

RESOLUTION R-81-08

A RESOLUTION AUTHORIZING THE EXECUTION OF A COMMERCIAL SUBLEASE BETWEEN THE CITY OF WHEATON AND BENSIDOUN USA WINTER MARKET

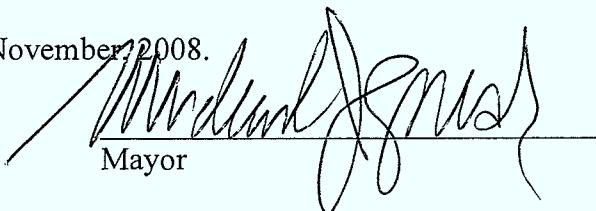
WHEREAS, the City of Wheaton subleases the Wheaton Commuter Station from the Union Pacific Railroad for the convenience of its citizens; and

WHEREAS, Bensidoun USA, who operates the open air French Market in the Downtown on Saturday's during the summer, desires to operate an indoor winter market on Saturday's between Thanksgiving and Christmas; and

WHEREAS, the operation of a winter market on Saturday's between Thanksgiving and Christmas adds to the attractiveness and utility of the station.

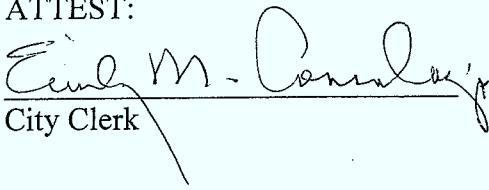
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor and City Council approve the commercial sublease between the City of Wheaton and Bensidoun USA attached hereto, and incorporated herein as if fully set forth as Exhibit A.

ADOPTED this 17th day of November, 2008.



Mayor

ATTEST:



Emily M. Connolly
City Clerk

Roll Call Vote

Ayes:	Councilman Mouhelis Councilman Prendiville Councilman Suess Councilwoman Corry Councilman Johnson Councilman Levine Mayor Gresk
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Nays:	None
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Absent:	None
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Motion Carried Unanimously

COMMERCIAL SUBLEASE
(CITY OF WHEATON/WHEATON TRAIN STATION/BENSIDOUN USA)

This Commercial Sublease (the "Sublease") is made and entered into as of November (insert), 2008, by and between the City of Wheaton, an Illinois home rule municipal corporation ("Sublandlord") and Bensidoun USA ("Subtenant").

1. **PREMISES.** Sublandlord is the lessee of a building commonly known as the Wheaton Train Station at 402 Front Street, Wheaton, Illinois (the "Building"), pursuant to a lease dated April 1, 1998 attached hereto as Exhibit A (the "Master Lease") and which is on land owned by the Union Pacific Railroad Company. In consideration of the mutual promises, covenants and conditions set forth herein, Sublandlord hereby leases to Subtenant, and Subtenant hereby leases from Sublandlord areas within the building containing approximately (insert number of square feet) depicted by crosshatching on Exhibit B attached hereto and incorporated here as fully set forth (hereinafter referred to as the "Sublet Premises").

2. **TERM.** The term of this Sublease shall be for Saturday's only, between 7:00 a.m. until 3:00 p.m., from November 29, 2008 through December 20, 2008. The first and last hours of the subtenancy shall be for purposes of assembling and disassembling vendor stalls.

3. **RENT.** The rent for the lease term specified in Section 2 of this Sublease shall be \$100.00. The rent shall be paid to the City of Wheaton for the full term no later than November 25, 2008. A security deposit of \$1,000.00 shall be paid by the Subtenant to the Sublandlord simultaneous with the payment of the rent. The security deposit may be used to reimburse the Sublandlord for all costs and expenses incurred due to the Subtenant's breach of any covenant, term or condition of this Sublease. Any security deposit not used by the Sublandlord shall be returned to the Sublessee no later than 14 days from December 20, 2008.

4. **USE.** Subtenant shall use and occupy the Premises for the conduct of a European Style French Market only. The subtenant may use the premises for any and all of the following: Sale of food items; the sale of seasonal and promotional items including gifts, arts and crafts; the sale of jewelry, clothing items, purses; and fresh, dry and silk flowers. Subtenant's use shall be conducted to as not to interfere with the use of the Building as a commuter rail station.

