

RESOLUTION R-2021-01

**A RESOLUTION AUTHORIZING THE EXECUTION OF A MARKET LICENSE AGREEMENT WITH
WFM26, LLC, COMMENCING ON APRIL 1, 2022**

WHEREAS, Bensidoun USA, Inc., operates an open-air market in City of Wheaton ("City") Parking Lot #3; and

WHEREAS, the open-air market in the City's Parking Lot #3 has enjoyed the support of the community since its inception twenty-two years ago, and draws many visitors to downtown Wheaton on a weekly basis; and

WHEREAS, WFM26, LLC, 405 N. Wabash, #3404, Chicago, Illinois 60611, was created by Bensidoun USA, Inc., for the operation of Bensidoun USA, Inc.'s market in the City and commencing with the 2022 market season, WFM26, LLC will be maintaining and operating the market formerly maintained and operated by Bensidoun, USA, Inc.; and

WHEREAS, as a part of the City's downtown streetscape project, the City is undertaking the erection of a canopy structure on City Parking Lot #3; and

WHEREAS, WFM26, LLC, desires to maintain and operate seasonal open-air and covered markets on City Parking Lot #3 and use a portion of the City's Willow Avenue Parking Garage for storage; and

WHEREAS, the City desires to enter into a Market License Agreement ("Agreement") with WFM26, LLC, for a five (5) year term, with the option to extend the Agreement for one (1) additional five year term, which provides WFM26, LLC with: (1) a license to use Parking Lot #3 for the maintenance and operation of its seasonal open-air and covered markets, and (2) a license to use of a portion of the Willow Avenue Parking Garage for storage use.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is hereby authorized to execute, and the City Clerk is hereby directed to attest to the Market License Agreement between the City of Wheaton and WFM 26, LLC, 405 N. Wabash, #3404, Chicago, Illinois 60611 for a five (5) year term with the option to extend the Agreement for one (1) additional five (5) year term; and that a copy of that certain Market License Agreement is attached hereto and incorporated by reference into this Resolution as if fully set for herein, as Exhibit "A".

ADOPTED by the City Council of the City of Wheaton, Illinois, this 4th day of January 2021.

ATTEST:


City Clerk


Mayor

ROLL CALL VOTE:

Ayes: Councilman Rutledge
Councilman Zaruba
Councilman Barbier

Councilwoman Bray-Parker
Councilwoman Fitch
Mayor Suess
Councilwoman Robbins

Nays: None

Absent: None

MOTION CARRIED UNANIMOUSLY

EXHIBIT "A"

MARKET LICENSE AGREEMENT

This Agreement (the "Agreement") is made as of January 5, 2021, by and between the CITY OF WHEATON, a municipal corporation (the "Licensor") and WFM26, LLC, an Illinois limited liability corporation (the "Licensee"). Licensor and Licensee may be referred to in this Agreement individually as "Party" and collectively as "Parties."

WHEREAS, the County of DuPage, Illinois (the "County") holds title to the former Chicago, Aurora & Elgin Railroad right-of-way within the City of Wheaton (said right-of-way hereinafter referred to as the "DuPage Parkway"); and

WHEREAS, Licensor, pursuant to intergovernmental agreements with the County, constructed City of Wheaton Parking Lot #3 on a portion of the DuPage Parkway located north of Liberty Drive between Main Street and Cross Street in the City of Wheaton and has the authority to operate, maintain and control that portion of Parking Lot #3 owned by the County, consistent with the Licensor's statutory and home rule powers under Illinois law; and

WHEREAS, that portion of Parking Lot #3 owned by the Licensor and that portion of Parking Lot #3 owned by the County is depicted in the attached Exhibit A-1; and

WHEREAS, Licensor is the owner of the City of Wheaton Willow Avenue Parking Garage; and

WHEREAS, Licensor desires to license Parking Lot #3 and a portion of the City of Wheaton Willow Avenue Parking Garage to Licensee and Licensee desires to accept such license upon the terms and conditions herein provided.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties hereto do hereby agree as follows:

1. Licensed Premises. Licensor hereby grants to Licensee a revocable license (the "License") to use the parking lot commonly known as Parking Lot #3, Wheaton, Illinois (the "Lot"), which premises are outlined on the drawing attached hereto and incorporated herein as Exhibit A-1 and the storage area located under the ramp in the City of Wheaton's Willow Avenue Parking Garage (the "Storage Area"); hereinafter the Lot is referred to as the "Licensed Premises" and the Storage Area is referred to as the "Licensed Storage Area." The Licensed Premises shall be used solely by the Licensee for the purpose of operating covered market activities under the canopy structure located on the Lot which is generally depicted in the drawing attached hereto and incorporated herein as Exhibit B-1 (the "Canopy Structure") and open-air market activities on the uncovered portion of the Lot. At no time shall the Licensee occupy the premises commonly known as the "Prairie Path," or interfere with any movement of pedestrians or bicycle traffic over that

area. The Licensed Storage Area shall be used solely for storage related to Licensee's market activities and shall at all times be kept clean and secure by the Licensee.

