



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**July 19, 2011**

**Ordinance 17144**

**Proposed No. 2011-0238.1**

**Sponsors Patterson**

1                   AN ORDINANCE approving a sublease for the Ninth and  
2                   Jefferson Building with Subway Real Estate, LLC.

3                   BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

4                   SECTION 1. Findings:

5                   A. The Ninth and Jefferson Building, located at 908 Jefferson Street, Seattle,  
6 provides essential public services as part of the Harborview Medical Center Campus.  
7 The Ninth and Jefferson Building is owned by NJB Properties, a Washington non-profit  
8 corporation, and leased to the county as its sole tenant. The Ninth and Jefferson Building  
9 contains approximately 10,750 square feet of retail suite space which are available for  
10 sublease from the county.

11                  B. The King County executive has negotiated a sublease with Subway Real  
12 Estate, LLC. for the operation of a Subway restaurant to serve employees, visitors and the  
13 community at the Ninth and Jefferson Building.

14                  C. King County is authorized to lease county real property when doing so is in  
15 the best interest of the county pursuant to K.C.C. 4.56.150.A. Pursuant to K.C.C.  
16 4.56.160.A, all leases shall be awarded upon the best terms and conditions available to  
17 the county. All leases with an original term of more than five years require approval by  
18 the King County council before execution by the King County executive, as required by  
19 K.C.C. 4.56.190.C. The subject lease provides an original term of ten years.

20            SECTION 2. The King County executive is hereby authorized to take all actions  
21 necessary to execute the sublease in substantially similar form to that of Attachment A to  
22 this ordinance, and all actions up to now taken by county officials, agent and employees  
23 consistent with the terms and purposes of the attached sublease agreement are hereby  
24 ratified, confirmed and approved.

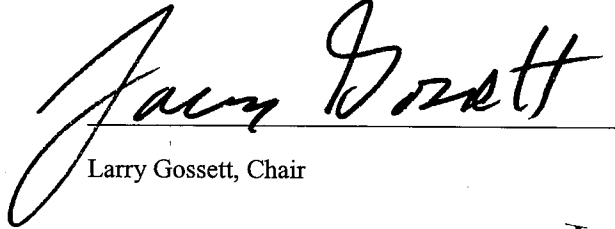
25            SECTION 3. If any one or more of the covenants or agreements provided in this  
26 ordinance to be performed on the part of the county is declared by any court of competent  
27 jurisdiction to be contrary to law, then such a covenant or covenants, agreement or  
28 agreements are null and void and shall be deemed separable from the remaining  
29 covenants and agreements of this ordinance and in no way affect the validity of the other  
30 provisions of this ordinance or of the lease.

31            SECTION 4. The subject sublease is hereby approved in substantially similar  
32 form to that of Attachment A to this ordinance.  
33

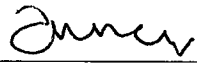
Ordinance 17144 was introduced on 6/20/2011 and passed by the Metropolitan King County Council on 7/18/2011, by the following vote:

Yes: 9 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague,  
Ms. Patterson, Ms. Lambert, Mr. Ferguson, Mr. Dunn and Mr.  
McDermott  
No: 0  
Excused: 0

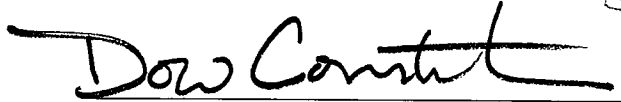
KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

  
Larry Gossett, Chair

ATTEST:

  
\_\_\_\_\_  
Anne Noris, Clerk of the Council

APPROVED this 28 day of JULY, 2011.

  
\_\_\_\_\_  
Dow Constantine, County Executive

RECEIVED  
2011 JUL 29 PM 1:00  
CLERK  
KING COUNTY COUNCIL

**Attachments:** A. Ninth & Jefferson Building Sublease Agreement Between King County and Subway Real Estate, LLC

**NINTH & JEFFERSON BUILDING**

**SUBLEASE AGREEMENT**

**BETWEEN**

**KING COUNTY**

*a political subdivision of the State of Washington  
as Landlord*

**and**

**SUBWAY REAL ESTATE, LLC**

*Tenant*

## SUBLEASE AGREEMENT

### Ninth & Jefferson Building

THIS SUBLEASE ("Lease") is made this \_\_\_\_ day of \_\_\_\_\_, 2010, between **KING COUNTY**, a political subdivision of the State of Washington ("Landlord"), and **SUBWAY REAL ESTATE, LLC**, a Delaware limited liability company ("Tenant").

As parties hereto, Landlord and Tenant agree:

#### **1. LEASE DATA AND EXHIBITS**

The following terms as used herein shall have the meanings provided in this Section 1, unless otherwise specifically modified by provisions of this Lease:

##### **(a) Landlord and Building:**

Landlord is the owner of the Harborview Medical Center ("Medical Center") complex in Seattle, Washington, which includes associated clinics, office buildings and related facilities.

The Medical Center is operated by the University of Washington ("University") pursuant to the "Management and Operations Contract between the Harborview Medical Center Board of Trustees and the University of Washington" as approved by Landlord and dated December 19, 1995 (the "Management Agreement").

This Lease concerns premises located in the Ninth and Jefferson Building ("Building"), or such other name as Landlord may designate from time to time, situated on a portion of the real property more particularly described in Section 2 hereof, with an address of 908 Jefferson Street, Seattle, Washington, 98104, which is part of the Medical Center. The Building is owned by NJB Properties, a Washington nonprofit corporation ("Master Landlord"), and is leased to Landlord under a Project Lease Agreement dated as of November 1, 2006.

As a result of its role in operating the Medical Center, and so long as the Management Agreement remains in effect, the University shall for the purposes of this Lease act on behalf of Landlord and exercise all of the rights and discharge all of the obligations of Landlord. All indemnification, insurance or subrogation provisions in this Lease that protect Landlord include in their protection and coverage Landlord, the University and the Harborview Medical Center Board of Trustees ("Trustees"). In the event the Management Agreement expires or terminates during the term of this Lease, the University will no longer act on behalf of the Landlord and exercise the rights and discharge the obligations of Landlord.

##### **(b) Premises:**

Consisting of the area on the first (1<sup>st</sup>) floor known as Retail Suite E of the Building, as outlined on the floor plan(s) attached hereto as Exhibit A, including Tenant improvements, if any, as described in Exhibit B.

##### **(c) Tenant's Pro Rata Share:**

Landlord and Tenant agree that, for purposes of this Lease, the rentable area of the Premises is deemed to be 1,162 square feet and Tenant's Pro Rata Share of the Building is deemed to be .27 percent.

Tenant's rentable area of the Premises and Pro Rata Share of the Building as presented in this Section 1(c) of the Lease shall be recalculated by Landlord and amended in this Lease to accurately reflect the rentable square footage comprising the Premises after Final Plans for the Tenant's Premises are completed. Such recalculation shall be completed no later than thirty (30) days after completion of Final Plans.

In the event a portion of the Building is damaged or condemned or any other event occurs which alters the rentable area of the Premises or the rentable area of the Building,

Landlord may adjust Tenant's Percentage of the Building to properly reflect the proportion of the rentable area of the Building (as altered by such event) which is attributable to the rentable area of the Premises (as altered by such event).

**(d) Commencement Date:** The date on which the Lease has been signed, notarized and delivered by both Landlord and Tenant.

**(e) Expiration Date:** One hundred twenty (120) months after the Rent Commencement Date.

**(f) Basic Monthly Rent and Rent Commencement Date:**

Rent shall be paid in accordance with Section 1 of Exhibit C hereto. Additional Rent shall be paid in accordance with Sections 9 and 10 below.

The Rent Commencement Date, for commencement of payment of Rent and Additional Rent, shall be 180 days after the Commencement Date.

**(g) Security Deposit: \$3,000.00** is due upon execution of the Lease.

**(h) Permitted Use:** Retail sale of sandwiches, drinks, wrap-style sandwiches, pizza, salads, coffee (excluding espresso-based drinks and coffee-related food products, and any then-existing exclusives of other retail tenants in the Building, which exclusion shall not prohibit sale of sandwiches, salads and related delicatessen-style food products), and subject to any other products sold in Subway stores nation-wide or region-wide (Washington/Oregon/Idaho) basis, as further described in Section 8 below. In the event Landlord gives exclusivity to any new or existing tenants, Tenant shall still be allowed to sell sandwiches, wraps, flatbreads, and English muffins at all times.

**Exclusive Use:** Sale of submarine-style sandwiches.

**Prohibited Uses:** Sale of espresso-based drinks and coffee-related food products (excluding sandwiches, salads and related delicatessen-style food products).

**(i) Landlord's and Tenant's Leasing Broker/Agent:**

Master Landlord has engaged the services of a real estate broker, Michael Horner of Colliers International Olympia. Wright Runstad & Company is the agent of the Landlord.

**(j) Parking:**

Tenant shall have the right to purchase up to four (4) permits to park automobiles in the Building Garage on an unassigned self-park basis (as designated by Landlord from time to time) at the prevailing monthly rates established by Landlord from time to time. The Building Garage is located on Sixth Avenue, with secure access to the Building via a tunnel under Fifth Avenue.

**(k) Notice Addresses:**

Landlord: University of Washington  
Real Estate Office, Dept. #2907  
P.O. Box 34936  
Seattle, WA 98124-1936

With a copy to: Real Estate Services  
King County  
500 Fourth Avenue, Room 500  
Seattle, WA 98104

Tenant: Subway Real Estate, LLC  
325 Bic Drive  
Milford, CT 06461  
Attn: Legal Dept.

With a copy to: To the Development Agent at:  
Subway Northwest Inc.  
17802 134<sup>th</sup> Ave NE Suite 20  
Woodinville, WA 98072

And: The demised premises

**(l) Payment Address:**

University of Washington  
Real Estate Office, Dept. # 2907  
P.O. Box 34936  
Seattle, WA 98124-1936

**(m) Exhibits:**

The following exhibits or riders are made a part of this Lease:

- Exhibit A - Floor Plan of Premises
- Exhibit B - Rules & Regulations
- Exhibit C - Addendum to Lease
- Exhibit D - Tenant Improvements

**2. PREMISES:**

Landlord does hereby Lease to Tenant, and Tenant does hereby Lease from Landlord, upon the terms and conditions herein set forth, the Premises described in Section 1 (b) hereof as shown on Exhibit A attached hereto and incorporated herein, together with rights of ingress and egress over common areas in the Building located on the land ("Land") more particularly described as:

Lots 1 through 8, Block 81, Terry's second addition to the town of Seattle, according to the plat thereof recorded in Volume 1 of plats, page 87, in King County, Washington.

**3. COMMENCEMENT AND EXPIRATION DATES:**

**(a) Commencement Date:**

Tenant shall use commercially reasonable efforts to complete the Tenant Improvements (as defined on Exhibit D) as soon as reasonably practicable. The Commencement Date is the date set forth in Section 1(d) above.

**(b) Delays:**

In the event, due to delays from any cause other than Tenant's failure to comply with the terms of this Lease, the Premises are not available for occupancy by Tenant with Landlord's Work substantially completed within one hundred eighty (180) days after the date of this Lease, Tenant may terminate this Lease by written notice; provided, however, that such period shall be extended for delays due to causes beyond the reasonable control of Landlord. Termination under this Section 3(b) shall be Tenant's sole remedy and Tenant shall have no other rights or claims hereunder at law or in equity. Landlord shall return Tenant's security deposit if Tenant terminates this Lease pursuant to this Section 3(b).

**(c) Rent Commencement Date:**

The Rent Commencement Date is the date set forth in Section 1(f) above.

**(d) Confirmation of Commencement Date and Rent Commencement Date:**

After the Commencement Date and the Rent Commencement Date are established, Landlord shall confirm the same to Tenant in writing.

**(e) Expiration Date:**

This Lease shall expire on the date specified in Section 1 (e).

**(f) Renewal Options:** Intentionally Deleted

**4. ACCEPTANCE OF PREMISES:**

Within five (5) days ("Inspection Period") after Landlord gives notice to Tenant that Landlord's Work has been substantially completed, Tenant shall make such inspection of the Premises as Tenant deems appropriate. Except as otherwise specified by Tenant in writing to Landlord within the Inspection Period, and except for latent defects not reasonably observable by Tenant, Tenant shall be deemed to have accepted Landlord's Work at the end of the Inspection Period. If, as a result of such inspection, Tenant discovers minor deviations or variations from the requirements of Landlord's Work set out on Exhibit D which do not materially affect Tenant's use of the Premises and are of a nature commonly found on a "punch list" (as that term is used in the construction industry), Tenant shall, during the Inspection Period, notify Landlord in writing of such deviations. Landlord shall promptly repair all punch list items. The existence of such punch list items shall not postpone the Commencement Date of this Lease nor the obligation of Tenant to pay Rent.

**5. RENT AND ADDITIONAL RENT:**

Commencing on the Rent Commencement Date, Tenant shall pay Landlord without notice the Rent stated in Section 1(f) hereof and Additional Rent as provided in Section 9 and Section 10 and any other payments due under this Lease without deduction or offset in lawful money of the United States in advance on or before the first day of each month at Landlord's Payment Address set forth in Section 1 (l) hereof, or to such other party or at such other place as Landlord may hereafter from time to time designate in writing. Rent and Additional Rent for any partial month at the beginning or end of the Lease term shall be prorated in proportion to the number of days in such month. All amounts which Tenant assumes or agrees to pay to Landlord pursuant to this Lease shall be deemed Additional Rent hereunder and, in the event of nonpayment thereof, Landlord shall have all remedies provided for in the case of nonpayment of Rent.

**6. SECURITY DEPOSIT:**

As security for the performance of this Lease by Tenant, Tenant has paid to Landlord the Security Deposit as specified in Section 1(g) hereof, receipt of which is hereby acknowledged. Landlord may apply all or any part of the Security Deposit to the payment of any sum in default or any other sum which Landlord may in its reasonable discretion deem necessary to spend or incur by reason of Tenant's default. In such event, Tenant shall, within five (5) days of written demand therefore by Landlord, deposit with Landlord the amount so applied. The amount of the Security Deposit then held by Landlord shall be repaid to Tenant within thirty (30) days after the expiration or sooner termination of this Lease. Landlord shall not be required to keep any Security Deposit separate from its general funds and Tenant shall not be entitled to any interest thereon.

