

**LEASE OF PREMISES BETWEEN
SUBWAY REAL ESTATE LLC AND THE CITY OF AURORA**

DATE OF LEASE: _____, 2017 (the "Lease Execution Date").

TERM OF LEASE: November 1, 2016 to October 31, 2021

LOCATION OF PREMISES: The Premises consists of approximately 1,400 square feet of commercial space in a City building, commonly known as **Stolp Island Place**, located at 5 E. Downer Place, Aurora, Illinois 60505 (the "Premises").

USE AND PURPOSES: Commercial space for **Food Service Establishment**.

LESSEE

Name: Subway Real Estate, LLC

Address: 325 Sub Way
Milford, CT 06461
See Section 29

Contact: Same as Above

LESSOR

Name: The City of Aurora, an Illinois municipal corporation,
Kane, Will, DuPage and Kendall Counties, Illinois
(the "Lessor")

Address: 44 E. Downer Pl.
Aurora, IL 60505

Contact: Chuck Nelson
Property Manager

In consideration of the mutual covenants and agreements herein stated, Lessor leases to Lessee and Lessee leases from Lessor solely for the above "Purposes" the premises designated above (the "Premises"), together with the appurtenances thereto, for the above Term.

1. **TERM:** The Term of the Lease is for a five (5) year term
2. **RENT:** see below **SECURITY DEPOSIT:** see below
- A. **Rent:** Lessee shall pay as rent ("Rent") for the use and occupancy of the Premises, rent during the term of this Lease or until terminated, without notice or demand, and without deduction or set-off of any kind other than as provided for herein, as follows:

Year One: Rent, \$1,021.63 per month
Year Two: Rent, \$1,042.06 per month
Year Three: Rent, \$1,062.90 per month
Year Four: Rent, \$1,084.16 per month
Year Five: Rent, \$1,105.85 per month

Rent is to be made payable to the "City of Aurora," to be delivered to the City's Property Manager at Lessor's address stated above or such other address as Lessor may designate in writing. Lessee agrees to pay Rent in advance to Lessor on or before the first day of each and every month. The amount of the first month's Rent shall be paid upon the execution of this Lease. If the Commencement date is not the first day of a month, then the Rent from the Commencement Date until the first day of the following month shall be prorated on a per diem basis at the rate of one-thirtieth (1/30th) of the monthly installment of the Rent payable during the first year of the Term.

- B. **Security Deposit:** Upon the execution of this Lease, Lessee agrees to deposit with Lessor the sum of one month's rent which is One Thousand Twenty-One Dollars and 63/100 (\$1,021.63) to be held as a Security Deposit to secure the faithful performance of each and every provision of this Lease. If Lessee defaults with respect to any provision of this Lease, including, but not limited to, the payment of Rent, Lessor may (but shall not be required to) use, apply or retain all or any part of the Security Deposit for the payment of any Rent or any other sum in default, or for the payment of any amount which Lessor may spend or become obligated to spend by reason of Lessee's default, or to compensate Lessor for any other loss or damage which Lessor may suffer by reason of Lessee's default. If any portion of said Security Deposit is so used or applied, Lessee shall, within ten (10) days after written demand therefore, deposit cash with Lessor in an amount sufficient to restore the Security Deposit to its original amount and Lessee's failure to do so shall be a default under this Lease. On termination of this Lease and full payment of all amounts due and performance of all of Lessee's covenants and agreements, the Security Deposit shall be returned to Lessee. The Lessor shall not be required to keep the Security Deposit separate from its general funds, shall be entitled to retain any interest earned on the Security Deposit and is not obligated to pay such accrued interest to the Lessee. The Lessee agrees that no portion of the Security Deposit shall be used by Lessee to pay any portion of the Rent
- C. **Interest On Late Payments:** Each and every installment of Rent and additional amounts herein specified which shall not be paid **WITHIN 10 DAYS OF ITS DUE DATE** shall bear interest at the rate of eighteen percent per (18%) annum from the date when the same is payable under the terms of this Lease until the same shall be paid.
- D. **Lease Extension:** Provided that Lessee is not then in default hereunder at the time the extension period is set to commence, Lessee and Lessor have the mutual option of extending this Lease for two (2) consecutive period(s) of two (2) years. The options shall be automatically exercised unless Lessee and Lessor provide the other with written notice of its intention not to renew this Lease at least ninety (90) days prior to the expiration of the then current term. Rent shall increase at a rate of 2% per year including all years in which the Lease is extended.
3. **USE, ZONING, AND SIGNAGE:**
- A. Prior to the commencement of the Term, Lessee shall, at its sole cost and expense, have obtained any and all governmental approvals and other approvals that may be required in connection with the Use and Purposes specified herein of the Premises. While Lessee has a right, subject to such approval(s), to use the Premises for the Use and Purposes specified herein, Lessee may not use the Premises at any point during the Term in a manner that interferes with or disturbs the use of the Premises by Lessor for any lawful purposes.
- B. Lessee acknowledges that the Premises are currently zoned Downtown Core Zoning District, and that under such zoning classification, the Use is a permitted use in that District. If Lessee desires to propose a use in addition to or other than the Use and Purposes specified herein, it shall submit a request in writing to Lessor explaining the nature of such use and the reasons for such a request. Lessor agrees to consider such request and, in the case of a permitted use (as allowed under the City's Zoning Code) other than the Use and Purposes specified herein, advise Lessee of Lessor's decision within sixty (60) days after receipt of the request and all supporting documentation required by Lessor. Any uses other than permitted uses under the Zoning Code that Lessee may wish to propose shall be subject to all requirements of the Zoning Code prior to the commencement of such use(s).
- C. Lessee shall operate a **Food Service Establishment** on the Premises consisting of the sale of sandwiches, soups, beverages and other such food items. Lessee's use shall be defined as a restaurant for on and off premise consumption or for any other lawful purpose. Lessor acknowledges that Lessee's menu consists primarily of sandwiches, wraps, salads and related items and that from time to time Lessee may add test items to its menu. Lessor further agrees that Lessee may add, delete and/or change its menu without the prior consent of the Lessor provided that Lessee complies with all local codes and ordinances, and that the Lessor has no preexisting agreements prohibiting such menu additions. Lessee may sell fruit smoothies

and/or yogurt. In no event shall Lessee's menu be construed as limited to sandwiches and salads. Lessee may, but shall not be required to, remain open seven (7) days per week twenty-four (24) hours per day. Lessor acknowledges that the normal operation of Lessee's business will create certain aromas including but not limited to the aroma of baking bread. Nothing in this paragraph is intended to limit Lessor's right to address nuisance activity relating to Lessee's business, including, without limitation, noxious smells, however, bread baking in and of itself shall not be determined to be a "noxious smell".

