upon the expiration or earlier termination of this Lease Agreement. Should Tenant or Tenant's employees, agents, invites, or licensees damage the Premises or other property of Landlord, or make alterations, modifications, or additions thereto without the prior written consent of Landlord, then the same shall be

a default hereunder. Further, all costs necessary to restore the Premises and/or such other property to its prior condition shall be borne by Tenant. If Tenant fails to comply with the provisions of this Section, Landlord shall the right, in addition to the rights afforded Landlord for default hereunder, at Tenant's expense, to restore the Premises and/or such other property to its prior condition, and Tenant shall reimburse Landlord for Landlord's resulting expenses and disbursements within 10 days of receipt of a written demand for payment for such. If Tenant fails to pay such within said 10 day period, Landlord may charge interest thereon at the rate of 18% per annum or the maximum non-usurious rate, whichever is less, from the date of any expenditure by Landlord to the date of reimbursement. Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease Agreement.

#### **10. Destruction of Premises**

If the Premises are damaged by fire or other casualty, Tenant shall give immediate notice of such damage to Landlord. If the damage shall substantially and materially interfere with the use by Tenant of the Premises such that Tenant cannot conduct any business thereon, and in the opinion of a registered architect, engineer or contractor selected by Landlord, such damage cannot be restored within 120 days of the date of occurrence, the Landlord and Tenant shall both have the option to terminate this Lease Agreement by providing a notice in writing to the other party within 15 days after delivery to Landlord and Tenant of the opinion of the architect, engineer, or contractor. If the Tenant and Landlord do not elect to terminate this Lease Agreement, Landlord, within a reasonable time, shall restore the Premises to substantially their condition prior to the damage. During the work or restoration, the rent shall abate in proportion to the amount of space in the Premises which the Lessee cannot reasonable use during such period. If the Tenant exercises its option to terminate this Lease Agreement, all rent paid in advance shall, subject to the terms of this Lease Agreement, be apportioned as of the date of the occurrence of the casualty. If the damage by fire or other casualty is not such as to substantially interfere with the use by Tenant of the Premises, the Landlord, upon receipt of notice of such damage, shall reasonably proceed to restore the Premises.

#### **11. Eminent Domain**

In the event that during the Lease Term any portion of the Premises is taken by eminent domain, Tenant shall have the right and option to terminate this Lease Agreement, but such option must be exercised by written notice to Landlord within 10 days after the date the condemning authority takes possession of the Premises, and the termination shall be effective as of the date such notice is given. Tenant shall have no right to participate in the proceeds payable by or from the condemning authority on account of such taking, but if Tenant exercises its option to terminate this Lease Agreement, any rent paid in advance shall be apportioned as of the date this Lease Agreement is terminated. In the event Tenant does not exercise such option, there shall be no abatement of the rent payable under this Lease. For purposes of this Section, a taking by eminent domain shall include a voluntary conveyance to a corporate or political body having the power of eminent domain under threat of eminent domain. In the event of the condemnation of the Premises, Tenant is entitled to seek any and all awards for such taking to the extent that any such award includes the loss, if any, sustained by Tenant as a result of the termination of this Lease for loss of business, fixtures, goodwill, moving expenses and attorneys' fees and costs, to the fullest extent permitted by law. In no event shall Tenant's claim reduce and/or diminish Landlord's award.

#### **12. Use of the Premises**

Tenant shall use and occupy the Premises exclusively as a **Subway®-franchised sandwich shop** and for no other purpose. Tenant shall comply with the laws, rules, and regulations of all governmental authorities and of Landlord, respecting the use of the Premises and operations and activities on the Premises, including sidewalks, streets, approaches, drives, parking areas, and entrances, and shall not make, suffer, or permit any unlawful, improper or offensive use of the Premises or permit any nuisance thereon. Tenant shall not make any use of the Premises which is illegal, which would conflict with any law, statute, ordinance, rule, or regulation affecting the Premises, or which would void or make voidable any policy of fire or extended coverage insurance covering the Premises, or any other property of the Landlord. Further, if Tenant should make any use of the Premises which causes the hazard insurance premiums on policies maintained by Landlord to be increased over normal rates for the Premises or any other property of Landlord, the amount of the increase in the premium shall be paid by Tenant as additional rent upon demand by Landlord. Tenant shall maintain the Premises and its windows in a neat and clean condition, shall keep the Premises and area around the Premises, including the parking area, clean and free from trash, and shall store all trash and garbage in suitable covered containers. Tenant shall provide its own trash and garbage containers and shall arrange and pay for at Tenant's sole expense garbage pick up services. Tenant shall maintain any permitted planter boxes, trees, shrubbery, grass, and lighting on the Premises, and those surrounding

the parking area, and shall properly water said, and water any plants or other landscaping on or around the Premises. Tenant shall provide fire extinguishers as required by local ordinance. Tenant shall not burn any trash of any kind in or about the Premises, nor shall Tenant permit trash to accumulate or any fire or health hazard to exist on or about the Premises.

