

**STATE OF NORTH CAROLINA**  
**COUNTY OF CUMBERLAND**

**COMMERCIAL LEASE AGREEMENT**

**THIS COMMERCIAL LEASE AGREEMENT** (hereinafter referred to as “Lease”) made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2025, by and between the **CITY OF FAYETTEVILLE**, a municipal corporation organized under the laws of the State of North Carolina (hereinafter referred to as the “LESSOR”) and **SUBWAY REAL ESTATE, LLC, a Delaware Limited Liability Company** (hereinafter referred to as the “LESSEE”).

**WITNESSETH:**

- 1) **LEASED PROPERTY.** The LESSOR hereby leases to the LESSEE, subject to the terms and conditions hereinafter expressed, 2,286.03 square feet in the building located at 472 Hay Street, within the City of Fayetteville, more particularly identified as a portion of Tax PIN 0437-45-5033 (“Premises”). LESSOR and LESSEE hereby agree that any reference to this Lease shall include Exhibit “A”, which is attached hereto and incorporated herein by reference. No parking facilities are allocated to LESSEE as part of the leased property. Parking is the sole responsibility of the LESSEE.
- 2) **RENT.** In accordance with City Council Policy 155.6, the rent for the term of this Lease shall be Seventeen Thousand Six Hundred Seventy-Nine Dollars and 12/100 (\$17,679.12) paid in twelve (12) monthly payments of One Thousand Four Hundred Seventy-Three Dollars and 26/100 (\$1,473.26) payable on the 20<sup>th</sup> of each month beginning on the 20<sup>th</sup> day of September 2025. Rent will be re-evaluated every three (3) years based on the then existing City Council Policy and upon expiration of each term. As a courtesy, LESSOR may send LESSEE an invoice for the amount of the monthly rent and/or any fees that are due. No notice, invoice, or other documentation shall be required to obligate the payment of monthly rent.
  - a) **Security Deposit.** LESSOR and LESSEE hereby acknowledge that LESSOR did not collect a security deposit from the LESSEE under the terms of this agreement and shall not be liable, therefore.
  - b) **Late Payment Fee.** In the event that any payment required to be paid by LESSEE hereunder is not received within five (5) calendar days of when due, LESSEE shall pay to LESSOR, in addition to such payment or other charges due hereunder, a “late fee”

not to exceed fifteen dollars and 00/100 (\$15.00) or five percent (5%) of the monthly rent, whichever is greater. The LESSOR and LESSEE agree that such a late fee represents a fair and reasonable estimate of the cost LESSOR will incur because of such late payment.

- 3) **TERM.** The Lease shall commence on September 1, 2025, and, unless terminated earlier, shall extend three (3) years ending on August 31, 2028. The term may be renewed for five (5) additional one (1) year periods. LESSEE may exercise its right to renew for each of these terms with not less than ninety (90) days prior written notice to the LESSOR.

**Termination.**

- i) *Termination at End of Term.* This Lease terminates at the expiration of the term unless termination occurs prior to the end of the term by means explicated herein.
- ii) *Option to Terminate.* Either LESSOR or LESSEE may terminate this Lease by (1) giving one hundred twenty days (120) days written notice to the other, (2) forfeiting all of its rights, title, and interest in and to all sums which it shall have paid as rent hereunder, and (3) performing all of its obligations hereunder through such termination date, including the surrender of the leased property in good repair, ordinary wear and tear excepted, on or before that date.
- iii) *Duties Upon Termination.* Upon the termination of this Lease, whether by LESSOR or LESSEE and whether for breach or otherwise, LESSEE shall:
  - 1. pay all utility bills due for services to the leased property and have all such utility services discontinued;
  - 2. vacate the leased property, removing all LESSEE's personal property of whatever nature; any such property not removed shall become the property of the LESSOR;
  - 3. properly sweep and clean the leased property, including plumbing fixtures, refrigerators, stoves, and sinks, removing all rubbish, trash, garbage and refuse;
  - 4. make such repairs and perform such other acts as are necessary to return the leased property, and any appliances or fixtures furnished in connection therewith, in the same condition as when LESSEE took possession of the leased property; provided, however, LESSEE shall not be responsible for ordinary wear and tear;

5. fasten and lock all doors and windows; and
6. return to the LESSOR all keys to the leased property. If the LESSEE fails to sweep out and clean the leased property, appliances and fixtures as herein provided, LESSEE may become liable and be charged by the LESSOR for the actual costs of cleaning.