- D. Lessee's use of the Premises shall conform to all pertinent and applicable City Codes, ordinances and regulations. Lessee shall not allow, keep or store on the Premises any flammable or explosive liquids or materials, except such liquids or materials as may be necessary for use in the business of the Lessee, and in such case, any such substances shall be delivered and stored in amount, and used, in accordance with the City's fire code requirements and the rules of the applicable federal, state, county or local regulations and laws. Lessee shall not use or permit the Premises to be used for any purpose which shall create a safety hazard upon or imperil the safe use of the Premises, or engage in any activity which is or would be disapproved by the City for reasons of safety or of undue interference with commuter uses.
- E. Lessee shall not place any kind of temporary or permanent signs on the Premises without Lessor's prior written consent and approval of the content, design and location, which consent and approval may be withheld in its sole discretion. All signs must conform to the character and design of the Premises as determined by the City in its sole discretion. All signs must comply with applicable City Codes, ordinances and regulations. No political or election signs shall be placed or maintained on the Premises at any time.
- F. Lessee shall have no authority to post or place any awnings or other fixtures or attachments on the exterior of the Premises without having first received Lessor's written consent and approval of the content, design and location of the awning, fixture or attachment, which consent and approval may be withheld in its sole discretion. Such awnings, fixtures and attachments must conform with the character and design of the Premises, as determined by the Lessor in its sole discretion, and must comply with applicable City Codes, ordinances and regulations.

Lessee with prior written consent of Lessor, may construct the Premises in accordance with standard SUBWAY® decor and to erect standard SUBWAY® signs/awnings on the building. Lessee's "standard SUBWAY signs" shall be in accordance with any and all applicable ordinances and other applicable laws. The phrase "standard SUBWAY® signs" shall be deemed to include existing pole signs, monument signs and awnings. Additionally, Lessee may use standard SUBWAY® window advertising including but not limited to LED "open" signs and static cling(s), provided that such signs comply with any and all ordinances or other applicable laws.

4. INSURANCE; PAYMENT OF PREMIUMS; TAXES: Lessee shall maintain property and casualty insurance on any of its property located at the Premises, including goods, equipment and interior improvements, as it may deem reasonable and necessary. Lessor shall have no liability for damage, destruction or loss of or to such property.

Lessee agrees in addition, to maintain, during the life of this Lease, at its expense, the following types of insurance, written on the comprehensive form and as an "occurrence" policy, and in not less than the specified amounts:

- A. **Comprehensive General Liability** – insuring Lessee against liability for personal injury, death or damage to property arising out of the use of the Premises by Lessee. Required policy limits are not less than two million dollars (\$2,000,000) in the aggregate and one million dollars (\$1,000,000) per occurrence in the event of bodily injury or death to one or more persons, and in an amount of not less than one million dollars (\$1,000,000) for property damage.
- B. **Workers' Compensation and Employers' Liability** – Workers' Compensation coverage with statutory limit and Employers' Liability limits of \$500,000 per accident.

Prior to the effective date of this Lease, and annually thereafter and at any such time a new policy is issued, Lessee shall provide insurance certificate(s) to the Property Manager that show "the City of Aurora, and its appointed and elected officials, employees, volunteers, attorneys and agents" as additional primary non-contributory insureds under all insurance

coverages required by this Lease, and if a Certificate of Insurance is provided, it must specifically confirm that the policy contains this notice provision. The insurance coverages required by this Lease shall be primary to any coverage maintained by Lessor. The policy shall contain a provision that it cannot be cancelled, non-renewed or modified in any manner without at least thirty (30) days advance written notice to Lessor, and if a Certificate of Insurance is provided, it must specifically confirm that the policy contains this notice provision. Lessee shall comply with each of the terms and conditions relative to insurance coverage for the Premises. Failure to timely pay any insurance premiums, causing a loss or lapse in coverage, shall be grounds for the immediate suspension of business activities.

Lessee shall carry fire and extended coverage insurance insuring its interest in Lessee's improvements on the Premises and its interest in its furniture, inventory, equipment and supplies, and Lessee shall waive any rights of action against Lessor for loss or damage covered by such insurance, and the policy shall permit such waiver.

Lessee shall pay on a timely basis all of the premiums for the insurance coverage required by this Lease.

Lessee shall comply with each of the terms and conditions relative to insurance coverage for the Premises. Failure to timely pay any insurance premiums, causing a loss or lapse in coverage, shall be considered an event of default of the Lease. Lessee expressly acknowledges that Lessee is leasing the Premises at Lessee's own risk. In no event shall Lessor have any financial responsibility to Lessee as a result of any loss or damage occurring on the Premises. Lessee shall waive any rights of action against Lessor for loss or damage covered by the insurance required hereunder, and the policy shall permit such waiver. Such policy shall be provided by an insurance company duly authorized to do business in Illinois and acceptable to Lessor.

Lessor recognizes Lessee will continue to use its Gold Standard Insurance policy as required by Franchisor.

C. PROPERTY TAXES. Lessee is responsible for paying all applicable real estate taxes.

5. CONDITION AND UPKEEP OF PREMISES: Lessee has examined and knows the condition of the Premises and has received the same in good order and repair, and acknowledges that no representations as to the condition and repair thereof have been made by Lessor, or its agent, prior to or at the execution of this Lease that are not herein expressed. The Lessee is taking possession of the Premises in "AS IS, WHERE IS" condition. Lessee, at Lessee's cost, will keep the interior of the Premises, including all improvements that it makes to the Premises and any existing appurtenances, in good repair, replacing all broken glass with glass of the same size and quality as that broken, will maintain and repair all plumbing fixtures, electrical systems, heating systems and/or air conditioning systems, and in the event of failure of same, shall replace such fixtures or systems with others of equal quality.