2. Term. The term of this Agreement shall commence on April 1, 2022 and shall continue until March 31, 2027 ("Initial Term") subject to the default and termination provisions of Paragraphs 16 and 10 of this Agreement. Upon expiration of the Initial Term, Licensee shall have the option to extend the Agreement for one (1) additional five (5) year term (Extended Term) if Licenser determines that Licensee has met the 80% Minimum Vendor Occupancy requirement, as set forth in Paragraph 10 of this Agreement, for all Market Seasons during the Term of this Agreement. If a Force Majeure Event, as defined in Paragraph 6 of this Agreement, occurs during a Market Season, the 80% Minimum Vendor Occupancy requirement shall be equitably adjusted to not include days on which the Licensee's Market was closed due to the Force Majeure Event in the calculation of the vendor occupancy rate for that Market Season.

In the event that Licensee extends the Term of this Agreement, Licenser shall not increase the License Fee by more than 5% for the Extended Term. Licensee may extend the Agreement beyond the expiration date by exercising its option to extend at Licensee's sole and absolute discretion by sending notice of its intention to extend the Agreement at least sixty (60) days prior to the expiration of the Term and by modifying the Agreement by written instrument executed and approved in the same manner as the Agreement.

3. License Not a Tenancy. Licenser and Licensee acknowledge and covenant that this Agreement establishes a license and not a tenancy.

4. Contingency and Alternate Location. The City has entered into an Intergovernmental Agreement with the County of DuPage which provides the Licenser with the authority to operate, maintain and control that portion of the Licensed Premises owned by the County of DuPage consistent with the Licenser's statutory powers and home rule powers under Illinois law (hereinafter referred to as "Contingency").

If, at any time, market activities of the like and kind that are the subject of this Agreement are no longer permitted on the Licensed Premises due to the County of DuPage's withdrawal of its authorization or permission for the Licenser to operate, maintain, and control that portion of the Licensed Premises owned by the County of DuPage for such market activities, then the Licenser will use its best efforts to provide a location substantially similar to that of the Licensed Premises for Licensee to conduct its market activities.

5. Market Season. A market season (hereinafter, "Market Season") shall be defined as that season commencing no earlier than April 1st and terminating no later than November 30th of any year except as may be extended by written mutual agreement of the Licenser and Licensee.

6. License Fee. The fee for use of the Licensed Premises and Licensed Storage Area shall be twenty-thousand dollars (\$20,000.00) per Market Season (hereinafter "Annual License

Fee"). The Annual License Fee shall be due to Licensor in full, on or before the first day of the Market Season for that year. No market activities shall be allowed on the Licensed Premises until the Annual License Fee is paid in full. If a Force Majeure Event, as that term is further defined in this Paragraph 6, occurs during a Market Season, Licensor shall reimburse Licensee its Annual License Fee on a pro rata basis for the number of markets scheduled on Saturdays for that year's Market Season, which were not open for business due to the Force Majeure Event, as illustrated by the following example. For example, if there are thirty (30) markets held on Saturdays during a Market Season, and if Licensee is unable to open its market for business on four (4) Saturdays during the Market Season due to a Force Majeure Event, then Licensor will reimburse Licensee a total of \$2,666.68 (\$20,000 [Annual License Fee] divided by 30 [number of Saturday markets] = \$666.67 multiplied by 4 [number of unopened markets due to Force Majeure Event] = \$2,666.68). Such pro rata reimbursement of the Annual License Fee due to a Force Majeure Event shall be paid to Licensee by December 1 of the year for which the Annual License Fee was paid. A Force Majeure Event is an event beyond the reasonable control of the Parties, including, without limitation, governmental action, including executive orders; war; riot or civil commotion; fire; natural disaster; acts of God; acts of public enemy; epidemics; and quarantine restrictions, or any other cause that could not with reasonable diligence be foreseen or prevented by the Parties.