4) **LESSEE'S DUTIES AND OBLIGATIONS.**

- a) Use. LESSEE shall use the leased property exclusively as a restaurant and for no other purpose (the "Permitted Use.") LESSEE shall use and occupy the leased property for commercial purposes only. LESSEE shall not use or knowingly permit any part of the leased property to be used for any other purpose or unlawful purpose.
- b) Quiet Enjoyment. LESSEE, upon the payment of the rent herein reserved and upon the performance of all the terms of this Lease, shall at all times during the Lease term peaceably and quietly enjoy the leased property without any disturbance from the LESSOR or from any other person claiming through the LESSOR.
- c) Repairs or Alterations. No alteration and no physical or structural change and no change in the color of surfacing shall be made to the exterior or interior of the building located on the leased property without prior written approval of the LESSOR, which shall not be unreasonably withheld, nor shall any additional structure be constructed or permitted to be built upon the leased property unless the plans and exterior designs for such structure have likewise been approved in writing and any necessary permits obtained. LESSEE shall bear the entire expense of any permits, repairs, alterations, improvements, maintenance, and replacements required to be made to the leased property because of fault or neglect on the part of the LESSEE. Any repairs, alterations, improvements, maintenance, and replacements required by the terms of this paragraph shall be accomplished promptly with first-class materials, in a good and workmanlike manner, in compliance with all applicable laws of all governmental authorities. LESSEE shall obtain all certificates, permits, licenses, and other authorizations of governmental bodies and authorities which are necessary to permit the construction of the improvements on the leased property and shall keep the same in full force and effect at LESSEE's cost. Any addition, alteration, or repair approved by LESSOR shall be deemed real property if it becomes permanently affixed to the leased

property or cannot be removed without substantial injury to the leased property. Any unauthorized alteration to the structure(s) or leased property will be considered grounds for termination.

- d) Compliance with Laws. LESSEE at its sole expense shall comply with all laws, orders, and regulations of federal, state, and municipal authorities, and with any direction of any public officer, pursuant to law, which shall impose any duty upon the LESSOR or the LESSEE with respect to the leased property. LESSEE, at its sole expense, shall obtain all licenses or permits which may be required for the conduct of its business within the terms of this Lease, or for the making of repairs, alterations, improvements, or additions, and LESSOR, where necessary, may join with the LESSEE in applying for all such permits or licenses.
- e) Utilities and Janitorial Service. Pursuant to City Council Policy 155.6(III)(B), LESSEE shall be responsible for all utility charges including but not limited to electricity, light, and heat that may be contributable to its operations within the leased property as well as any telephone or other communication service used, rendered, or supplied upon or in connection with the leased property, and shall indemnify LESSOR against any liability or damages on such account. Janitorial service shall be the sole responsibility of LESSEE.
- f) Assignment and Subletting. LESSEE may assign this Lease or sublet the leased property to any bona-fide licensee/franchisee of Doctor's Associates Inc: Doing business as a SUBWAY sandwich shop, without the prior consent, but shall give written notice to the LESSOR 30 days prior to said assignment. 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.
- g) Abandonment. LESSEE shall not abandon or vacate the leased property during the Lease term. LESSEE shall be deemed to have abandoned or vacated the leased property if LESSEE removes substantially all of its possessions from the leased property. If the LESSOR determines that LESSEE has abandoned the leased property, LESSOR shall have the right to reenter and repossess the property and to dispossess LESSEE of all rights under this Lease. However, repossession shall not remove the

obligation of LESSEE to pay any outstanding rent, utility fee, or other applicable fee as a result of their abandonment.

- h) Maintenance. LESSEE shall, at its expense during the term of this Lease and any option period, maintain, in good condition, the doors, glass and interior of the leased property, including fixtures, except when such damage is caused by the negligence of the LESSOR, its agents or employees.

5) **LESSOR'S DUTIES AND OBLIGATIONS.**

- a) Possession. LESSOR shall deliver possession of the leased property to LESSEE not later than the commencement date of the Lease.
- b) Warranties. LESSOR represents that it owns the leased property in fee simple and that the property is free from encumbrances except as referred to elsewhere in this Lease. LESSOR represents that it has the full right, power, and authority to enter this Lease for the term herein granted and that the leased property may be used by the LESSEE during the entire term for the purposes herein set forth.
- c) Right of Entry. LESSOR and its representatives may enter the leased property, at any reasonable time, for the purpose of inspecting the leased property, performing any work which the LESSOR elects to undertake made necessary by reason of the LESSEE's default under the terms of this Lease, exhibiting the leased property for sale, lease, or mortgage, financing, or posting notices of no responsibility under any mechanic's lien law.
- d) Taxes. LESSOR agrees that it will list in its name for taxation the leased property and all improvements and buildings thereon, provided however, that should LESSOR's property ever be declared non-exempt from ad valorem taxes, then and in that event, the LESSEE agrees it will pay all taxes assessed against the leased property and special assessments by the City or County during the term of this Lease, to include all personal property of the LESSEE, and the real property demised herein.
- e) Maintenance. LESSOR shall, at their own expense, maintain the exterior of the building, including the roof, walls, foundation, walks, driveways, and the structural portion of the leased property, in good condition and repair, except when damage is caused by the LESSEE. LESSOR warrants that the leased property including the