Lessee, at Lessee's sole expense, will maintain the Premises and its improvements in accordance with all federal, state, county and local regulations, laws and ordinances applicable thereto, as well as lawful requirements of all competent governmental authorities, and keep said improvements from deterioration due to ordinary wear and from falling temporarily out of repair.

Lessee agrees to store all waste, scrap, garbage, etc., in enclosed metal or other approved containers and agrees not to permit any non-operating motor vehicles or equipment to be stored on the Premises. Waste containers are to be stored within the building or away from public view at a location on or adjacent to the Premises. The waste containers shall be maintained in an orderly and slightly manner. Lessee agrees to pay the cost for waste refuse removal per Section 5 above and to maintain a schedule of pick-ups at least bi-monthly.

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

6. LESSEE NOT TO MISUSE, SUBLET; ASSIGNMENT: Lessee will not permit the Premises to be used for any unlawful purpose, or for any purpose that will injure the reputation of the Lessor or disturb the neighborhood or public, and will not permit the same to remain vacant or unoccupied for more than fourteen (14) consecutive days (except due to inclement weather); and will not allow any temporary or permanent signs, cards or placards of any kind to be posted (other than the City-approved signage for the Premises), or placed thereon, nor permit any alteration of or addition to any part of the Premises, except as approved by written consent of Lessor; all alterations and additions to the Premises shall remain

for the benefit of Lessor unless otherwise provided in the consent aforesaid. Lessor acknowledges that Lessee may close the business temporarily in order to retake the premises from the Franchisee. In the event of such closures, Lessee shall make every effort to minimize the time the business is closed. Nothing in this paragraph is intended to limit Lessor's right to terminate this Lease should the business remain closed longer than six (6) months.

Lessor represents that the permitted use of the Premises as described in this Lease shall not cause an increase in the rate of Lessor's insurance, so long as Lessee complies with all laws, ordinances, rules and regulations of governmental authorities now and hereafter in effect. Lessor agrees that if Lessee's future use or occupancy of the Premises results in an increase in Lessor's insurance premiums, that Lessor will so notify Lessee, and Lessee shall have the option of either 1) discontinuing the use which results in the increased premium, or 2) paying the total increase of Lessor's insurance premium to the extent that such increase was caused by Lessee's use or occupancy of the Premises.

Lessee shall have no right to assign, sublet or transfer this Lease or any interest herein, or allow the Premises to be occupied in whole, or in part, by any other person, without the express written consent of the Lessor. Consent to the approval of a request to assign, sublet, or transfer this Lease, or to occupation by any other person, may be withheld in the sole discretion of the City Council of the Lessor. Any assignment, subletting, or transfer of this Lease, or occupancy, without Lessor's prior written consent, shall, at Lessor's option, be deemed to be void and of no force or effect. Notwithstanding any assignment, sublet, transfer or occupancy, Lessee shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants or conditions of this Lease.

Notwithstanding anything in the Lease to the Contrary, Lessee may assign this Lease or *sublet the premises to any bona-fide Subway licensee/franchisee of Doctor's Associates, Inc., who has been approved by normal review procedures which 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 school without the prior consent of the LESSOR or written notice to the LESSOR.*

Such assignment or subletting shall not alter the Lessee's responsibility to the LESSOR under this Lease. Lessor agrees to accept rent from the Lessee, its assignee or sublessee

7. INDEMNIFICATION: Except if caused by the negligence of the Lessor, its agents or employees, Lessee shall at all times protect, indemnify and hold harmless the Lessor, and its past, current and future officers, appointed and elected officials, employees, volunteers, attorneys, and agents, and indemnify them against and from any and all causes of action, claims, demands, liabilities, losses, expenses, penalties, damages or charges of any kind, including reasonable attorneys' fees and administrative expenses, that may arise, or be alleged to have arisen, out of or in connection with the existence of this Lease, the failure of Lessee in any respect to comply with and perform all of the requirements and provisions of this Lease, any violation of any laws or ordinances relating to or arising out of the operation of Lessee, or out of or in connection with any actions of Lessee or its employees, invitees or agents on the Premises, whether occasioned by the actions or omissions of Lessee or those persons using the Premises.

Except if caused by the negligence of the Lessor, its agents or employees, Lessee shall at all times protect, indemnify and hold harmless the Lessor, and its past, current and future officers, appointed and elected officials, employees, volunteers, attorneys and agents, against and from any and all causes of action, claims, demands, liabilities, losses, expenses, penalties, damages or charges of any kind, including reasonable attorneys' fees and administrative expenses, that may arise, or be alleged to have arisen, out of or from any actions or omissions or any accident or other occurrence on or within the Premises, or occurring as a consequence of any activities performed on the Premises, causing injury, illness or death to any person or damage to property, except if caused by the omission or fault of the Lessor or its employees.

Lessee waives and releases all claims and causes of action it has or may have in the future against Lessor, and its past, current and future officers, appointed and elected officials, employees, volunteers, attorneys, and agents, for losses or damages of any kind sustained by Lessee relating to or arising out of any accident or other occurrence on or within the Premises, or occurring as a consequence of any activities performed on the Premises, causing injury, illness or death or occurring resulting directly or indirectly from any act, actions or omissions of Lessee or its employees, invitees and agents, or the operation of its businesses on the Premises, except if caused by the omission or fault of the Lessor or its employees.

8. **NON-LIABILITY OF LESSOR:** Lessor shall not be liable for any damages of any kind occasioned by its failure to keep the Premises in repair, or for any damage done or occasioned by or from plumbing, gas, water, sprinkler, steam or other pipes or sewerage or the bursting, leaking or running of any pipes, tank or plumbing fixtures, in, above, upon or about Premises or any building or improvement thereon or for any damage occasioned by water, snow or ice being upon or coming through the roof, skylights, trap door or otherwise, or for any damages arising from acts or neglect of any owners or occupants of adjacent or contiguous property, except due to the omission or fault of Lessor or its employees.