7. Use of Licensed Premises.

(a) Standards of Use. Licensee may use the Licensed Premises solely for setting up, maintaining, and operating covered market and open-air market activities (hereinafter, "Market(s)"). Licensee agrees to operate its Markets as attractive, modern, sanitary, convenient, and efficiently operated Markets using vendors selling products or services that are legal, of high quality, and not repugnant to the values of any element of society as determined by Licensor (the "Standards"). If Licensor, through a majority vote of its City Council, determines that Licensee or any of its vendors, is not meeting the Standards, Licensor shall promptly notify Licensee of the deficiency. Licensee shall have twenty-one (21) days after such notice has been given to rectify the deficiency and unless the Parties otherwise agree in writing, if the deficiency is not rectified, Licensee shall be deemed to be in default and Licensor may exercise any remedies available to it. Except that, if immediate action is necessary to safeguard against an impending threat to public safety and welfare, as determined by any City of Wheaton Official or agent acting in his or her official capacity, then Licensor shall have the right to immediately prohibit the sale of any such threatening product or service and the participation of the vendor from Market activities. Any further sale of such product or service or participation by such vendor shall be at the discretion of Licensor.

(b) Time. The Licensee may set up and maintain its Market(s) between the hours of 7:00 p.m. on Friday to 6:00 p.m. on Saturdays. Commercial sales by vendors at the Market(s) may commence no earlier than 7:00 a.m. and terminate no later than 4:00 p.m. on Saturdays. This License shall not be valid during the Chamber of Commerce's annual "Taste of Wheaton" event, if the event is scheduled to occur on the Licensed Premises during any year of this Agreement. There may be occasions during any year where the Licensor will provide Licensee 10-day written notice of

the need to terminate commercial sales by vendors at 2:00 p.m., also requiring said vendors to vacate the Licensed Premises by 4:00 p.m. In the event of such an occasion, the Licensee shall remove all its equipment from the Licensed Premises by 5:00 p.m. of that day, or request that the Licenser remove all Licensee's equipment after 4:00 p.m. and store such equipment in the Storage Area at no expense to the Licensee. If the Licensee elects to have the equipment removed by the Licenser, it shall provide the Licenser with 72-hour notice of that election.

(c) Vehicles and Equipment. Licenser may cause to be towed or removed, at the expense of the Licensee, any vehicles or equipment which remain on the Licensee Premises except during the time specified for setup and operation of the Market. Licenser will also ensure that Licensed Premises are free of any vehicles, or other impediments, other than those expressly permitted by Licensee during the hours described in paragraph 7(b) above.

(d) Water. The Licensee shall pay for all water used in the operation of its Markets at the Licenser's standard billing rate.

(e) Parking. The Licensee shall be responsible for paying the costs of any parking the Licenser secures on private property provided that the Licensee accepts the use of the private property for parking purposes.

(f) Electricity. The Licenser agrees to provide the Licensee with electricity during Market hours from outlets on the Market site at no charge to the Licensee. Vendors requiring electricity shall use the electricity provided by Licenser and are prohibited from using fossil fuel generators. Solar Panels shall be the only permitted alternative source to City provided electricity.

(g) Trash Removal. The Licensee shall provide for the disposal of garbage and recycling generated by its Markets. The Licensee shall clear all debris from the surface of the Licensed Premises by sweeping the surface at the end of each Market day.

(h) Designated Representative. Licensee shall designate in writing to Licenser a Market Manager who shall be in charge of managing the general operations of Licensee's Markets and Licensee's use of the Licensed Premises and Licensed Storage Area. The Licenser shall be allowed to interview candidates for the position of Market Manager. The Market Manager shall be readily accessible by telephone and upon Licenser's request, shall be available to be present at the Licensed Premises within a reasonable period of time. The Market Manager or his/her designee shall be in attendance at all times during the operation of Licenser's Markets. Licensee shall further immediately notify the Licenser in writing of any change in the identity of the Market Manager.

(i) Licenser's Rules and Regulations. Licenser shall have the right, from time to time upon notice thereof to Licensee, to prescribe rules and regulations which in its judgment may be desirable for the use of the Licensed Premises. Licensee agrees to comply with all such rules and regulations provided that such rules and regulations shall not contradict any right expressly granted

to Licensee herein. Licensee may, in its own discretion, limit or restrict the number of booths available to categories of vendors in order to provide a desirable vendor mix. A violation of any such rules and regulations shall constitute a default by Licensee under this Agreement. The Licensee agrees that vendors shall abide by the rules attached as Exhibit C-1.

(j) Marketing. Licensee shall provide marketing for its Markets through a combination of press releases, paid-for advertisements and hand -delivered flyers.