heating and air conditioning systems, plumbing, hot water heater, and electrical systems on the leased property comply with all building codes.

6) **BREACHES AND REMEDIES.**

- a) LESSEE's Default: It shall constitute a breach of this Lease if LESSEE fails to: (i) pay the full amount of rent herein owed as and when it shall become due hereunder; or (ii) perform any other promise, duty or obligation herein agreed to or imposed upon LESSEE by law and such failure shall continue for a period of five (5) days from the date the LESSOR provides LESSEE with written notice of such failure. In either of such events and as often as either of them may occur, LESSOR, in addition to all other rights and remedies provided by law, may, at its option and with notice, to LESSEE.
- b) LESSOR's Right to Possession: If LESSOR terminates this Lease for reasons stated herein, LESSOR shall be immediately entitled to possession of the leased property, and the LESSEE shall peacefully surrender possession of the leased property to LESSOR immediately upon LESSOR's demand.
- c) Summary Ejectment Fees: If a summary ejectment proceeding is instituted against LESSEE, in addition to any court costs and past-due rent that may be awarded, LESSEE shall be responsible for paying LESSOR a Fifteen and 00/100 Dollar (\$15.00) administrative fee for summary ejectment.
- d) Acceptance of Partial Rent: LESSEE acknowledges and understands that LESSOR's acceptance of partial rent will not waive LESSEE's breach of this Lease or limit LESSOR's rights to take possession of the leased property.
- e) Termination of Lease: In the event LESSOR terminates this Lease, all further rights and duties hereunder shall terminate, and LESSOR shall be entitled to collect from LESSEE all accrued but unpaid rents and any damages resulting from the LESSEE's breach, including but not limited to, damages for LESSEE's continued occupancy of the leased property following the LESSOR's termination.

7) **LESSOR'S DEFAULT; LIMITATION OF REMEDIES AND DAMAGES.** Until the LESSEE notifies the LESSOR in writing of an alleged default and affords the LESSOR 30 days from date of notice within which to cure, no default by the LESSOR in the performance of any of the promises or obligations herein agreed to by LESSOR or imposed upon LESSOR by law shall constitute a material breach of this Lease and the LESSEE shall have no right to

terminate this Lease for any such default or suspend LESSOR's performance hereunder. In no event and regardless of their duration shall any defective condition of or failure to repair, maintain, or provide any area, fixture, or facility constitute a material breach of this Lease and the LESSEE shall have no right to terminate this Lease or to suspend LESSOR's performance hereunder. In any legal action instituted by the LESSEE against the LESSOR, the LESSEE's damages shall be limited to the difference, if any, between the rent reserved in this Lease and the reasonable rental value of the leased property, taking into account the LESSOR's breach or breaches, and in no event, except in the case of the LESSOR's willful or wanton negligence, shall the LESSEE collect any consequential or secondary damages resulting from the breach or breaches, including but not limited to, the following items: damage or destruction of furniture or other personal property of any kind located in or about the leased property, moving expenses, storage expenses, alternative interim housing expenses, and expenses of locating and procuring alternative housing.

- 8) **REMEDIES.** If either LESSOR or LESSEE shall fail to comply with any provision of this Lease, said party shall be in default and if said party shall have remained in default for ten (10) days after receipt of notice of default, there shall be a breach of this Lease, and the Lease shall be terminated immediately. If required by the non-defaulting party, the defaulting party shall remain fully liable for performing the defaulting party's remaining obligations under this Lease. The defaulting party shall be liable for reasonable damages as provided by law and for all costs and expenses, to include attorney fees incurred by the other party on account of such default, except as otherwise provided herein. Waiver by either party of any breach of the other's obligation shall not be deemed a waiver of any other or subsequent breach of the same obligation.

