

RESOLUTION R-2022-23

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE MARKET LICENSE AGREEMENT APPROVED BY RESOLUTION R-2021-01 BETWEEN WFM26, LLC, BENSIDOUN USA, INC. AND THE CITY OF WHEATON

WHEREAS, Resolution R-2021-01 authorized the execution and approved a Market License Agreement (hereinafter "MLA 21") with Bensidoun USA, Inc. and WFM26, LLC, as Bensidoun's successor licensee (hereinafter "Licensee") to operate "an open-air market" in the City of Wheaton on Parking Lot #3 (hereinafter "PL3") in 2022 (hereinafter "Market Season"); and

WHEREAS, the City anticipated that PL3 would be available for occupancy (commencing April 9, 2022) for the 2022 Market Season; and

WHEREAS, due to various construction delays, it is likely that PL3 will not be available for open-air market operations by April 9, 2022; and

WHEREAS, it is anticipated that PL3 will be available for occupancy for the open-air market sometime after April 9, 2022; and

WHEREAS, at the time WFM26, LLC was created, city staff and the counsel for Bensidoun USA were working towards an up-front funding approach for the construction of the multi-use canopy structure to be located on PL3 in exchange for a new long-term license agreement; and

WHEREAS, economic uncertainty surrounding the COVID-19 pandemic resulted in both the operator's reluctance to commit to the substantial amount of up-front capital necessary for the construction of the multi-use canopy structure and the City's in entering into along a long-term agreement with the operator; and

WHEREAS, the current agreement provides for an annual license fee in an amount that is equivalent on an annual basis to the amount divided by the term of the agreement previously discussed with the operator; and

WHEREAS, as the originally anticipated financial structure with WFM26, LLC did not come to fruition, Bensidoun USA, Inc. is requesting that the City allow it, instead of WFM26, LLC, to resume operations under the current agreement; and

WHEREAS, WFM26, LLC, by execution of this amendment has agreed to fully assign, all rights and privileges, granted it under MLA 21 approved by Resolution R-2021-01, to Bensidoun USA, Inc.; and

WHEREAS, Bensidoun USA, LLC, has established a consistent and effective record for operating an open-air market in the City of Wheaton on both Reber Street and PL3; and

WHEREAS, the corporate authorities of the City of Wheaton are willing to accept the withdrawal of WFM26, LLC, and its assignment to Bensidoun USA, Inc., as Licensee and operator of an open-air market, pursuant to the amended MLA 21 approved herein; and

WHEREAS, it is in the best interest of the Licensor to amend MLA 21.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the City Manager is hereby authorized to execute, and the City Clerk is hereby directed to attest to the Amendment to the Market License Agreement Approved by Resolution R-2021-01 Between Wfm26, LLC, Bensidoun USA, Inc. and The City of Wheaton attached hereto as Exhibit A.

ADOPTED by the City Council of the City of Wheaton, Illinois, this 21st day of March 2022.

ATTEST:



City Clerk


Mayor

ROLL CALL VOTE:

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

Nays: None

Absent: Councilman Brown

MOTION CARRIED UNANIMOUSLY

Passed 03/21/2022
Published 03/22/2022

EXHIBIT A

AMENDMENT TO THE MARKET LICENSE AGREEMENT APPROVED BY RESOLUTION R-2021-01 BETWEEN WFM26, LLC, BENSIDOUN USA, INC. AND THE CITY OF WHEATON

THIS AMENDMENT is made and entered into between the City of Wheaton, an Illinois home rule municipality, 303 West Wesley Street, Wheaton, IL 60187 ("Licensor") and Bensidoun USA, Inc., 405 N. Wabash, Suite 3404, Chicago, IL 60611 ("Licensee"), this 21st day of March, 2022.