(k) State Sales Tax Reporting. Licensee shall register the French Market with the Special Event Division of the Illinois Department of Revenue and follow all appropriate regulations. The Licensee shall also provide to the Licensor, on a monthly basis, a report detailing the date of each Market held that month, each of the Market vendors for each Market day, and each vendor's Illinois Business Tax (IBT) number and business address. The Licensee shall be required to ensure that each vendor has an IBT number prior to being allowed to sell any products at the Market. Further, vendors shall properly report their sales taxes. Vendors who do not report or inaccurately report their retail sales may be barred from participation in Licensee's Markets.

8. Condition of Licensed Premises. Licensee shall accept the Licensed Premises and Licensed Storage Area in their "AS-IS, WHERE-IS" condition after construction of the Canopy Structure is completed and when the Licensed Premises are deemed suitable for use by Licensee for its market activities. Licensee's taking possession of the Licensed Premises and Licensed Storage Area shall be conclusive evidence against Licensee that the Licensed Premises and Licensed Storage Area were then in good order, repair and satisfactory condition. Licensee shall, at its sole cost and expense, be responsible for any and all repairs or damage to the Licensed Premises and/or Licensed Storage Area arising from the misuse or damage to same by Licensee or any vendor, its agents, employees, successors, and assigns. Upon termination of this License by lapse of time or otherwise, Licensee shall re-deliver possession of the Licensed Premises and Licensed Storage Area to Licensor in good order, condition and repair, normal wear and tear expected.

9. Alterations and Additions. Licensee shall make no alteration, addition, improvement or change in or to the Licensed Premises and the Licensed Storage Area.

10. Continuous Occupancy. For purposes of this Paragraph 10, Minimum Vendor Occupancy shall mean the total number of vendor sales areas or booths required to be open for business on the Licensed Premises on each Market day. Licensee agrees for itself, its successors, and assigns, that during the entire term of the Market License Agreement it shall operate the Licensed Premises, per Market Season, with due diligence and efficiency so as to produce Minimum Vendor Occupancy. Prior to the commencement of Licensee's first Market Season, Licensor and Licensee shall determine the Minimum Vendor Occupancy for each Market day to calculate the Minimum Vendor Occupancy for each Market Season, and such determination(s) shall be reduced to writing and an amendment to this Market License Agreement shall be made to include that Minimum Vendor Occupancy for the Licensed Premises for each Market day and each Market Season. Should a Market Season's Minimum Vendor Occupancy rate fall below eighty percent (80%) for that Market Season, Licensee shall either pay Licensor a compliance penalty of 100% of the Annual License Fee or provide Licensor with its notice of termination of this Agreement, within sixty (60) days of the Market Season's

closure. The failure of Licensee to achieve or to maintain a vendor occupancy for any Market Season of at least sixty percent (60%) of the Minimum Vendor Occupancy for the Market Season shall constitute an incurable default of this Market License Agreement entitling Licenser to terminate this Market License Agreement. If a Force Majeure Event, as defined in Paragraph 6 of this Agreement, occurs during a Market Season, the Minimum Vendor Occupancy requirement shall be equitably adjusted to not include days on which the Licensee's Market was closed due to the Force Majeure Event in the calculation of the vendor occupancy rate for that Market Season.

11. Assignment. Licensee shall not assign this Agreement or any portion thereof, or allow the use thereof by any person, firm or entity other than Licensee and its vendors, unless otherwise approved by Licenser in writing.

12. Compliance with Laws. Licensee shall comply with all the requirements of all applicable city, county, state and federal laws, as well as insurance carriers now in force pertaining to the use of the Licensed Premises and Licensed Storage Area, or which Licensee shall hereafter carry.

13. Waiver; Risk of Loss. Neither Licenser nor any of its officers, directors, agents, employees, members and affiliated entities shall be liable for any accident, injury or death, loss or damage resulting to any person or property sustained by Licensee or Licensee's agents, employees and/or invitees, anyone claiming by or through Licensee or any vendor or customer on the Licensed Premises or the Licensed Storage Area, without limitation, for tortious or criminal acts of third parties. Licenser shall have no obligation or duty to provide security services, traffic direction or police services for the Licensed Premises or Licensed Storage Area. All property of Licensee or Licensee's agents, employees and/or invitees, anyone claiming by or through Licensee or any user of the Licensed Premises or Licensed Storage Area shall be at the Licensed Premises or Licensed Storage Area at the risk of Licensee or such other person only, and Licenser shall not be liable for any damage thereto, including, without limitation, theft or vandalism of any vehicles at the Licensed Premises. Nothing in this Agreement shall be interpreted to waive any immunities or privileges provided to the Licenser, as an Illinois Municipal Corporation under Illinois Statutory or Common Law, such privileges and immunities being specifically reserved by the Licenser.