The storage of welding or flammable, toxic, hazardous, explosive, or other inherently dangerous or proscribed material in or about the Premises is expressly prohibited. Vehicles or other similar fuel-driven equipment may not be stored in the Premises. Tenant shall not store in the Premises any items which shall be in violation of any applicable order, regulation, law, or requirement imposed by any Board of Health, Sanitary Department, Police Department, or governmental agency or in violation of any other legal requirement, nor shall Tenant do, perform, or allow to be done, any illegal acts or any act or cause to be done, any act which creates or may create a nuisance in, about, or upon the Premises. Landlord acknowledges that the normal operation of Tenant's business will create certain aromas which shall not be considered a violation of this provision, provided, however, that if any Board of Health, Sanitary Department, Police Department, or other governmental agency rules that, or if any other legal requirement (i.e. deed restrictions) are held to be that, such aroma(s) are in violation of some ordinance, law, regulation or other governmental requirement, that Tenant shall take immediate steps at Tenant's sole cost and expense to remediate the aroma(s) so as to bring such into compliance.

**13. Rules**

Tenant agrees to abide by all rules and policies from time-to-time adopted by Landlord, whether now in effect, or that may hereafter be put into effect. Landlord shall deliver to Tenant copies of said rules and policies.

**14. Assignment**

Tenant shall not assign, sublease, transfer, pledge, or encumber the Premises or any interest thereon without the prior written consent of Landlord, which may be granted or withheld by Landlord in Landlord's sole discretion. Any attempted assignment, sublease, transfer, pledge or encumbrance in violation of this Section shall be void, and considered a default of this Lease Agreement. If the Tenant is a corporation, partnership, trust or similar entity, any sale, transfer, pledge or other disposition of the controlling stock, partnership interests, or beneficial interests in such entity shall be deemed an assignment of this Lease Agreement for purposes of this Section and a default hereunder. This paragraph shall not apply to Subway Real Estate, LLC, a Delaware limited liability company, or to Doctor's Associates Inc., so long as the Premises continue to be used for the operation of a Subway restaurant in accordance with the Permitted Use and the Trade Name, and so long as in each case the entity transfer and/or transaction described in this paragraph is not executed as a subterfuge to avoid the restrictions on Transfer by Tenant hereunder.

Notwithstanding the above paragraph, Tenant may assign this Lease Agreement 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. Landlord agrees to accept rent from Tenant, its assignee, or sublessee.

**15. Premises Buildout**

Landlord agrees to perform the build out of the interior of the Premises in accordance with Exhibit A of this Lease Agreement. Tenant agrees to provide all plans and permits for such buildout. Further, Tenant shall supply all materials and supplies for the buildout.

**16. Events of Default**

The happening of any one or more of the following listed events ("Events of Default") shall constitute a breach of this Lease Agreement by Tenant:

- (a) The failure of Tenant to pay any rent, Additional Rent, or any other sums of money due hereunder and such failure continues for a period of 10 days after written notice to Tenant;
- (b) Tenant shall fail by any act of omission or commission, to keep, perform, or abide by any term or condition or covenant and provision of this Lease Agreement, all of which terms, provisions and covenants are deemed material and continues after 30 days written notice to Tenant;

- (c) The failure of Tenant to accept the Premises, to promptly move into, to take possession of, and to operate its business on the Premises, or if Tenant ceases to do business in, or abandons any substantial portion of the Premises, Landlord acknowledges that Tenant shall have the right to close the business temporarily, but no more than 60 days, in order to retake the premises from the Franchisee;
- (d) Tenant becomes insolvent or unable to pay its debts as they become due, or Tenant's notification to Landlord that Tenant anticipates either condition;
- (e) Tenant files a petition for bankruptcy protection, or notifying Landlord that Tenant intends to file for such;
- (f) The appointment of a receiver or trustee for Tenant's leasehold interest in the Premises or for all or a substantial part of the assets of Tenant;
- (g) Tenant makes an assignment for the benefit of creditors;