**7. PARKING:**

Use of parking in the Building Garage by Tenant shall be subject to such reasonable rules and regulations as Landlord or its parking operator, or the City of Seattle may publish from time to time. Tenant shall provide Landlord with thirty (30) days prior written notice of the number of parking permits required by Tenant, up to the maximum number specified in Section 1(j), and of any changes in those requirements. Short-term hourly parking shall be offered on a space available basis during Normal Business Hours (as defined in Section 9(b)) except Saturdays, Sundays or legal holidays, for Tenant's clients and customers.

**8. USES:**

**(a) Permitted Uses.** The Premises are to be used only for uses described in Section 1(h) above ("Permitted Uses"), and for no other business or purpose without the prior written consent of Landlord, which consent may be withheld if Landlord, in its sole discretion, determines that any proposed use is inconsistent with or detrimental to the maintenance and



operation of the Building as a first-class office building or is inconsistent with any restriction on use of the Premises, the Building, or the Land contained in any Lease, mortgage, or other instrument or agreement by which the Landlord is bound or to which any of such property is subject. Tenant shall not commit any act that will increase the then existing cost of insurance on the Building without Landlord's consent. Tenant shall promptly pay upon demand the amount of any increase in insurance costs caused by any act or acts of Tenant. Tenant shall not commit or allow to be committed any waste upon the Premises, or any public or private nuisance or other act which disturbs the quiet enjoyment of any other Tenant in the Building or which is unlawful. Tenant shall not, without the written consent of Landlord, use any apparatus, machinery or device in or about the Premises which will cause any substantial noise, vibration or fumes. Tenant shall not permit smoking in the Premises; Landlord has designated all internal portions of the Building as a smoke-free zone. If any of Tenant's office machines or equipment should disturb the quiet enjoyment of any other Tenant in the Building, then Tenant shall provide adequate insulation, or take other action as may be necessary to eliminate the disturbance. Tenant shall comply with all laws relating to its use or occupancy of the Premises and shall observe such reasonable rules and regulations (not inconsistent with the terms of this Lease) as may be adopted and made available to Tenant by Landlord from time to time for the safety, care and cleanliness of the Premises or the Building, and for the preservation of good order therein. The Building Rules in force at the execution date of this Lease are attached hereto as Exhibit B.

Notwithstanding the foregoing, Tenant's use shall be defined as a restaurant for on and off premises consumption as permitted under Section 1(h). Landlord acknowledges that Tenant's menu consists primarily of sandwiches, wraps, salads and related items and that from time to time Tenant may add test items to its menu. Landlord further agrees that Tenant may add, delete and/or change its menu without the prior consent of the Landlord provided that such changes are consistent with its corporate or regional menu items and provided that such items do not conflict with exclusive rights granted to other tenants in the Building by Landlord. Tenant may sell fruit smoothies and/or yogurt. In no event shall Tenant's menu be construed as limited to sandwiches and salads. Tenant may, but shall not be required to remain open seven (7) days per week twenty-four (24) hours per day. Landlord acknowledges that the normal and reasonable operation of Tenant's business will create certain aromas including but not limited to the aroma of baking bread. However, odors rising to the level of nuisance or odor emissions aggravated by any failure to maintain, service or properly clean exterior exhaust filtering systems are prohibited. No changes or additions by the Landlord will inhibit access to or visibility of the Premises or decrease parking ratio. Tenant is allowed, at its cost, to prune, cut back or remove any trees that interfere with visibility of the Premises, subject to local ordinances and Landlord's consent, which shall not be unreasonably withheld or delayed.

**(b) Exclusive Use.** Landlord shall not, throughout the term of this Lease, lease any space in the Building to a tenant whose primary use is the Exclusive Use described in Section 1(h) above.

**(c) Prohibited Uses.** Tenant specifically acknowledges and agrees that it may not engage in the uses identified as Prohibited Uses in Section 1(h) above.

## **9. SERVICES AND UTILITIES:**

### **(a) Standard Services:**

Landlord shall cause the public and common areas of the Building to be maintained in good order and condition consistent with the operation and maintenance of a first-class office building in downtown Seattle, except for damage occasioned by any act or omission of Tenant or Tenant's officers, contractors, agents, invitees, licensees, or employees, the repair of which shall be paid by Tenant. No janitorial service shall be provided by the Landlord as a standard service. The costs of any janitorial service, or other service requested by Tenant, and provided by Landlord to Tenant in addition to the services ordinarily provided Building Tenants shall be repaid by Tenant as Additional Rent upon receipt of billings therefore.

### **(b) Normal Business Hours:**

Building hours shall be from 7:00 a.m. to 6:00 p.m. on weekdays subject to reasonable change by Landlord ("Normal Business Hours"). The Building will be closed Saturdays, Sundays and legal holidays. During other than Normal Business Hours, Landlord may restrict access to the Building in accordance with the Building's security system, provided that Tenant shall have at all times during the term of this Lease (24 hours of all days) reasonable access to the Premises.

**(c) Interruption of Services:**

Landlord shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption, or failure of any services or facilities provided by Landlord pursuant to this Lease due to any cause whatsoever. No temporary interruption or failure of such services or facilities incident to the making of repairs, alterations, or improvements, or due to accident, strike or conditions or events beyond Landlord's reasonable control shall be deemed an eviction of Tenant or relieve Tenant from any of Tenant's obligations hereunder. Landlord shall use its best efforts in good faith to minimize any disruption of Tenant's use of the Premises arising from any interruption or failure of such services or facilities.

**(d) Additional Services:**

The Building mechanical system is designed to accommodate heating loads generated by lights and equipment using up to three (3) watts per square foot. Before installing lights and equipment in the Premises which in the aggregate exceed such amount, Tenant shall obtain the written permission of Landlord. Landlord may refuse to grant such permission unless Tenant shall agree to pay the costs of Landlord for installation of supplementary air conditioning capacity or electrical systems as necessitated by such equipment or lights.

**(e) Costs of Additional Services:**

In addition, Tenant shall in advance, on the first day of each month during the Lease term, pay Landlord as Additional Rent the reasonable amount estimated by Landlord as the cost of furnishing electricity for the operation of such equipment or lights and the reasonable amount estimated by Landlord as the costs of operation and maintenance of supplementary air conditioning units necessitated by Tenant's use of such equipment or lights. Landlord shall be entitled to install and operate at Tenant's cost a monitoring/metering system in the Premises to measure the added demands on electricity, heating, ventilation, and air conditioning systems resulting from such equipment or lights and from Tenant's after-hours heating, ventilation and air conditioning service requirements. Tenant shall comply with Landlord's reasonable instructions for the use of drapes, blinds and thermostats in the Building.

**10. COSTS OF OPERATIONS AND REAL ESTATE TAXES:**

**(a) Additional Rent:**

Tenant shall pay as Additional Rent its pro rata share of taxes, assessments (including special district assessments enacted subsequent to the Commencement Date), operating costs and common area maintenance ("CAM") charges ("Tax, Operating Costs and CAM Expenses"). Operating Costs shall be adjusted to reflect 95 percent occupancy in the Building, provided, however, that the CAM charges shall be adjusted according to the actual retail space operating expenses incurred during the preceding year.

**(b) Definitions:**

**(i)** For the purposes of this section, "Taxes" shall mean taxes, Washington State Leasehold Excise Tax, and assessments (including special district levies) on real and personal property payable during any calendar year or fiscal year, based on the actual assessment period, with respect to the Land, the Building and all property of Landlord, real or personal, used directly in the operation of the Building and located in or on the Building, together with any taxes levied or assessed in addition to or in lieu of any such taxes or any tax upon leasing of the Building or the rents collected (excluding any net income or franchise tax) ("Taxes").

**(ii)** For purposes of this Section, "Operating Costs" or "Costs" shall mean all expenses of Landlord for maintaining, operating and repairing the Land and Building and the personal property used in connection therewith, including without limitation insurance premiums,

utilities, customary management fees and other expenses which in accordance with generally accepted accounting and management practices would be considered an expense of maintaining, operating or repairing the Building ("Operating Costs" or "Costs"); excluding, however: (I) Costs of any special services rendered to individual Tenants for which a separate charge is collected; (II) leasing commissions and other leasing expenses; and (III) Costs of improvements required to be capitalized in accordance with generally accepted accounting principles, except Operating Costs shall include amortization of capital improvements (A) made subsequent to initial development of the Building which are designed with a reasonable probability of improving the operating efficiency of the Building, or providing savings in the cost of operating the Building; or, (B) which are reasonably responsive to requirements imposed with respect to the Building under any amendment to any applicable building, health, safety, fire, nondiscrimination, or similar law or regulation ("law"), or any new law, or any new interpretation of an existing law ("new interpretation"), which amendment, law or new interpretation is adopted or arose after the Commencement Date of this Lease. For purposes of this Lease, a new interpretation shall mean any interpretation, enforcement or application of a law enacted prior to the Commencement Date that imposes requirements with respect to the Building that Landlord in the exercise of sound business judgment and good faith at the time of Landlord's execution of this Lease would not have deemed applicable to the Building.

(iii) "Year" shall mean the calendar year.

**(c) Estimated Costs:**

At the beginning of each year of the Lease term, Landlord shall furnish Tenant a written statement of estimated Tax, Operating Costs and CAM Expenses for such year and a calculation of Tenant's Pro Rata Share of any such amount. Tenant shall pay one-twelfth (1/12) of that amount as Additional Rent for each month during the year. If at any time during the year Landlord reasonably believes that the actual Tax, Operating Costs and CAM Expenses will vary from such estimated Tax, Operating Costs and CAM Expenses by more than five percent (5%), Landlord may by written notice to Tenant revise the estimate for such year, and Additional Rent for the balance of such year shall be paid based upon such revised estimates.

**(d) Actual Costs:**

Within ninety (90) days after the end of each year of the Lease term or as soon thereafter as practicable, Landlord shall deliver to Tenant a written statement setting forth Tenant's Pro Rata Share of the actual Tax, Operating Costs and CAM Expenses during the preceding year. If the actual Tax, Operating Costs, or CAM expenses exceed the estimates for each paid by Tenant during the year, Tenant shall pay the amount of such excess to Landlord as Additional Rent within thirty (30) days after receipt of such statement. If the actual Tax, Operating Costs, or CAM expenses are less than the amount paid by Tenant to Landlord, then the amount of such overpayment by Tenant shall be, at Landlord's option, credited against any amounts owed by Tenant under this Lease, refunded by check to Tenant, or credited against the next Rent payable by Tenant hereunder.

**(e) Records and Adjustments:**

Landlord shall keep records showing all expenditures made in connection with Tax, Operating Costs and CAM Expenses, and such records shall be available for inspection by Tenant within 60 days after receipt of the statement of actual costs; Landlord and Tenant agree the results of any such audit or review shall remain confidential, except as required by law. Tenant hereby waives any right to any adjustment of sums paid under this Section 10 unless a claim in writing specifying the reasons therefore is delivered to Landlord no later than six (6) months after the end of the year for which the sums were paid. Tax, Operating Costs and CAM Expenses shall be prorated for any portion of a year at the beginning or end of the term of this Lease. Notwithstanding this Section 10, the Rent payable by Tenant shall in no event be less than the Rent specified in Section 1(f) hereof.

**(f) Personal Property Taxes:**

Tenant shall pay all personal property taxes with respect to property of Tenant located on the Premises or in the Building. "Property of Tenant" shall include all improvements which are

paid for by Tenant and "personal property taxes" shall include all property taxes assessed against the property of Tenant, whether assessed as real or personal property.

#### **11. CARE OF PREMISES:**

Landlord shall perform all normal maintenance and repairs reasonably determined by Landlord as necessary to maintain the Premises and the Building as a first-class office building; provided that Landlord shall not be required to maintain or repair any property of Tenant or any appliances (such as refrigerators, water heaters, microwave ovens, and the like) which are within the Premises. Tenant shall take good care of the Premises. Tenant shall not make any alterations, additions or improvements ("Alterations") in or to the Premises, or make changes to locks on doors, or add, disturb or in any way change any plumbing or wiring ("Changes") without first obtaining the written consent of Landlord and, where appropriate, in accordance with plans and specifications reasonably approved by Landlord. As a condition to its approval, Landlord may require Tenant to remove such Alterations or Changes upon the expiration or earlier termination of the Term and to restore the Premises to the condition they were in prior to such Alterations or Changes, including restoring any damage resulting from such removal, all at Tenant's Expense. Any Alterations or Changes required to be made to Tenant's Premises by any amendment to any applicable building, health, safety, fire, nondiscrimination, or similar law or regulation ("law"), or any new law shall be made at Tenant's sole expense and shall be subject to the prior written consent of Landlord. Tenant shall reimburse Landlord for any reasonable sums expended for examination and approval of the architectural and mechanical plans and specifications of the Alterations and Changes and direct costs reasonably incurred during any inspection or supervision of the Alterations or Changes. All damage or injury done to the Premises or Building by Tenant or by any persons who may be in or upon the Premises or Building with the express or implied consent of Tenant, including but not limited to the cracking or breaking of any glass of windows and doors, shall be paid for by Tenant. Notwithstanding anything to the contrary, Tenant may use the Franchisor's standard interior décor as used in the majority of Subway stores in the Seattle metropolitan area.

#### **12. ACCESS:**

Tenant shall permit Landlord and its agents to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same or for the purpose of cleaning, repairing, altering or improving the Premises or the Building. Upon reasonable notice, Landlord shall have the right to enter the Premises for the purpose of showing the Premises to prospective Tenants within the period of one hundred eighty (180) days prior to the expiration or sooner termination of the Lease term.