14. Insurance.

(a) Contemporaneous with the Licensee's execution of this Agreement, the Licensee shall provide a certificate of insurance and a copy of the policy of insurance as well as any applicable endorsements, all with coverages and limits acceptable to Licenser evidencing:

- (i) Commercial General Liability insurance on an "occurrence" basis with a limit of not less than ONE MILLION DOLLARS (\$1,000,000) for each occurrence and a general aggregate limit of not less than TWO MILLION DOLLARS (\$2,000,000); and

- (ii) Umbrella or Excess Liability insurance coverage of not less than FIVE MILLION DOLLARS (\$5,000,000) per occurrence; and
- (iii) Worker's Compensation Insurance in accordance with the limits required by the applicable State of Illinois Worker's Compensation Insurance laws; and
- (iv) Commercial Automobile Liability insurance covering all vehicles used in connection the operation of markets on the Licensed Premises, whether owned, non-owned, or hired vehicles with coverage limits of not less than ONE MILLION DOLLARS (\$1,000,000).

(b) Acceptability of Insurer. The insurance carrier providing insurance under this Agreement shall be authorized to do business in the State of Illinois and shall have a current A.M. Best and Companies Insurance Guide rating of no less than A and Class VI or better. Licensor shall have the right to reject the insurer/insurance policy of Licensee.

(c) Additional Insureds. Licensor, its officers, elected officials, employees, agents and volunteers and the County of DuPage, Illinois, and its officer, elected officials, employees, agents and volunteers shall be covered as additional named insureds on the Commercial General Liability, Automobile Liability, and Umbrella or Excess Liability policies of insurance required by this Agreement.

(d) Primary and non-contributory. The policies of insurance required by this Agreement shall state that the insurance provided to the additional insureds shall apply on a primary and non-contributory basis for the benefit of the additional insureds before the additional insureds' own primary insurance or self-insurance shall be called upon to protect their named insured(s).

(e) Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall not be suspended, voided, or canceled except after providing thirty (30) calendar days prior unqualified written notice to Licensor. Such notice shall be sent directly to the City of Wheaton City Clerk, 303 W. Wesley St., Wheaton, Illinois 60187. Licensee's failure to provide Licensor with timely notice shall be considered a default of this Agreement and subject to the default provisions of this Agreement. A copy of the notice of cancellation endorsement shall be provided to Licensor.

(f) Waiver of Subrogation. Licensee hereby grants to Licensor a waiver of any right to subrogation which any insurer of Licensee may acquire against Licensor by virtue of the payment of any loss of damage(s) under such insurance. Licensee agrees to obtain any endorsement that may be necessary to effectuate this waiver of subrogation, but this provision applies regardless of whether or not Licensor has received a waiver of subrogation endorsement from the insurer.

(g) Acceptance of Insurance Does Not Release Liability. Licensors acceptance or approval of any insurance of Licensee shall not be construed as relieving or excusing Licensee from any liability or obligation imposed by the provisions of this Agreement.

(h) Evidence of Current Insurance. Upon written request by Licensors, Licensee shall, within seven (7) calendar days, provide to Licensors acceptable evidence of current insurance. Should Licensee fail to provide evidence of current insurance following written request, the Licensors shall have the absolute right to terminate this Agreement without any further obligation to Licensee.

(i) Policy Expiration. Licensee shall renew any policy which expires during the term of this Agreement and shall notify Licensors by appropriate certificate of insurance of such renewal prior to the expiration date.

15. Indemnification. Licensee, to the greatest extent permitted under Illinois law, shall defend, hold harmless, and indemnify the Licensors and the County of DuPage, Illinois, for any and all claims, actions, causes of action, demands, costs, including reasonable attorneys' fees, resulting from the Licensee's and its vendors' operation of its Market(s), and possession of the Licensed Premises and Licensed Storage Area only up to the maximum general aggregate level of insurance limit provided for under the terms of the insurance policy secured for the benefit of the Licensee and Licensors pursuant to the terms of Paragraph 14.

16. Default by Licensee.

(a) If Licensee defaults in the performance of any obligation hereunder, Licensors may, pursuant to Paragraph 16(b) below, at its option and in addition to any other rights or remedies hereunder or otherwise available at law or in equity, terminate this Agreement and the right of Licensee (and any and all users) to use the Licensed Premises and Licensed Storage Area.