**17. Remedies of Landlord** (See Subway Rider)

- (a) Upon the occurrence of any Event of Default, the Landlord shall have the option to:
  - (1) Immediately cancel and terminate this Lease Agreement, dispossess Tenant and resume possession of the Premises for Landlord's own account and recover immediately from Tenant (i) all unpaid rent that had been earned at the time of termination of this Lease Agreement, together with (ii) the worth, at the time of the award, of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease Agreement until the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided, together with (iii) the worth, at the time of the award, of the amount by which the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided, together with (iv) any other amount and court costs necessary to compensate Landlord for all damages proximately caused by Tenant's default (for purposes of this Section, the worth, at the time of award, of an amount shall be determined by discounting such amount in accordance with accepted financial practice at the rate of 2% per annum to its present worth), and/or
  - (2) without terminating the Lease Agreement, Landlord may resume possession and re-lease or re-enter the Premises for the remainder of the term of this Lease for the account of Tenant and recover from Tenant, at the end of the Lease Term, or at the time each payment of rent comes due under this Lease Agreement, as Landlord may choose, the difference between the rent provided for in this Lease Agreement and the rent received on the re-lease or re-renting, together with all costs and expenses of the Landlord in connection with the re-leasing or re-renting and collection of rent and the cost of all repairs or renovations reasonably necessary in connection with the re-leasing or re-rental; if this option is exercised, Landlord shall, in addition, be entitled to recover from Tenant immediately any other amount, and attorneys' fees and court costs, necessary to compensate Landlord for all damages proximately caused by Tenant's default; and/or
  - (3) without terminating this Lease Agreement, declare the entire amount of the rent and other sums due under this Lease Agreement for the remainder of the Lease Term immediately due and payable, and collect such amount, together with any other amount and attorneys' fees and court costs necessary to compensate Landlord for all damages proximately caused by Tenant's default, by any lawful procedure; and/or
- (b) The remedies provided above in this Section shall be cumulative but shall not be exclusive, and in addition thereto, the Landlord may pursue such other remedies as are provided by law or in equity. In any event and irrespective of any option exercised, Tenant shall pay upon demand all of

Landlord's costs, charges, and expenses, including attorneys' fees, agents, and others retained by Landlord, incurred in connection with the recovery of sums due under this Lease Agreement, or because of the breach of any covenant or agreement of Tenant contained in this Lease Agreement or for any other relief against Tenant.

- (c) The Tenant hereby expressly waives any notices of default not specifically provided for in this Lease Agreement.
- (d) Any waiver or release by Landlord and any cancellation, termination, or modification of this Lease Agreement must be in writing, signed by Landlord. The delivery of keys to any employee or agent of Landlord shall not operate as a surrender or termination of this Lease Agreement and no such employee or agent shall have any power to accept such keys prior to the termination of this Lease Agreement. Tenant hereby expressly waives service of any notice of Landlord's intention to re-enter. Tenant hereby further waives any and all rights to recover or regain possession of the Premises or to reinstate or redeem this Lease Agreement as permitted or provided by or under any statute, law, or decision now or hereafter in force or effect.

**18. Landlord Disclaimer of Liabilities**

The parties agree that Landlord is not responsible as a warehouseman and that the only relationship between Landlord and Tenant is that of landlord and tenant. As such, Landlord shall not issue Tenant any warehouse receipt, bill of lading or other document of title for the personal property which may be stored in the premises, and any description of the types of personal property which Tenant may store in the Premises, as set forth in the preamble to this Lease Agreement is not intended to evidence the actual receipt by Landlord or delivery by Tenant of any such property. Tenant expressly releases Landlord from liability for any and all damage to Tenant's property or effects stored in the Premises; for any theft thereof; for any damage to the same caused by the acts or omissions of other lessees or by the breakage of water or sewer pipes or other leakage in or about the Premises. **TENANT'S POSSESSIONS WITHIN THE PREMISES ARE SO PLACED AT TENANT'S SOLE RISK AND LANDLORD SHALL HAVE NO LIABILITY FOR ANY LOSS OR DAMAGE CAUSED TO SAID POSSESSIONS WHATSOEVER, UNLESS CAUSED BY THE INTENTIONAL MISCONDUCT OF LANDLORD. TENANT ACKNOWLEDGES THAT INSURANCE IS AVAILABLE FROM INDEPENDENT COMPANIES TO INSURE TENANT'S PROPERTY. LANDLORD DOES NOT CARRY INSURANCE TO COVER ANY LOSS OR DAMAGE TO THE CONTENTS OF THE PREMISES FROM ANY CAUSE WHATSOEVER AND IN ORDER TO PROTECT TENANT'S PROPERTY FROM ALL PERILS, TENANT SHOULD OBTAIN SUCH INSURANCE.**