9. **ACCESS TO PREMISES:** Lessee will allow Lessor reasonable access to the Premises with prior 24 hours notice and during normal working hours, provided that such access shall be conducted in a manner as not to unreasonably interfere or disrupt the activities of Lessee or interfere with Lessee's quiet enjoyment of the Premises, for the purpose of examining or exhibiting the same, or to make any needful repairs, or alterations thereof which Lessor may see fit to make. In emergency situations, no prior notice shall be required, but the Lessor shall endeavor to provide prompt notice to the Lessee of the emergency events that required immediate access to the Premises.

10. **QUIET ENJOYMENT:** So long as Lessee is in possession of the Premises, and is not in default beyond any applicable cure period provided for herein, Lessor agrees that Lessee may peacefully and quietly enjoy the Premises without disturbance or hindrance by any person holding under or claiming through the Lessor.

11. **CONTRACTS AND SERVICE AGREEMENTS:** The Lessee shall not permit any management, service, equipment, supply, maintenance, or other agreements relating to the Premises to be binding on the Lessor in the event that this Lease is terminated or at the time of its expiration.

12. **NO LIENS, MORTGAGES OR OTHER ENCUMBRANCES:** The Lessee shall not place or allow any liens, mortgages, security interests, pledges, claims of others, equitable interests, or other encumbrances to attach to or to be filed against title to the Premises. The Lessee shall not use the Lease or leasehold interest as security or collateral for any financing of any kind nor shall the Premises, Lease or leasehold interest be pledged or collateralized for purposes of securing any debt, loan, note, mortgage or contract. The Lessee shall indemnify and hold harmless the Lessor and its Premises, from any such lien, encumbrance or claim therefor and from any and all cost or expense incurred in connection with any such lien, encumbrance or claim, including, attorney's fees and expenses incurred with removing, settling or contesting such lien, encumbrance or claim. In the event Lessee fails to discharge or insure over such lien within thirty (30) days of written notice by Lessor. Lessor shall have the further right, without notice to Lessee, to cause the removal of any lien (but Lessor shall have no obligation to do so) and to collect upon demand from Lessee all of Lessor's costs and expenses, including, without limitation, attorneys' fees and expense, for removing same.

13. **UCC LIENS and MECHANIC'S LIENS:** Lessee shall promptly pay all creditors, equipment providers, contractors, mechanics and materialmen, and shall not permit or suffer any UCC or Mechanics or other similar lien to be filed against or attach to the Premises or any part thereof. If any mechanic's, materialman's or other similar lien shall at any time be filed against or attach to the Premises or any part thereof on account of any materials furnished or claimed to have been furnished, or on account of any work, labor or services performed or claimed to have been performed, for or at the direction of Lessee, Lessee shall, at its sole cost and expense, promptly cause the same to be discharged of record by payment, bond, order of court, or otherwise. The Lessee shall indemnify and hold harmless the Lessor and its Premises, from any such lien, encumbrance or claim therefor and from any and all cost or expense incurred in connection with any such lien, encumbrance or claim, including, attorney's fees and expenses incurred with removing, settling or contesting such lien, encumbrance or claim. In the event Lessee fails to discharge or insure over such lien within thirty (30) days of written notice by Lessor. Lessor shall have the further right, without notice to Lessee, to cause the removal of any lien (but Lessor shall have no obligation to do so) and to collect upon demand from Lessee all of Lessor's costs and expenses, including, without limitation, attorneys' fees and expense, for removing same. Lessor agrees to subordinate lien to Lessee's financial institution.

14. **HOLDING OVER; REMOVAL OF PERSONAL PROPERTY:** Lessee shall, at the termination of this Lease by lapse of time or otherwise, yield up immediate possession to Lessor, and failing so to do, will pay as liquidated damages, for the whole time such possession is withheld, the sum of \$100.00 PER DAY FOR THE PERIOD OF TIME OF HOLDOVER to be first deducted from the Security Deposit and then any outstanding balance shall be payable from Lessee. If such costs exceed the Security Deposit, the Lessor shall have a right of action against Lessee for the balance of such costs; but the provisions of this clause shall not be held as a waiver by Lessor of any right of re-entry as hereinafter set forth; nor shall the receipt of said Rent or any part thereof, or any other act in apparent affirmance of tenancy, operate as a waiver of the right

to forfeit this Lease and the term hereby granted for the period still unexpired, for a breach of any of the covenants herein. The Lessee, at his or her cost, shall remove all of the vehicles and other personal property from the Premises at the time this Lease expires or terminates. Failure of Lessee to remove such property shall be a breach of this Lease and Lessor shall have the right to deduct all removal and disposal costs from the Security Deposit and if such costs exceed the Security Deposit then the Lessor shall have a right of action against Lessee for the balance of such costs.

15. NO RENT DEDUCTION OR SET OFF: Lessee's covenant to pay Rent is and shall be independent of each and every other covenant of this Lease. Lessee agrees that any claim by Lessee against Lessor shall not be deducted from Rent nor set off against any claim for Rent in any action.

16. RENT AFTER NOTICE OR SUIT: It is further agreed, by the Parties hereto, that after the service of notice, or the commencement of a suit or after final judgment for possession of the Premises, Lessor may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, said suit, or said judgment.

17. ESTOPPEL CERTIFICATES: At any time and from time to time, both Parties agree, upon twenty (20) days written request in writing from the other Party, to execute, acknowledge and deliver to Lessor a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates to which the Rent and other charges have been paid, and any other factual data relating to this Lease or the Premises which Lessor may request.