9) **INSURANCE.**

- a) The LESSOR shall keep the building and improvements situated on the leased property insured against loss or damage by fire with all risk extended coverage endorsement in an amount sufficient to prevent the LESSOR and LESSEE from becoming a co-insurer under the terms of the applicable policies. Any and all insurance proceeds payable under any such extended coverage policy shall be payable to the LESSOR. Such insurance shall be issued by financially responsible insurers duly authorized to do business in this state.

- b) LESSEE, at its own expense, shall insure its own contents, including any computer equipment, any hardware or software attendant thereto, against loss by fire, theft, vandalism, or any other physical damage not due to the negligence of the LESSOR.
- c) LESSEE, at LESSEE's own expense, agrees to obtain, and keep in force during the entire term of this Lease, Commercial General Liability Insurance in a minimum amount of One Million and 00/100 Dollars (\$1,000,000.00) combined single limit of coverage for the protection of LESSOR against all liabilities of any nature that may accrue against the LESSOR because of damage to the property of, injury to or death of any person, under any circumstances when that damage, injury or death is due to the actions or negligence of LESSEE, its agents, employees or invitees. Such insurance shall be issued by an insurance company licensed by the State of North Carolina and include the City of Fayetteville as an additional insured. A copy of a certification of insurance shall be provided to the LESSOR by LESSEE prior to occupying the leased property.
- d) LESSEE shall maintain a Commercial Umbrella Insurance Policy providing excess coverage in an amount not less than Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) general aggregate.
- e) If LESSEE owns or operates a motor vehicle or employs a motor vehicle to conduct business, then a business automobile policy shall be obtained at LESSEE's own expense, with a minimum of One Million and 00/100 Dollars (\$1,000,000.00) coverage per accident. A certificate of insurance showing proof of coverage shall be provided to the LESSOR.
- f) LESSEE shall provide the LESSOR with proof of worker's compensation coverage as is required by North Carolina state statute.
- g) Each of the policies and certificates listed above, except for worker's compensation insurance, shall show the LESSOR as an additional named insured and shall bear the following provision: This policy cannot be canceled, not renewed, reduced in amount, or coverage eliminated less than thirty (30) days after the insurer mails written notice to the insured and the LESSOR giving notice of such alteration, cancellation, or reduction in coverage sent by certified mail to the LESSOR at the following address:



City of Fayetteville, Finance Department, 433 Hay Street, Fayetteville, NC 28301. Such additional insured status shall be provided on a primary and non-contributory basis.

- h) The above insurance coverage and limits required of the LESSEE under this Lease are designed to meet the minimum requirements of the LESSOR. These requirements are not a recommended program of insurance. LESSEE alone is responsible for the sufficiency of its own insurance program. If LESSEE has any questions concerning its coverage, professional insurance assistance should be obtained by LESSEE.

- 10) **INDEMNIFICATION.** Except for claims arising out of acts caused by the affirmative negligence of the LESSOR or its representatives, the LESSEE shall indemnify, defend, and hold harmless the LESSOR and the leased property, at the LESSEE's expense, against all claims, expenses, and liabilities proximately caused by any act or negligence of the LESSEE or its agents, contractors, employees, invitees or licensees arising from the operation, management, or use of the leased property during the term of this Lease. Indemnification of LESSOR by LESSEE does not constitute a waiver of the City's governmental immunity in any respect under North Carolina law.

- 11) **DESTRUCTION OF LEASED PROPERTY; CONDEMNATION.**

- a) In the event of damage or destruction to the leased property as a result of fire, or other loss not due to normal wear and tear, LESSOR shall be required to repair the leased property as expeditiously as possible, provided that the LESSOR's expenditures and repair shall not exceed the insurance proceeds payable under the LESSOR's policy; provided further, that in the event the damage or destruction of the leased property exceeds more than fifty percent (50%) of its then reproducible or replacement cost, as determined by a building contractor licensed to do business in the state of North Carolina, then LESSOR shall be under no obligation to repair or restore the leased property and all insurance proceeds shall be payable to the LESSOR. In the event of either a partial or total destruction, all rent shall be apportioned to the date of the loss. In the event of destruction of the leased property, LESSEE may terminate this Lease in accordance with Paragraph 3 but shall not be required to remove damaged personal property, clean, or otherwise make the property ready for occupancy.

b) In the event that the leased property is subject to acquisition under the laws of eminent domain by any public or private condemnor, and the taking is less than the entire leased property, LESSEE shall have the option to terminate this Lease provided that the portion of the leased property remaining after the taking is insufficient in size to make it feasible for LESSEE to continue its operation and use of the property for the remainder of the term of the Lease; if the taking is of the entire leased property, then in that event the Lease shall terminate. In the event of either a partial or total taking, (1) all rent shall be apportioned at the date of taking, and (2) LESSOR shall be entitled to all compensation awarded by the condemning authority either by payment, settlement, or jury award.

