

## FRENCH MARKET OPERATORS' AGREEMENT

This Agreement is entered into on May 7, 2009, by and between the VILLAGE OF LOMBARD, a municipal corporation (the "Village") and Lombard Town Centre, an Illinois not-for-profit corporation ("Lombard Town Centre").

WHEREAS, said license is for the purpose of conducting a French Market (hereinafter referred to as "French Market"), and

WHEREAS, the French Market is a seasonal, outside display and sales by multiple vendors of freshly grown fruits, vegetables, edible grains, nuts and berries, as well as other products; and

WHEREAS, the Village wishes to provide a French Market to attract customers to the downtown area for the purpose of economic development; and

WHEREAS, Park Avenue is a publicly dedicated right-of way owned and maintained by the Village of Lombard; and

WHEREAS, a segment of the 0-100 block of the North Park Avenue right of way, as depicted on the drawing attached hereto as Exhibit A (hereinafter referred to as the "Premises"); is proposed for the use of a French Market; and

WHEREAS, Lombard Town Centre has agreed to manage and operate a French Market 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. Incorporation of recitals. The Provisions stated in the preamble above are incorporated herein and made operative provisions hereof, as if fully set forth herein.
2. Operations. As an independent contractor and not as an agent of the Village, Lombard Town Centre hereby agrees to manage and operate a French Market, as authorized herein, on the Premises, said Premises to be used by Lombard Town Centre solely for said purpose.
3. Term. The term of this Agreement shall commence on the date of execution first written above and shall continue until October 31, 2009.
4. Market Season. The French Market shall begin operations no earlier than May 12, 2009 and terminate operations no later than October 31<sup>st</sup> of any year (hereinafter referred to as the "Market Season"), except as may be extended by the mutual

agreement of the Village and Lombard Town Centre, subject to prior approval of the Licensor.

5. Use of Premises. (a) Lombard Town Centre may use the Premises solely for setting up, maintaining, and operating the French Market from the hours of 6:00 a.m. to 1:00 p.m. on Tuesdays during the Market Season with sales by vendors to commence no earlier than 7:00 a.m. and terminate no later than 12:30 p.m. on those days. Lombard Town Centre may extend or alter said hours with the written approval of the Village.
- (b) Water. Lombard Town Centre shall secure a water meter from the Village of Lombard's Public Works Department, in accordance with the Village's rules and regulations. Lombard Town Centre shall pay for all water used in the operation of the French Market at the Village's standard billing rate.
- (c) Parking. The Village shall have no obligation to secure private parking for Lombard Town Centre. Parking for French Market customers and vendors will be available in Village parking areas at no charge on a non-exclusive basis. Lombard Town Centre shall pay the costs of any additional parking, which the Village may secure on private property, provided that Lombard Town Centre accepts the use of said private property for parking purposes.
- (d) Electricity. The Village agrees to provide Lombard Town Centre with electricity during French Market hours from the outlets located on the premises, within the existing tree vaults. If the Village is able to secure such electricity at no cost, the Village agrees to provide it to Lombard Town Centre at no cost. If the Village is charged for such electricity, Lombard Town Centre shall reimburse the Village for the actual cost incurred by the Village for the electricity.
- (e) Trash Removal. The Village agrees to provide three 33-gallon trash containers and to dispose of their contents after each French Market day at no charge to Lombard Town Centre. Trash, in excess of three such containers, shall be removed by Lombard Town Centre at its own expense. Lombard Town Centre shall clear all debris from the Premises by sweeping and/or hosing off the surface at the end of each French Market day.
- (f) Barricades The Village agrees to provide barricades to be placed at each end of the Premises to limit vehicular traffic movement into the Market Area.
- (g) Designated Representative. Lombard Town Centre shall designate a French Market Manager, and his/her designee, and provide their names, addresses and 24-hour accessible telephone numbers in writing to the Village. The Market Manager, and/or designee, shall manage the general operations of the French Market and Lombard Town Centre's use of the Premises. The Market Manager, and/or designee, shall be readily accessible by telephone and, upon the Village's request, shall respond to, and arrive at the Premises within a reasonable period of time during the Market

Season. The Market Manager or his/her designee shall be on the Premises at all times during the operation of the French Market. Lombard Town Centre shall immediately notify the Village in writing of any change in the identity of the Market Manager and/or his/her designee, including name, address and 24-hour accessible telephone numbers.