#### **13. DAMAGE OR DESTRUCTION:**

##### **(a) Damage and Repair:**

If the Building is damaged by fire or any other cause to such extent that the cost of restoration, as reasonably estimated by Landlord, will equal or exceed thirty percent (30%) of the replacement value of the Building (exclusive of foundations) just prior to the occurrence of the damage, or if insurance proceeds sufficient for restoration are for any reason unavailable, then Landlord may no later than the sixtieth day following the damage, give Tenant a notice of election to terminate this Lease. In the event of such election, this Lease shall be deemed to terminate on the third day after the giving of said notice, and Tenant shall surrender possession of the Premises within a reasonable time thereafter, and the Rent and Additional Rent shall be apportioned as of the date of said surrender and any Rent and Additional Rent paid for any period beyond such date shall be repaid to Tenant. If the cost of restoration as estimated by Landlord shall amount to less than thirty percent (30%) of said replacement value of the Building and insurance proceeds sufficient for restoration are available, or if Landlord does not elect to terminate this Lease, Landlord shall restore the Building and the Premises (to the extent of improvements to the Premises originally provided by Landlord hereunder) with reasonable promptness, subject to delays beyond Landlord's control and delays in the making of insurance adjustments by Landlord, and Tenant shall have no right to terminate this Lease except as herein provided. To the extent that the Premises are rendered untenable, the Rent and Additional Rent shall proportionately abate, except in the event such damage resulted from or was contributed to, directly or indirectly, by the act, fault or neglect of Tenant, Tenant's officers, contractors, agents, employees, clients, customers, or licensees, in which event Rent

and Additional Rent shall abate only to the extent Landlord receives proceeds from any rental income insurance policy to compensate Landlord for such loss. No damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the Premises or of the Building. Landlord shall use its best efforts to effect such repairs promptly.

**(b) Destruction During Last Year of Term:**

In case the Building shall be substantially destroyed by fire or other cause at any time during the last twelve months of the term of this Lease, either Landlord or Tenant may terminate this Lease upon written notice to the other party hereto given within sixty (60) days of the date of such destruction.

**(c) Tenant Improvements:**

Landlord will not carry insurance of any kind on any improvements paid for by Tenant as provided in Exhibit D or on Tenant's furniture or furnishings or on any fixtures, equipment, improvements or appurtenances of Tenant under this Lease and Landlord shall not be obligated to repair any damage thereto or replace the same.

**14. WAIVER OF SUBROGATION:**

Whether a loss or damage is due to the negligence of either Landlord, the University, the Trustees or Tenant, their agents or employees, or any other cause, Landlord and Tenant do each hereby release and relieve the other, including the University and the Trustees, their agents or employees, from responsibility for, and waive their entire claim of recovery for (i) any loss or damage to the real or personal property of either located anywhere in the Building or on the Land, including the Building itself, arising out of or incident to the occurrence of any of the perils which are covered by their respective property insurance policies, and (ii) any loss resulting from business interruption at the Premises or loss of rental income from the Building, arising out of or incident to the occurrence of any of the perils which are covered by a business interruption insurance policy or loss of rental income insurance policy held by Landlord or Tenant. Each party shall use best efforts to cause its insurance carriers to consent to the foregoing waiver of rights of subrogation against the other party. Notwithstanding the foregoing, no such release shall be effective unless the aforesaid insurance policy or policies shall expressly permit such a release or contain a waiver of the carrier's right to be subrogated.

**15. INDEMNITY AND HOLD HARMLESS:**

Tenant agrees to indemnify and hold Landlord, the University and the Trustees, their respective appointed and elected officials, and employees (collectively the "Indemnitee Parties") harmless as provided herein to the maximum extent possible under law. Accordingly, Tenant agrees for itself, its successors, and assigns (collectively the "Indemnitor Parties"), to defend, indemnify, and hold harmless the Indemnitee Parties from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to Tenant's exercise of rights and privileges granted by this Lease, except to the extent of the sole negligence of Landlord, the University and the Trustees. Tenant's obligations under this section shall include:

- A. The duty to promptly accept tender of defense and provide defense to the Indemnitee Parties at Tenant's own expense, and with counsel reasonably acceptable to Landlord;
- B. Indemnification of claims made by Tenant's own employees or agents; and,
- C. Waiver of the Tenant's immunity under the industrial insurance provisions of Title 51 R.C.W. but only to the extent necessary to indemnify the Indemnitee Parties, which waiver has been mutually negotiated herein.

In the event Landlord, the University or the Trustees incurs attorney's fees, legal expenses or other costs to enforce the provisions of this section, all such fees, expenses and costs shall be recoverable from Tenant.

In the event it is determined that R.C.W. 4.24.115 applies to this Lease or any addenda, Tenant agrees to defend, hold harmless, and indemnify Landlord, the University and the Trustees to the maximum extent permitted thereunder, and specifically for its negligence concurrent with that of Landlord, the University and the Trustees to the full extent of Tenant's negligence.

The provisions of this Section 15 shall survive the expiration, abandonment or termination of this Lease. Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

#### **16. INSURANCE:**

##### **(a) Liability Insurance:**

Tenant shall, throughout the term of this Lease and any renewal hereof, at its own expense, keep and maintain in full force and effect, a policy of commercial general liability (occurrence form) insurance, including contractual liability insuring Tenant's activities upon, in or about the Premises or the Building against claims of injuries to persons or death and property damage loss with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) in the aggregate. Landlord, the University, the Trustees, Master Landlord and the Building manager shall be named as additional insureds.

##### **(b) Property Insurance:**

Tenant shall, throughout the term of this Lease and any renewal thereof, at its own expense, keep and maintain in full force and effect, "All Risk" Property insurance coverage (excluding earthquake and flood) on Tenant's Leasehold Improvements and personal property in an amount not less than one hundred percent (100%) of the replacement value thereof. As used in this Lease, "Tenant's Leasehold Improvements" shall mean any alterations, additions or improvements installed in or about the Premises by or with Landlord's permission or otherwise permitted by this Lease, whether or not the cost thereof was paid for by Tenant. |

##### **(c) Insurance Policy Requirements:**

All insurance required under this Section 16 shall be with companies rated A- VIII or better by A.M. Best or otherwise reasonably approved by Landlord. No insurance policy required under this Section 16 shall be cancelled or reduced in coverage except after forty-five (45) days prior written notice to Landlord, except after ten (10) days prior written notice to Landlord in the case of non-payment of premium.

##### **(d) Evidence of Insurance:**

Tenant shall deliver to Landlord prior to the Commencement Date, and from time to time thereafter, copies of policies of such insurance or certificates of insurance, including additional insured endorsement(s) evidencing the existence of insurance coverage as required above and evidencing Landlord and the Building manager as additional insureds thereunder. In no event shall the limits of any insurance policy required under this Section 16 be considered as limiting the liability of Tenant under this Lease.

##### **(e) Primary Policies:**

The Tenant's insurance coverage shall be primary insurance as respects the Landlord, the University and the Trustees, their officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the Landlord, the University and the Trustees, their officers, officials, employees or agents shall not contribute with the Tenant's insurance or benefit the Tenant in any way.

#### **17. ASSIGNMENT AND SUBLETTING:**

##### **(a) Assignment or Sublease:**

Tenant shall not assign, mortgage, encumber or otherwise transfer this Lease nor sublet the whole or any part of the Premises without in each case first obtaining Landlord's prior

written consent. Subject to Section 17(b), below, consent may be withheld in Landlord's sole discretion.

No such assignment, subletting or other transfer shall relieve Tenant of any liability under this Lease. Consent to any such assignment, subletting or transfer shall not operate as a waiver of the necessity for consent to any subsequent assignment, subletting or transfer. Each request for an assignment or subletting must be accompanied by a Processing Fee of \$500 in order to reimburse Landlord for expenses, including attorneys fees, incurred in connection with such request ("Processing Fee"). Tenant shall provide Landlord with copies of all assignments, subleases and assumption instruments.

**(b) Landlord Right to Terminate Portion of Lease:**

If such consent is requested, Landlord reserves the right to terminate this Lease, or if consent is requested for subletting less than the entire Premises to terminate this Lease with respect to the portion for which such consent is requested, at the proposed effective date of such subletting, in which event Landlord may enter into the relationship of Landlord and Tenant with any such proposed subtenant or assignee, based on the rent (and/or other compensation) and the terms agreed to by such subtenant or assignee and otherwise upon the terms and conditions of this Lease.

**(c) Tenant Transfer of Lease:**

If a Tenant is a corporation, partnership, or any other entity, any transfer of this Lease by merger, consolidation or liquidation, or any change in the ownership of or power to vote a majority of its outstanding voting stock, partnership interests, or other ownership interests, shall constitute an assignment for the purpose of this Section. If Tenant is a partnership, conversion of Tenant to a limited liability company or partnership or to a corporation (or to another entity by which the parties in Tenant would be relieved of liability to any creditors of Tenant) shall constitute an assignment for purposes of this Section.

**(d) Assignee Obligations:**

As a condition to Landlord's approval, any potential assignee otherwise approved by Landlord shall assume in writing all obligations of Tenant under this Lease and shall be jointly and severally liable with Tenant for rental and other payments and performance of all terms, covenants and conditions of this Lease.

**(e) Sublessee Obligations:**

Any sublessee shall assume all obligations of Tenant as to that portion of the Premises which is subleased and shall be jointly and severally liable with Tenant for rental and other payments and performance of all terms, covenants, and conditions of this Lease with respect to such portion of the Premises.

**(f) Permitted Transfer:**

Notwithstanding anything to the contrary in this Section 17 Tenant may assign this Lease or sublet the Premises to any bona-fide licensee/franchisee of Doctor's Associates Inc. ("DAI"), doing business as a SUBWAY® sandwich shop, which licensee/franchisee has been approved by Tenant's customary review procedures which shall include inquiries into applicant's financial statement, credit, criminal and business histories, educational background, personal interviews, and the completion by the franchisee of the Subway business management training, without the prior consent of, but with written notice to, Landlord. Tenant may also assign this Lease in conjunction with an assignment of not less than a majority of Tenant's leases nationally to a single entity as part of a corporate reorganization without the prior consent of, but with written notice to, Landlord. Any sublease entered into pursuant to this Section 17(f) shall provide for a term which is at least one (1) day less than Tenant's then-current Term or Extension Term, as the case may be, for the sole purpose of avoiding the sublease being converted to or construed as an assignment in any bankruptcy proceeding involving any subtenant. Such assignment or subletting shall not alter the Tenant's obligations to the Landlord under this Lease. Landlord agrees to accept rent from the Tenant, its assignee or subtenant.

**18. SIGNS:**

Tenant shall not place or in any manner display any sign, graphics, or other advertising matter anywhere in or about the Premises or the Building at places visible (either directly or indirectly) from anywhere outside the Premises without first obtaining Landlord's written consent thereto, which consent to be at Landlord's reasonable discretion. Any such consent by Landlord shall be upon the understanding and condition that Tenant shall remove the same at the expiration or sooner termination of this Lease and Tenant shall repair any damage to the Premises or the Building caused thereby. Landlord shall not unreasonably withhold its consent to normal Tenant signage within the Premises which Landlord determines is consistent in Landlord's opinion with the Building's image and signage and graphics program. Signage other than one building standard blade sign and one building standard under-canopy sign is at Tenant's sole expense. Subject to the foregoing criteria, Tenant's window signage shall be limited to the two storefront window sections situated immediately East of the entry door to the Premises. Notwithstanding anything in this lease to the contrary, Tenant may use the Franchisor's standard logo and colors. Subject to Landlord's advance written approval, not to be unreasonably withheld or delayed, and applicable laws, Tenant may use the Franchisor's standard Subway window advertising, including but not limited to LED "open" signs and static clings. All Tenant signage shall be consistent with that used in the majority of similarly situated (urban office tower) Subway stores in the Seattle metropolitan area.

**19. LIENS AND INSOLVENCY:**

**(a) Liens:**

Tenant shall keep its interest in this Lease, the Premises, the Land and the Building free from any liens arising out of any work performed and materials ordered or obligations incurred by or on behalf of Tenant and hereby indemnifies and holds Landlord, the University and the Trustees harmless from any liability from any such lien, including without limitation liens arising from the work performed pursuant to Section IV of Exhibit D hereto. In the event any lien is filed against the Building, the Land or the Premises by any person claiming by, through or under Tenant, Tenant shall, upon request of Landlord and at Tenant's expense, within 10 days, cause such lien to be released of record or furnish to Landlord a bond, in form and amount and issued by a surety reasonably satisfactory to Landlord, indemnifying Landlord, the University and the Trustees, the Land and the Building against all liability, costs and expenses, including attorneys fees, which Landlord may incur as a result thereof. Provided that such bond has been furnished to Landlord, Tenant, at its sole cost and expense and after written notice to Landlord, may contest, by appropriate proceedings conducted in good faith and with due diligence, any lien, encumbrance or charge against the Premises arising from work done or materials provided to or for Tenant, if, and only if, such proceedings suspend the collection thereof against Landlord, Tenant and the Premises and neither the Premises, the Building nor the Land nor any part thereof or interest therein is or will be in any danger of being sold, forfeited or lost. The provisions of this Section 19 shall survive the expiration, abandonment or termination of this Lease. Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

**(b) Insolvency:**

If Tenant becomes insolvent or voluntarily or involuntarily bankrupt, or if a receiver, assignee or other liquidating officer is appointed for the business of Tenant, Landlord at its option may terminate this Lease and Tenant's right of possession under this Lease and in no event shall this Lease or any rights or privileges hereunder be an asset of Tenant in any bankruptcy, insolvency or reorganization proceeding.

**20. DEFAULT:**

**(a) Cumulative Remedies:**

All rights of Landlord herein enumerated shall be cumulative, and none shall exclude any other right or remedy allowed by law. In addition to the other remedies provided in this Lease, Landlord shall be entitled to restrain by injunction the violation or threatened violation of any of the covenants, agreements or conditions of this Lease.