12) **NOTICES.** LESSOR agrees to give written notice to LESSEE within ten (10) days (or such shorter period as may otherwise be set forth in this Lease) of any failure to perform any of the terms or conditions of this Lease by LESSEE, its Sublessee, or assignee. Failure of LESSOR to give such notice will constitute a waiver of monetary and non-monetary claims against LESSEE with respect thereto. For the avoidance of doubt, if LESSOR gives notice only to LESSEE's Sublessee and not to LESSEE as required herein such notice shall be of no force or effect.

Every notice, approval, consent or other communication authorized or required by this Lease shall be effective if given in one of the following ways: (i) by email to LESSEE at [SubwayRealEstate@Subway.com](mailto:SubwayRealEstate@Subway.com), (ii) in writing to either party; or (iii) in writing and sent for next business day delivery by FedEx, UPS, or other nationally-recognized courier. Notices sent via nationally-recognized courier shall be addressed to the parties at the addresses below, or at such other address as either party shall from time to time designate in writing. Notices sent for next business day delivery by nationally recognized courier shall be deemed to be effective on the next business day.

LESSEE:

(a) Subway Real Estate, LLC  
Attn: Legal Department – Leasing  
1 Corporate Drive, Suite 1000  
Shelton, CT 06484

- (b) A necessary copy to the Premises:

Subway Restaurant  
Attn: Sublessee  
472 Hay Street  
Fayetteville, NC 28301

LESSOR:

- (a) City of Fayetteville  
Attn: City Manager  
433 Hay Street  
Fayetteville, NC 28301
- (b) City of Fayetteville  
Attn: City Attorney  
433 Hay Street  
Fayetteville, NC 28301

LESSOR agrees to accept Rent at the below-referenced address:

City of Fayetteville  
Attn: Collections Department  
433 Hay Street  
Fayetteville, NC 28301

Any change in the LESSOR or LESSEE entity (including, but not limited to, property ownership, address for notices, etc.) must be authorized in writing by the named LESSOR, its mortgagor, or by court order and sent to all the required notification parties as listed above. Absent such acceptable authorization, LESSEE shall not be in default of this Lease if it continues to pay Rent to the then current LESSOR, nor shall it lose any of its rights, privileges (including, but not limited to, renewal options) as specified herein.

- 13) GOVERNING LAW, VENUE AND FORUM.** This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of North Carolina. The LESSOR and LESSEE agree if litigation is brought in connection with this Lease and (1) the litigation proceeds in the Courts of the State of North Carolina, the LESSOR and LESSEE agree the appropriate venue shall be in Cumberland County (Fourteenth Judicial District); or (2) the litigation proceeds in the federal court, the LESSOR and LESSEE agree the appropriate venue shall be the United States District Court for the Eastern District of North Carolina.

- 14) **ENTIRE AGREEMENT.** This Lease contains the entire agreement between the LESSOR and LESSEE, and any executory agreement hereafter made shall be ineffective to change, modify or discharge it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, or discharge is sought.
- 15) **SEVERABILITY.** The LESSOR and LESSEE agree that if any provision of this Lease shall be held invalid for any reason, the remaining provisions shall not be affected if they continue to conform with the purposes of this Lease and the requirements of applicable law.
- 16) **BINDING.** This Lease shall inure to the benefit of and be binding upon the heirs, legal representatives, successors, and assigns of the LESSOR and LESSEE hereto. Wherever used herein, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders as the context may require.
- 17) **E-VERIFY.** LESSEE acknowledges that “E-Verify” is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. LESSEE further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with N.C.G.S. § 64-26(a). LESSEE pledges, attests, and warrants through execution of this Lease that LESSEE complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests, and warrants that any subcontractor, sub-lessee, or others currently employed by or subsequently hired by LESSEE [if allowed by LESSOR under Paragraph 4(f)] shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Lease.
- 18) **FORCE MAJEURE.** Neither LESSOR or LESSEE shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign actions, adverse governmental actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