5. **MISUSE.** Subtenant will not permit any lawful or immoral practice, with or without its knowledge or consent, to be committed or carried on in the Building by or by any other person. Subtenant will not let the Premises to be used for any purpose that will increase the rate of insurance thereon, nor for any purpose other than that hereinbefore specified. Subtenant will not keep or use or permit to be kept or used in or on the Premises or any place contiguous thereto any flammable fluids or explosives, without the written permission of the Sublandlord, first having been obtained. Subtenant will not load floors beyond the floor load rating prescribed by applicable municipal ordinances. Subtenant will not use or allow the use of the Premises for any purposes whatsoever that will injure the reputation of the Premises or the building of which they are part.

6. UTILITIES. The foregoing rental rate includes the Subtenant's utility expenses.

7. TRASH REMOVAL. Subtenant shall be responsible for the cost of station trash removal for the Lease Term.

8. SIGNS. Subtenant shall be permitted to place up to two (2) placard signs, in conformance with Article 23.9.6 of the Zoning Ordinance, upon the Subject Property.

9. MAINTENANCE AND REPAIR. Subtenant acknowledges that the Premises are in good order and repair, unless otherwise indicated herein. Subtenant shall keep the Premises in good order and repair and not permit waste thereof. Subtenant shall make arrangements for and undertake the costs of any and all cleaning of the Premises no later than 24 hours after the completion of each Saturday Market Day. Cleaning operations shall be conducted to the satisfaction of the Wheaton City Manager.

10. ALTERATION AND IMPROVEMENTS. Subtenant shall not make any alterations, additions, or improvements, in, to or about the Premises, without first obtaining the written consent of the Sublandlord. Subtenant shall not permit any mechanics' or material men's liens to be levied against the Premises for any labor or material furnished to Subtenant. Subtenant shall not install or any permit furnishings, machinery, trade fixtures, or equipment during the period of the tenancy. Any items remaining in the building more than two (2) hours after the completion of any market day by any vendor or the Subtenant shall be considered abandoned and forfeited to the City. Any item abandoned may be disposed of by the City in any manner the City deems appropriate and the costs of such disposal shall be paid by the Subtenant. In no event, shall the Subtenant or its vendors damage the Premises or the building.

11. COMPLIANCE WITH LAWS. If any law, ordinance, order, rule or regulation is passed or enacted by any governmental agency or department having jurisdiction over the Premises or Subtenant's use of the same which requires Subtenant to modify or alter its operations or use of the Premises, this Sublease shall in no way be affected and Subtenant shall, at its sole cost and expense, promptly comply with such law, ordinance, order, rule or regulation.

12. INSURANCE. During the Term of this Sublease, Subtenant shall obtain and keep in full force and effect, the following insurance which may be provided under blanket insurance policies covering other properties as well as the Premises and shall be maintained with an insurance company rated at least A-VIII or better in Best's Insurance Reports. Upon Sublandlord's request, Subtenant will provide Sublandlord and Master Landlord with a certificate(s) evidencing such insurance.

12.1 Liability Insurance. Personal injury, bodily injury and property damage insurance, naming Sublandlord and Master Landlord (Union Pacific Railroad) as additional insureds, as their interests may appear from time to time, against liability arising out of Subtenant's use, occupancy, or maintenance of the Premises. Such insurance shall provide coverage for and shall be in an amount of not less than One Million Dollars (\$1,000,000.00) for injury to or death of one person in any one accident or occurrence and in an amount of not less than Two Million Dollars (\$2,000,000.00) for injury to or death of more than one person in any

one accident or occurrence. Subtenant's insurance shall be primary with respect to any claim arising out of events that occur in the Premises.

12.2 Property Insurance. Commercial property form insurance with a special form endorsement to the extent of at least eighty percent (80%) of the insurable value of Subtenant's fixtures, equipment and inventory in the Premises. During the Term, Subtenant shall use the proceeds from any such policy or policies of insurance for the repair or replacement of the insured property. Subtenant's policies shall not be contributing with or in excess of any coverage that Sublandlord or Master Landlord shall carry on the Building.

