

**A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AND DIRECTING THE CITY CLERK TO ATTEST TO A
SUBLEASE AMENDMENT BETWEEN THE CITY OF WHEATON AND ROBERT LOVELAND d/b/a
COMMUTER COMFORTS**

WHEREAS, the City of Wheaton, leases commuter train stations from the Union Pacific Railroad for the convenience of its citizens who commute by train to work;

WHEREAS, the City of Wheaton, consistent with its lease with the Union Pacific Railroad has subleased portions of the College Avenue commuter train station, located on College Avenue in the City of Wheaton, hereinafter "Station" to Robert Loveland d/b/a Commuter Comforts, hereinafter "Commuter Comforts" for the provision of coffee and other items for the benefit of commuters and which further enhance the attractiveness and utility of the Station; and

WHEREAS, City staff has received numerous and continuing positive comments from citizens about Commuter Comfort's business and the management of that business;

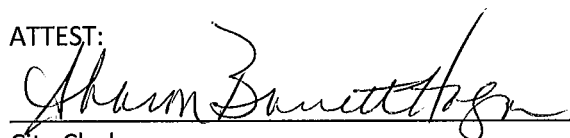
WHEREAS, City staff has examined the operations of Commuter Comforts and concluded that Commuter Comforts operates its business in a responsible, competitive and professional manner;

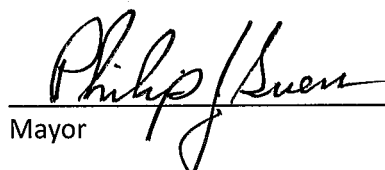
WHEREAS, the Corporate Authorities of the City of Wheaton desire to further extend the sublease between the City and Commuter Comforts until December 31, 2023 so long as there is compliance with the terms of the sublease.

NOW THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois that the Mayor is hereby authorized to sign and the City Clerk is hereby directed to attest to the amendment to the sublease attached hereto and incorporated herein as fully set forth as Exhibit "1".

ADOPTED this 16th day of November 2020.

ATTEST:


City Clerk


Mayor

ROLL CALL VOTE:

Ayes: Councilwoman Robbins
Councilman Rutledge
Councilman Zaruba
Councilman Barbier
Councilwoman Bray-Parker
Councilwoman Fitch
Mayor Suess

Nays: None

Absent: None

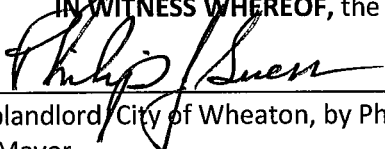
Motion Carried Unanimously

Exhibit "1"

**AMENDMENT TO COMMERCIAL SUBLEASE MADE AND ENTERED INTO AS OF NOVEMBER 3, 2014, BY
AND BETWEEN THE CITY OF WHEATON, AN ILLINOIS MUNICIPAL CORPORATION, ("SUBLANDLORD")
AND ROBERT LOVELAND d/b/a COMMUTER COMFORTS**

1. Section 2 entitled "Terms" of the sublease for the Station is hereby amended by extending the end date of the sublease to December 31, 2023.
2. Section 3 entitled "Rent" of the sublease for the Station is hereby amended by the addition of the following: "No rent shall be due for any month in which the Metra System Estimated Passenger Trips by Line (UP-W) does not exceed 50% of the passenger trips for that same month in 2019."
3. That all other terms and conditions of the original sublease shall remain in full force and effect. The original of the sublease is attached hereto and incorporated herein as if fully set forth as Exhibit "A".

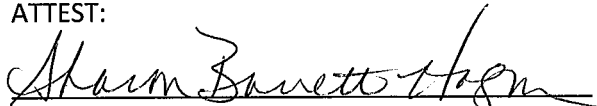
IN WITNESS WHEREOF, the parties have executed this Amendment to the original sublease.


Sublandlord City of Wheaton, by Phillip J. Suess,
its Mayor

36-600-6153
Sublandlord, Federal Tax ID Number

Date: November 17, 2020

ATTEST:


City Clerk, City of Wheaton

Date: November 17, 2020

Robert Loveland D/B/A Commuter Comforts

Date: _____

SUBSCRIBED and SWORN to before me
this _____ day of _____, 2020

Notary Public



Exhibit "A"

THIS COMMERCIAL SUBLEASE (the "Sublease") is made and entered into as of November 14, 2005, by and between the City of Wheaton, an Illinois municipal corporation, ("Sublandlord") and Java Connection of Wheaton, Inc ("Subtenant").