- 19) **CITY’S TERMS SUPERSEDE.** To the extent a conflict exists between the terms of this Lease and the terms and conditions in any of the attachments to the Lease, the terms of this Lease shall govern.
- 20) **SURVIVAL OF TERMS.** All warranties, covenants, and representations contained within this Lease and all applicable work authorizations, if any, shall continue in full force and effect for three (3) years after the execution and delivery of the final product, act, or service taken in furtherance of this Lease. Survivability shall not be impacted, or otherwise shall not be rendered null or void, by the termination or natural expiration of this Lease or other applicable work undertaken in furtherance of this Lease.
- 21) **DIVESTMENT OF COMPANIES BOYCOTTING ISRAEL OR INVEST IN IRAN CERTIFICATION.** LESSEE certifies that (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. § 147-86.58; (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. § 147-86.81 as a company engaged in the boycott of Israel [(i) and (ii) to be collectively referred to as “FD Lists”]; and (iii) it will not take any action causing it to appear on the Treasurer’s FD Lists created by the NC State Treasurer during the term of this Lease. By signing this Lease, LESSEE further agrees, as an independent obligation, separate and apart from this Lease, to reimburse the City for any and all damages, costs, and attorneys’ fees incurred by the City in connection with any claim that this Lease or any part thereof is void due to LESSEE appearing on the Treasurer’s FD Lists at any time before or during the term of this Lease.

**(Remainder of Page Intentionally Left Blank)**

**IN WITNESS WHEREOF**, the LESSOR and LESSEE have executed this Lease in duplicate the date first above written.

***CITY OF FAYETTEVILLE, LESSOR***

(Corporate Seal)

By: \_\_\_\_\_  
DR. DOUGLAS J. HEWETT, ICMA-CM  
City Manager

ATTEST:

\_\_\_\_\_  
JENNIFER L. AYRE, MPA, MMC  
City Clerk

APPROVED AS TO FORM:

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
LISA Y. HARPER, Senior Assistant City Attorney

\_\_\_\_\_  
TIFFANY MURRAY, Chief Financial Officer

***SUBWAY REAL ESTATE, LLC, LESSEE***

By: \_\_\_\_\_  
KRISTINE ZANIEWSKI  
Duly Authorized

ATTEST:

\_\_\_\_\_

**EXHIBIT "A"**  
**LESSOR SPECIFIC CLAUSES**

1. **Use.** LESSEE's permitted use shall be defined as a restaurant for on and off premises consumption or for any other lawful purpose (the "**Permitted Use**"). LESSOR acknowledges that LESSEE's menu consists primarily of sandwiches, wraps, salads and related items and that from time to time LESSEE shall have the right to add test items to its menu. LESSOR further agrees that LESSEE shall have the right to add, delete and/or change its menu without the prior consent of LESSOR provided that LESSEE complies with all local codes and ordinances, and LESSOR represents and warrants that LESSOR has no preexisting agreements prohibiting such menu additions. In no event shall LESSEE's menu be construed as limited to sandwiches, wraps, salads, related items and test items. LESSEE shall have the right to, but shall not be required to, remain open seven (7) days per week twenty-four (24) hours per day. Notwithstanding the foregoing, LESSEE shall not be obligated to open for business, conduct business, operate under any specific trade name, operate for any period or during any specified hours or remain open for the conduct of any business in the Premises. LESSOR acknowledges that the normal operation of LESSEE's business will create certain aromas including but not limited to the aroma of baking bread. LESSOR represents that LESSEE's Permitted Use is permitted by all applicable federal, state, and local laws, ordinances, rules and regulations, all court orders, governmental directives, and governmental orders and all interpretations of the foregoing, and all restrictive covenants or zoning laws, and does not violate the provisions of any other lease for any portion of the Premises.
2. **Exclusive Use.** LESSOR agrees and understands that the following exclusive rights that are granted to LESSEE are a material inducement for LESSEE to enter into this Lease. LESSOR grants to LESSEE for the entire Term of this Lease, the exclusive right to operate a restaurant for on and off premises consumption of sandwiches, wraps and salads ("**LESSEE's Exclusive**").
3. **Compliance with Laws.** LESSOR represents and warrants to LESSEE that, as of the Commencement Date of this Lease, the Property shall be in compliance with all applicable federal, state and local laws, codes, ordinances, regulations, orders, or other legal requirements, including but not limited to the Americans with Disabilities Act and any other laws concerning public accommodations, access and facilities for handicapped or disabled persons and all environmental, health and safety laws (collectively, the "**Laws**"). The leased property is located within an historic building which qualifies for ADA exceptions. If it is discovered that the Premises, the Building or the Property violate any of the Laws as of Commencement Date to the extent permitted by law . During the Term of this Lease, LESSEE shall be responsible for complying with all Laws related to the manner in which

LESSEE operates its business from the Premises or related to any alterations, additions or improvements constructed by LESSEE within the Premises.