18. ENVIRONMENTAL MATTERS: The Lessee represents, covenants and warrants that Lessee's operation in, on or under the Premises shall be in compliance with all applicable environmental laws. The Lessee shall not use, generate, transport, store, dispose of or release any hazardous substance, material, contaminant, or pollutant, as defined by the any federal or state environmental laws ("Hazardous Materials"), in, under, on or about the Premises. The Lessee, at its cost, shall remediate any Hazardous Materials or other dangerous environmental condition that it (or its employees, agents or contractors) creates or causes with respect to the Premises, in accordance with all federal, state, county and local applicable laws and regulations. The term "Hazardous Materials" in addition shall include any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Illinois, or the United States government, including, but not limited to, any material or substance which is: a) petroleum or a petroleum-based substance; b) asbestos; c) polychlorinated biphenyls; d) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 3121) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1371); e) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6901); or g) subject to regulations as a hazardous chemical substance pursuant to Section 6 of the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq. (15 U.S.C. Section 2605). Except for any Hazardous Materials or other environmental conditions existing on or under the Premises prior to the first day of this Lease, the Lessee shall indemnify and hold the Lessor, and its agents, harmless against any claim, suit, loss, liability or damage, including, attorney's fees and expenses incurred by the Lessor, and its agents, in defending itself or complying with applicable laws and regulations, arising out of or relating to the disposal or release of any Hazardous Materials in, under, on or about the Premises, by the Lessee that occurs on or after the first day of this Lease. Lessee shall notify Lessor in writing on the first date of the Lease of any chemicals that might be needed to facilitate Lessee's use of the Premises. The Lessee agrees that it is taking possession of the Premises in "AS IS, WHERE IS" condition, including all known Hazardous Materials or other environmental conditions existing on or under the Premises prior to the first day of this Lease and that it shall comply with each of the environmental, indemnification, defense covenants set forth herein.

Lessor agrees to hold the Lessee harmless from any and all past, present and future environmental problems not caused by the direct result of the operation of Lessee's business.

19. COUNTERCLAIM: If Lessor commences any proceedings for non-payment of Rent or other sums due hereunder, Lessee will not interpose any voluntary counterclaim relating to such matters in such proceedings. This shall not, however, be construed as a waiver of Lessee's right to assert such claims in a separate action brought by Lessee. The covenants to pay rent and other amounts hereunder are independent covenants and Lessee shall have no right to hold back, offset or fail to pay any such amounts by reason of default by Lessor or for any other reason whatsoever.

20. WAIVER OF TRIAL BY JURY AND RIGHTS OF REDEMPTION: To the extent permitted by law, Lessee waives any and all right to a trial by jury and rights of redemption granted by or under any present or future laws if Lessee

is evicted or dispossessed for any cause, or if Lessor obtains possession of the Premises due to Lessee's default under this Lease or otherwise.

21. CONDEMNATION: In the event that all or substantially all of the Premises shall be taken by any governmental agency or utility that has the power of condemnation, then either Lessor or Lessee may terminate this Lease by giving written notice of termination within thirty days after such condemnation, in which event this Lease shall terminate effective as of the date of such condemnation. Condemnation shall be defined to mean the time when a condemnation or eminent domain proceeding is actually filed in a court of competent jurisdiction. In the event that a portion of the Premises, but not all, is taken by condemnation, the remaining Premises must be reasonably suitable for Lessee, without further modification to the Premises, to continue its usual and customary use from the Premises. If not, Lessor or Lessee shall have the right to terminate the Lease. If this Lease so terminates, Rent and any other payments due under this Lease shall be paid through and apportioned as of the filing date of such condemnation lawsuit. If the Lease is not terminated, the Lease shall remain in full force and effect. Subject to the Lessor's exclusive right to receive just compensation for taking of the fee, Lessee may pursue its own claim against the condemning authority for compensatory damages and moving expenses resulting from the condemnation of its leasehold interest. Each Party shall have the right to maintain its own respective action against the condemning authority for its respective damages and neither Party shall have any interest in any award granted to the other. The foregoing right of termination shall not apply with respect to any condemnation for street improvements or widening, or for public utility easements.

22. SURRENDER OF PREMISES: Upon the termination of this Lease, whether by forfeiture, lapse of time or otherwise, or upon the termination of Lessee's right to possession of the Premises, Lessee will at once surrender and deliver up the Premises, together with all improvements thereon, to Lessor in good condition and in good repair, reasonable wear and tear excepted and Lessee shall have removed all vehicles, equipment, garbage, debris and other personal property from the Premises. The entire Premises shall be returned to Lessor free and clear of all rubbish and debris, and broom clean. All attached improvements made by Lessee during the Term of the Lease shall remain on the Premises and become the property of Lessor upon termination. Lessee shall turn over the Premises to Lessor, in good condition and repair, loss by fire and ordinary wear accepted, and will deliver the keys therefore at the place of payment of said Rent. Nothing contained in this Section shall limit the right of Lessor to receive liquidated damages as set forth in Section 17 (Holding Over) of this Lease.

23. MODIFICATIONS TO PREMISES AND STRUCTURES: Lessee shall not make any replacement, alteration, improvement or addition to or removal from the Premises (hereinafter "alteration"), without prior written consent of Lessor, which consent may be withheld in its sole discretion. In the event Lessee proposes to make any alteration, Lessee shall, prior to commencing such alteration, submit to Lessor for prior written approval: (i) detailed plans and specifications; (ii) including the name, addresses and copies of contracts for all contractors; (iii) all necessary permits evidencing compliance with all applicable governmental rules, regulations and requirements; (iv) certificates of insurance in form and amounts required by Lessor, naming Lessor and any other parties designated by Lessor as additional insureds; and (v) all other documents and information as Lessor may reasonably request in connection with such alteration. Neither approval of the plans and specifications nor supervision of the alteration by Lessor shall constitute a representation or warranty by Lessor as to the accuracy, adequacy, sufficiency or propriety of such plans and specifications or the quality of workmanship or the compliance of such alteration with applicable law. Lessee shall pay the entire cost of any alteration. Each alteration shall be performed in a good and workmanlike manner, in accordance with the plans and specifications approved by Lessor, and shall meet or exceed the standards for construction and quality of materials established by Lessor for the Building. In addition, each alteration shall be performed in compliance with all applicable governmental and insurance company laws, regulations and requirements. Notwithstanding anything to the contrary, Lessee may use the Franchisor's standard interior décor, provided that such décor does not adversely affect the structural integrity of the Premises.