WHEREAS, Resolution R-2021-01 authorized the execution and approved a Market License Agreement (hereinafter "MLA 21") with Bensidoun USA, Inc. and WFM26, LLC, as Bensidoun's successor licensee (hereinafter "Licensee") to operate "an open-air market" in the City of Wheaton on Parking Lot #3 (hereinafter "PL3") in 2022 (hereinafter "Market Season"); and

WHEREAS, the City anticipated that PL3 would be available for occupancy (commencing April 9, 2022) for the 2022 Market Season; and

WHEREAS, due to various construction delays, it is likely that PL3 will not be available for open-air market operations by April 9, 2022; and

WHEREAS, it is anticipated that PL3 will be available for occupancy for the open-air market sometime after April 9, 2022; and

WHEREAS, at the time WFM26, LLC was created, city staff and the counsel for Bensidoun USA were working towards an up-front funding approach for the construction of the multi-use canopy structure to be located on PL3 in exchange for a new long-term license agreement; and

WHEREAS, economic uncertainty surrounding the COVID-19 pandemic resulted in both the operator's reluctance to commit to the substantial amount of up-front capital necessary for the construction of the multi-use canopy structure and the City's in entering into along a long-term agreement with the operator; and

WHEREAS, the current agreement provides for an annual license fee in an amount that is equivalent on an annual basis to the amount divided by the term of the agreement previously discussed with the operator; and

WHEREAS, as the originally anticipated financial structure with WFM26, LLC did not come to fruition, Bensidoun USA, Inc. is has requesting that the City allow it, instead of WFM26, LLC, to resume operations under the current agreement; and

WHEREAS, WFM26, LLC, by execution of this amendment has agreed to fully assign, all rights and privileges, granted it under MLA 21 approved by Resolution R-2021-01, to Bensidoun USA, Inc.; and

WHEREAS, Bensidoun USA, LLC, has established a consistent and effective record for operating an open-air market in the City of Wheaton on both Reber Street and PL3; and

WHEREAS, the corporate authorities of the City of Wheaton are willing to accept the withdrawal of WFM26, LLC, and its assignment to Bensidoun USA, Inc., as Licensee and operator of an open-air market, pursuant to the amended MLA 21 approved herein; and

WHEREAS, it is in the best interest of the Licensor to amend MLA 21.

NOW, THEREFORE based upon the considerations recited here and other good and valuable considerations, the City of Wheaton (hereinafter City”), Bensidoun USA, (hereinafter Bensidoun) and WFM26 LLC (hereinafter WFM): agree as follows:

1. That the recitals referred to above are incorporated herein as representing the intent of the parties and substantive provisions.
2. That the assignment from WFM to Bensidoun, which is attached hereto and incorporated herein as EXHIBIT i is hereby approved by the City, to allow Bensidoun, to operate the open-air market approved by Resolution R-2021-01 in the City of Wheaton consistent with the MLA 21 as amended.
3. That Bensidoun USA, Inc., shall execute this amendment to the MLA 21. The legal effect of this amendment shall be to obligate Bensidoun USA, Inc., to honor and abide by all terms of the amendment, as well as MLA 21 approved by Resolution R-2021-01.
4. That Section 1 “Licensed Premises” of MLA 21 approved by resolution 2021-01 is hereby repealed and rescinded in its entirety and replaced with a new Section 1 of Resolution R-2021-01 to be titled, “Licensed Premises” MLA 21 which shall read:

“Licensed Premises” Licensor hereby grants a revocable license to Licensee to use:

a) Reber Street between Willow Avenue and Liberty Drive and Liberty Drive between Cross Street and Reber Street as depicted on EXHIBIT 1 or PL3 as depicted on EXHIBIT 2, commencing April 9, 2022, both exhibits, being incorporated herein as fully set forth, and based upon availability as follows:

i. Commencing April 9, 2022, Lessee is authorized to commence occupancy of Reber Street between Willow Avenue and Liberty Drive and Liberty Drive between Cross Street and Reber Street, if PL3 is not available for occupancy as an open-air market, as determined by the City Manager; and

ii. From April 9, 2022, until the City Manager provides a written notice that PL3 is available for market operations, Bensidoun USA, Inc., shall have those rights to Reber Street between Willow Avenue and Liberty Drive and Liberty Drive between Cross Street and Reber Street as specified in

this amendment and MLA 21 and shall be obligated to conduct the open-air market and abide by all terms and conditions of both this amendment and MLA 21.

b) Upon written notice from the City Manager that PL3 is available for occupancy for market operations, the Licensee shall provide written notice of the date it intends to commence market license operations on PL3 and thereafter conduct the open market and abide by all terms and conditions of both this amendment and MLA 21.