(b) Licensors shall provide Licensee with written notice of any alleged default, and if Licensee does not cure any such default within thirty (30) days after the giving of notice, Licensors may terminate this Agreement on not less than fourteen (14) days notice (the "Termination Notice") to Licensee. On the date specified on such Termination Notice, the term of this Agreement shall terminate and neither Licensee nor any vendor or other person claiming through or under License shall be entitled to possession or to remain in possession of or use the Licensed Premises or Licensed Storage Area but shall quit and surrender the Licensed Premises and Licensed Storage Area in a condition and order of repair substantially similar to their original condition and order of repair as of the date on which Licensee first took possession of the Licensed Premises and Licensed Storage Area, reasonable wear and tear excepted, and Licensors may exclude Licensee (including, without limitation, any or all of Licensee's vendors) from access to the Licensed Premises and Licensed Storage Area.

(c) On the date this Agreement terminates, whether by default by a Party or by Licensee's election pursuant to Paragraph 10, and thereafter, Licensors shall have the right, among

other remedies, to enter the Licensed Premises and Licensed Storage Area, exclude Licensee (including, without limitation, any or all of Licensee's permit users or permit vehicles) therefrom and remove any or all of their property and effects. Licensee shall pay to Licensor upon demand the expense and costs for removal and/or storage of vehicles, any and all repairs to the Licensed Premises and Licensed Storage Area, other than that attributable to reasonable wear and tear, and all other costs arising from Licensee's default, including, but not limited to, attorney's fees and expenses. Upon any such removal of Licensee's or any of its vendors' property, such property shall be considered to have been abandoned and may either be retained by Licensor as its property or may be disposed of at public or private sale or donated as Licensor sees fit.

(d) Licensee shall pay to Licensor upon demand all costs, expenses and damages incurred by Licensor in enforcing Licensee's obligations under this Agreement or resulting from default by Licensee or any of Licensee's permit users, including, without limitation, attorney's fees and expenses.

17. Notices. All notices to be given hereunder shall be given in person or by registered or certified mail, return receipt requested, addressed to the parties as follows, or at such other place as either of them may hereafter designate for itself by notice in writing to the other:

To Licensor: City of Wheaton
303 W. Wesley Street
Wheaton, IL 60187
Attn: City Clerk

To Licensee: WFM26, LLC
405 N. Wabash #3404
Chicago, IL 60611

WFM26, LLC
72 Boulevard Des Corneilles 94100
Saint-Maur Des Fosses
France

Any such notice shall be deemed given when personally delivered or upon being mailed as aforesaid.

18. Authorization. Each party has full right, power and authority to enter into this Agreement and to perform its obligations thereunder, and the execution, delivery and performance of this Agreement shall not, nor shall the observance or performance of any of the matters and things herein set forth, violate or contravene any provision of law or of the charter or by-laws of either such party or of any indenture or other agreement of or affecting either party. All necessary and appropriate action has been taken on the part of each party to


authorize the execution and delivery of this Agreement. This Agreement is the valid and binding agreement of each party in accordance with its terms.

19. Counterpart Execution. This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

20. Electronic Signatures. The Parties may execute this Agreement in writing or by facsimile transmission or by e-mail delivery of a ".pdf" format data file, and any such signature shall have the same legal effect as a handwritten signature for the purposes of validity, enforceability and admissibility. In addition, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

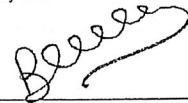
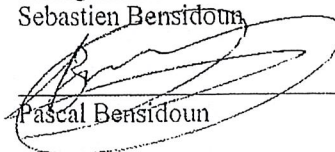
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY OF WHEATON