24. DEFAULT: In the event of a failure by either Party to fulfill any of its obligations under this Lease, or in the event of a material breach of any representation or warranty of either Party under this Lease, which failure or breach continues after a notice and a demand for cure and the applicable period for cure has passed or within such reasonable time period after notice of the default if either Party initiates and actively pursues good faith remedial action to cure the default within the initial cure period, such Party shall be in default, and the non-defaulting Party may seek any available and appropriate remedy at law or in equity, including without limitation declaratory and injunctive relief, mandamus, specific performance and rescission, in addition to remedies available under the Lease. In the event of any litigation to enforce the

provisions of this Lease, the prevailing Party in such litigation shall be entitled to recover its costs of litigation, including reasonable attorneys' fees and costs.

A. Events of Default: Each of the following shall constitute an event of default under this Lease:

- (1) Lessee fails to pay any installment of Rent, Taxes or Insurance Payments when due, or payments pursuant to any Section hereunder within ten (10) days written notice by Lessor, or fails to replenish Security Deposit to its highest previous balance within ten (10) days after Lessor requests replenishment;
- (2) Lessee breaches any representation, covenant or warranty or obligations with respect to Hazardous Materials or environmental laws, causes or permits a dangerous or hazardous condition to exist in the Premises or a condition that jeopardizes Lessee's or Lessor's insurance coverage, and fails to remedy such condition after written notice to Lessee;
- (3) Failure by either Party to observe or perform any other covenant or provision of this Lease to be observed or performed by it and a subsequent failure to cure such failure within thirty (30) days after written notice from the other Party;
- (4) The interest of Lessee in the Lease is levied upon under execution or other legal process;
- (5) A petition is filed by or against Lessee to declare Lessee bankrupt or seeking a plan of reorganization or arrangement under any Chapter of the Bankruptcy Code (as now or hereafter amended), and if filed against Lessee, such petition is not rescinded, or the bankruptcy proceeding is not dismissed, within forty-five (45) days after such filing;
- (6) A receiver is appointed for Lessee or for Lessee's property;
- (7) The voluntary or involuntary dissolution of Lessee; or
- (8) Lessee abandons the Premises, or the Premises become substantially vacant. Lessor acknowledges that Lessee shall have the right to close the business temporarily in order to retake the premises from the Franchisee subject to the terms in Paragraph 6.

B. Lessor's Specific Remedies. Upon the occurrence of an event of default by Lessee under this Lease after the cure period, if any, has expired, Lessor, at its option, with notice as hereinabove provided to Lessee may, in addition to all other rights and remedies provided in this Lease, or available to Lessor at law or in equity: terminate this Lease and Lessee's right to possession of the Premises and recover all damages to which Lessor is entitled under law. Lessee shall, upon termination, immediately remove its facilities, equipment and property from the Premises. Lessor's damages shall specifically include, without limitation (a) all reasonable expenses of reletting (including attorney's fees, marketing costs and brokerage commissions), plus (b) the present value of the amount by which all Rent reserved under this Lease for the balance of the term exceeds the fair market rental value of the Premises for the balance of the term (allowing for a reasonable period of exposure on the open market before realization of such fair market rental value). Notwithstanding any language elsewhere in the Lease to the contrary, Rent and other payments hereunder to be paid to Lessor by the Lessee during the term hereof shall continue to be paid as they become due and payable under the terms of this Lease. In the event of termination of this Lease by Lessor, said obligation shall remain due and payable as payments of damages in monthly installments as they would have become due under the terms of this Lease, but for such termination or default. In no event shall Lessor be obligated to pay Lessee any amounts nor shall Lessee be entitled to any credits by reason of the application of such present value formula.

Notwithstanding any provision in this Lease to the contrary, Lessor and Lessee agree that Lessee's aggregate liability in the event of default shall not exceed the lesser of six (6) months' monthly rent or rent due for the remainder of the Lease. Furthermore, Lessor acknowledges an affirmative duty to mitigate damages and shall in no event accelerate rent. Upon the termination of this Lease, whether in accordance with this section or

otherwise, Lessee shall be permitted access to the Premises to remove any and all logo or trademark items. Such items shall include, but shall not be limited to, signage and murals

25. NO-SMOKING FACILITY: The Premises are a no smoking facility. Lessee must comply with this provision and ensure that all patrons and employees of Lessee comply with this provision.

26. RELATIONSHIP OF PARTIES: Nothing contained herein shall be deemed or construed by the parties hereto, nor by any other party, as creating the relationship of principal and agent or of partnership, or of joint venture by the parties hereto, and neither the method of computation of Rent nor any other provisions contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship other than the relationship of Lessor and Lessee.

27. FINANCIAL RESOURCES: As a condition of executing the Lease and to ensure the performance of all of her obligations and covenants required under this Lease, Lessee warrants that he/she/it has the financial resources at his/her/its disposal necessary to undertake and fulfill all of the obligations and duties set forth under this Lease and to provide the indemnification of the Lessor and its Agents and Affiliates as provided for in this Lease.

28. BROKER'S COMMISSION: The Parties each warrant to the other that they have used no brokerage entity in connection with this Lease, and that no brokerage fees or commissions are owed in connection therewith. Each Party shall, and does hereby indemnify, save harmless and agree to defend the other from any liability for any such fees and commissions.

29. NOTICES: All notices to or demands upon Lessor and Lessee desired or required to be given under any of the provisions of this Lease, shall be in writing and served by either certified mail, return receipt requested, by nationally-recognized overnight delivery service (such as Federal Express), or by personal delivery at the addresses listed for the Parties at page one above or as otherwise directed by the Parties in writing. Notices shall be deemed received at the earlier of actual receipt or one business day after deposit with an overnight courier as evidenced by a receipt of deposit or three (3) business days following deposit in the U.S. mail, as evidenced by a return receipt.

Any notice which is to be given to Lessee shall be deemed sufficiently given if sent by Certified or Registered Mail, postage prepaid, addressed as follows:

- Lessee:
- (1) Subway Real Estate, LLC
325 Sub Way
Milford, CT 06461,
 - (2) To the Development Agent at:
Subway Development of IN & IL
16800 Chicago Ave.,
Lansing, IL 60438
 - (3) And the demised premises.