**(b) Tenant's Right to Cure:**

Tenant shall have a period of ten (10) days from the date of written notice from Landlord to Tenant within which to cure any default in the payment of Rent, Additional Rent and other sums due hereunder. Tenant shall have a period of thirty (30) days from the date of written notice from Landlord to Tenant within which to cure any other default hereunder; provided, however, that with respect to any such default capable of being cured by Tenant which cannot be cured within thirty (30) days, the default shall not be deemed to be uncured if Tenant commences to cure within thirty (30) days and for so long as Tenant is diligently pursuing the cure thereof.

**(c) Abandonment:**

Abandonment shall be defined as an absence from the Premises of five (5) days or more while Tenant is in default or Landlord otherwise reasonably determines that Tenant has abandoned the Premises and its interest under this Lease. Any abandonment by Tenant shall be considered a default with no right to cure, allowing Landlord to re-enter the Premises as hereinafter set forth.

**(d) Landlord's Reentry:**

Upon abandonment or an uncured default of this Lease by Tenant, Landlord, in addition to any other rights or remedies it may have, at its option, may enter the Premises or any part thereof, and expel, remove or put out Tenant or any other persons who may be thereon, together with all personal property found therein; and Landlord may terminate this Lease, or it may from time to time, without terminating this Lease, relet the Premises or any part thereof for such term or terms (which may be for a term less than or extending beyond the term hereof) and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable, with the right to repair, renovate, remodel, redecorate, alter and change the Premises, Tenant remaining liable for any deficiency computed as hereinafter set forth. In the case of any default, reentry and/or dispossession all Rent and Additional Rent shall become due thereupon, together with such expenses as Landlord may reasonably incur for attorneys fees, advertising expenses, brokerage fees and/or putting the Premises in good order or preparing the same for re-rental, together with interest thereon as provided in Section 37(f) hereof, accruing from the date of any such expenditure by Landlord. No such re-entry or taking possession of the Premises shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention be given to Tenant.

**(e) Reletting the Premises:**

At the option of Landlord, rents received by Landlord from such reletting shall be applied first to the payment of any indebtedness from Tenant to Landlord other than Rent and Additional Rent due hereunder; second, to the payment of any costs and expenses of such reletting and including, but not limited to, attorneys fees, advertising fees and brokerage fees, and to the payment of any repairs, renovations, remodeling, redecoration, alterations and changes in the Premises; third, to the payment of Rent and Additional Rent due and to become due hereunder, and, if after so applying said Rents there is any deficiency in the Rent or Additional Rent to be paid by Tenant under this Lease, Tenant shall pay any deficiency to Landlord monthly on the dates specified herein. Any payment made or suits brought to collect the amount of the deficiency for any month shall not prejudice in any way the right of Landlord to collect the deficiency for any subsequent month. The failure of Landlord to relet the Premises or any part or parts thereof shall not release or affect Tenant's liability hereunder, nor shall Landlord be liable for failure to relet, or in the event of reletting, for failure to collect the Rent thereof, and in no event shall Tenant be entitled to receive any excess of net Rents collected over sums payable by Tenant to Landlord hereunder. Notwithstanding any such reletting without termination, Landlord may at any time elect to terminate this Lease for such previous breach and default. Should Landlord terminate this Lease by reason of any default, in addition to any other remedy it may have, it may recover from Tenant the then present value of Rent and Additional Rent reserved in this Lease for the balance of the Term, as it may have been extended, over the then fair market rental value of the Premises for the same period, plus all court costs and attorneys fees incurred by Landlord in the collection of the same.

**(f) Trade Fixtures:**

Tenant shall have no right to, and Tenant agrees that it will not, remove any trade fixtures or movable furniture from the Premises at any time while Tenant is in default hereunder.

**(g) Limitation on Tenant's Liability Following Default; Removal of Property Following Termination:**

Notwithstanding the foregoing, for good and valuable consideration, Landlord agrees to the following provision: In the event of a monetary default by the Tenant, Rent shall not be accelerated for the remainder of the Term. Notwithstanding any foregoing provision to the contrary, Landlord and Tenant agree that Tenant's liability upon monetary default shall not exceed the lesser of: (i) twelve (12) months of base rent, (ii) \$40,000, or (iii) the remainder due pursuant to this Lease. Upon the termination of this Lease, whether in accordance with this section or otherwise, for a period of up to thirty (30) days following the date of such termination, Tenant shall be permitted access to the Premises to remove any and all logo or trademark items, subject to all terms and conditions of this Lease and payment of Rent and Additional Rent, without limitation and in addition to any aforementioned limitation on Tenant's aggregate liability to Landlord, by Tenant for the period between the date of termination and the date of removal of such items and surrender of the Premises to Landlord. Such items shall include, but shall not be limited to, signage and murals.

Tenant may, at Tenant's option, and subject to the payment described herein, terminate this Lease at any time. In the event Tenant chooses to exercise this option, Tenant shall be required to pay to the Landlord a sum of money equal to the lesser of: (i) twelve (12) month's base rent, (ii) \$40,000, or (iii) the remainder due under this Lease, which shall be deemed accelerated and immediately due and payable. If Tenant elects to exercise this option, it shall give Landlord at least sixty (60) days written notice thereof, which notice shall designate the date of termination and the Lease shall expire on such date. Tenant's right to terminate this Lease pursuant to this section shall be conditioned upon Tenant making such payment within sixty (60) days after such written notice of termination.

**21. PRIORITY:**

Notwithstanding anything to the contrary contained in this Lease, Landlord and Tenant acknowledge that this Lease is actually a sublease. The Premises and Land are subject to that certain Project Lease Agreement dated as of November 1, 2006 ("Master Lease") between NJB Properties ("Master Landlord") as lessor and Landlord as lessee, a copy of which has been delivered to Tenant. Tenant shall fully comply with all applicable terms of the Master Lease, including without limitation Section 7 thereof, regarding the use of the Premises. This Lease shall not be terminable by Tenant, but may be terminated by Landlord, by reason of any termination of the Master Lease by summary proceedings or otherwise. If requested by Master Landlord or its successor under the Lease, as the case may be, Tenant shall enter into a new Lease with Master Landlord for the balance of the term of this Lease upon the same terms and conditions as set forth herein, or shall attorn to Master Landlord provided Lessor agrees to recognize this Lease as long as Tenant shall not be in default hereunder beyond the period for curing the same. Tenant hereby waives the provisions of any statute or rule of law now or hereafter in effect which may give Tenant any right of election to terminate this Lease or to surrender possession of the Premises in the event the Master Lease is terminated.

**22. SURRENDER OF POSSESSION:**

Subject to the terms of Section 13 relating to damage and destruction, upon expiration of the term of this Lease, whether by lapse of time or otherwise, Tenant shall promptly and peacefully surrender the Premises to Landlord in as good condition as when received by Tenant from Landlord or as thereafter improved (subject to Tenant's obligation to remove any Alterations or Changes if requested by Landlord pursuant to Section 11, above), reasonable use and wear and tear excepted.

**23. REMOVAL OF PROPERTY:**

Tenant shall remove all of its movable personal property, telephone, data and computer cabling, and trade fixtures paid for by Tenant which can be removed without damage to the Premises at the expiration or earlier termination of this Lease, unless Landlord has given its

written consent otherwise, and shall pay Landlord any damages for injury to the Premises or Building resulting from such removal. All other improvements and additions to the Premises shall thereupon become the property of Landlord.

**24. NON-WAIVER:**

Waiver by Landlord or Tenant of any term, covenant or condition herein contained or any breach thereof shall not be deemed to be a waiver of such term, covenant, or condition or of any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of any payment hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the amount so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such payment.

**25. HOLDOVER:**

If Tenant shall, with the written consent of Landlord, hold over after the expiration of the term of this Lease, such tenancy shall be deemed a month-to-month tenancy, which tenancy may be terminated as provided by applicable law. During such tenancy, Tenant agrees to pay to Landlord the greater of (a) the then quoted rates for similar space in the Building or (b) one hundred twenty-five percent (125%) of the Rent and Additional Rent in effect upon the date of such expiration as stated herein, and to be bound by all of the terms, covenants and conditions herein specified, so far as applicable. Acceptance by Landlord of Rent and Additional Rent after such expiration or earlier termination shall not result in a renewal of this Lease. The foregoing provisions of this Section 25 are in addition to and do not affect Landlord's right of re-entry or any rights of Landlord hereunder or as otherwise provided by law. If Tenant shall hold over after the expiration or earlier termination of this Lease without the written consent of Landlord, such occupancy shall be deemed an unlawful detainer of the Premises subject to the applicable laws of the state in which the Building is located and, in addition, Tenant shall be liable for any costs, damages, losses and expenses incurred by Landlord as a result of Tenant's failure to surrender the Premises in accordance with this Lease.

**26. CONDEMNATION:**

**(a) Entire Taking:**

If all of the Premises or such portions of the Building as may be required for the reasonable use of the Premises, are taken by eminent domain, this Lease shall automatically terminate as of the date title vests in the condemning authority and all Rent, Additional Rent and other payments shall be paid to that date.

**(b) Constructive Taking of Entire Premises:**

In the event of a taking of a material part of but less than all of the Building, where Landlord shall reasonably determine that the remaining portions of the Premises cannot be economically and effectively used by it (whether on account of physical, economic, aesthetic or other reasons), or if, in the opinion of Landlord, the Building should be restored in such a way as to alter the Premises materially, Landlord shall forward a written notice to Tenant of such determination not more than sixty (60) days after the date of taking. The term of this Lease shall expire upon such date as Landlord shall specify in such notice but not earlier than sixty (60) days after the date of such notice.

**(c) Partial Taking:**

In case of taking of a part of the Premises, or a portion of the Building not required for the reasonable use of the Premises, then this Lease shall continue in full force and effect and the Rent shall be equitably reduced based on the proportion by which the floor area of the Premises is reduced, such Rent reduction to be effective as of the date title to such portion vests in the condemning authority. If a portion of the Premises shall be so taken which renders the remainder of the Premises unsuitable for continued occupancy by Tenant under this Lease, Tenant may terminate this Lease by written notice to Landlord within sixty (60) days after the date of such taking and the term of this Lease shall expire upon such date as Tenant shall specify in such notice not later than sixty (60) days after the date of such notice.

**(d) Awards and Damages:**

Landlord reserves all rights to damages to the Premises for any partial, constructive, or entire taking by eminent domain, and Tenant hereby assigns to Landlord any right Tenant may have to such damages or award, and Tenant shall make no claim against Landlord or the condemning authority for damages for termination of the Leasehold interest or interference with Tenant's business. Tenant shall have the right, however, to claim and recover from the condemning authority compensation for any loss to which Tenant may be put for Tenant's moving expenses, business interruption or taking of Tenant's personal property and Leasehold improvements paid for by Tenant (not including Tenant's Leasehold interest) provided that such damages may be claimed only if they are awarded separately in the eminent domain proceedings and not out of or as part of the damages recoverable by Landlord.

**27. NOTICES:**

All notices under this Lease shall be in writing and delivered in person or sent by registered or certified mail, or nationally recognized courier (such as Federal Express, DHL, etc.), postage prepaid, to Landlord and to Tenant at the Notice Addresses provided in Section 1(k) (provided that after the Commencement Date any such notice may be mailed or delivered by hand to Tenant at the Premises) and to the holder of any mortgage or deed of trust at such place as such holder shall specify to Tenant in writing; or such other addresses as may from time to time be designated by any such party in writing. Notices mailed as aforesaid shall be deemed given: (a) the date of delivery if delivered in person, (b) three (3) business days following the date of such mailing if delivered by registered or certified mail, and (c) one (1) business day following the date of sending if delivered specifying overnight delivery by nationally recognized courier.

Landlord and Tenant acknowledge that it is extremely important that Rent and Additional Rent, and any other payment due hereunder, be paid in a timely manner as required by this Lease. Since Tenant may sublet the Premises to a licensee/franchisee of Doctor's Associates Inc. and the licensee/franchisee may pay rent directly to Landlord, Tenant does not receive rental income and will not know if Rent and Additional Rent has not been paid. Since the parties recognize that time is of the essence in this matter, Landlord agrees to give written notice to Tenant within one hundred eighty (180) days of the occurrence of any failure to pay Rent or Additional Rent, or pay any amount due, as required by this Lease concurrently with its delivery to Tenant's sublessee, or assignee. Failure of Landlord to give such notice will constitute a waiver of monetary claims against Tenant for failure to pay Rent, Additional Rent or other sums due under this Lease. Any notice which is to be given to Tenant shall be deemed sufficiently given if sent by Certified or Registered Mail, postage prepaid, to the addresses set forth in Section 1(k), or such other address as may from time to time be designated by Tenant in writing delivered to Landlord.

**28. COSTS AND ATTORNEYS FEES:**

If Tenant or Landlord shall bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of Rent, Additional Rent or other payments hereunder or possession of the Premises, each party shall, and hereby does, to the extent permitted by law, waive trial by jury and the losing party shall pay the prevailing party a reasonable sum for attorneys fees in such suit, at trial and on appeal, and such attorneys fees shall be deemed to have accrued on the commencement of such action.

**29. LANDLORD'S LIABILITY:**

Anything in this Lease to the contrary notwithstanding, covenants, undertakings and agreements herein made on the part of Landlord are made and intended not as personal covenants, undertakings and agreements for the purpose of binding Landlord personally or the assets of Landlord except Landlord's interest in the Premises and Building, but are made and intended for the purpose of binding only the Landlord's interest in the Premises and Building, as the same may from time to time be encumbered. No personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforceable against Landlord or its partners or their respective heirs, legal representatives, successors, and assigns on account of the Lease or on account of any covenant, undertaking or agreement of Landlord in this Lease contained.