By: 
Philip J. Suess

Its: Mayor

WFM26, LLC

By: 
Sebastien Bensidoun

Pascal Bensidoun

Its: Managers of 6301NS7D, LLC
Manager of WFM26, LLC

Exhibit A-1

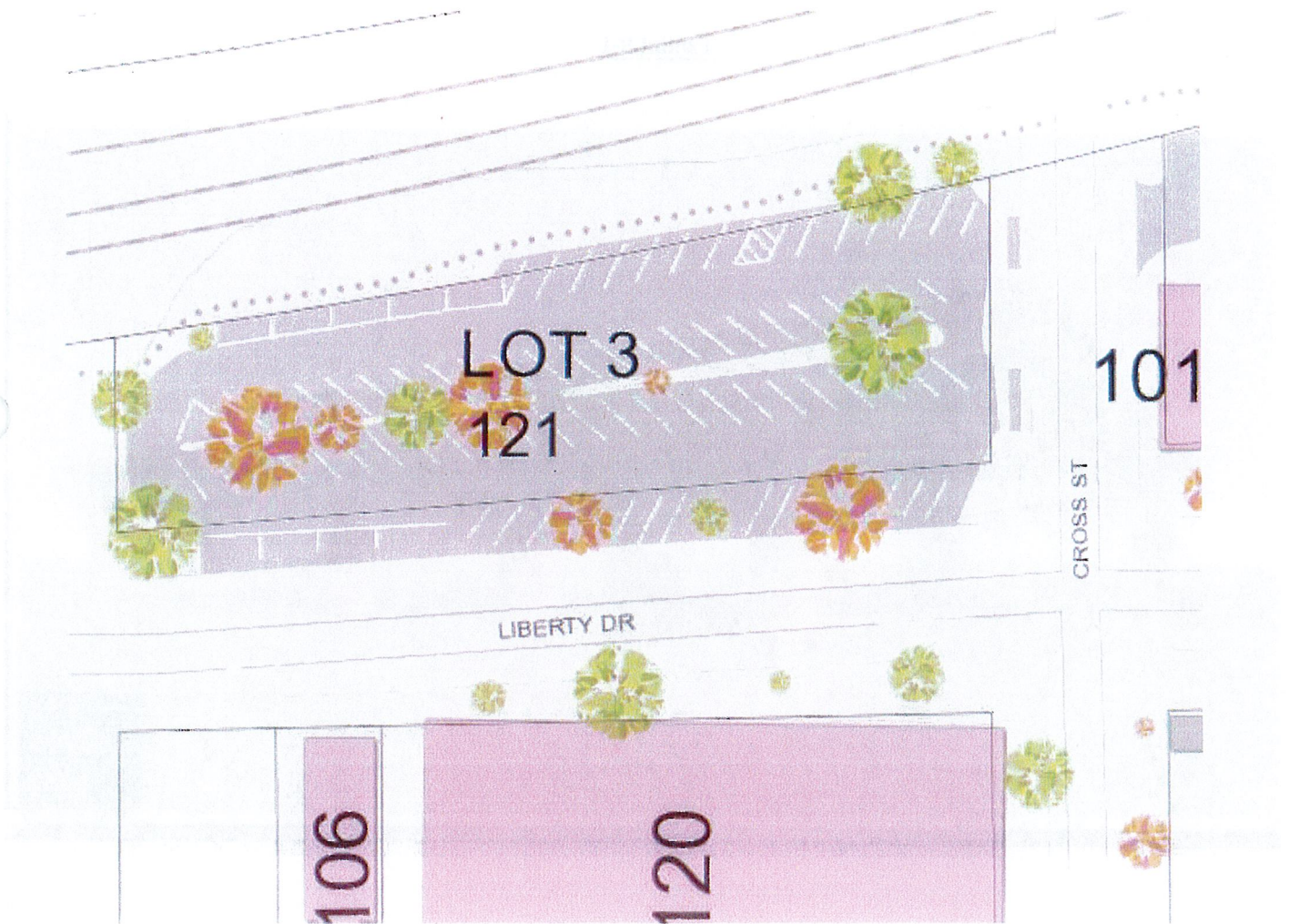


Exhibit B-1

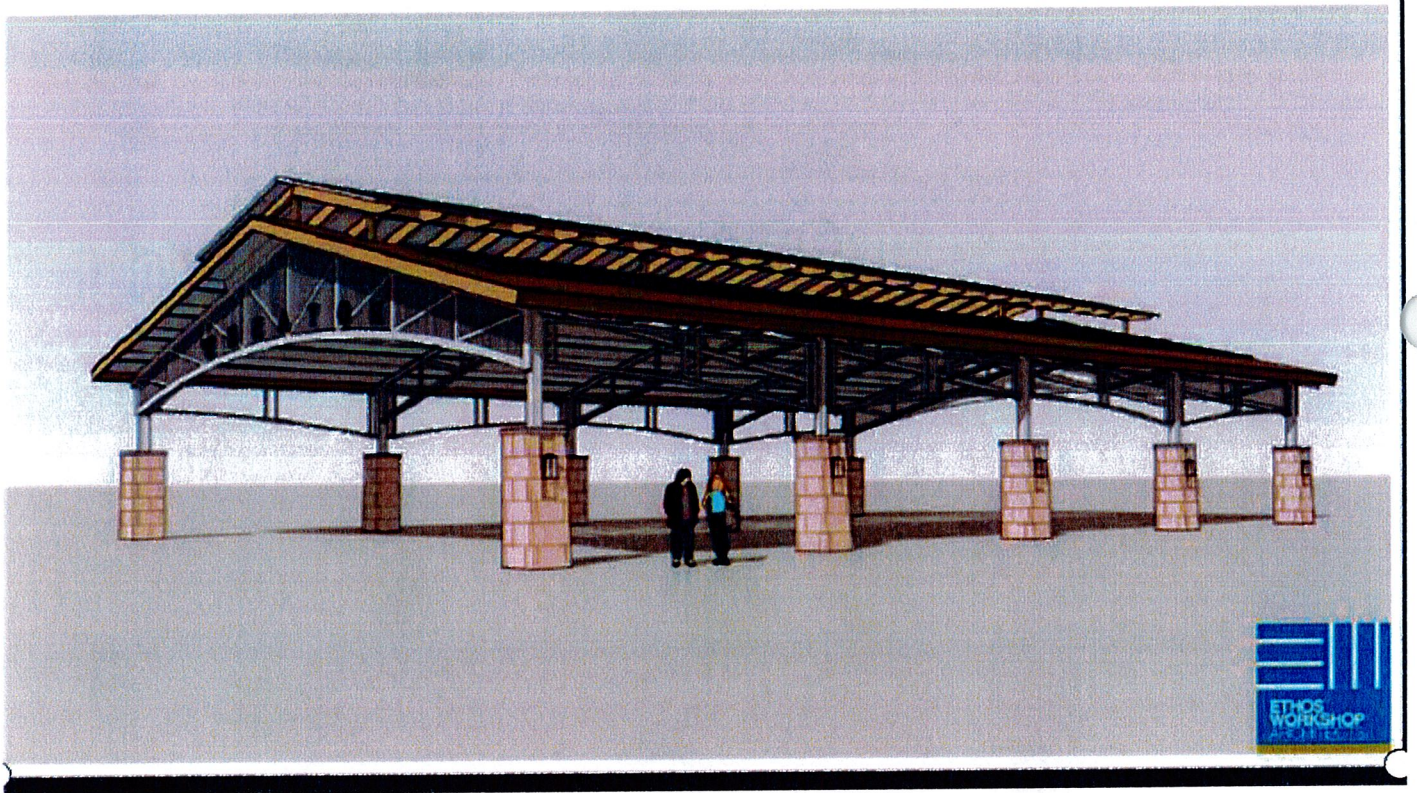


Exhibit C-1

RULES AND REGULATIONS FOR VENDORS AT WHEATON FRENCH MARKET

For the purpose of these rules and regulations, "Vendor" means any entity or individual renting space from Bensidoun USA, Inc., the "Promoter," on any given Market day. "Space" means that space the Vendor has rented from the Promoter. "Market hours" means those hours the Market is open for the sale of goods to Market customers.

1. Vendors shall comply with all applicable Federal, State and local laws, rules and regulations, including but not limited to health and licensing.
2. Vendors are responsible for paying all applicable Federal, State and local taxes.
3. Products shall be deemed appropriate to a family audience by the Promoter. No drug paraphernalia or sexually explicit material shall be tolerated. In addition, Vendors shall only sell products that are of good quality, which they have lawfully obtained, manufactured or grown. Should the Promoter determine, in their own discretion, that the vendor is not selling such products, the Promoter may request the Vendor to vacate his/her space(s) immediately. Furthermore, the Promoter may prohibit the Vendor from leasing future space.
4. Connected with its responsibility to maintain the public health, safety and welfare, the City of Wheaton, as Licensor of Promoter's right to use the space used for the Wheaton French Market, has reserved the right to determine the appropriateness of any product or Vendor on any given market day. As such, the Licensor, at its discretion, may require the Promoter to prohibit the sale of