Lessor address for notice is: 44 East Downer Place, Aurora, Illinois, 60507, attn. Corporation Counsel.

30. OTHER CONDITIONS:

- A. CAPTIONS:** The captions of this Lease are for convenience only and are not to be construed as part of this Lease and shall not be construed as defining, limiting, or construing in any way the scope or intent of the provisions hereof.



- B. **COVENANTS BINDING ON SUCCESSORS:** All of the covenants, agreements, conditions and undertakings contained in this Lease shall extend and inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties to this Lease, and wherever in this Lease reference is made to either of the parties hereto, it shall be held to include and apply to, successors and assigns of such party. Nothing herein contained shall be construed to grant or confer upon any person, firm, corporation or governmental authority, other than the parties hereto, their heirs, executors, administrators, successors and assigns, any right, claim or privilege by virtue of any covenant, agreement, condition or undertaking contained in this Lease.
- C. **ENTIRE AGREEMENT; AMENDMENTS MUST BE IN WRITING:** This Lease, together with the Exhibits attached thereto (all of which are attached hereto or incorporated herein by this reference), contains the entire agreement and understanding between the parties and supersedes any prior understanding or written or oral agreements between them with respect to the subject matter of this Lease. There are no representations, agreements, arrangements or understandings, oral or written, between and among the parties hereto relating to the subject matter of this Lease that are not fully expressed herein. None of the covenants, terms or conditions of this Lease, to be kept and performed by either party, shall in any manner be altered, waived, modified, changed or abandoned except by a written instrument, duly signed, acknowledged and delivered by the other party.
- D. **APPLICABLE LAW; VENUE:** The Parties agree that for purposes of any lawsuit(s) between them concerning the subject matter of this Lease, and all questions of construction, interpretation, and enforcement hereof, that all such controversies shall be governed by the statutory and common law of the State of Illinois; venue shall be in the Circuit Court of Kane County, Illinois and the parties consent to the jurisdiction of said Court for any such proceedings or action.
- E. **RIGHTS CUMULATIVE:** The rights and remedies of Lessor under this Lease are cumulative. The exercise or use of any one or more thereof shall not bar Lessor from exercise or use of any other right or remedy provided herein or otherwise provided by law, nor shall exercise nor use of any right or remedy by Lessor waive any other right or remedy.
- F. **REMEDIES NOT EXCLUSIVE:** The obligation of Lessee to pay the Rent required during the balance of the term of this Lease shall not be deemed to be waived, released or terminated, by the service of any five-day notice, other notice to collect, demand for possession, or notice that the tenancy hereby created will be terminated on the date therein named, the institution of any action of forcible detainer or ejectment or any judgment for possession that may be rendered in such action, or any other act or acts resulting in the termination of Lessee's right to possession of the Premises. The Lessor may collect and receive any Rent due from Lessee, and payment or receipt thereof shall not waive or affect any such notice, demand, suit or judgment, or in any manner whatsoever waive, affect, change, modify or alter any rights or remedies which Lessor may have by virtue hereof.
- G. **ACCORD AND SATISFACTION:** Lessor shall be entitled to accept, receive and cash or deposit any payment made by Lessee for any reason or purpose or in any amount whatsoever, and apply the same at Lessor's option to any obligation of Lessee and the same shall not constitute payment of any amount owed except that to which Lessor has applied the same. No endorsement or statement on any check or letter of Lessee shall be deemed an accord and satisfaction or otherwise recognized for any purpose whatsoever. The acceptance of any such checks or payments shall not prejudice Lessor's right to recover any and all amounts owed by Lessee under this Lease and Lessor's right to pursue any other available remedy.
- H. **PAYMENT OF COSTS:** Lessee will pay and discharge all reasonable costs, attorney's fees and expenses that shall be made and incurred by Lessor in enforcing the covenants and provisions of this Lease.
- I. **TIME OF THE ESSENCE:** Time is of the essence in the performance of all terms, covenants and conditions of this Lease.

- J. **NON-WAIVER:** The failure of either Party to enforce against the other any term, covenant or condition of this Lease shall not be deemed a waiver thereof, nor void or affect the right of the aggrieved Party to enforce the same term, covenant or condition on the occasion of any subsequent breach or default; nor shall the failure of either Party to exercise any option in this Lease upon any occasion arising therefore, be deemed or construed to be a waiver of the right to exercise that same kind of option upon any subsequent occasion.
- K. **FORCE MAJEURE:** The time within which any of the Parties hereto shall be required to perform any act or acts under this Lease shall be extended to the extent that the performance of such act or acts shall be delayed by acts of God, fire, windstorm, flood, explosion, collapse of structures, riot, war, labor disputes, delays, or restrictions by governmental bodies, inability to obtain or use necessary materials, or any cause beyond the reasonable control of such Party, *provided, however*, that the Party entitled to such extension hereunder shall give prompt notice to the other Party of the occurrence causing such delay. The provisions of this Section shall not operate to excuse Lessee from prompt payment of Rent or any other payments required by the terms of this Lease.
- L. **CONSENTS:** Whenever the consent or approval of either Party is required herein, such consent or approval shall be in writing and shall not be unreasonably withheld or delayed, and, in all matters contained herein, both Parties shall have an implied obligation of reasonableness, except as may be expressly set forth otherwise.
- M. **COUNTERPARTS:** This Lease may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- N. **PLURALS:** The words "Lessor" and "Lessee" wherever herein occurring and used shall be construed to mean "Lessors" and "Lessees" in case more than one person constitutes either party to this Lease. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Lessee and to male or female, shall in all instances be assumed as though in each fully expressed.
- O. **SEVERABILITY:** Wherever possible each provision of this Lease shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Lease shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Lease.
- P. **AUTHORITY:** This Lease shall be in full force and effect, and legally binding, after it is signed by the duly authorized representatives or officers of each Party. The Parties warrant to each other that each of the signatories to this Lease are the duly authorized representatives or officers of their respective entities and each such person has signed this Lease pursuant to the authority duly granted to him or her by the applicable authorities of said entity, who have acted by motion or approved a resolution (in the Lessor's case, at an open public meeting) that authorized and directed the representatives to sign this Lease.
- Q. **HEADINGS:** The headings, titles and captions in this Lease have been inserted only for convenience, and in no way define, limit, extend or describe the scope or intent of this Lease.
- R. **NO INDIVIDUAL OR PERSONAL LIABILITY:** Notwithstanding any other statement in this Lease, the Parties agree that the representations in this Lease are made on behalf of the City of Aurora, and the Mayor, City Council and employees are not making such representations personally, are not parties to this Lease and shall incur no personal liability in conjunction with this Lease.
- S. **FILING OF LEASE:** The Lessor, in its discretion, may file a fully executed certified copy of this Lease with the Kane County Assessor's Office and may record a copy of the Lease or Memorandum of Lease against title to the Premises by filing it with the Kane County Recorder of Deeds.