### **30. ESTOPPEL CERTIFICATES:**

Tenant shall, from time to time, upon 15 days of written request of Landlord, execute, acknowledge and deliver to Landlord or its designee a written statement prepared by Landlord stating: The date this Lease was executed and the date it expires; the date the term commenced and the date Tenant accepted the Premises; the amount of minimum monthly Rent and the date to which such Rent has been paid; and certifying to the extent true: That this Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way (or specifying the date and terms of agreement so affecting this Lease); that this Lease represents the entire agreement between the parties as to this leasing; that all conditions under this Lease to be performed by Landlord have been satisfied; that all required contributions by Landlord to Tenant on account of Tenant's improvements have been received; that on this date there are no existing claims, defenses or offsets which Tenant has against the enforcement of this Lease by Landlord; that the security deposit is as stated in the Lease; and such other matters as Landlord may reasonably request. It is intended that any such statement delivered pursuant to this paragraph may be relied upon by a prospective purchaser of Landlord's interest or the holder of any mortgage upon Landlord's interest in the Building. If Tenant shall fail to respond within fifteen (15) days of receipt by Tenant of a written request by Landlord as herein provided, Tenant shall be deemed to have given such certificate as above provided without modification and shall be deemed to have admitted the accuracy of any information supplied by Landlord to a prospective purchaser or mortgagee and that this Lease is in full force and effect, that there are no uncured defaults in Landlord's performance, that the security deposit is as stated in the Lease, and that not more than one month's Rent has been paid in advance.

Landlord, within thirty (30) days of Tenant's request, shall deliver to Tenant an executed, written, Estoppel Certificate (attached) identifying Tenant and this Lease and certifying and confirming, in addition to any information or confirmation Tenant may reasonably require and which is reasonably acceptable to Landlord, the following (which shall in all instances be limited to the actual knowledge as of the date issued of the representative of Landlord identified therein, with no duty to perform any investigation relating to such representations, and shall be substantially in the form attached hereto as Exhibit E:

- A. That this Lease is either unmodified since its execution and in full force and effect, or modified since its execution but still in full force and effect as modified;
- B. That Tenant is not in default of any of its obligations under this Lease;
- C. The Lease Term, Rent Commencement Date, Expiration Date, Current Rent, Renewal Periods remaining as to the Leased Premises for which the Estoppel Certificate applies.

Tenant's right to request Estoppel Certificates as described in this Section 30 shall be expressly limited to prospective, actual franchisees and for no other purpose, and shall, following the first year of the Term, be limited to one (1) request per calendar year thereafter. Nothing contained in this Section 30 shall be interpreted to impose a duty or obligation on Landlord to conduct an inspection of the Premises.

### **31. TRANSFER OF LANDLORD'S INTEREST:**

In the event of any transfers of Landlord's interest in the Premises or in the Building, other than a transfer for security purposes only, and provided the transferee expressly assumes the obligations of this Lease, the transferor shall be automatically relieved of any and all obligations and liabilities on the part of Landlord accruing from and after the date of such transfer and such transferee shall have no obligation or liability with respect to any matter occurring or arising prior to the date of such transfer, and in such event Tenant agrees to attorn to the transferee.

### **32. RIGHT TO PERFORM:**

If Tenant shall fail to pay any sum of money, other than Rent and Additional Rent required to be paid by it hereunder, or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue for ten (10) days after written notice thereof by Landlord, Landlord may, but shall not be obligated so to do, and without waiving or releasing Tenant from any obligations of Tenant, make such payment or perform any such

other act on Tenant's part to be made or performed as provided in this Lease. Any sums paid by Landlord hereunder shall be immediately due and payable by Tenant to Landlord and Landlord shall have (in addition to any other right or remedy of Landlord) the same rights and remedies in the event of the nonpayment of sums due under this Section as in the case of default by Tenant in the payment of Rent.

**33. QUIET ENJOYMENT:**

Tenant shall have the right to the peaceable and quiet use and enjoyment of the Premises, subject to the provisions of this Lease, as long as Tenant is not in default hereunder.

**34. AUTHORITY:**

If Tenant is a corporation, limited liability company, limited liability partnership or limited or general partnership, each individual executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant, in accordance with a duly adopted resolution or consents of all appropriate persons or entities required therefore and in accordance with the formation documents of Tenant, and that this Lease is binding upon Tenant in accordance with its terms. At Landlord's request, Tenant shall, prior to execution of this Lease, deliver to Landlord a copy of a resolution or consent, certified by an appropriate officer, partner or manager of Tenant authorizing or ratifying the execution of this Lease.

**35. HAZARDOUS MATERIALS:**

**(a) Tenant Obligations:**

(i) Tenant shall not dispose of or otherwise allow the release of any hazardous waste or materials in, on or under the Premises or the Building, or any adjacent property, or in any improvements placed on the Premises. Tenant represents and warrants to Landlord that Tenant's intended use of the Premises does not involve the use, production, disposal or bringing on to the Premises of any hazardous waste or materials, except only ordinary and general office supplies typically used in first-class downtown office buildings and only in such quantities or concentrations as allowed under applicable laws, rules and regulations. As used in this Section, the term "hazardous waste or materials" includes any substance, waste or material defined or designated as hazardous, toxic or dangerous (or any similar term) pursuant to any statute, regulation, rule or ordinance now or hereafter in effect. Tenant shall promptly comply with all such statutes, regulations, rules and ordinances, and if Tenant fails to so comply Landlord may, after reasonable prior notice to Tenant (except in case of emergency) effect such compliance on behalf of Tenant. Tenant shall immediately reimburse Landlord for all costs incurred in effecting such compliance.

(ii) Tenant agrees to protect, defend, indemnify and hold harmless Landlord, the University and the Trustees against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, cleanup costs, remedial actions, costs and expenses (including, without limitation, consultant fees, attorneys' fees and disbursements) which may be imposed on, incurred or paid by Landlord, or asserted in connection with (i) any misrepresentation, breach of warranty or other default by Tenant under this Lease, or (ii) the acts or omissions of Tenant, or any subtenant or other person for whom Tenant would otherwise be liable, resulting in the release of any hazardous waste or materials. Tenant hereby waives immunity under the industrial insurance provisions of Title 51 R.C.W. but only to the extent necessary to indemnify Landlord, the University and the Trustees, which waiver has been mutually negotiated herein.

(iii) The provisions of this Section 35 shall survive the expiration, abandonment or termination of this Lease. Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

**(b) Landlord Obligations:**

Landlord represents to Tenant that, to the best of Landlord's knowledge, no hazardous waste or materials have been generated, stored or disposed of on the Premises other than in compliance with all applicable laws. Landlord will hold Tenant harmless from and indemnify Tenant against any actual costs resulting from any breach of this representation or resulting

from the release of hazardous waste or materials on the Premises by Landlord or its employees, agents or contractors. Landlord shall not be responsible for any hazardous waste or materials resulting from the acts of other Tenants or occupants of the Building or other third parties, or for consequential damages arising from the presence of any hazardous wastes or materials on the Premises or in the Building.

### **36. TELECOMMUNICATIONS LINES AND EQUIPMENT:**

#### **(a) Location of Tenant's Equipment and Landlord Consent:**

(i) Tenant may install, maintain, replace, remove and use communications or computer wires, cables and related devices (collectively, the "Lines") at the Building in or serving the Premises, only with Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed. Tenant shall locate all electronic telecommunications equipment within the Premises and shall relocate all Tenant's equipment which is located within the Building telephone closets or riser spaces, at Tenant's cost, to the Tenant's Premises. Any request for consent shall contain detailed plans, drawings and specifications identifying all work to be performed, the time schedule for completion of the work, the identity of the entity that will provide service to the Lines and the identity of the entity that will perform the proposed work (which entity shall be subject to Landlord's approval). Landlord shall have a reasonable time in which to evaluate the request after it is submitted by Tenant.

(ii) Without in any way limiting Landlord's right to withhold its consent, Landlord may consider the following factors, among others, in making its determination: (A) the experience, qualifications and prior work practice of the proposed contractor and its ability to provide sufficient insurance coverage for its work at the Building; (B) whether or not the proposed work will interfere with the use of any then existing Lines at the Building; (C) whether or not an acceptable number of spare Lines and space for additional Lines shall be maintained for existing and future occupants of the Building; (D) a requirement that Tenant remove existing abandoned Lines located in or servicing the Premises, as a condition to permitting the installation of new lines; (E) whether or not Tenant is in default of any of its obligations under this Lease; (F) whether the proposed work or resulting Lines will impose new obligations on Landlord, expose Landlord to liability of any nature or description, increase Landlord's insurance premiums for the Building, create liabilities for which Landlord is unable to obtain insurance protection or imperil Landlord's insurance coverage; (G) whether Tenant's proposed service provider is willing to pay reasonable monetary compensation for the use and occupation of the Building; and (H) whether the work or resulting Lines would adversely affect the Land, Building or any space in the Building in any manner.

(iii) Landlord's approval of, or requirements concerning, the Lines or any equipment related thereto, the plans, specifications or designs related thereto, the contractor or subcontractor, or the work performed hereunder, shall not be deemed a warranty as to the adequacy thereof, and Landlord hereby disclaims any responsibility or liability for the same. Landlord disclaims all responsibility for the condition or utility of the intra-building network cabling ("INC") and makes no representation regarding the suitability of the INC for Tenant's intended use.

(iv) If Landlord consents to Tenant's proposal, Tenant shall (A) pay all costs in connection therewith (including all costs related to new Lines); (B) comply with all requirements and conditions of this Section; (C) use, maintain and operate the Lines and related equipment in accordance with and subject to all laws governing the Lines and equipment. Tenant shall further insure that (I) Tenant's contractor complies with the provisions of this Section and Landlord's reasonable requirements governing any work performed; (II) Tenant's contractor provides all insurance required by Landlord; (III) any work performed shall comply with all Laws; and (IV) as soon as the work is completed, Tenant shall submit "as-built" drawings to Landlord.

(v) Landlord reserves the right to require that Tenant remove any Lines located in or serving the Premises which are installed in violation of these provisions, or which are at any time in violation of any laws or present a dangerous or potentially dangerous condition (whether such Lines were installed by Tenant or any other party), within three (3) days after written notice.

(vi) Notwithstanding anything in the above paragraphs, Tenant shall remove any Lines located in or serving the Premises promptly upon expiration or sooner termination of this Lease.

**(b) Landlord's Rights:**

Landlord may (but shall not have the obligation to):

- (i) Install new lines at the Building;
- (ii) Create additional space for Lines at the Building; and
- (iii) Direct, monitor and/or supervise the installation, maintenance, replacement and removal of, the allocation and periodic re-allocation of available space (if any) for, and the allocation of excess capacity (if any) on, any Lines now or hereafter installed at the Building by Landlord, Tenant or any other party (but Landlord shall have no right to monitor or control the information transmitted through such Lines).

**(c) Indemnification:**

In addition to any other indemnification obligations under this Lease, Tenant shall protect, defend, indemnify and hold harmless Landlord, the University and the Trustees, and their employees, agents, officers, and contractors from and against any and all claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including reasonable attorneys' fees) arising out of or in any way related to the acts and omissions of Tenant, Tenant's officers, directors, employees, agents, contractors, subcontractors, subtenants, and invitees with respect to: (i) any Lines or equipment related thereto serving Tenant in the Building; (ii) any injuries to persons (including wrongful death) or property damage arising out of or related to any Lines or equipment related thereto serving Tenant in the Building; (iii) any lawsuit brought or threatened, settlement reached, or governmental order, fine or penalty relating to such Lines or equipment related thereto; and (iv) any violations or Laws or demands of governmental authorities, or any reasonable policies or requirement of Landlord, which are based upon or in any way related to such Lines or equipment. This indemnification and hold harmless agreement shall survive the termination of this Lease. Tenant hereby waives immunity under the industrial insurance provisions of Title 51 R.C.W. but only to the extent necessary to indemnify Landlord, the University and the Trustees, which waiver has been mutually negotiated herein.

**(d) Limitation of Liability:**

Except to the extent arising from the gross negligence or willful misconduct of Landlord or Landlord's agents or employees, Landlord shall have no liability for damages arising from, and Landlord does not warrant that the Tenant's use of any Lines will be free from the following (collectively called "Line Problems"): (i) any shortages, failures, variations, interruptions, disconnections, loss or damage caused by the installation, maintenance, or replacement, use or removal of Lines by or for other Tenants or occupants at the Building, by any failure of the environmental conditions or the power supply for the Building to conform to any requirement of the Lines or any associated equipment, or any other problems associated with any Lines by any other cause; (ii) any failure of any Lines to satisfy Tenant's requirements; or (iii) any eavesdropping or wire-tapping by unauthorized parties. Landlord in no event shall be liable for damages by reason of loss of profits, business interruption or other consequential damage arising from any Line Problems. Under no circumstances shall any Line Problems be deemed an actual or constructive eviction of Tenant, render Landlord liable to Tenant for abatement of Rent, or relieve Tenant from performance of Tenant's obligations under this Lease.

**(e) Electromagnetic Fields:**

If Tenant at any time uses any equipment that may create an electromagnetic field exceeding the normal insulation ratings of ordinary twisted pair riser cable or cause radiation higher than normal background radiation, Landlord reserves the right to require Tenant to appropriately insulate the Lines therefore (including riser cables) to prevent such excessive electromagnetic fields or radiation.

**37. GENERAL:**



**(a) Headings:**

Titles to Sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

**(b) Successors and Assigns:**

All of the covenants, agreements, terms and conditions contained in this Lease shall inure to and be binding upon the Landlord and Tenant and their respective, successors and assigns, provided the foregoing shall be subject to the terms of Section 17.

**(c) Payment of Brokers:**

Landlord shall pay the commissions due those real estate brokers or agents named in Section 1(i). If Tenant has dealt with any other person or real estate broker with respect to leasing or renting space in the Building, Tenant shall be solely responsible for the payment of any fee due said person or firm and Tenant shall indemnify and hold Landlord harmless against any liability in respect thereto, including Landlord's attorneys' fees and costs in defense of any such claim.

**(d) Entire Agreement:**

This Lease contains all covenants and agreements between Landlord and Tenant relating in any manner to the leasing, use and occupancy of the Premises, to Tenant's use of the Building and other matters set forth in this Lease. No prior agreements or understanding pertaining to the same shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or added to except in writing signed by Landlord and Tenant.