**19. Bankruptcy**

In the event Tenant shall: (a) be adjudicated a bankrupt or insolvent, (b) take the benefit of any reorganization or composition proceedings or insolvency law, (c) make an assignment for the benefit of creditors, (d) suffer or permit Tenant's leasehold interest under this Lease to be levied upon or attempted to be sold under any execution or process of law, (e) suffer or permit a receiver to be appointed for Tenant, (f) fail to take possession of the Premises within 30 days after notice from Landlord that the Premises are ready for occupancy by Tenant, or (g) permit this Lease or any interest therein to pass by operation of law to any person other than the Tenant, then and hereafter, Landlord shall have the right and option to terminate this Lease, said termination to be effective immediately upon Landlord's exercise of such option, in which event Landlord shall have all of the rights and remedies provided in Paragraph 17 above.

**20. Limitation of Landlord's Liability**

If Landlord shall fail to perform any covenant, term or condition of this Lease Agreement upon Landlord's part to be performed, Tenant hereby releases Landlord from any personal liability for such default. **IN NO EVENT SHALL LANDLORD BE LIABLE TO TENANT FOR ANY CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES, EVEN IF APPRISED OF THE POSSIBILITY OF SUCH.**

**21. Notices**

All rent payable and notices required to be given under this Lease Agreement to Landlord shall be paid and given at, or mailed, certified mail, return receipt requested, to:

Hilton, LLC  
PO Box 55621  
Houston TX 77255

All notices given under this Lease Agreement to Tenant shall be given at, or mailed, certified mail, return receipt requested, to (See Subway Rider):

Subway Real Estate, LLC  
325 Bic Drive  
Milford, CT 06461  
Attn: Legal Department

All such notices will be deemed delivered upon receipt or refusal to receive. It shall be the duty of both parties to notify the other in writing of any change in said addresses.

**22. Attorneys' Fees**

Tenant shall be obligated to pay Landlord's attorneys' fees, if Landlord retains an attorney to enforce any provisions of this Lease Agreement, or to collect any sums due hereunder, whether or not suit is filed for such enforcement or collection.

**23. Parking**

Tenant shall have the use of the parking facilities dedicated to the Premises at no additional monthly charge. Landlord may at Landlord's sole discretion, designate a certain number of parking spots for particular tenants in the Building, including, Tenant, if Tenant so requests. Further, Landlord reserves the right to charge a monthly fee in addition to the amounts payable otherwise under this Lease Agreement for designated parking spots. If one or more such parking spots is designated for Tenant, Tenant shall be solely responsible for professionally prepared signs (which must be approved by Landlord) denoting the designation of the parking spot(s) for Tenant. Tenant may not otherwise display signs designating parking spots for Tenant without Landlord's written approval. Doing so shall constitute a default of this Lease Agreement.

**24. Waivers**

The failure of Landlord to insist, in any one or more instances, upon a strict performance of any of the covenants and agreements in this Lease Agreement, or to exercise any option herein contained, shall not be construed as a waiver or a relinquishment for the future of such covenant, agreement, or option, but the same shall continue in full force and effect. The receipt or acceptance by Landlord of the rent, with knowledge of the breach of any covenant or agreement hereof, shall not be deemed as a waiver of such breach, and no waiver by Landlord of any provision of this Lease Agreement shall be deemed to have been made unless expressed in writing and signed by an authorized representative of Landlord.

No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installment of rent due under this Lease Agreement shall be deemed to be other than on account of the earliest rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease Agreement. Landlord's rights and remedies under this Lease Agreement shall be cumulative of every other right or remedy Landlord may have hereunder, at law or in equity, and if Landlord exercises one or more rights or remedies, the same shall not bar or in any way impair Landlord's exercise of other rights and remedies.

