

**RESOLUTION R-91-06**

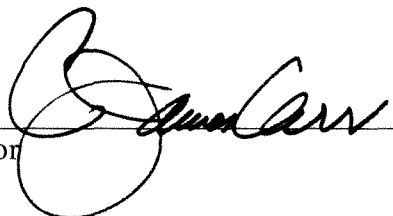
**A RESOLUTION AUTHORIZING AN AGREEMENT  
WITH BENSIDOUN USA, INC., DATED DECEMBER 18, 2006**

WHEREAS, the Bensidoun USA, Inc., seeks to operate an open-air market in Downtown Wheaton; and

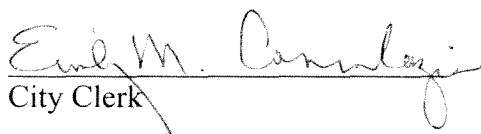
WHEREAS, the open-air market in Downtown Wheaton has enjoyed the support of the community since its inception ten years ago, and draws many visitors to Downtown Wheaton on a weekly basis.

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 an Agreement on behalf of the citizens of Wheaton, and the City Clerk to attest an agreement in the form attached hereto, to allow Bensidoun USA, Inc., to operate an open-air market in Parking Lot #3.

ADOPTED this 18<sup>th</sup> day of December, 2006.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

Roll Call Vote

Ayes: Councilman Mouhelis  
Councilman Sues  
Councilman Bolds  
Councilwoman Corry  
Councilman Johnson  
Mayor Carr  
Councilman Levine

Nays: None

Absent: None

Motion Carried Unanimously

## MARKET LICENSE AGREEMENT

This Agreement is made as of December 18, 2006, by and between the CITY OF WHEATON, a municipal corporation (the "Licensor") and Bensidoun USA, Inc., a corporation (the "Licensee").

A. Licensor is the owner and the lessee of part of the premises herein licensed and other premises commonly known as City of Wheaton Parking Lot #3, Wheaton, Illinois.

B. Licensor has agreed with Licensee to license certain of the premises 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 to use the parking lot commonly known as Parking Lot #3, Wheaton, Illinois (the "Lot"), which premises are outlined on the drawing hereto attached as Exhibit A (the "Licensed Premises"). The Licensed Premises shall be used solely by the Licensee for the purpose of operating an open-air market. 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.

2. Term. The term of this Agreement shall commence on April 1, 2007 and shall continue until March 31, 2014 subject to the termination provisions of paragraph 12 of this agreement.

3. License Fee. The fee for use of the lot shall be \$2,500 per market season. A market season shall be defined as that season commencing no earlier than April 1<sup>st</sup> and terminating no earlier than October 31<sup>st</sup> of any year except as may be extended by the mutual agreement of the licensor and licensee. In addition, a single deposit of \$500.00 shall be made by the Licensee to the Licensor for the repair of any damage to the property of the Licensor caused by the Licensee's use of the property. Any portion of the deposit remaining at the end of the term of this agreement shall be returned to the Licensor.

4. Use of Licensed Premises. (a) Licensee may use the Licensed Premises solely for setting up, maintaining, and operating an open-air market. The Licensee may set up and maintain the open-air market from the hours of 7:00 p.m. on Friday to 9:00 p.m., on Saturdays. Commercial sales by vendors at the open-air market may commence no earlier than 7:00 a.m. and terminate no later than 8:00 p.m. on Saturdays. Licensor may cause to be towed or removed, at the expense of the Licensee, any vehicles or equipment which remains on the Licensed Premises during the time specified for setup and operation of the market. Licensor will also insure that Licensed Premises are free of any vehicles, or other impediments, other than those expressly permitted by Licensee during the hours described above. This license shall not be valid on the third Saturday of September during the Chamber of Commerce's "Autumn Fest" and the market will not operate on this date. Licensee agrees that no arts and crafts vendors will be allowed at the market on the second Saturday in July during the Downtown Wheaton Association's "Fine Art Fair".

(b) Water. The Licensee shall secure a water meter from the City of Wheaton's Water Department. The Licensee shall pay for all water used in the operation of the open-air market at the Licensor's standard billing rate.

(c) Storage. The Licensee shall construct at Licensee's expense, up to a 20x20 foot fenced enclosure upon the Right-of-Way of Reber Street as depicted in Exhibit B. The design of said enclosure shall be subject to the approval of the Licensor. The fenced enclosure shall be kept cleaned and secured at all times by the licensee.

(d) Parking. Licensor shall have no obligation to secure private parking for the licensee. Parking for Market customers and vendors will be available in City parking areas at no charge on a non-exclusive basis. The Licensee shall be responsible for paying the costs of any parking the Licensor secures on private property provided that the Licensee accepts the use of the private property for parking purposes.

(e) Electricity. The Licensor agrees to provide the Licensee with electricity during Market hours from the four outlets on the Market site at no charge to the Licensee. If the Licensor is unable to secure electricity at no cost to the Licensee, the Licensee shall reimburse the Licensor for the actual cost incurred by the Licensor for the electricity.

(f) Trash Removal. The Licensor and licensee agree to evenly split the cost of a two yard garbage dumpster. The Licensee shall clear all debris from the surface of the Lot by sweeping or hosing off the surface at the end of each market day.