13. INDEMNIFICATION. To the greatest extent permitted by Illinois law, Subtenant shall defend, indemnify, and hold Sublandlord and Sublandlord's agents, officers, directors, employees, and contractors harmless against and from any and all injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including reasonable attorneys' fees) arising in connection with any and all third party claims arising out of (a) injuries occurring within the Premises; (b) any intentional acts or negligence of Subtenant or Subtenant's agents, employees, or contractors; (c) any breach or default in the performance of any obligation on Subtenant's part to be performed under this Sublease; or (d) the failure of any representation or warranty made by Subtenant herein to be true when made. This indemnity shall survive termination of this Sublease only as to claims arising out of events that occur prior to termination of the Sublease.

14. ENVIRONMENTAL LIABILITY.

14.1 Environmental Law. The term "Environmental Law" means any federal, state, provincial, local law, statute, ordinance, regulation or order and all amendments thereto pertaining to health, industrial hygiene, environmental conditions or Hazardous Substances.

14.2 Hazardous Substance. The term "Hazardous Substance" shall mean any hazardous or toxic substances, materials or wastes, or pollutants or contaminants as defined, listed or regulated by any Environmental Law or by common law decision including, without limitation, chlorinated solvents; petroleum products or by-products; asbestos; and polychlorinated biphenyl.

14.3 Subtenant's Use of Any Hazardous Substance. The only Hazardous Substances Subtenant may use in its operations are cleaning solvents. Subtenant will manage such use in accordance with the Environmental Laws. Other than using the foregoing cleaning solvents, Subtenant does not have direct or indirect authority to possess, deposit, release, place, store, manage or control use, transportation, generation or disposal of any Hazardous Substance on the Premises, the Building or the Property.

14.4 Indemnities. In addition to the indemnities set forth in paragraph 13 above, and to the greatest extent provided by law, Subtenant shall protect, indemnify, and hold harmless Sublandlord and Sublandlord's employees, agents, parents, and subsidiaries from and against any and all loss, damage, cost, expense, or liability (including attorneys' fees) and the costs of repairs and improvements necessary to return the Premises to the physical condition

existing prior to undertaking any activity related to any Hazardous Substance ("Claims") directly arising out of or attributable to Subtenant or Subtenant's agents, contractors, or employees possession, deposit, use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises or the Building. This indemnity shall survive the termination of this Sublease.

15. INDEMNIFICATION. If the Building is damaged or destroyed by fire or any casualty which cannot be restored within 24 hours this Sublease shall terminate and the Subtenant shall be refunded any remaining rent on a prorated basis.

16. ASSIGNMENT AND SUBLetting. Except as to stalls or sales areas leased to Subtenants vendors, Subtenant shall not assign this Sublease or sublet the Premises, or any part thereof, without the prior written consent of Sublandlord, which consent may be subject to any and all terms and conditions as Sublandlord considers necessary to protect its interest in the Premises; provided, however, that no assignment of this Sublease, whether by act of Subtenant or by operation of law, and no subletting of the Premises, or any part thereof, by or from Subtenant, shall relieve or release Subtenant from any of its obligations hereunder. Any assignment or subletting without Sublandlord's consent shall be void and, at the option of Sublandlord, may terminate this Sublease.

17. SUBLANDLORD'S REMEDIES ON DEFAULT. If Subtenant defaults in the performance of any conditions or covenants hereunder Sublandlord may give notice of the default and if the Subtenant does not cure the default within 3 business days after such notice Sublandlord may terminate this Sublease. Notice of termination shall be mailed to the Subtenant as provided herein. No failure to enforce any term of this lease shall be deemed as a waiver. Subtenant shall pay upon demand all of Sublandlord's costs, charges and expenses, including attorneys fees, incurred enforcing any obligations under this Sublease.

18. SURRENDER OF PREMISES. Upon termination of this Sublease, whether by lapse of time or otherwise, or the exercise of the Sublandlord of any power to enter and reposes the Premises, Subtenant shall surrender possession of the premises to the Sublandlord in a condition and order of repair substantially similar to its original condition upon commencement of this Sublease.

19. PRIOR AGREEMENTS; AMENDMENTS. This Sublease contains all agreements of the parties as of the date hereof in any and all prior negotiations or discussions are incorporated herein. This Sublease may not be modified or otherwise altered without the written consent of both parties.