4. **Décor and Signage.** To the extent allowed by law, LESSOR hereby gives its consent to LESSEE to construct the interior and exterior of Premises in accordance with standard Subway® decor and to erect standard Subway® signs /awnings on the building. LESSEE's signs shall measure at least 36" high and extend the length of the fascia. The phrase "standard Subway® signs" shall be deemed to include existing pole signs, monument signs and awnings. Additionally, LESSEE shall have the right to use standard Subway® window advertising including but not limited to LED "open" signs and static cling(s). However, LESSEE agrees that any signage installed by LESSEE shall conform to local codes and ordinances. In the event LESSEE shall be prohibited from utilizing the Franchisor's standard décor and signage, LESSOR and LESSEE shall use best efforts to obtain a variance or applicable approvals. LESSEE shall have the right, at LESSEE's option, to terminate this Lease at any time upon thirty (30) days written notice to the LESSOR should LESSEE, its assignee or Sublessee fail to receive any approval, permit, licenses, rezoning or variance that is required for LESSEE to install or utilize Franchisor's décor and signage per the requirements described above.
5. **Condemnation.** If all or part of the Property is taken for any public or private use under any governmental law, ordinance or regulation, or by power of eminent domain, or by purchase in lieu thereof, and such taking adversely affects LESSEE's use or enjoyment of the Premises in the reasonable opinion of LESSEE, then LESSEE shall have the option to terminate this Lease by giving written notice to LESSOR within thirty (30) days after the date the condemning authority is given the right to possession (such date being the "date of taking" for purposes of this Section) and, in such event, all rights and obligations under this Lease shall cease, effective as of the date of the taking. If LESSEE does not terminate this Lease in accordance with the foregoing, then LESSOR shall proceed with diligence to make any repairs and alterations necessary to restore the Property to an architectural whole and make the Property suitable for LESSEE's use. The Rent payable under this Lease from the date of the taking through the expiration of the Lease Term shall be equitably reduced based on the degree to which LESSEE's use and enjoyment of the Property are impaired. If LESSOR fails to complete such repairs or alterations within ninety (90) days after the date of the taking, then LESSEE shall have the right, at its option, to terminate this Lease, effective upon delivering written notice of termination to LESSOR at any time prior to LESSOR's completion of such repairs and alterations, whereupon all rights and obligations under this Lease shall cease.
6. **Limitation of LESSEE Liability.** Notwithstanding any provision in this Lease to the contrary, LESSOR agrees that LESSEE's maximum aggregate liability in the event of default shall not exceed the lesser of Ten Thousand and 00/100 Dollars (\$10,000.00) or the total amount due for the remainder of the Minimum Rent for the Lease term. Furthermore, LESSOR acknowledges that it has an affirmative duty to mitigate damages and shall in no event have any right to accelerate any Rent or right to assert anticipatory breach damages or to recover the present value of the rent. LESSOR and LESSEE agree that this limitation of liability shall apply to, but not be limited to, all past due and future Rent, common area expenses (if applicable), late fees, attorney fees and court costs



7. **LIMITATION ON DAMAGES.** LESSOR ACKNOWLEDGES AND AGREES THAT: (1) LESSEES'S PRINCIPAL BUSINESS IS TO ENTER INTO LEASES IN ORDER TO SUBLET LEASED PREMISES TO FRANCHISEES OF DOCTOR'S ASSOCIATES LLC ("DAL" OR "FRANCHISOR"); (2) LESSEE HAS NO RIGHTS WITH RESPECT TO FRANCHISES FOR SUBWAY® RESTAURANTS OR TO COLLECT ANY FRANCHISE-RELATED ROYALTIES OR NON-RENT PAYMENTS FROM FRANCHISEES OF DAL; (3) THE SOLE AND EXCLUSIVE PERSON OR ENTITY AGAINST WHICH IT MAY SEEK DAMAGES OR ANY REMEDIES UNDER THIS LEASE IS LESSEE; AND (4) LESSEE'S PARENTS AND AFFILIATES AND ALL OF LESSEE'S AND ITS PARENTS' AND AFFILIATES' SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, ATTORNEYS AND AGENTS SHALL HAVE NO LIABILITY UNDER THIS LEASE
8. **LESSOR Consent.** If at any time under the provisions of this Lease the consent of the LESSOR is required, it shall not be unreasonably withheld, conditioned or delayed.
9. **Attorneys' Fees; Waiver of Jury Trial.** In the event of litigation between the LESSOR and the LESSEE relative to rights, obligations and duties of either party under this Lease, each party shall pay its own attorneys' fees and costs. Additionally, LESSOR and LESSEE agree that, to the extent permitted under Federal, State or local rules of civil procedure, LESSOR and LESSEE shall have the option to participate in any arbitration, deposition or mediation via telephone or video conferencing. Neither LESSOR nor LESSEE will compel the other to produce a representative to appear in person at the aforementioned proceedings in the jurisdiction where the litigation is taking place. Further, LESSOR and LESSEE irrevocably waive trial by jury in any action or proceeding brought by either party. LESSOR AND LESSEE HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES AGAINST THE OTHER AND AGREE THAT IN THE EVENT OF ANY DISPUTE BETWEEN THEM EACH SHALL BE LIMITED TO THE RECOVERY OF ANY ACTUAL DAMAGES SUSTAINED.
10. **Quiet Enjoyment.** LESSOR covenants that LESSEE, upon complying with the terms of this Lease, shall peaceably and quietly have, hold and enjoy the Premises and all rights, easements, appurtenances and privileges belonging or appertaining thereto. LESSOR agrees not to impose any restrictions or grant any easements or other rights that conflict with LESSEE's rights under this Lease. Upon request, LESSOR shall provide proof of ownership satisfactory to LESSEE.
11. **Surrender of Premises.** Upon the expiration or earlier termination of this Lease, 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. In addition, LESSEE shall be permitted, within ten (10) days after the expiration or sooner termination of this Lease, to remove any additions or improvements made by it, provided, however, that it repairs any damage to the Premises caused by such removal or pays for any damages caused by such removal. Any such addition or improvement not removed within ten (10) days shall be deemed abandoned and shall, thereupon, become the property of LESSOR without compensation to LESSEE. LESSEE's trade fixtures and all of LESSEE's equipment shall not