**(e) Severability:**

Any provision of this Lease which shall be held invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.

**(f) Overdue Payments:**

Tenant acknowledges that a late payment of Rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease. Such costs may include, but not be limited to, processing and accounting charges, and penalties imposed by terms of any contracts, mortgages or deeds of trust covering the Building. Therefore, in the event Tenant shall fail to pay any Rent, Additional Rent or other sums payable by Tenant under this Lease for five (5) business days after such amount is due, then Tenant shall pay Landlord, as Additional Rent, a late charge ("Late Charge") equal to 5% of such amount owing, but not in excess of the highest rate permitted by law. In addition to any Late Charges which may be incurred hereunder, any Rent, Additional Rent or other sums payable by Tenant under this Lease which are more than thirty (30) days past due, shall bear interest at a rate equal to 18% per annum but not in excess of the highest lawful rate permitted under applicable laws, calculated from the original due date thereof to the date of payment ("Overdue Fee"); provided, however, the minimum Overdue Fee shall be \$100.00.

In addition, if payments are received by check or draft from Tenant, and two (2) or more of such checks or drafts are dishonored by the bank or other financial institution they were drawn upon in any twelve (12) month period, Landlord may thereafter require all Rent and other payments due hereunder from Tenant to Landlord to be made by bank cashier's or bank certified check or other similar means of payment and Landlord shall not be required to accept any checks or drafts of Tenant which do not comply with such requirements.

**(g) Force Majeure:**

Except for the payment of Rent, Additional Rent and other sums payable by Tenant, time periods for Tenant's or Landlord's performance under any provisions of this Lease shall be extended for periods of time during which Tenant's or Landlord's performance is prevented due to circumstances beyond Tenant's or Landlord's reasonable control.

**(h) Right to Change Public Spaces:**

Landlord shall have the right at any time, without thereby creating an actual or constructive eviction or incurring any liability to Tenant therefore, to change the arrangement or location of such of the following as are not contained within the Premises or any part thereof: entrances, passageways, doors and doorways, corridors, stairs, toilets and other like public service portions of the Building. Nevertheless, in no event shall Landlord diminish any service, change the arrangement or location of the elevators serving the Premises, make any change which shall diminish the area of the Premises, make any change which shall interfere with access to the Premises or change the character of the Building from that of a first-class office building.

**(i) Governing Law:**

This Lease shall be governed by and construed in accordance with the laws of the State of Washington.

**(j) Building Directory:**

Landlord shall maintain in the lobby of Building a directory which shall include the name of Tenant and any other names reasonably requested by Tenant in proportion to the number of listings given to comparable Tenants of the Building.

**(k) Building Name:**

The Building shall be known by such name as Landlord may designate from time to time.

**(l) LANDLORD RECOGNIZES AND ACKNOWLEDGES THAT TENANT IS A DELAWARE LIMITED LIABILITY COMPANY AND THAT TENANT'S ASSETS CONSIST ALMOST EXCLUSIVELY OF LEASES, SUBLEASES, AND OPTIONS TO PURCHASE LEASED PREMISES. LANDLORD ALSO RECOGNIZES AND ACKNOWLEDGES THAT TENANT WAS ORGANIZED PRINCIPALLY FOR THE PURPOSE OF NEGOTIATING AND DRAFTING LEASES WITH A VIEW TOWARDS SUBLETTING THE LEASED PREMISES TO FRANCHISEES/LICENSEES OF DOCTOR'S ASSOCIATES, INC. LANDLORD RECOGNIZES AND ACKNOWLEDGES THAT IT HAS BEEN ADVISED THAT DAI IS A FLORIDA CORPORATION THAT OWNS ALL RIGHTS TO AWARD FRANCHISES FOR SUBWAY® SANDWICH SHOPS AND THAT LANDLORD HAS ALSO BEEN ADVISED THAT TENANT HAS NO RIGHTS WHATSOEVER TO AWARD FRANCHISES FOR SUBWAY® SANDWICH SHOPS OR COLLECT ANY FRANCHISE RELATED ROYALTIES FROM ANY PROSPECTIVE SUBLESSEE OF THE PREMISES. LANDLORD 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 TENANT'S FINANCIAL STATUS AND TO EVALUATE SAID STATUS TO ITS SATISFACTION. LANDLORD HAS EITHER MADE SUCH INQUIRY AND IS SATISFIED WITH THE RESPONSE TO SUCH INQUIRY OR HAS AFFIRMATIVELY AND VOLUNTARILY DETERMINED NOT TO DO SO. LANDLORD FURTHER RECOGNIZES AND ACKNOWLEDGES THAT NO PERSON OR ENTITY OTHER THAN TENANT HAS MADE ANY REPRESENTATIONS OF ANY KIND WITH REGARD TO THE ABILITY OF TENANT TO PERFORM TENANT'S OBLIGATIONS HEREUNDER. LANDLORD ALSO RECOGNIZES AND ACKNOWLEDGES THAT TENANT INTENDS TO SUBLEASE THE PREMISES TO A PERSON(S) WHO HAS OR WILL BE AWARDED A FRANCHISE/LICENSE FOR A SUBWAY® SANDWICH SHOP FROM DOCTOR'S ASSOCIATES, INC., UNDER WHICH SUBLEASE THE SUBLESSEE WILL PAY RENT DIRECTLY TO LANDLORD SO THAT THE RENTAL PAYMENT FROM SUCH SUBLESSEE WILL NORMALLY NOT BE RECEIVED OR HELD BY TENANT. ALTHOUGH THE SUBLESSEE MAY OPEN A BUSINESS OPERATION DOING BUSINESS AS A SUBWAY® SANDWICH SHOP AND MAY HAVE FRANCHISE AND OTHER BUSINESS RELATIONSHIPS WITH CORPORATIONS RELATED TO OR ASSOCIATED BY THE GENERAL PUBLIC WITH "SUBWAY," AS IT IS COMMONLY KNOWN, LANDLORD RECOGNIZES AND ACKNOWLEDGES THAT THE SOLE AND EXCLUSIVE PERSON OR ENTITY AGAINST WHICH IT MAY SEEK DAMAGES OR ANY REMEDIES**

**UNDER THIS OR ANY OTHER DOCUMENT IN WHICH THE LANDLORD AND TENANT OR LANDLORD AND SUBLESSEE ARE PARTIES, WHETHER FOR UNPAID RENT AND ASSOCIATED DAMAGES, CLAIMS OF UNJUST ENRICHMENT, CLAIMS OF UNFAIR TRADE PRACTICES, OR ANY OTHER THEORY OF RECOVERY OF ANY KIND OR NATURE RELATED TO THIS OR SUCH OTHER DOCUMENT(S), IS TENANT OR SUBLESSEE. FURTHER, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THERE WILL NOT BE ANY LIABILITY UNDER THIS OR SUCH OTHER DOCUMENT(S) 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 TENANT. SUCH EXCULPATION OF LIABILITY SHALL BE ABSOLUTE AND WITHOUT ANY EXCEPTION WHATSOEVER.**

(m) Landlord covenants, warrants and represents that upon commencement of the Lease term, Landlord has full right and power to execute and perform this Lease, and to grant the estate demised herein; and that Tenant, upon the payment of the rent herein reserved and performance of the covenants and agreements hereof, shall peaceably and quietly have, hold and enjoy the Premises and all rights, easements, covenants, and privileges belonging or in any way appertaining thereto, during the term of this Lease.

(n) Landlord agrees to provide Tenant with ID access cards so that Tenant may have 24/7 access to the trash area and restrooms when the building is closed.

[Signatures on following pages]

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IN WITNESS WHEREOF this Lease has been executed the day and year first above set forth.

TENANT: SUBWAY REAL ESTATE, LLC  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_(s) of Subway Real Estate, LLC, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.

Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Notary public in and for the state of \_\_\_\_\_,  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_



CONCURRENCE AND APPROVAL BY:

Board of Regents of the  
University of Washington

By: \_\_\_\_\_  
Jeanette L. Henderson  
Director of Real Estate

Approved as to form:

\_\_\_\_\_  
Assistant Attorney General

1

EXHIBIT A

FLOOR PLAN OF PREMISES

1

## EXHIBIT B

### BUILDING RULES AND REGULATIONS

1. **Enforcement of Rules.** Landlord may waive any one or more of these Rules and Regulations for the benefit of Tenant or any other Tenant but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of Tenant, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all of the Tenants of the Building.

2. **Directory.** The directory of the Building will be provided exclusively for the display of the name and location of Tenants and Landlord reserves the right to exclude any other names therefrom.

3. **Emergency Information.** Tenant must provide Landlord with names and telephone numbers to contact in case of emergency. Tenant must fill out a Tenant emergency information sheet and return it to Landlord's office within three (3) days of occupancy.

4. **Sign.** Subject to Section 18 of the Lease, no sign, placard, picture, advertisement, name or notice shall be inscribed, displayed, printed or affixed on or to any part of the outside or inside of the Building, the Premises or the surrounding area without the written consent of the Landlord being first obtained. If such consent is given by Landlord or, Landlord may regulate the manner of display of the sign, placard, picture, advertisement, name or notice. Landlord shall have the right to remove any sign, placard, picture, advertisement, name or notice which has not been approved by Landlord or is being displayed in a non-approved manner without notice to and at the expense of the Tenant. Tenant shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall that may appear unsightly from outside of the Premises.

5. **Access.** The sidewalks, halls, passages, exits, entrances, elevators and stairways shall not be obstructed by any of the Tenants or used by them for any purpose other than for ingress to and egress from their respective Premises. This includes obstructing halls, passages, entrances, exits, elevators, stairways, balconies and roof with furniture, trash or deliveries. Halls, passages, entrances, exits, elevators, stairways, balconies and the roof are not for the use of the general public and the Landlord shall in all cases retain the right to control thereof and prevent access thereto by all persons whose presence in the judgment of the Landlord shall be prejudicial to the safety, character, reputation and interests of the Building or its Tenants; provided, however, that nothing herein contained shall be construed to prevent access by persons with whom the Tenant normally deals in the ordinary course of Tenant's business unless such persons are engaged in illegal activities. No Tenant and no employees or invitees of any Tenant shall go upon the roof of the Building.

6. **Locks and Keys.** Tenant shall not place any additional lock or locks on any door in the Premises or Building without Landlord's prior written consent. Landlord shall furnish a reasonable number of keys to the locks on the doors in the Premises to Tenant at move in. All keys to the Building, Premises, rooms and toilet rooms shall be obtained from Landlord's office and Tenant shall not, from any other source, duplicate or obtain keys or have keys made. The Tenant, upon termination of the tenancy, shall deliver to the Landlord the keys to the Building, Premises, rooms and toilet rooms that shall have been furnished.

7. **Installation of Burglar and Informational Services.** If Tenant requires telegraphic, telephonic, burglar alarm or similar services, it shall first obtain and comply with Landlord's instructions in their installation.

8. **Floor Loads.** Tenant shall not place a load upon any floor of the Premises, which exceeds the load per square foot, which such floor was designed to carry and which is allowed by law. Landlord shall have the right to prescribe the weight, size and position of all equipment, materials, furniture or other property brought into the Building. Heavy objects shall, if considered necessary by Landlord, stand on such platforms as determined by Landlord to be necessary to properly distribute the weight, which platforms shall be provided at Tenant's



expense. Business machines and mechanical equipment belonging to Tenant, which cause noise or vibration that may be transmitted to the structure of the Building or to any space therein to such a degree as to be objectionable to Landlord or to any Tenants in the Building, shall be placed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to eliminate noise or vibration. The persons employed to move such equipment in or out of the Building must be acceptable to Landlord. Landlord will not be responsible for loss of, or damage to, any such equipment or other property from any cause, and all damage done to the Building by maintaining or moving such equipment or other property shall be repaired at the expense of Tenant.

**9. Deliveries and Moving Materials within Building.** The Building freight elevator shall be available for use by all Tenants in the Building, subject to such reasonable scheduling as Landlord, in its discretion, shall deem appropriate. No equipment, materials, furniture, packages, supplies, merchandise or other property will be received in the Building or carried in the elevators except between such hours and in such elevators as may be designated by Landlord. Tenant's initial move in and subsequent deliveries of bulky items, such as furniture, safes and similar items shall, unless otherwise agreed in writing by Landlord, be made only at times designated by Landlord. At least 24 hours prior notice is required for unusually large or heavy deliveries in order that floor protection may be placed to distribute the load and protect the stone lobby floor. No deliveries shall be made which impede or interfere with other Tenants or the operation of the Building. Hand trucks and delivery carts are not permitted on passenger cars except by permission of the Landlord. Tenant shall be solely liable for any and all damage resulting from the above activities.

**10. Unapproved Equipment.** Tenant shall not install, operate or maintain in the Premises or in any other area of the Building, any electrical equipment which does not bear the U/L (Underwriters Laboratories) seal of approval, or which would overload the electrical system or any part thereof beyond its capacity for proper, efficient and safe operation as determined by Landlord, taking into consideration the overall electrical system and the present and future requirements in the Building. Tenant shall not furnish any cooling or heating to the Premises, including, without limitation, the use of any electronic or gas heating devices, fans or space heaters, without Landlord's prior written consent.

**11. Vending Machines.** No vending machine shall be installed, maintained or operated upon the Premises without the written consent of the Landlord.

**12. Fire Regulations.** Tenant agrees that it shall comply with all fire regulations that may be issued from time to time by Landlord. Tenant also shall provide Landlord with the names of a designated responsible employee to represent Tenant in all matters pertaining to fire regulations.

**13. Safety.** Landlord may from time to time adopt appropriate systems and procedures for the security or safety of the Building, its occupants, entry and use, or its contents. Tenant, Tenant's agents, employees, contractors, guests and invitees shall comply with Landlord's reasonable requirements relative thereto.