**25. Security Deposit**

Tenant shall pay Landlord a security deposit in the amount of **\$4,800.00**. Landlord shall hold such security deposit throughout the term of this Lease Agreement as security for the performance by Tenant of all of Tenant's obligations under this Lease Agreement. Landlord shall have the right, from time-to-time, without prejudice to any other remedy, to apply such security deposit, or any part thereof, to Landlord's damages arising from any default on the part of Tenant, including non-payment of rent. Should the entire security deposit, or any portion thereof, be applied in such manner, Tenant shall immediately upon written demand by Landlord, pay to Landlord an amount sufficient to restore such security deposit to the original amount specified above. Landlord shall have the same

rights and remedies for the non-payment by Tenant of any amount due on account of the security deposit as Landlord has under this Lease Agreement for Tenant's failure to pay rent. Upon the expiration or earlier termination of this Lease Agreement and performance by Tenant of all of Tenant's obligations hereunder, and assuming Tenant is not in default hereunder, Landlord shall return the security deposit, or so much thereof as shall not have been applied in accordance with the provisions of this Lease Agreement, to Tenant. While Landlord holds the security deposit, Landlord shall have no obligation to pay interest on same, and shall have the right to commingle the same with Landlord's other funds. If Landlord conveys its interest under this Lease Agreement, the security deposit, or any part thereof not previously applied, may be turned over by Landlord to Landlord's grantee, and if so turned over, Tenant agrees to look solely to such grantee for proper application of the deposit in accordance with the terms of this paragraph.

**26. Subordination**

This Lease Agreement, and all of the rights of the Tenant hereunder, are hereby made subject and subordinate at all times to all ground or underlying leases and to all mortgages which may now or hereafter affect the Premises, or the real property of which the Premises are a part, and to all renewals, modifications, consolidations, replacements, and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required to effect such subordination. In confirmation of such subordination, Tenant shall execute within 15 days of presentment, any certificate or subordination agreement that Landlord may request.

Tenant, hereby, covenants and agrees that Tenant will, from time-to-time, within 15 days from written request by Landlord, execute and deliver to such persons as Landlord shall request a statement in recordable form, certifying that the Lease Agreement is in full force and effect, the Date of Commencement of the Lease Term, that rent is paid currently without any offset or defense thereto, the amount of rent, if any, paid in advance, and that there are no uncured defaults by Landlord, or stating those claimed by Tenant, provided that, in fact, such facts are accurate and ascertainable. If the Lease Agreement is not in good standing or if the Lease Agreement has been amended, the notice shall provide the particulars in which it is not in good standing or has been amended. The failure within said 15 day period to give written reply shall constitute a representation that the Lease Agreement is in good standing and has not been amended, which representation any person, within 5 days after expiration of said 15 day period, may rely upon as being true and correct. Such notices shall be addressed to the Landlord and the Tenant at the places prescribed in the request and to a third party at the address stated in the request. Notwithstanding the foregoing to the contrary, in no event shall Tenant be required to submit Tenant's financial statement(s).

**27. Entire Agreement**

The agents and employees of Landlord are not authorized to make any representations or warranties about the Premises, and any statements about the Premises, whether written or oral, which are not contained in this Lease Agreement, are not binding on Landlord. This Lease Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof, and supercedes any prior discussions, understandings, or written or oral agreements between the parties with respect to the subject matter hereof. This Lease Agreement may not be modified or amended, except by a written agreement, dated subsequent to the date hereof, and duly executed by the parties hereto.

**28. Landlord's Lien**

Tenant hereby grants to Landlord a lien and security interest on all property of Tenant now or hereafter placed in or upon the Premises, and such property shall be and remain subject to such lien and security interest of Landlord for payment of all rent and other sums agreed to be paid by Tenant herein. It is provided, however, that Landlord shall not have a lien with respect to the Premises which would be superior to a lien from a lending institution, supplier or leasing company, if such lending institution, supplier or leasing company has a perfected security interest in the equipment, furniture, or other tangible personal property and which security interest has its origin in a transaction whereby Tenant acquired such equipment, furniture or other tangible property.

The provisions of this paragraph relating to such lien and security interest shall constitute a security agreement under and subject to the Uniform Commercial Code so that Landlord shall have and may enforce a security interest on all property of Tenant now or hereafter placed in or upon the Premises, in addition to and cumulative of the Landlord's liens and rights provided by law or by other terms and provisions of this Lease Agreement. Landlord agrees to subordinate its lien to Tenant's financial institution(s).