1. **PREMISES.** Sublandlord is the lessee of a building commonly known as the College Avenue Train Station (the "Building") under that a certain lease attached hereto as **Exhibit C** (the "Master Lease"), and which is located on land owned by the Union Pacific Railroad Company, which is legally described in **Exhibit A** attached hereto. In consideration of the mutual promises, covenants and conditions herein set forth, Sublandlord hereby leases to Subtenant and Subtenant hereby leases from Sublandlord that certain premises in the Building with an address of 303 North President, Wheaton, Illinois, containing approximately 165 square feet of floor area as shown on **Exhibit B** attached hereto and by this reference incorporated herein (the "Premises").
2. **TERM.** The Initial term of this Sublease shall be for one (1) year, commencing on December 1, 2005 (or upon occupancy) and ending on November 30, 2006 (or 12 months from occupancy), unless sooner terminated or extended as provided herein (the "Initial Term"). The Sublease may be extended for two, twelve month time periods, if the Subtenant agrees to pay the same annual rent as stated in Section 3. and the extension is agreed to in writing by both the Sublandlord and Subtenant. Notwithstanding the foregoing, this Sublease shall terminate upon termination of the Master Lease in accordance with the terms of that Master Lease, provided, however, that Sublandlord shall provide Subtenant with any termination notice under the Master Lease immediately upon receipt or exercise.
3. **RENT.** The annual rent for the lease term shall be \$7,884 payable in equal monthly installments of \$657 each, in advance of the first day of each calendar month throughout the lease term. Subtenant shall pay the first and last month's rent to Sublandlord at the time of the parties' execution of this Sublease, as security for the payment of rent and faithful performance by the Subtenant of all its obligations under this Sublease. The security deposit may be used to reimburse the Sublandlord for all costs and expenses incurred due to the Subtenants breach of any covenant, term or condition of this Sublease. Should any amount be used, Subtenant agrees to restore the security deposit to its original amount. The security deposit shall be held and applied as provided by the laws of the State of Illinois. The security deposit may not be applied by the Subtenant toward the payment of rent. If the Subtenant fully performs its obligations hereunder, the security deposit, or balance shall promptly be returned to the Subtenant upon termination of this Sublease. All rental payments shall be made to Sublandlord at the address specified in Section 36.
4. **USE.** Subtenant shall use and occupy the Premises for a coffee store and related uses. In engaging in such use, Subtenant shall sell for retail any or all of the following: (a) coffee by the cup, (b) espresso-based drinks, (c) teas and spices, (d) pre-packaged or off-site prepared baked goods, and (e) fruit juices and water. Subtenant may also sell for retail any or all of the following: (a) seasonal, promotional and Subtenant branded merchandise, (b) fresh whole and ground coffee beans, (c) pre-packaged coffee beans, (d) coffee and tea related equipment and supplies, (e) books, magazines and newspapers, (f) pre-packaged or off-site prepared salads, sandwiches and gourmet food items, (g) fruit, and (h) other items that Subtenant or its successors make available for sale in the ordinary course of business. Subtenant is prohibited from using the Premises to prepare, cook, bake or broil any food (not including beverage) items. Subtenant's use of the Premises shall be comparable to that of a First Class coffee store in the surrounding metropolitan area and such use shall be in a lawful, careful, safe, and proper

manner. Subtenant shall carefully preserve, protect, control and guard the Premises from damage. If Sublandlord becomes dissatisfied with the quality of Subtenant's service provided or with the quality of products or goods sold by Subtenant to the public, or if Sublandlord receives numerous complaints about the Subtenant's quality of service and/or products or goods, Sublandlord shall promptly notify Subtenant of the quality deficiency(ies) and Subtenant shall have 21 days after such notice has been given to rectify the deficiency(ies) and to improve its quality of service and products to that of a comparable First Class coffee store in the surrounding metropolitan area. If the deficiency(ies) is not rectified and/or if quality improvements are not made to the First Class standard required herein, Subtenant shall be deemed to be in default of this section and Sublandlord may exercise any remedies available to it upon default under this Sublease.