any product or the participation by such Vendor from the Wheaton French Market operation. Any further sale of such product or participation by such Vendor shall be at the discretion of Licensor. A determination of such appropriateness may be made by a simple majority vote of the Wheaton City Council; or when immediate action is necessary to safeguard against an impending threat to public safety and welfare, such a determination may be made by any City Official or agent acting in his or her official capacity.
5. Vendors shall be prepared to sell at the start of Market hours and shall continue to sell until the close of Market hours. Loading and unloading shall occur only before and after Market hours, respectively.
- 6.. Vendors shall at all times be polite with customers and shall use their best efforts to enthusiastically sell their products.
7. Vendors shall continually keep their spaces as clean as possible. Vendors shall provide their own disposal bags, in accordance with local ordinances, into which they shall put rubbish collected within their respective space(s). The Promoter shall pick-up and dispose of the refuse bags at the close of the Market hours.
8. Vendors who bring their goods in wooden crates or boxes shall take those crates or boxes back with them at the close of Market hours.

9. Vendors may only park and load their vehicles in areas designated by the Promoter. The use of City parking lots and customer parking zones is prohibited. Anyone violating the parking regulations shall be fined and /or towed away at their own expense.

10. Vendors shall cooperate with and participate in promotions organized by the Promoter (for example, contributing a reasonable amount of the Vendor's products to Market customer give-aways) and may be asked to provide information for publicity.