Tenant agrees to execute as debtor such financing statement or statements and such other documents as Landlord may now or hereafter request in order to protect or further perfect Landlord's security interest. Notwithstanding the above, Landlord shall neither sell nor withhold from Tenant, Tenant's business records.

All of Tenant's furniture, movable trade fixtures, and personal property not removed from the Premises within 5 days of the termination of this Lease Agreement, whether such termination occurs by lapse of time or otherwise, shall be conclusively presumed abandoned by Tenant, and Landlord may declare such property to be the property of Landlord, and Landlord may dispose of the property by any method it deems advisable. Landlord's rights under this paragraph shall be cumulative of its rights under this paragraph or any other paragraph of this Lease Agreement.

**29. Indemnification**

Landlord shall not be responsible for liability or damage claims for injury to persons or property for claims of any type that it may incur in connection with the operation of Tenant's business unless caused by the negligence of Landlord or its agents, servants, or employees. Except when caused by the negligence of the Landlord, Tenant agrees to indemnify and hold harmless the Landlord from and against any and all claims, demands, damages, actions, or causes of action arising or resulting from loss, injury, or physical damage to Tenant or the property of Tenant or from the death of, or loss, injury or physical damage to the person or property or persons whomsoever resulting or arising from Tenant's use or occupancy of the Premises, or the acts or omissions of Tenant or its employees, agents, licensees, or invitees, unless caused by the intentional misconduct of Landlord.

Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon, or about the Premises from any cause whatsoever (except that which is caused by the failure of Landlord to observe any of the terms and conditions of this Lease Agreement and such failure has persisted for an unreasonable period of time after written notice of such failure from Tenant to Landlord) and Tenant hereby waives all claims in respect thereof against Landlord. Tenant's obligations under this paragraph shall survive the expiration or earlier termination of this Lease Agreement. Landlord hereby agrees to defend, indemnify and save harmless Tenant, its agents and employees, from and against any and all claims, demands, fines, suits, actions, proceedings, orders, decrees, costs and expenses (including attorneys' fees) and judgments of any kind or nature by or in favor of anyone whomsoever, resulting from or in connection with loss of life, bodily or personal injury or property damage arising, directly or indirectly, in the Common Areas, except claims arising out of the negligence or willful act of Tenant.

**30. Miscellaneous**

- A. This Lease Agreement shall be construed in accordance with the laws of the State of Texas.
- B. This Lease Agreement shall be binding on the parties hereto and their respective heirs, successors and assigns, provided however, that no assignment by Tenant in violation of the provisions of this Lease Agreement shall vest in the assignee any right, title or interest in this Lease Agreement. If this Lease Agreement has been signed by more than one party on behalf of Tenant, then all such parties shall be jointly and severally liable hereunder.
- C. If any part of this Lease Agreement is declared invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it shall conflict therewith, and shall be deemed modified to conform with such statute or rule of law. Any provision hereof which may prove invalid or unenforceable under any such statute or rule of law shall not affect the validity or enforceability of any other such provision hereof.
- D. The headings of the various provisions of this Lease Agreement are for convenience only, and are not to be used in construing this Lease Agreement nor ascertaining the intentions of the parties.
- E. Whenever a period of time is herein prescribed for the taking of any action by a party, said shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to terrorist act, strike, lockouts, riots, acts of God, fire, storm, flood, power failure, settlement of losses with insurance carriers, labor or material shortages, war, governmental laws, regulations or restrictions, financing, or any other cause beyond the reasonable control of said party.

- F. Any amount due from Tenant to Landlord which is not paid when due shall bear interest at the rate of 18% per annum, or the maximum non-usurious rate allowable by law, whichever is less.
- G. Time is of the essence in the performance of all provisions of this Lease Agreement, including, but not limited to, the payment of each and every installment of rent, sales and/or rent tax, and other charges herein covenanted to be paid by Tenant to Landlord.
- H. Tenant agrees to deliver within fifteen (15) days of written request by Landlord an executed estoppel certificate identifying Tenant and this Lease Agreement and certifying and confirming certain aspects of this Lease Agreement as requested therein. Failure to deliver such as required herein shall deem such document true and correct.

IN WITNESS HEREOF, the undersigned parties are duly authorized and hereby set their hands and seals on the dates set forth below.

Hilton, LLC

Subway Real Estate, LLC

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_