(h) Village's Rules and Regulations. The Village shall have the right, from time to time upon notice thereof to Lombard Town Centre, to prescribe rules and regulations for public health, welfare and safety purposes, which in the Village's judgement may be desirable for the use of the Premises. Lombard Town Centre agrees to comply with all such rules and regulations provided that such rules and regulations shall not contradict any right expressly granted to Lombard Town Centre herein. A violation of any such rules and regulations shall constitute a default by Lombard Town Centre under this Agreement. Lombard Town Centre further agrees to enforce adherence of the rules, attached hereto as Exhibit B, by the vendors.

6. Condition of Premises. Lombard Town Centre hereby accepts the Premises in its "as is" condition as of the date hereof, and acknowledges that upon delivery of possession of the Premises to Lombard Town Centre the same was in good order, condition and repair. Lombard Town Centre shall, at its sole cost and expense, be responsible for any and all repairs or damage to the Premises arising from the misuse or damage to same by Lombard Town Centre or any vendor, its agent, employees, successors, and assigns. At the close of each Market Season, Lombard Town Centre shall re-deliver possession of the Premises to the Village in good order, condition and repair, normal wear and tear excepted. At the beginning of each Market Season, Lombard Town Centre shall inspect the Premises, accept the Premises in their "as is" condition as of the date thereof, and acknowledge that upon delivery of possession of the Premises to Lombard Town Centre the same were in good order, condition and repair. Upon termination of this License by lapse of time or otherwise, Lombard Town Centre shall re-deliver possession of the Premises to the Village in good order, condition and repair, normal wear and tear accepted.
7. Alterations and Additions. Lombard Town Centre shall make no alteration, addition, improvement or change in or to the Premises.
8. Assignment. Lombard Town Centre shall not assign this Agreement or any portion thereof, or allow the use of the Premises by any person, firm or entity other than Lombard Town Centre its vendors, and customers thereof, without the express written approval of the Village. However, the Village does hereby authorize Lombard Town Centre to enter into management and operating arrangements with and BENSIDOUN USA, INC., an Illinois corporation ("Bensidoun"), for the purpose of operating the French Market and meeting the provisions of this Agreement as set forth herein..
9. Compliance with Laws. Lombard Town Centre shall comply with the requirements

of all governmental authorities and insurance carriers now or hereafter in force pertaining to the use of the Premises, including any insurance carriers of Lombard Town Centre.

10. Waiver; Risk of Loss. Neither the Village nor any of its officers, agents, employees, volunteers, members and affiliated entities shall be liable for any accident, injury or death, loss or damage resulting to any person or property, sustained by Lombard Town Centre or Lombard Town Centre's agents, employees and/or invitees, anyone claiming by or through Lombard Town Centre or any vendor or customer on the Premises, without limitation, arising out of, connected with, or in any way associated with Lombard Town Centre's operation of the French Market and/or use of the Premises. The Village shall have no obligation or duty to provide security services, traffic direction or police services for the Premises. All property of Lombard Town Centre or Lombard Town Centre's agents, employees and/or invitees, anyone claiming by or through Lombard Town Centre or any vendor or any user of the Premises shall be at the Premises at the risk of Lombard Town Centre or such other person only, and the Village shall not be liable for any damage thereto, including, without limitation, theft, damage or vandalism of any vehicles at the Premises. Nothing in this Agreement shall be interpreted as to waive any immunities or privileges provided to the Village, as an Illinois municipal corporation under Illinois statutory or common law, such privileges and immunities being specifically reserved by the Village.
  