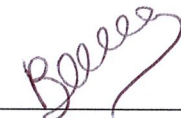
5. That "WFM26, LLC," is hereby stricken wherever it appears in the MLA 21 approved by Resolution R-2021-01 and replaced with Bensidoun USA, LLC.

6. In all other respects, the MLA 21 approved by Resolution R-2021-01 is hereby reconfirmed and restated.

IN WITNESS WHEREOF, the City of Wheaton by its City Manager has entered into this agreement with Bensidoun this ____ day of March, 2022.




City of Wheaton Manager, Michael Dzuga



Bensidoun USA, Inc., by its Authorized Representative

ATTESTATION:



City of Wheaton, City Clerk

ATTESTATION:



Bensidoun USA, Inc., Representative

R A I L R O A D T R A C K

43 44
43 44

45
46
47

42P 42W
41P 41W
40P 40W
39P 39W
38P 38W
37P 37W
36P 36W
34/5P 34/5W
33P 33W
32P 32W
31P 31W

29E
28E
27E
26E
25E
24E
23E
22E

Skate Park
Construction Area
Marked Parking Space
Grassy Areas
Unmarked Parking Space
Barricades



C3
C1 C2

21E
20E
19E

Xtra
18E
17E
16E

REBER STREET

15E 7
14E
13E 6
12E 5
11E
10E 4
9E
8E 3
7E
6E
5E 2
4E

3E
2E 1
1E

EGGRESS
PARKING GARAGE

Driveway
do not
block

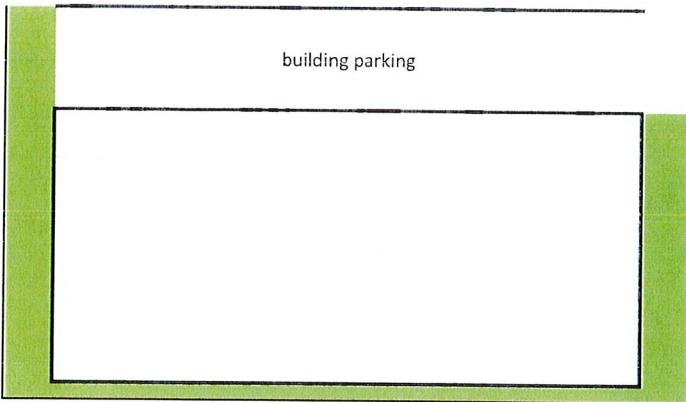
Parking Guide

Jeffrey
28 Feet
Boik
24 Feet
Hanchette
24 Feet
Srail x2
50 Feet

Driveway
do not
block

Driveway
do not
block

Parking garage



building parking

sidewalk

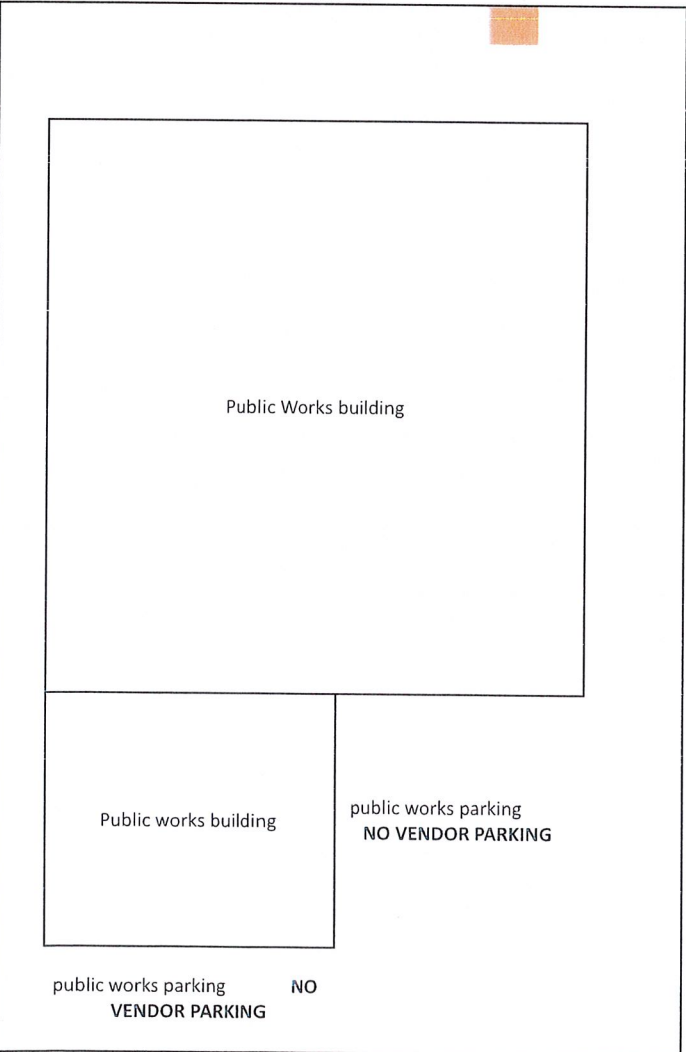