Subtenant may furnish, install, and maintain no more than 3 vending machines in the Premises. Food and beverage items are the only types of items that may be sold and/or distributed via the vending machines allowed in the Premises pursuant to this paragraph. No other items, including but not limited to cigarettes and condoms, may be sold and/or distributed via the vending machines allowed in the Premises pursuant to this paragraph. Subtenant is responsible for providing electrical service for any vending machine installed in the Premises. Such electricity shall be supplied from the electrical lines metered specifically for the Premises, and which shall be metered separately from the electricity supplied for the remaining portions of the Building. All charges for any electricity used or provided to any vending machine installed in the Premises shall be the sole responsibility of the Subtenant, as provided for in Paragraph 9 of this Sublease. Subtenant shall be responsible for any and all contracts, costs, expenses, damages, repairs and losses associated with any vending machine's products. Any and all profits from any vending machine installed by Subtenant in the Premises belong to Subtenant. 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 attorney's fees) arising in conjunction with any and all third party claims pertaining to Subtenant's vending machines.

5. MISUSE. Subtenant will not permit any unlawful or immoral practice, with or without his knowledge or consent, to be committed or carried on in the Premises by itself or by any other person. Subtenant will not allow 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 Sublandlord first had and 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 purpose whatsoever that will injure the reputation of the Premises or of the building of which they are a part.

6. SALES. Subtenant shall disclose in writing to Sublandlord with its monthly rent payment for the months of February, May, August and November, the amount of its gross quarterly sales, for the quarter immediately preceding the month in which such gross sales disclosure is due.

7. OPERATIONS. Subtenant shall, at a minimum, operate its business in the Premises from 6:00 a.m. to 10:00 a.m. Monday through Friday and such additional hours as

Subtenant considers proper in Subtenant's business judgment. Nothing in this Section or Sublease shall be construed as a continuous operating covenant.

8. UTILITIES. Subtenant will pay, in addition to the rent specified above, all separately metered electricity charged on the Premises, for and during the time for which this Sublease is granted, and in case the electric bill is not paid when due, Sublandlord shall have the right to pay the same, and the amount of any electric bill paid by Sublandlord will be declared to be so much additional rent and payable within 21 days of the date on which the City paid the electric bill, and if Subtenant does not pay the City within that time, Subtenant will be considered in breach of this Sublease. Subtenant shall also provide all replacement light bulbs and tubes and shall pay for all maintenance of all utilities for the Premises, during the sublease term and any extension thereof. Subtenant may install and maintain telephonic lines on the Premises at its sole cost and expense after prior notification to and approval from Sublandlord.

Sublandlord does not warrant that any of the utility services above-mentioned will be free from interruptions caused by war, insurrection, civil commotion, riots, acts of God or the enemy, governmental action, lockouts, picketing (whether legal or illegal), accidents, inability of Sublandlord to obtain fuel or supplies, or any other cause or causes beyond the reasonable control of Sublandlord. Any such interruption of service shall not be deemed an eviction or disturbance of Subtenant's use and possession of the Premises, or any part thereof, or render Sublandlord liable to Subtenant for damages, or relieve Subtenant from the performance of Subtenant's obligations under this Sublease. Sublandlord shall have no responsibility or liability for the failure of any public or private utility to supply sufficient or adequate utility services to the Premises.

9. TRASH REMOVAL. Sublandlord shall provide a location on the Property convenient to the Premises for a three or four cubic-yard trash container and recycling bins for trash disposal and recycling exclusively for Subtenant's use; or, if Subtenant is sharing a trash dumpster supplied by Sublandlord, Subtenant will pay its share of the costs of such dumpster based on the square footage of Subtenant's store compared to the total square footage of all tenants sharing the trash dumpster.

10. SIGNS. Subtenant may attach, affix, or exhibit or permit to be attached, affixed or exhibited on the Premises and inside the Building, one business identification sign after providing to Sublandlord a sketch, drawing or plan depicting the sign and its placement on the Premises and after obtaining Sublandlord's written consent. Subtenant may also attach, affix or exhibit or permit to be attached, affixed or exhibited information signage about its products and services after providing to Sublandlord a sketch, drawing or plan depicting any such signs and their placement on the Premises and after obtaining Sublandlord's written consent.