20. HOLDING OVER. Holding over is prohibited under the terms of this lease.

21. CUMULATIVE REMEDIES. Except or otherwise expressly provided in this lease, no remedy or election hereunder shall be deemed exclusive, but shall, whenever possible be cumulative with all other remedies at law or in equity.

22. ENTRY BY SUBLANDLORD. Sublandlord shall have the right to enter upon the Premises at all times for the purpose of inspecting the same, and shall have the right at

any time within 60 days prior to the expiration of this Sublease, to place upon the Premises any of the Sublandlord signs or other information.

23. PERFORMANCE OF MASTER LEASE OBLIGATIONS. Subtenant covenants and agrees to comply with and shall have the benefit of all provisions of any covenants and restrictions pertaining to the Building or Property of which the Premises are part, including without limitation, use of all common areas, and the other terms contained in the Master Lease. Subject to the provisions of this Sublease, Sublandlord shall not be in default of any term, covenant or agreement of this Sublease if Master Landlord is obligated, pursuant to the Master Lease, to perform such term, covenant or agreement. Sublandlord will not bear any liability and shall not be considered in breach of this Sublease if the Master Landlord breaches any term or provision of the Master Lease.

24. SUBORDINATION TO MASTER LEASE. Subtenant covenants and agrees that its conduct shall conform to the standards and provisions of the Master Lease. Subtenant acknowledges and agrees that its rights under this Sublease are those of a subtenant and not an assignee of Sublandlord's rights under the Master Lease and that Subtenant's rights are junior and subordinate to the terms and provisions of the Master Lease. Unless otherwise provided in this Sublease, the termination of the Master Lease for any reason whatsoever shall automatically terminate and cancel this Sublease, and all rights of Subtenant hereunder, effective on the date the Master Lease terminates. Except as otherwise provided in this Lease, in the event of such termination, Sublandlord shall have no further obligation to Subtenant.

25. MASTER LANDLORD APPROVAL. Any approvals under the Master Lease by the Master Landlord shall be a prerequisite to the effectiveness and operation of this Sublease and any decision by the Master Landlord shall be binding and shall not be interpreted as breaching any of the conditions of this Sublease by Sublandlord. This Sublease shall be contingent upon the approval of the Master Landlord, in accord with Section 32 of the Master Lease. Should Master Landlord fail to give its consent, the Sublease shall be of no further force and effect, and Subtenant shall be entitled to recover any monies paid by Subtenant in connection with this Sublease.

26. CONFESION OF JUDGMENT. Subtenant hereby irrevocably constitutes and appoints any attorney, of any court of record in this State, to be his lawful attorney for him and in his name and stead, to enter his appearance in any suit or suits that may be brought in any court in this State at any time when any money is due hereunder for rent or otherwise, to waive the issuing of process and service thereof and trial by jury or otherwise, and to confess a judgment or judgments for such money so due and for costs of suit and for reasonable attorney's fees in favor of Sublandlord, and to release all errors that may occur or intervene in such proceedings, including the issuance of execution upon any such judgment, and to stipulate that no writ of error or appeal shall be prosecuted from such judgment or judgments, nor any bill in equity filed, nor any proceedings of any kind taken in law or equity to interfere in any way with the operation of such judgment or judgments or of execution issued thereon and to consent that execution may immediately issue thereon.

27. NOTICES. Whenever a provision is made under this Sublease for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be in writing and served either personally, sent by United States mail, certified, postage prepaid, or by a reputable overnight courier service addressed at the addresses set forth below or at such address as either party may advise the other from time to time.

To Sublandlord at: City of Wheaton
Attn: City Manager
303 West Wesley St.
Wheaton, IL 60187

To Subtenant at: Bensidoun USA
405 N. Wabash, Ste. 3404
Chicago, IL 60611

Notices given hereunder shall be deemed to have been given on the date of personal delivery (or the first business day thereafter if delivered on a non-business day) or two (2) days after the date of mailing.

IN WITNESS WHEREOF, the parties have executed this Sublease as of the date first above written.

SUBLANDLORD:

Bensidoun, USA

By

City of Wheaton,
an Illinois municipal corporation,

By

Sublandlord's Federal Tax
Identification Number