grass

END End 4N 5N 6N 7N 8N 9N 10N 11N 12N 13N 14N

Liberty Drive

End End End 1/2 5S 6S 7S 8S 9S 10S 11S 12S 13S 14S 15S
24 23 22 21 20

sidewalk



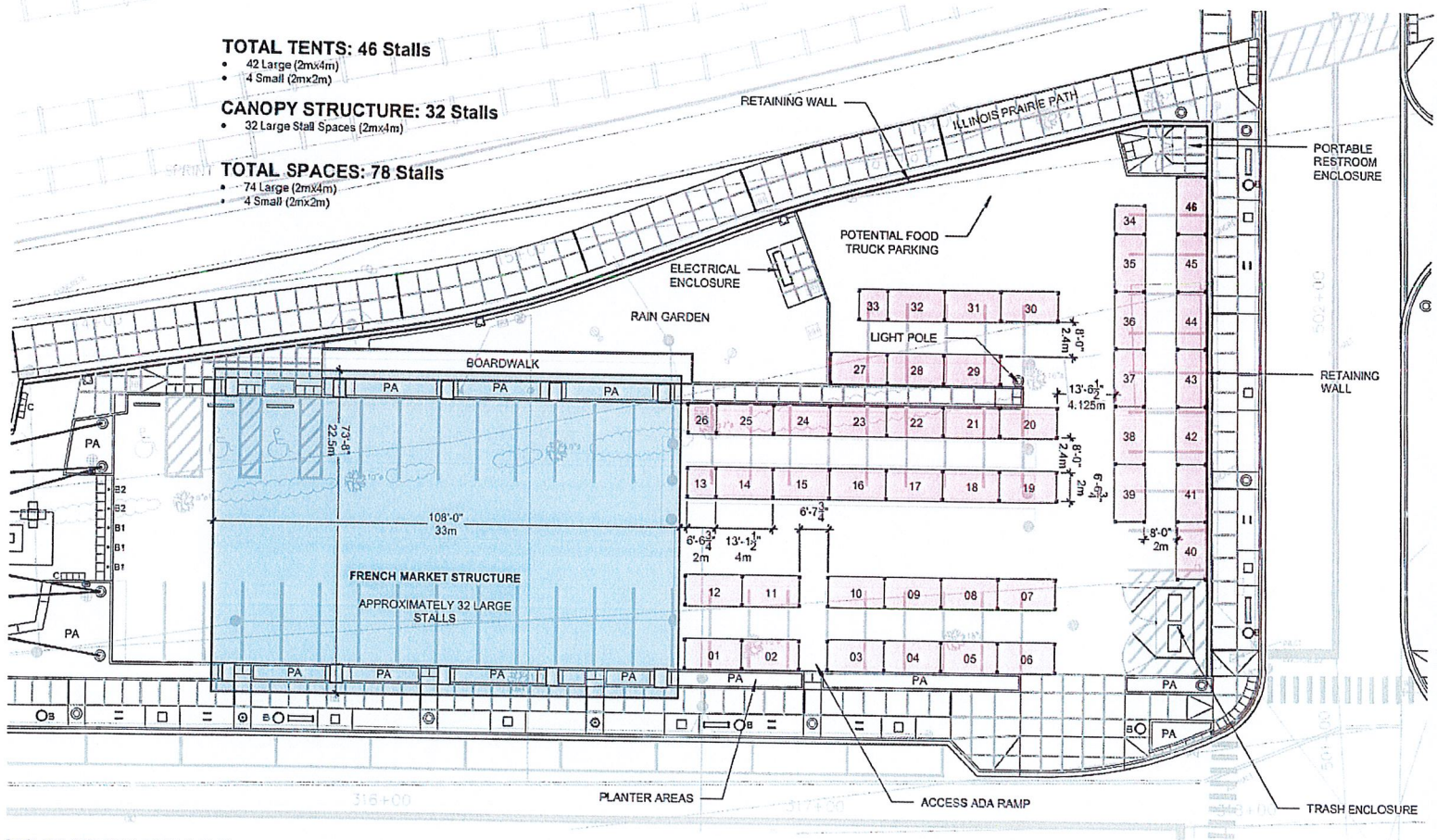
Public Works building

Public works building

public works parking
NO VENDOR PARKING

public works parking NO
VENDOR PARKING

Willow Avenue



WHEATON PHASE 4 - Lot 3 | Scale 1:20

EXHIBIT I

ASSIGNMENT AND ASSUMPTION OF MARKET LICENSE AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF MARKET LICENSE AGREEMENT (this "Assignment") is made as of the 21st day of March, 2022, by **WFM26, LLC**, an Illinois Limited Liability Company, (herein referred to as "Assignor") and **BENSIDOUN USA, INC.** an Illinois Corporation, (herein referred to as "Assignee");

RECITALS

A. Assignor, as tenant, entered into a certain Market License Agreement (the "Lease") with City of Wheaton as landlord (herein referred to as "Landlord"), for premises located at Reber Street or Parking Lot 3 Wheaton, Illinois 60187 (the "Property"), as more particularly described in the Lease approved by Resolution R-2021-01.

B. Assignor now desires to assign its interest under the Lease to Assignee and Assignee desires to succeed to the interest of Assignor under the Market License Agreement and is willing to assume all of the obligations of Assignor under the Lease.

C. Landlord has adopted by Resolution {INSERT #} written consent for the assignment and assumption of the Lease.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Assignor hereby assigns, transfers and sets over unto Assignee all of the right, title and interest under the Market License Agreement as of the date of this Assignment.
2. Assignee, for the benefit of Assignor, and the City of Wheaton, hereby agrees to assume, keep, observe and perform each and every one of the terms, covenants and conditions of the Lease on the landlord's part to be observed or performed under the Lease with the same force and effect as if Assignee had executed the Lease as the landlord named therein.
3. This Assignment may be executed in any number of counterparts which together shall constitute the agreement of the parties.
4. The provisions of this Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have duly executed this Assignment as of the day and year first above written.

ASSIGNOR:

WFM26, LLC


By: 
Authorized Manager

Subscribed and Sworn to before
me this ____ day of March, 2022

NOTARY PUBLIC

ASSIGNEE:

BENSIDOUN USA, INC.

By: 
Its President *EXECUTIVE
VICE-PRESIDENT
BENSIDOUN USA INC.*

Subscribed and Sworn to before
me this ____ day of March, 2022

NOTARY PUBLIC