11. MAINTENANCE AND REPAIR.

11.1 Subtenant's Obligations. Subtenant acknowledges that the Premises are in good order and repair, unless otherwise indicated herein. Subject to the provisions of Section 12.2, 18, 21 and except for damage caused by fire or other casualty, whether or not insured or insurable, Subtenant at Subtenant's expense, shall keep the Premises in good order and repair, including maintaining all plumbing, heating, electrical and lighting facilities and equipment within the Premises and exclusively serving the Premises, and the store front, doors and plate glass, in any, of the Premises. Notwithstanding any provision to the contrary, Subtenant's obligations under this Section shall not include making (a) any repair or improvement

necessitated by the negligence or willful misconduct of Sublandlord, its agents, employees or servants; or (b) any repair or improvement caused Sublandlord's failure to perform its obligations hereunder or under any other agreement between Sublandlord and Subtenant.

11.2 Sublandlord's Obligations. Sublandlord's legal obligations to the Subtenant under this Sublease shall never be greater than its obligations to the Master Landlord under the Master Lease.

11.3 Sublandlord's Rights. If Subtenant fails to perform Subtenant's obligations under this Article, Sublandlord may, but shall not be required to, enter upon the Premises, after thirty (30) days prior written notice to Subtenant, and put the same in good order, condition and repair and all reasonable costs thereof shall become due and payable as additional rent to Sublandlord together with Subtenant's next monthly rent installment falling due after Subtenant's receipt of an invoice for such costs.

12. ALTERATIONS AND IMPROVEMENTS. Subtenant shall not make any alterations, additions, or improvements, in, to or about the Premises, without first obtaining the written consent of Sublandlord. If any alterations and/or improvements are allowed and made, 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 or to its agents or contractors; provided however, that Subtenant shall not be required to pay or otherwise satisfy any claims or discharge such liens so long as Subtenant, in good faith and at its own expense, contests the same or the validity thereof by appropriate proceedings and posts a bond or takes other steps acceptable to the Master Landlord and Sublandlord that stay enforcement of such lien.

All personal property, furnishings, machinery, trade fixtures, equipment and improvements (trade or otherwise) which Subtenant installs in the Premises ("Subtenant's Property") shall remain the property of Subtenant. Upon the termination or expiration of the Term, Subtenant may remove Subtenant's Property from the Premises no later than the termination or expiration date. In addition, Subtenant may remove from the Premises all items and structural characteristics installed by Subtenant that are indicative of Subtenant's business and may otherwise "de-identify" the Premises, as Subtenant reasonably believes necessary or appropriate for the protection of Subtenant's interest in Subtenant's trademarks, trade names or copyrights. Subtenant shall repair any damage to the Premises or the Building caused by such removal, including patching and filling holes. In no event shall Subtenant remove or be required to remove any restrooms, flooring, ceilings, utility or electrical components located inside the walls or HVAC systems. All other utility systems will be capped and returned to a condition compatible with code requirements. Any of Subtenant's Property not removed from the Premises on the date the Sublease terminates or expires shall become the property of Sublandlord.

13. 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.

14. 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.

14.1 Liability Insurance. Personal injury, bodily injury and property damage insurance, naming Sublandlord and Master Landlord as additional insureds as its interest may appear from time to time, against liability arising out of Subtenant's use, occupancy, or maintenance of the Premises and Subtenant's outdoor seating area (if any). 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.

14.2 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 unless Subtenant elects to terminate the Sublease under Section 18 hereof. Subtenant's policies shall not be contributing with or in excess of any coverage that Sublandlord shall carry on the Building.

15. 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 does not include the intentional or negligent acts or omissions of Sublandlord or its agents, officers, contractors or employees. This indemnity shall survive termination of this Sublease only as to claims arising out of events that occur prior to termination of the Sublease.

16. ENVIRONMENTAL LIABILITY.

16.1 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.

16.2 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.

16.3 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 responsibility for or 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.