(g) Designated Representative. Licensee shall designate in writing to Licensor a Market Manager who shall be in charge of managing the general operations of the open-air market and Licensee's use of the Licensed Premises. The Licensor shall be allowed to interview candidates for the position of Market Manager. The Market Manager shall be readily accessible by telephone and upon Licensor'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 the open-air market. Licensee shall further immediately notify the Licensor in writing of any change in the identity of the person in charge.

(h) Licensor's Rules and Regulations. Licensor 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 vendors in order to provide a desirable vendor mix. Licensee shall not require any vendor participating in the Wheaton Market to participate in other community markets operated by licensee. A violation of any such rules and regulations shall constitute a default by Licensee under this Agreement. The Licensee agrees that vendors will abide by the rules attached as Exhibit B.

5. Condition of Licensed Premises. (a) Licensee hereby accepts the Licensed Premises in their "as is" condition as of the date thereof, and acknowledges that upon delivery of possession of the Licensed Premises to Licensee the same were in good order, condition and repair. Licensee shall, at its sole cost and expense, be responsible for any and all repairs or

damage to the Licensed Premises 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 to Licensor in good order, condition and repair, normal wear and tear expected.

6. Alterations and Additions. Licensee shall make no alteration, addition, improvement or change in or to the Licensed Premises except the installation of canopy standard gaskets. Gaskets shall be removed and holes patched by the Licensee at its sole cost, to the satisfaction of the Licensor, at the end of the term of this Agreement, or at the end of the term of any extension of this Agreement.

7. 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.

8. Compliance with Laws. Licensee shall comply with all of the requirements of all governmental authorities and insurance carriers now in force pertaining to the use of the Licensed Premises, or which Licensee shall hereafter carry.

9. Waiver; Risk of Loss. Neither Licensor 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, without limitation, for tortious or criminal acts of third parties. Licensor shall have no obligation or duty to provide security services, traffic direction or police services for the premises. 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 shall be at the Licensed Premises at the risk of Licensee or such other person only, and Licensor 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 Licensor, as an Illinois Municipal Corporation under Illinois Statutory or Common Law, such privileges and immunities being specifically reserved by the Licensor.

10. Hold Harmless and Insurance. (a) Licensee shall carry insurance during the entire term thereof insuring Licensee, and insuring, as additional named insured, Licensor and its officers, directors, agents, employees and affiliated entities, as their interests may appear, with comprehensive public liability insurance, (including the broad or extended liability endorsement) during the entire term thereof with terms and in companies satisfactory to Licensor to afford protection to the limits of not less than \$2,000,000 for combined single limit personal injury and property damage liability per occurrence. Insurance shall cover Licensor's use of the property on market days as well as injury or damage which may occur as a result of the installation of the canopy standard gasket. The insurer shall be subject to the reasonable approval of the Licensor.

(b) Licensee, to the greatest extent permitted under Illinois law, shall defend, hold harmless, and indemnify the Licensor for any and all claims, actions, causes of action, demands, cost, including reasonable attorneys fees, resulting from the Licensor and its vendees operation of the open market and possession of the Licensed Premises only up to the maximum level of

insurance limit provided for under the terms of the insurance policy secured for the benefit of the Licensee and Licensor pursuant to the terms of this Paragraph.

(c) Licensee shall, prior to the commencement of the Agreement term, furnish to Licensor certificates evidencing such coverage, which certificates shall state that such insurance coverage may not be changed or canceled without at least thirty (30) days prior written notice to Licensor.

11. Default by Licensee. (a) If Licensee defaults in the performance of any obligation hereunder, Licensor may, pursuant to paragraph (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. Neither Licensee nor any vendor or other person claiming through or under Licensee shall be entitled to possession or to remain in possession of or use the Licensed Premises but shall forthwith quit and surrender the Licensed Premises, and Licensor may exclude Licensee (including, without limitation, any or all of Licensee's vendors) access to the Licensed Premises.

(b) Licensor shall provide Licensee 30 day's written notice of any alleged default, which Licensee shall have the right to cure, prior to Licensor exercising any options pursuant to this paragraph.

(c) Licensor shall have the right, among other remedies, to enter the Licensed Premises, 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 all other costs arising from Licensee's default, including, but not limited to, attorney's fees and expenses.

(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.

12. Licensor and licensee acknowledge and covenant that this agreement establishes a license and not a tenancy. This agreement may be terminated by either party by providing written notice of termination not less than ten (10) business days prior to the next scheduled market day. Upon the giving of such notice this license shall terminate effective on the Sunday next following the effective date of the notice.

13. If this license is terminated by the Licensor, and the Licensee is not in default, the Licensor shall work in good faith with the Licensee to find a mutually satisfactory alternative site. Any alternative site shall be the subject of a new license agreement.

14. 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, Illinois 60187  
Attn: City Clerk

To Licensee:       Bensidoun USA, Inc.  
                          405 N. Wabash #3404  
                          Chicago, IL  
                          60611

Bensidoun USA, Inc.  
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.

14. 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.

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

CITY OF WHEATON

BENSIDOUN USA, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_