**14. Hazardous Substances.** Tenant shall not use or keep in the Premises or the Building any kerosene, gasoline or flammable or combustible fluid or material or any Hazardous Materials as defined in Section 35 of the Lease (including but not limited to asbestos or lead based paints) or use any method of heating or air conditioning other than that supplied by Landlord.

**15. Nuisance.** Tenant shall not use, keep or permit to be used or kept any food or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to the Landlord or other occupants of the Building by reason of noise, odors and/or vibrations, or interfere in any way with other Tenants or those having business in the Building. No animals (other than those aiding disabled persons such as "seeing eye" dogs) or birds shall be brought in or kept in or about the Premises or the Building. No Tenant shall make or permit to be made any disturbing noises or disturb or interfere with occupants of this or neighboring Buildings or Premises, or with those having business with such occupants by the use of any musical instrument, radio, phonograph, unusual noise, or in any other way. No Tenant shall throw anything out of doors or down the passageways.

**16. Restrooms.** The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein.

**17. Janitorial Services.** Tenant shall not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness. Any janitorial service provided pursuant to Section 9(a) of the Lease shall include ordinary dusting and cleaning by the janitor assigned to such work and shall not include cleaning of carpets or rugs, except normal vacuuming, or moving of furniture and other special services. Restrooms shall be cleaned every weekday, five (5) days per week, holidays and weekends excluded.

**18. No Defacing Premises.** Tenant shall not overload the floor of the Premises, shall not mark on or drive nails, screw or drill into the partitions, woodwork or plaster (except as may be incidental to the hanging of wall decorations), and shall not in any way deface the Premises or any part thereof.

**19. Floor Covering.** Tenant shall not lay or affix any linoleum, carpet or tile without the advance written consent of Landlord, which shall not be unreasonably withheld. Tenant shall remove any and all floor covering installed by Tenant at Tenant's sole cost and expense upon expiration or earlier termination of this Lease. Notwithstanding anything to the contrary, Tenant may use the Franchisor's standard interior design materials.

**20. No Antennas.** Tenant shall not install any radio or television antenna, loudspeaker or other devices on the roof or exterior walls of the Building, or the interior of windows. Tenant shall not interfere with radio or television broadcasting or reception from or in the Building or elsewhere.

**21. Bicycles.** Bicycles and other vehicles are not permitted inside or on the walkways outside the Building, except in those areas specifically designated by Landlord for such purposes.

**22. Window Coverings.** Tenant shall observe Landlord's rules with respect to maintaining standard window coverings at all windows in the Premises so that the Building presents a uniform exterior appearance.

**23. Telephones.** Landlord will direct electricians as to where and how telephone and telegraph wires are to be introduced. No boring or cutting for or stringing of wires will be allowed without the consent of Landlord. The location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the approval of Landlord.

**24. Pest Extermination.** Tenant shall utilize the termite or pest extermination service designated by Landlord to control termites and pests in the Premises. Except as included in Basic Costs, Tenant shall bear the cost and expense of such extermination services.

**25. Non-Smoking Building.** The Building is a non-smoking Building. Tenant shall prohibit smoking in the entirety of the Premises in compliance with WAC 296-62.

**26. Time of Repairs and Maintenance.** Tenant shall carry out Tenant's permitted repair, maintenance, alterations, and improvements in the Premises only during times agreed to in advance by Landlord and in a manner which will not interfere with the rights of other Tenants in the Building.

**27. Tenant Advertising.** Without the written consent of Landlord, Tenant shall not use the name of the Building in connection with or in promotion or advertising the business of Tenant except as Tenant's address.

**28. No Soliciting.** Canvassing, soliciting and distribution of handbills or any other written material, and peddling in the Building are prohibited, and Tenant shall cooperate to prevent such activities.

**29. Disorderly Conduct.** Landlord reserves the right to exclude or expel from the Building any person who, in the judgment of Landlord, is intoxicated or under the influence of

liquor or drugs, or who shall in any manner do any act in violation of any of the rules and regulations of the Building.

**30. Building Closure.** During all hours on Saturdays, Sundays, legal holidays and on weekdays between the hours of 6:00 p.m. and 7:00 a.m. the following day, access to the Building or to the halls, corridors, or stairways in the Building, or to the Premises may be refused unless the person has a pass or is properly identified. Landlord shall provide for up to four (4) of Tenant's employees at any given time to have 24/7 access to the loading dock area. Tenant shall be solely responsible for any cost incurred by Landlord to replace lost access cards, identification cards or access keys lost or damaged by Tenant's employees. The Landlord shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In case of invasion, mob, riot, public excitement, or other commotion or any structural damage from any cause whatsoever, the Landlord reserves the right to prevent access to the Building during the continuance of the same, by closing the doors or otherwise, for the safety of the Tenants and protection of the Building and property located therein. Anything to the foregoing notwithstanding, Landlord shall have no duty to provide security protection for the Building at any time or to monitor access thereto.

**31. Premises Closure.** Tenant shall see that the doors of the Premises are closed and securely locked before leaving the Building and that all water faucets, water apparatus and electricity are entirely shut off before Tenant or Tenant's employees leave the Building. Tenant shall be responsible for any damage to the Building or other Tenants' premises caused by a failure to comply with this rule.

**32. Building Name and Address.** Landlord shall have the right, exercisable without notice and without liability to Tenant, to change the name and/or the street address of the Building of which the Premises is a part.

**33. Observance of Rules.** Tenant shall be responsible for the observance of all of the foregoing rules by Tenant's employees, agents, licensees, sublessees, assigns, and invitees.

**34. Additional Rules.** Landlord reserves the right to make such other Rules and Regulations or amendments hereto as, in its reasonable judgment, may from time to time be needed for safety and security, for care and cleanliness of the Building and for the preservation of good order therein. Tenant agrees to abide by all such Rules and Regulations hereinabove stated and any additional rules and regulations which are adopted.

**35. Lease.** These Rules and Regulations are in addition to, and are made a part of, the terms, covenants, agreements and conditions of Tenant's Lease of its Premises in the Building.

## EXHIBIT C

### ADDENDUM TO LEASE

1. Basic Monthly Rent.

1.1 Tenant shall pay monthly Rent of \$26.00 per rentable square foot of area on the Premises per year (\$2,517.67 per month), payable monthly on or before the first day of each month through the term of the Lease. Notwithstanding the foregoing, no Rent shall be due for the first 180 days following the Rent Commencement Date. Pursuant to the provisions of Section 3 of this Lease, the Commencement Date and Rent Commencement Date shall be confirmed by Landlord in writing to Tenant within thirty (30) days after the actual Rent Commencement Date. Tenant shall pay Additional Rent pursuant to Sections 9 and 10 of the Lease. Tenant has deposited with Landlord on the date hereof \$2,517.67 to be applied to the first Rent payment due hereunder.

1.2 Beginning on the third anniversary of the Rent Commencement Date and on the same date each year thereafter during the Term of this Lease, Rent shall be adjusted with an increase of three percent (3%) per year. Landlord and Tenant agree that an annual increase of three percent (3%) following the first two (2) years of the Lease constitutes Fair Market Rental Value as defined in Exhibit E (Rent Adjustment Arbitration). Landlord shall provide Tenant advance written notice of any adjustment to the Rent, as provided in Exhibit E. Failure of Landlord to provide advance written notice as provided herein shall not constitute a waiver of Tenant's obligation to pay adjusted Rent.

1.3 Should Tenant elect to dispute the adjusted Rent, Tenant shall follow the notice and appeal provisions of Exhibit E.

2. Quality of Service; Minimum Hours of Operation.

2.1 Tenant understands that Landlord expects the Premises to be an amenity for the Building and its tenants. As an amenity, Tenant is to provide quality service to invitees and visitors. Quality service shall include neatly-groomed, friendly, knowledgeable employees, clean premises, adequate stock and experienced on-site management.

2.2 Tenant shall be open for business in the Premises at least during the hours of 10:30 a.m. to 6:00 p.m., Monday through Friday or each week; provided, however, that at the option of Tenant, the Premises may be closed for all Federally recognized holidays, and that this provision shall not apply if the Premises should be closed and the business of Tenant temporarily discontinued therein on account strikes; lockouts; alterations, renovations, improvements approved by Landlord; or other causes beyond the reasonable control of Tenant.

3. Services and Utilities Any Landlord obligation hereunder may be performed by Master Landlord as agreed between Landlord and Master Landlord in their sole discretion.

3.1 Landlord shall make available for Tenant employees a common break room located on the 1<sup>st</sup> floor.

3.2 Landlord shall make available to Tenant electricity, water, and 6 tons of heating/air-conditioning at mutually agreed upon times. Separate meters will be installed as part of the tenant leasehold improvements to measure the use of

electricity (including electricity for heating/air conditioning), water, sewer and gas (or alternately, usage of all or some of the utilities shall be measured by engineer's estimate). Tenant shall be responsible for paying the costs of these utilities. Landlord shall be responsible for the maintenance of the heating and air-conditioning system to and within the Premises. However, should Tenant alter in any way the system, including thermostats and diffusers, any repair shall be at Tenant's expense.

- 3.3 Tenant shall be responsible for the maintenance of the Premises and for all cleanup of debris resulting from the operation of the store whether within the Premises, in the garage, in the Building lobbies, or on the sidewalk area outside of the Premises on which Tenant has placed tables and chairs for the use of its customers, including costs of garbage containers and garbage removal service. Landlord shall provide for the hauling of garbage from the trash compactor. Tenant shall be responsible for delivering garbage to the trash compactor. Landlord may, in its reasonable discretion, designate the route Tenant shall use to take trash from the Premises to the trash compactor.
- 3.4 Landlord shall be responsible for lamp replacement, for toilet room supplies in washrooms, and for customary janitorial services in its Premises. Tenant shall be responsible for maintaining and servicing the food and beverage preparation equipment and drains, sidewalk tables chairs, and the sidewalks within the outside seating area, and for all repairs to the Premises. Should Tenant not maintain or repair any of the above equipment and the lack of maintenance or repair affects the other tenants of the Building, Landlord may maintain or repair the equipment and bill Tenant. Should Tenant not maintain or repair any of the above equipment and the lack of maintenance or repair does not affect the other tenants of the Building, but is, in Landlord's opinion and at Landlord's sole discretion, unacceptable, Landlord shall so notify Tenant. Tenant shall then have ten (10) days from receipt of such notification to maintain or repair the equipment. If after the ten-day period the condition has not been remedied, Landlord may maintain or repair the equipment and bill Tenant.
- 3.5 Landlord will wash the exterior of the windows at reasonable intervals up to one (1) time per calendar quarter; if Tenant wishes more frequent window washing, Tenant may contract for such service with Landlord.

In the event of nonpayment of amounts due from Tenant for any of the above-described additional services, Landlord shall have the same rights as it has with respect to the nonpayment of Rent hereunder.

4. Name:

Throughout the term of this Agreement Tenant shall do business under the name Subway. The name shall not be changed without prior written consent of the Landlord.

5. Anti-Discrimination:

Landlord and Tenant shall not discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or presence of any sensory, mental or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under KCC ch. 12.16.

Landlord and Tenant shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations which prohibit such discrimination. These

laws include, but are not limited to, Chapter 49.60 of the Revised Code of Washington, and Title VI and VII of the Civil Rights Act of 1964.

## EXHIBIT D

### TENANT IMPROVEMENTS

- I. IMPROVEMENTS PROVIDED BY LANDLORD:** Landlord shall cause Master Landlord to deliver the Premises to Tenant as of the Commencement Date with the following improvements in the Premises (collectively "Landlord's Work"):
- (1) Restroom: Shared restroom in compliance with ADA and health code to be provided by Landlord, and shall be accessible from the premises.
  - (2) Walls: Core and perimeter walls include metal framing, sound batt insulation, drywall taped and sanded. Landlord shall install an extra door to the southeast corner of the Premises. Precise location of door shall be determined following Landlord's receipt of tenant design. Installation of this door shall not be a prerequisite for the Commencement Date.
  - (3) Floor: Concrete slab floor prepared to receive floor covering. Floor loading capacities: eighty pounds (80) per square foot live load; twenty pounds (20) per square foot partition load.
  - (4) Mechanical:
    - a. A 4-pipe fan coil and 6 ton HVAC unit will be provided in the premises with capacity to support one ton per 225 USF. Louvers are available above the storefront windows to support fresh air and air side economizer with the fan coil units. All ductwork and air distribution shall be the responsibility of the Tenant.
    - b. 1 ½" water line to be provided overhead to the rear of premises with separate meter and shut-off valve. If permitting authority requires installation of a backflow prevention device, said device shall be Tenant responsibility.
    - c. The building has a natural gas line capped and available for connection in the building loading dock. Connection to, and piping beyond this point shall be by Tenant, if a gas line is desired.
    - d. 4" sanitary waste line is available directly below the Premises for connection of Tenant's waste lines. If a grease trap is required by code, Tenant shall install.
    - e. A 3" plumbing vent will be stubbed to the premises for connection by Tenant.
  - (5) Electrical:
    - f. The electrical Core & Shell distribution system is 277/480 volt, 3 phase, 4 wire and has a 200 amp service that shall be transformed by Landlord to 461 amps at 120/208 volt, 3 phase, 4 wire with a properly sized transformer to be installed in the Premises. A tenant meter is located in the building's main electrical room. Electrical panels are installed in the corridor outside the premises. Transformer will be furnished and installed by Landlord at location within the Premises mutually agreeable to Tenant and Landlord and shall not be a prerequisite to the Commencement Date.
    - g. Landlord will install fire alarm as required by applicable building codes and authority having jurisdiction. System shall be connected to the building monitoring system and installed following Tenant's installation of ceilings. Fire alarm system installation shall not be a prerequisite to the Commencement Date.
  - (5) Fire Sprinklers: Sprinkler drops to the ceiling grid elevation will be by Landlord following Landlord's receipt of Tenant's design and once ceiling grid elevation is established by Tenant. Landlord installation of sprinkler drops shall not be a prerequisite to the Commencement Date.