16.4 Indemnities. In addition to the indemnities set forth in paragraph 16 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's 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.

17. DAMAGE OR DESTRUCTION.

17.1 Material Damage. If the Premises or the Building is damaged or destroyed by fire or any casualty which cannot, despite diligent, good faith efforts be repaired or restored, by the Sublandlord or Master Landlord, as the case may be, within one hundred eighty (180) days following the date on which such damage occurs, then Subtenant may elect to terminate the Sublease effective as of the date of such damage or destruction. Within thirty (30) days after the date of such damage, the parties shall determine how long the repair and restoration will take. After that determination has been made, Subtenant shall have a period of thirty (30) days to terminate the Sublease by giving written notice to Sublandlord.

17.2 Repair After Damage. If Subtenant does not give notice of Subtenant's election to terminate as provided in Section 18.1, and the Master Lease has not been terminated as a result of such damage, Sublandlord may elect to (subject to the provisions of the Master lease where required or permitted): (a) cause the restoration of the Premises to substantially the same condition as existed before such damage or destruction; or (b) cancel this Sublease as of the date of such fire or casualty by giving written notice to Subtenant not more than 30 days thereafter. Should Sublandlord elect to proceed under (a) above, rent shall abate unless Subtenant continues to partially occupy the Premises in which case Subtenant shall pay all rent on a prorated basis equal to an amount obtained by multiplying the then existing monthly rent by a percentage equal to the fraction which has as its numerator the amount of square feet in the improvements of the Premises which is incapable of being used for its intended purpose and as its denominator the total amount of square feet in the improvements on the Premises, until the Premises are restored. Subtenant shall fully cooperate with Sublandlord in making available to Sublandlord for the purpose of so restoring the Premises all insurance proceeds payable under Section 15 as a result of fire or other casualty damage to the Premises.

Nothing in this Section 18.2 is intended to alter the repair and restoration obligations as apportioned between Sublandlord and Master Landlord under the Master Lease.

17.3 Uninsured Damage. Subject to termination of the Master Lease as a result of material damage, if damage or destruction is caused by a peril not required to be insured against hereunder and for which insurance proceeds are not available, either Sublandlord or Subtenant may terminate this Sublease by thirty (30) days written notice to the other of its election so to do and the Sublease shall be deemed to have terminated as of such date unless the other party agrees in writing to pay for such repairs or restoration.

18. ASSIGNMENT AND SUBLETTING. 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.

19. SUBLANDLORD'S REMEDIES ON DEFAULT. If Subtenant defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, Sublandlord may give Subtenant notice of such default and if Subtenant does not cure any such default within 10 days after the giving of notice (or if such other default is of such nature that it cannot be completely cured within such period, if Subtenant does not commence such curing within such 21 days and thereafter proceed with reasonable diligence and in good faith to cure such default), then Sublandlord may terminate this Sublease on not less than 10 days notice to Subtenant. On the date specified in such notice the term of this lease shall terminate and Subtenant shall then quit and surrender the Premises to Sublandlord, but Subtenant shall remain liable as hereinafter provided. If this Sublease shall have been so terminated by Sublandlord, Sublandlord may at any time thereafter resume possession of the Premises by any lawful means and remove Subtenant or other occupants and their effects. No failure to enforce any term shall be deemed a waiver. Subtenant shall pay upon demand all Sublandlord's costs, charges and expenses, including fees of attorneys, agents and others retained by Sublandlord, incurred in enforcing any of the obligations of Subtenant under this Sublease or in any litigation, negotiation or transaction in which Sublandlord shall, without Sublandlord's fault, become involved through or on account of this Sublease.