T. **EXHIBITS:** True and correct copies of the below-listed Exhibits are attached hereto and made a part of this Lease or shall be incorporated herein after their approval and execution by the parties: N/A

U. LESSOR RECOGNIZES AND ACKNOWLEDGES THAT LESSEE IS A DELAWARE LIMITED LIABILITY COMPANY AND THAT LESSEE'S ASSETS CONSIST ALMOST EXCLUSIVELY OF LEASES, SUBLEASES, AND OPTIONS TO PURCHASE LEASED PREMISES. LESSOR ALSO RECOGNIZES AND ACKNOWLEDGES THAT LESSEE WAS ORGANIZED PRINCIPALLY FOR THE PURPOSE OF NEGOTIATING AND DRAFTING LEASES WITH A VIEW TOWARDS SUBLETTING THE LEASED PREMISES TO FRANCHISEES/LICENSEES OF DOCTOR'S ASSOCIATES INC. ("DAI"). LESSOR RECOGNIZES AND ACKNOWLEDGES THAT IT HAS BEEN ADVISED THAT DAI IS A FLORIDA CORPORATION THAT OWNS ALL RIGHTS TO AWARD FRANCHISES FOR SUBWAY® SANDWICH SHOPS AND THAT LESSOR HAS ALSO BEEN ADVISED THAT LESSEE HAS NO RIGHTS WHATSOEVER TO AWARD FRANCHISES FOR SUBWAY® SANDWICH SHOPS OR COLLECT ANY FRANCHISE-RELATED ROYALTIES FROM ANY PROSPECTIVE SUBLESSEE OF THE PREMISES. LESSOR RECOGNIZES AND ACKNOWLEDGES THAT IT HAS BEEN GIVEN AN OPPORTUNITY, WHETHER BY ITSELF OR WITH THE ASSISTANCE OF ITS PROFESSIONAL ADVISORS, TO MAKE INQUIRY OF LESSEE'S FINANCIAL STATUS AND TO EVALUATE SAID STATUS TO ITS SATISFACTION. LESSOR HAS EITHER MADE SUCH INQUIRY AND IS SATISFIED WITH THE RESPONSE TO SUCH INQUIRY OR HAS AFFIRMATIVELY AND VOLUNTARILY DETERMINED NOT TO DO SO. LESSOR FURTHER RECOGNIZES AND ACKNOWLEDGES THAT NO PERSON OR ENTITY OTHER THAN LESSEE HAS MADE ANY REPRESENTATIONS OF ANY KIND WITH REGARD TO THE ABILITY OF LESSEE TO PERFORM LESSEE'S OBLIGATIONS HEREUNDER. LESSOR ALSO RECOGNIZES AND ACKNOWLEDGES THAT LESSEE INTENDS TO SUBLEASE THE PREMISES TO A PERSON(S) WHO HAS OR WILL BE AWARDED A FRANCHISE/LICENSE FOR A SUBWAY® SANDWICH SHOP FROM DAI, UNDER WHICH SUBLEASE THE SUBLESSEE WILL PAY RENT DIRECTLY TO LESSOR SO THAT THE RENTAL PAYMENT FROM SUCH SUBLESSEE WILL NORMALLY NOT BE RECEIVED OR HELD BY LESSEE. ALTHOUGH THE SUBLESSEE MAY OPEN A BUSINESS OPERATION DOING BUSINESS AS A SUBWAY® SANDWICH SHOP AND MAY HAVE FRANCHISE AND OTHER BUSINESS RELATIONSHIPS WITH CORPORATIONS RELATED TO OR ASSOCIATED BY THE GENERAL PUBLIC WITH "SUBWAY," AS IT IS COMMONLY KNOWN, LESSOR RECOGNIZES AND ACKNOWLEDGES THAT THE SOLE AND EXCLUSIVE PERSON OR ENTITY AGAINST WHICH IT MAY SEEK DAMAGES OR ANY REMEDIES UNDER THIS OR ANY OTHER DOCUMENT IN WHICH THE LESSOR AND LESSEE OR LESSOR AND SUBLESSEE ARE PARTIES, WHETHER FOR UNPAID RENT AND ASSOCIATED DAMAGES, CLAIMS OF UNJUST ENRICHMENT, CLAIMS OF UNFAIR TRADE PRACTICES, OR ANY OTHER THEORY OF RECOVERY OF ANY KIND OR NATURE, IS LESSEE OR SUBLESSEE. FURTHER, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THERE WILL NOT BE ANY LIABILITY WHATSOEVER AGAINST (A) DAI, ITS SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES AND/OR AGENTS, AND/OR (B) ANY PERSONS AND ENTITIES WHO ARE THE SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AND/OR AGENTS OF THE LESSEE. SUCH EXCULPATION OF LIABILITY SHALL BE ABSOLUTE AND WITHOUT ANY EXCEPTION WHATSOEVER.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date of Lease stated above.

LESSOR: THE CITY OF AURORA, an Illinois
Municipal Corporation

LESSEE: Subway Real Estate, LLC

By: _____

By: Christopher J. Kan

Its: _____

Christopher J. Kan
Its: Duly Authorized

Date: _____

Date: JAN 27 2017

ATTEST:

ATTEST:

By: _____

By: Jac. L.

Its: Manager

Date: _____

Date: 1/27/17