**II. IMPROVEMENTS BY TENANT:**

Landlord has requested Master Landlord to cause the Tenant Improvements to be constructed according to the terms and conditions provided in this Exhibit D. Design and construction of all improvements, excluding Landlord's Work, in the Premises (the "Tenant Improvements") shall be provided by Tenant at Tenant's expense, less the TI Allowance stipulated in this Exhibit D. The Tenant Improvements provided by the Tenant should include, but is not limited to architectural design; permitting and special inspections; structural review and engineering; mechanical and electrical engineering using only Master Landlord's design build mechanical and electrical contractors; partitioning, millwork, and finishes; fire sprinkler modifications to meet codes; plumbing lines, connection and fixtures; HVAC equipment, connection to Building systems, distribution and controls, testing and balance; electrical wiring, equipments and fixtures; furnishings, phone, cabling, and security.

### **III. DESIGN OF TENANT IMPROVEMENTS:**

Master Landlord's preference is for Tenant to utilize the Building's space planners and general contractor. However, Tenant is free to use its space planners, architects and construction general contractor in the design and construction of the Tenant Improvements. Tenant's final design is subject to mutual agreement by all parties prior to the start of construction, and Tenant will be directly responsible for building permit submittal to the City of Seattle and King County Health Department.

Tenant's space planners and architects shall ensure that the work shown on Tenant's plans is compatible with the basic Building plans and that necessary basic Building modifications are included in Tenant's plans. Such modifications shall be subject to the Master Landlord's approval and the cost thereof shall be paid by Tenant. Tenant's space planners and architects shall use CAD System, which system shall be approved by Master Landlord for compatibility with the other Building drawings.

Final Plans are to be signed by Tenant and delivered to Master Landlord and shall include the following:

- (1) Basic Plans: These shall be fully dimensioned floor plans showing partition layout and identifying each room with a number and each door with a number. The Basic Plans must clearly identify and locate equipment requiring plumbing or other special mechanical systems, area(s) subject to above-normal floor loads, special openings in the floor, and other major or special features, including:
  - (a) Electrical and Telephone Outlets: Locate all power and telephone requirements: Dimension the position from a corner and give height above concrete slab for all critically located outlets. Identify all dedicated circuits and identify all power outlets greater than 120 volts. For the equipment used in these outlets which require dedicated circuits and/or which require greater than 120 volts, identify the type of equipment, the manufacturer's name and the manufacturer's model number, and submit a brochure for each piece of equipment. Also identify the manufacturer's name of the phone system to be used and the power requirements, size, and location of its processing equipment.
  - (b) Reflected Ceiling Plan: Lighting layout showing location and type of all Building Standard and special lighting fixtures.
  - (c) Furniture Layout: Layout showing furniture location so that Master Landlord's engineer can review the location of all light fixtures.
- (2) Millwork Details: These drawings shall be in final form with Tenant's office planner's title block in the lower right hand corner of the drawing, and shall include construction details of all cabinets, paneling, trim, bookcases, and door and jamb details for non-Building Standard doors and jambs.
- (3) Keying Schedules and Hardware Information: This information shall be in final form and include a Keying Schedule indicating which doors are locked and which key(s) open each lock, plus an "X" on the side of the door where the key will be inserted if a keyed door. Complete specifications for all non-Building Standard hardware will also be provided.



- (4) Room Finish and Color Schedule: This information shall be in final form and include locations and specifications for all wall finishes, floor covering and base for each room.
- (5) Construction Notes and Specifications: Complete specifications for every item included except those specified by Master Landlord.

Master Landlord will coordinate all engineering at Tenant's expense.

After completion of construction, Tenant shall supply to Master Landlord a complete set of construction documents for Master Landlord's files.

#### IV. CONSTRUCTION OF TENANT IMPROVEMENTS:

A. **Improvements Constructed by Tenant.** For any work to be performed in connection with Tenant improvements on the Premises by Tenant or Tenant's contractor, the following shall apply:

- (1) Such work shall proceed upon Master Landlord's written approval of (i) Tenant's contractor, (ii) general liability and property damage insurance satisfactory to Master Landlord carried by Tenant's contractor, (iii) detailed plans and specifications for such work, pursuant to Section IV above, and (iv) amount of general conditions, if any, to be paid by Tenant to Master Landlord for the services still provided by Master Landlord's contractor.
- (2) All work shall be done in conformity with a valid building permit when required, a copy of which shall be furnished for Master Landlord before such work is commenced, and in any case, all such work shall be performed in accordance with all applicable governmental regulations. Notwithstanding any failure by Master Landlord to object to any such work, Master Landlord shall have no responsibility for Tenant's failure to meet all applicable regulations.
- (3) All work by Tenant or Tenant's contractor shall be scheduled through Master Landlord.
- (4) Tenant or Tenant's contractor shall arrange for necessary utility, hoisting and elevator service with Master Landlord's contractor and shall pay such reasonable charges for such services as may be charged by Master Landlord's contractor. This will be included in the general conditions of Subsection (1)(iv) above.
- (5) Tenant shall promptly reimburse Master Landlord for costs incurred by Master Landlord due to faulty work done by Tenant or its contractors, or by reason of any delays caused by such work, or by reason of inadequate clean-up.
- (6) Prior to commencement of any work on the Premises by Tenant or Tenant's contractor, Tenant or Tenant's contractor shall enter into an indemnity agreement and a lien priority agreement satisfactory to Master Landlord indemnifying and holding harmless Master Landlord, Landlord, Master Landlord's contractors, the University and the Trustees for any liability, losses or damages directly or indirectly from lien claims affecting the land, the Building or the Premises arising out of Tenant's or Tenant's contractor's work or that of subcontractor or suppliers, and subordinating any such liens to the liens of construction and permanent financing for the Building. As a condition to approving Tenant's contractor or any subcontractor, Master Landlord may require one or more payment or performance bonds covering such work reasonably satisfactory to Master Landlord.
- (7) Master Landlord shall have the right to post a notice or notices in conspicuous places in or about the Premises announcing its non-responsibility for the work being performed therein.

(8) The approval of any detailed plans and specifications for construction of Tenant Improvements is conditioned upon the abatement of such improvements as provided in Section 23 of the Lease.

- B. **Tenant's Entry to Premises.** Tenant's entry to the Premises for any purpose, including without limitation, inspection or performance of Tenant Construction by Tenant's agents, prior to the Commencement Date as specified in Section 3(a) of the Lease shall be scheduled in advance with Master Landlord and shall be subject to all the terms and conditions of the Lease, except the payment of Rent. Tenant's entry shall mean entry by Tenant, its officers, contractors, office planner, licensees, agents, servants, employees, guests, invitees, or visitors.
- C. **Tenant's Telephone and Computer/Data Service.** Tenant is responsible for Tenant's telephone service, computer and data service, obtaining any applicable permits, and related cabling. Tenant shall select and coordinate installation of such communication and information systems with the Landlord through Master Landlord pursuant to Section 36 of the Lease.

V. **TENANT IMPROVEMENT ALLOWANCE:**

- A. **Amount of Allowance.** Master Landlord has agreed to cause the Tenant Improvements contemplated herein to be constructed at Tenant's cost and expense, subject to an allowance used to reimburse Tenant (the "TI Allowance"). The TI Allowance is an amount not to exceed fifteen dollars (\$15.00) per rentable square foot of the Premises, to be applied by Master Landlord toward the cost of the Tenant Improvements. No cost of the construction of the Tenant Improvements shall ever be an obligation of Landlord. The TI Allowance may be paid directly to Tenant's sublessee/franchisee.
- B. **If Tenant Improvement Costs Exceed TI Allowance.** In the event the final budget for the design and construction of the Tenant Improvements exceeds the TI Allowance, Tenant shall cause all such excess costs to be paid to Tenant's contractor or other party(ies) performing construction services, and shall submit documentation supporting such expenditures reasonably acceptable to Master Landlord ("Supporting Documentation"), prior to any amount of the TI Allowance being disbursed. The Supporting Documentation shall include, without limitation, all invoices and backup documentation for such work, appropriate lien waivers, and evidence of application of such excess costs to the total budget for the Tenant Improvements on a line-item basis. After payment of all such excess costs, Master Landlord shall cause the TI Allowance to be disbursed directly to Tenant's contractor on a progress basis as work is completed, subject to receipt of all Supporting Documentation.
- C. **If TI Allowance Exceeds Tenant Improvement Costs.** The TI Allowance shall be applied only to design and construction costs actually incurred in the improvement of the Premises. In the event the TI Allowance exceeds the cost of Tenant Improvements, or in the event Tenant notifies Master Landlord that it will self-finance its Tenant Improvements, Tenant shall be entitled to apply any TI Allowance not applied to the cost of Tenant Improvements to Rent first coming due under this Lease.

**EXHIBIT E**  
**RENT ADJUSTMENT ARBITRATION**

- A. **FAIR MARKET RENTAL VALUE DEFINED.** For all purposes required under this Lease, "**Fair Market Rental Value**" is defined as: An amount in the competitive market that a well-informed and willing lessor, who desires but is not required to lease, would accept, and which a well-informed and willing lessee, who desires but is not required to lease, would pay for the use of the Premises, after due consideration of all the elements reasonably affecting value.
- B. **NOTICE OF RENTAL ADJUSTMENT.** When it elects to adjust the rent, King County will give Lessee at least thirty days written notice of the adjusted rent for the Succeeding Period. The rent as adjusted shall take effect on the Rent Adjustment Date specified in the notice. Unless Lessee, within thirty days following receipt of notice from King County, gives King County written notice of its rejection of the adjusted rent together with Lessee's statement of the amount Lessee considers to be the Fair Market Rental Value, the rent as adjusted by King County will become the rent for the Succeeding Period. If Lessee so notifies King County of its rejection of the adjusted rent, the parties will negotiate in good faith in an attempt to agree upon the rent adjustment.
- C. **ARBITRATION.**
- 1) If, thirty days after King County receives Lessee's notice of its rejection of the rent as adjusted by King County, Lessee and King County cannot agree upon the rent adjustment, the rent for the Succeeding Period will be adjusted by arbitration. Lessee and King County will each select one disinterested arbitrator, and the two selected arbitrators will select a third.
  - 2) King County will give Lessee written notice of the name and address of its selected arbitrator and his or her qualifications. Unless otherwise agreed in writing by King County, Lessee shall give King County written notice of the name and address of Lessee's selected arbitrator and his or her qualifications within thirty days after Lessee's receipt of King County's notice. If Lessee fails to so provide its written notice to King County, Lessee shall be deemed to waive its right to arbitration, the arbitration shall not proceed, and the rent as adjusted by King County shall become the rent for the Succeeding Period.
  - 3) If the two arbitrators have not selected a third arbitrator within thirty days after the selection of the last selected of the two, either Lessee or King County will apply to the Presiding Judge of the Superior Court in King County for the appointment of a third arbitrator.
  - 4) Each arbitrator will be a member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, or other appraisal society or association having equivalent ethical and professional standards. If, in the future, a licensing requirement for real estate appraisers is imposed by any legislative body with jurisdiction, each arbitrator shall also be licensed. The arbitrators shall not only be impartial, but also shall not have been an employee of, or retained under contract by, either party for a period of one year before the arbitration, and shall have no financial interest in the subject of the arbitration. Each party shall have the right to disqualify any arbitrator who does not meet the requirements of this section by sending a written notice to the other party and to all the arbitrators stating the grounds for disqualification. If the disqualified arbitrator is a party-appointed arbitrator, then that party shall, within fourteen days after its receipt of the other party's requirements of disqualification, appoint another arbitrator who meets the requirements of this section to serve in place of the party's disqualified arbitrator. If the

disqualified arbitrator is the third arbitrator, then the two party-appointed arbitrators shall, within fourteen days after their receipt of a party's notice of disqualification, select a third arbitrator who meets the requirements of this section to serve in place of the disqualified arbitrator.

5) The arbitrators shall give the parties sixty days notice in writing of the date on which the arbitration is to commence. Unless otherwise agreed in writing by King County and Lessee, each party shall, no later than thirty days before the arbitration is scheduled to commence, provide the other party with a copy of an appraisal report prepared by a member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, or other appraisal society or association having equivalent ethical and professional standards, that supports that party's claim of Fair Market Rental Value. If Lessee fails to so provide a copy of its appraisal report to the County, Lessee shall be deemed to waive its right to arbitration, the arbitration shall not proceed, and the rent as adjusted by King County shall become the rent for the Succeeding Period.

6) The three arbitrators will determine a fair rent for the premises for the Succeeding Period based upon the Fair Market Rental Value as defined in King County Code 4.56.010. The decision of a majority of the arbitrators will bind both Lessee and King County. Both King County and the Lessee agree that all non-mandatory provisions of RCW 7.04A are waived and that, unless requested by a majority of the arbitration panel, no formal hearing will be held, no witnesses will testify, and no attorney's will participate in the arbitration. At the conclusion of the arbitration, the arbitrators will submit a written report in counterpart copies to Lessee and King County, which shall state their determination of the rent to be paid by Lessee for the Succeeding Period. The report shall contain all pertinent evidence that led to their conclusion together with an explanation of their reasoning for such conclusion

D. COST OF ARBITRATION. Each party shall pay for its appraisal and shall bear the expense of its own counsel, and any other of its representatives and/or experts that may be required to prepare for or, in the event it is requested by the arbitration panel, participate in the arbitration. Each party shall also pay the fees and expenses of its selected arbitrator. The fees and expenses of the third arbitrator and all other costs of the arbitration will be divided equally between Lessee and King County.

E. RENT PENDING ADJUSTMENT AND RETROACTIVITY. In the event resolution of the rental adjustment is not completed either by negotiation or arbitration prior to the Rent Adjustment Date:

- 1) Lessee shall, pending resolution of such rent adjustment, continue to pay King County the rent then in effect;
- 2) The adjusted rent, as determined either by negotiation or arbitration, shall be retroactive to the Rent Adjustment Date; and
- 3) Lessee will pay interest up to a maximum of twelve percent per annum commencing on the Rent Adjustment Date on any sum due as a result of a retroactive increase.