20. SURRENDER OF PREMISES. Upon termination of this Sublease, whether by lapse of time or otherwise, or upon the exercise by Sublandlord of the power to enter and repossess the Premises without terminating this Sublease, as hereinbefore provided, Subtenant shall at once surrender possession of the Premises to Sublandlord in a condition and order or repair substantially similar to its original condition and order of repair upon the commencement of the sublease term, reasonable wear and tear and damage by events of casualty excepted, and shall at once remove all of Subtenant's personal property and trade fixtures from the Premises. If, upon any such termination, Subtenant does not at once surrender possession of the Premises and remove such of its property as allowed by Sublandlord, Sublandlord may forthwith re-enter and repossess the same and remove all of Subtenant's property without being guilty of trespass or of forceful entry or detainer or without incurring any liability to Subtenant for loss or damage to Subtenant's property. Upon any such removal of Subtenant's property, it shall be considered to have been abandoned and may either be retained by Sublandlord as its property or may be disposed of at public or private sale as Sublandlord sees fit. If any such property is either sold at public or private sale or retained by Sublandlord, the proceeds of any such sale or the then current market value of the property, as the case may be, shall be applied by Sublandlord against Sublandlord's expenses or removal, storage or sale of such property, the arrears of rent and other charges or future rent and other charges payable hereunder, and any other damages to which Sublandlord may be entitled hereunder. Subtenant shall repair, at its sole cost and expense, any damage to the premises resulting from the removal of its property as allowed hereunder.

21. AUTHORITY. Each of Sublandlord and Subtenant hereby represents and warrants that this Sublease has been duly authorized, executed and delivered by and on its behalf and constitutes such party's valid and binding agreement in accordance with the terms hereof.

22. SEVERABILITY. The invalidity of any provision of this Sublease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

23. TIME OF ESSENCE. Time is of the essence with regard to all provisions of this Sublease.

24. HEADINGS. Article and section headings are not a part hereof and shall not be used to interpret the meaning of this Sublease.

25. PRIOR AGREEMENTS; AMENDMENTS. This Sublease contains all agreements of the parties as of the date hereof with respect to any matter mentioned herein. No prior agreement, correspondence or understanding pertaining to any such matter shall be effective to interpret or modify the terms hereof. This Sublease may be modified only in writing, signed by the parties in interest, at the time of the modification. Sublandlord specifically acknowledges that Subtenant's employees at the Premises do not have authority to modify the Sublease or to waive Subtenant's rights hereunder.

26. WAIVERS. No waiver by Sublandlord or Subtenant of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Subtenant or Sublandlord of the same or any other provision. A party's consent to or approval of any act shall not be deemed to render unnecessary obtaining such party's consent to or approval of any subsequent act. No waiver shall be effective unless it is in writing, executed on behalf of Sublandlord as authorized by its Corporate Authorities or Subtenant by the person to whom notices are to be addressed.

27. HOLDING OVER. If Subtenant remains in possession of the Premises or any part thereof after the expiration of the Term, with or without the consent of Sublandlord, such occupancy shall be a tenancy from day-to-day at a rental in the amount of \$64.50 per day payable weekly, plus all other charges payable hereunder, and upon the terms hereof applicable to day-to-day tenancies.

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

29. CHOICE OF LAW. The Sublease shall be binding upon and benefit the parties, their personal representatives, successors and assigns. The Sublease shall be governed by the laws of the state of Illinois.

30. SUBORDINATION. This Sublease is and shall be subordinated to all existing and future liens and encumbrances against the Building and Premises.

31. ENTRY BY SUBLANDLORD. Sublandlord shall have the right to enter upon the Premises at all reasonable 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 usual "For Lease" signs, and may bring persons desiring to lease the Premises to inspect the Premises thereafter.

32. FORCE MAJEURE. Notwithstanding any other provision hereof, in the event that either party shall be delayed or hindered in or prevented from the performance of any covenant, agreement, work, service, or other act required under this Sublease to be performed by such party, and such delay or hindrance is due to causes entirely beyond its control such as riots, insurrections, martial law, civil commotion, war, fire, flood, earthquake, or other casualty or acts of God, the performance of such covenant, agreement, work, service, or other act shall be excused for the period of delay and the time period for performance shall be extended by the same number of days in the period of delay.

33. 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.

34. 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.

35. 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.

36. CONFESSION 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.

37. **SUBLANDLORD'S LIEN.** Sublandlord shall have the first lien upon the interest of Subtenant under this Sublease, to secure the payment of all moneys due under this Sublease, which lien may be foreclosed in equity at any time when money is overdue under this Sublease; and the Sublandlord shall be entitled to act as a receiver of said leasehold interest, to take possession of said Premises and relet the same.