be considered fixtures and shall remain the property of LESSEE. As such, they may be removed by LESSEE at any, subject to the foregoing paragraph. On or before the expiration or early termination of this Lease, LESSEE shall surrender to LESSOR the Premises and all of LESSEE's alterations and fixtures broom clean, in good order and condition, excepting reasonable wear and tear, casualty and condemnation. LESSEE shall have the right, but shall not be required, to remove those alterations or improvements to the Premises which are installed by LESSEE and which are trade fixtures which may be removed without material damage to the Premises and which are in the nature of furniture, movable refrigeration, movable cook equipment, storage and display cases, counter shelves and racks. All other alterations and fixtures including, without limitation, those in the nature of ventilating, air conditioning, unmovable.

12. **OFAC Compliance.** LESSOR warrants and represents that neither LESSOR, nor any member, partner, shareholder nor any owner of a direct interest in, or principal of, LESSOR: (i) is listed on any Government Lists (as defined below), (ii) has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (September 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC (as defined below) or in any enabling legislation or other Presidential Executive Orders in respect thereof, (iii) has been previously indicted for or convicted of any Patriot Act Offense (as defined below), or (iv) is currently under investigation by any governmental authority for alleged criminal activity. For purposes hereof, the term “**Patriot Act Offense**” means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (1) the criminal laws against terrorism; (2) the criminal laws against money laundering, (3) the Bank Secrecy Act, as amended, (4) the Money Laundering Control Act of 1986, as amended, or the (5) Patriot Act. “Patriot Act Offense” also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term “**Government Lists**” means (A) the Specially Designated Nationals and Blocked Persons Lists maintained by the Office of Foreign Assets Control (“**OFAC**”), (B) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that LESSEE notified LESSOR in writing is now included in “Governmental Lists”, or (C) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other government authority or pursuant to any Executive Order of the President of the United States of America, and LESSOR shall deliver to LESSEE desirable for LESSEE to verify that the representations and warranties made in this Section are true, accurate and complete, which documentation includes information regarding the ownership of LESSOR and a list of any person or entity that directly or indirectly owns more than a twenty five percent (25%) interest in LESSOR, together with the Social Security number, FEIN number, or a copy of the passport, as applicable, for each such person or entity.
13. **Counterparts and Electronic Execution.** This Lease may be executed in counterparts, and all counterparts together shall be construed as one and the same document. Executed counterparts of this Lease with signatures sent by electronic mail (i.e., in PDF format) or

signed electronically via DocuSign may be used in the place of original signatures of this Lease. The parties intend to be bound by the signatures of the electronically mailed or signed signatures and the delivery of the same shall be effective as delivery of an original executed counterpart of this Lease. The parties hereby waive any defenses to the enforcement of this terms of this Lease based on the form of the signature or delivery thereof and hereby agree that such electronically mailed or signed signatures shall be conclusive proof, admissible in arbitration and judicial proceedings, of the parties' execution of this Lease.