11. Hold Harmless and Insurance. (a) Lombard Town Centre shall carry insurance during the entire term hereof insuring Lombard Town Centre, and insuring, as additional named insured, the Village and its officers, agents, employees, volunteers, members and affiliated entities, as their interests may appear, in the following minimum amounts:
  - (1) Broad form Comprehensive General Liability – not less than \$2,000,000 for combined single limit personal injury and property damage liability per occurrence;
  - (2) Auto Liability– Combined Single Limit Amount of \$1,000,000.00 on any Lombard Town Centre owned, and/or hired, and/or non-owned motor vehicles engaged in operations of the French Market;
  - (3) Worker Compensation – Statutory; Employers Liability \$1,000,000.00 (the policy shall include a "waiver of subrogation"); the requirements of this subparagraph (a)(3) do not apply in the event that Lombard Town Centre does not employ any servants or employees; and
  - (4) Umbrella Coverage – \$3,000,000.00.

Said insurance shall remain in effect during the entire term hereof. Said insurance shall cover the operations of the French Market and use of the Premises by the Village and Lombard Town Centre on French Market days as well as injury or damage which may occur as a result of the French Market operations. The insurer shall be subject to the reasonable approval of the Village.

(b) Lombard Town Centre, to the greatest extent permitted under Illinois law, shall indemnify, hold harmless and defend the Village, its officers, agents, volunteers and employees, against any and all liability, losses, damages, actions claims, demands, lawsuits, judgments, settlements, proceedings of any kind and any cost or expenses, including, but not limited to, fees for an attorney or attorneys of the Village's choice, arising out of, connected with, or in any way associated with the acts or omissions of Lombard Town Centre, its members, employees or agents in the operation of the French Market and/or use of the Premises only up to the maximum level of insurance limits provided for under the terms of the insurance policy secured for the benefit of the Village and Lombard Town Centre pursuant to the terms of this Paragraph.

(c) Lombard Town Centre shall, prior to the commencement of the Agreement term, furnish to the Village certificates evidencing the insurance coverage required in subparagraph (a), which certificates shall state that such insurance coverage may not be changed or canceled without at least thirty (30) days prior written notice to the Village.

12. Default by Lombard Town Centre. (a) If Lombard Town Centre defaults in the performance of any obligation hereunder, the Village 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 Lombard Town Centre (and any and all of its vendors) to use the Premises. In such case, neither Lombard Town Centre nor any vendor or other person claiming through or under Lombard Town Centre shall be entitled to possession or to remain in possession of or use the Premises but shall forthwith quit and surrender the Premises, and the Village may prohibit Lombard Town Centre (including, without limitation, any or all of Lombard Town Centre's vendors) access to the Premises.

(b) The Village shall provide thirty (30) days prior written notice to Lombard Town Centre of any alleged default, which Lombard Town Centre shall have the right to cure, prior to the Village's exercise of any options pursuant to this paragraph 13.

(c) If the default is not cured within the thirty (30) days allotted, the Village shall have the right, among other remedies, to enter the Premises, prohibit Lombard Town Centre (including, without limitation, any or all of Lombard Town Centre's vendors) therefrom and remove any or all of Lombard Town Centre's and/or its vendor's property and effects. In such case, Lombard Town Centre shall pay to the Village upon demand the expense and costs for removal and/or storage of vehicles, any and all repairs to the Premises and all other costs arising from Lombard Town Centre's

default, including, but not limited to, attorney's fees and expenses.

(d) Lombard Town Centre shall pay to the Village upon demand all costs, expenses and damages incurred by the Village in enforcing Lombard Town Centre's obligations under this Agreement or resulting from default by Lombard Town Centre or any of Lombard Town Centre's vendors, including, without limitation, attorney's fees and expenses.

13. 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 Village:                      Village of Lombard  
    255 E Wilson Avenue  
    Lombard, Illinois 60148  
    Attn: Village Manager

To Lombard Town Centre:

    102 W. St. Charles Road, Suite 2C  
    Lombard, IL 60148


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

14. Entire Agreement. This Agreement is the entire Agreement between the parties and shall not be modified except with the written and signed approval of both parties.
15. 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.

VILLAGE OF LOMBARD


LOMBARD TOWN CENTRE

By:   
William J. Mueller, Village President

By: 

Its: PRESIDENT

Attest:

  
Brigitte O'Brien  
Village Clerk

Attest:

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

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