38. **REMOVAL OF OTHER LIENS.** In event any lien upon title to the Premises results from any act or neglect of Subtenant, and Subtenant fails to remove said lien within 10 days after Sublandlord's notice to do so, Sublandlord may remove the lien by paying the full amount thereof or otherwise and without any investigation or contest of the validity thereof, and Subtenant shall pay Sublandlord upon request the amount paid out by Sublandlord in such behalf, including Sublandlord's costs, expenses and attorney's fees.

39. **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: Java Connection of Wheaton, Inc
Attn : Ellen E. Herman
436 Bristol Drive
Carol Stream, IL 60188

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.

41. **EXHIBITS.** The following exhibits are attached to this Sublease and by this reference are incorporated herein.

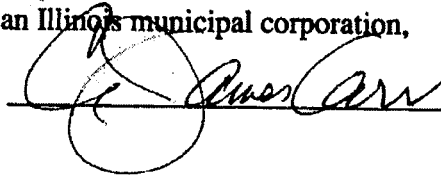
- A. Legal Description
- B. Site Plan with Diagram of Premises
- C. Master Lease

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

SUBLANDLORD:

City of Wheaton,
an Illinois municipal corporation,

By

A handwritten signature in black ink, appearing to read "C. Wheeler", is written over a horizontal line.

Sublandlord's Federal Tax
Identification Number 36-600-6153

STATE OF ILLINOIS)
)SS.
COUNTY OF DuPage)

On this 16th day of November, 2005, before me, the undersigned, a Notary Public in and for the State of Illinois, duly commissioned and sworn, personally appeared, to me known as, or providing satisfactory evidence that he/she is the MAYOR of THE CITY OF WHEATON, an Illinois municipal corporation, the municipal corporation that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath stated that he/she is authorized to execute said instrument.

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



NOTARY PUBLIC in and for the State
of Illinois residing at Warrenville
My commission expires 8/28/06
Print Name: Janet Q. Christman

SUBTENANT:

Ellen E. Herman

By owner

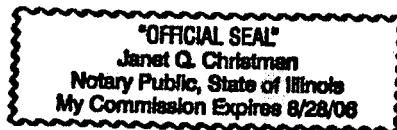
STATE OF ILLINOIS)
)SS.
COUNTY OF DUPAGE)

On this 16th day of November, 2005, before me, the undersigned, a Notary Public in and for the State of Illinois, duly commissioned and sworn, personally appeared, to me known as, or providing satisfactory evidence that he/she is the OWNER of CAFÉ ETC., the Illinois corporation that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath stated that he/she is authorized to execute said instrument.

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

Java Connection
of Wheaton, Inc

Janet Q. Christman
NOTARY PUBLIC in and for the State
of Illinois residing at Warrenville
My commission expires 8/28/06
Print Name: JANET Q. CHRISTMAN

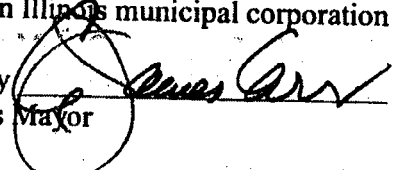


February 7, 2005 shall be amended by modifying the end date to December 31, 2008.

2. Section 39 entitled "Option to Renew" of the Wheaton Main Commuter Station shall be amended by modifying the renewal period from twelve months to 36 months.
3. Section 2 entitled "Term" of the College Avenue Commuter Station dated November 14, 2005 shall be amended by modifying the end date to December 31, 2008. Section 2 shall further be amended by modifying the extension from two, twelve month periods to one, three year period.
4. All other terms and conditions of the original sublease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this amendment to the original sublease.

Sublandlord:
City of Wheaton,
An Illinois municipal corporation

By 
Its Mayor

Sublandlords Federal Tax
Identification Number 36-600-6153

Subtenant:
Java Connection

By 
Its Owner



THIS AMENDMENT TO A COMMERCIAL SUBLEASE ("THE SUBLEASE")
is made and entered into as of December 19, 2005 by and between
the City of Wheaton, an Illinois municipal corporation, ("Sublandlord")
and Ellen E. Herman ("Subtenant")

1. Section 2 entitled "Term" of the Wheaton Main Commercial Lease is hereby

