

LEGISTAR: 220172
DISTRICT: 1

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION

For Inclusion on Board Agenda

 X Resolution or Ordinance (Blue) X Waiver of First Requested
 Recommendations of Boards, Commissions & Committees (Green)
 Other Business (Pink)

TO: VILLAGE PRESIDENT AND BOARD OF TRUSTEES

FROM: Scott Niehaus, Village Manager

DATE: April 25, 2022 (B of T) **Date:** May 5, 2022

TITLE: 115 W. St. Charles Road License Agreement – Ground level 105

SUBMITTED BY: Carl S. Goldsmith, Director of Public Works 

BACKGROUND/POLICY IMPLICATIONS:

The staff recommends the approval of a License Agreement between the Village of Lombard and Ground Level 105. The License Agreement formalizes the exclusive use of a portion of the 115 Parking Lot to be used in conjunction with outdoor dining for the operation of a restaurant at 105 W. St. Charles Road.

FISCAL IMPACT/FUNDING SOURCE:

Review (as necessary):

Village Attorney X _____ Date _____

Finance Director X _____ Date _____

Village Manager X _____ Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



April 25, 2022

TO: Village President and Board of Trustees
THROUGH: Scott A. Niehaus, Village Manager
FROM: Carl Goldsmith, Director of Public Works *g*
SUBJECT: License Agreement – Ground Level 105

Background

The Village received a request from Ground Level 105 to allow the establishment to have exclusive use of parking spaces located in the 115 W. St. Charles Parking Lot for outdoor dining. Staff has met with the restaurant operators and determined that three (3) parking spaces adjacent to the building at 105 W. St. Charles Road would be suitable to provide exclusive use to the restaurant. These spaces would reduce the number of available spaces for shoppers or merchants; however, there remains ample spaces for other users and residents. The use of the property for outdoor dining was permitted pursuant to Executive Order issued by the Village President in response to the COVID 19 pandemic. The Executive Order has lapsed and the owner is seeking to have access to the spaces for continued outdoor dining.

Staff has prepared the attached License Agreement that stipulates that the Village will provide three (3) parking spaces under the following conditions:

- Ground Level 105 will pay any and all costs to the Village for the designation of the parking spaces; to include signage and striping of the parking spaces.
- Ground Level 105 will assume the responsibility for maintaining and cleaning the parking spaces created as part of the project subject to the agreement.
- The term of the agreement is from the date of execution through December 31, 2022; however, the agreement does permit an extension of one (1) year upon mutual agreement by the Village and Ground Level
- The agreement runs the duration of the calendar and is not tied to seasonal use of the parking spaces.

Ground Level 105 has executed the agreement and is seeking the Village Board of Trustees support of the License Agreement. I respectfully request that this item be placed on the Village Board of Trustee’s agenda for the May 5, 2022. Please feel free to contact me with any questions regarding this matter. Thank you for your time and attention to this issue.

Recommendation

Staff recommends that the Village President and Board of Trustees adopt AN ORDINANCE APPROVING A LICENSE AGREEMENT FOR THE USE OF A PORTION OF THE VILLAGE PARKING LOT LOCATED NORTH OF 115 WEST ST. CHARLES ROAD BETWEEN THE VILLAGE OF LOMBARD AND GROUND LEVEL 105

ORDINANCE NO. _____

**AN ORDINANCE APPROVING A LICENSE AGREEMENT
FOR THE USE OF A PORTION OF THE VILLAGE PARKING LOT
LOCATED AT 115 WEST ST. CHARLES ROAD
BETWEEN THE VILLAGE OF LOMBARD AND GROUNDLEVEL 105, LLC**

BE IT ORDAINED by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

SECTION 1: That the President and Board of Trustees hereby approve the "License Agreement for the Use of a Portion of the Village Parking Lot Located at 115 West St. Charles Road", attached hereto as Exhibit 1 and made part hereof.

SECTION 2: That the Village President and Village Clerk as hereby authorized and directed to execute Exhibit 1 on behalf of the Village, as well as execute any and all additional documents necessary to carry out the terms and provisions of said Exhibit 1.

SECTION 3: That this Ordinance shall be in full force and effect from and after its passage and approval, by a three-fourths (3/4ths) vote of the Corporate Authorities, as provided by law.

Passed on first reading this ____ day of _____, 2022.

First reading waived by action of the Board of Trustees this ____ day of _____, 2022.

Passed on second reading this ____ day of _____, 2022, pursuant to a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this ____ day of _____, 2022.

Keith Giagnorio, Village President

ATTEST:

Elizabeth Brezinski, Village Clerk

Exhibit 1

**LICENSE AGREEMENT
FOR THE USE OF A PORTION OF THE VILLAGE PARKING LOT
LOCATED AT 115 WEST ST. CHARLES ROAD**

(attached)

**LICENSE AGREEMENT
FOR THE USE OF A PORTION OF THE VILLAGE PARKING LOT
LOCATED AT 115 WEST ST. CHARLES ROAD**

This License Agreement for the Use of a Portion of the Village Parking Lot Located at 115 West St. Charles Road (the "License Agreement") is entered into this ___ day of _____, 2020, by and between the Village of Lombard, an Illinois municipal corporation (the "Village") and GroundLevel 105, LLC, an Illinois limited liability company (the "Licensee"). The Village and the Licensee are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

WITNESSETH

WHEREAS, the Village owns and maintains a public parking lot located at 115 West St. Charles Road (the "115 Parking Lot"); and

WHEREAS, the Licensee owns the property commonly known as Ground Level 105 located at 105 West St. Charles Road, Lombard, Illinois (PIN 06-07-227-009), as depicted on Exhibit A attached hereto and made part hereof (the "Subject Property"), for the purpose of operating a restaurant to be known as Ground Level 105 (the "Restaurant"); and

WHEREAS, the Subject Property abuts the 115 Parking Lot; and

WHEREAS, the Licensee has requested to use that portion of the 115 Park Parking Lot, immediately West of the Subject Property, as legally described and depicted on Exhibit B-1 and Exhibit B-2, attached hereto and made part hereof, respectively, (the "Licensed Premises"), in conjunction with Licensee's Restaurant on the Subject Property; and

WHEREAS, the Village has determined that it is in the best interests of the Village to enter into an agreement to allow the Licensee to use the Licensed Premises in conjunction with Licensee's Restaurant on the Subject Property, subject to certain terms and conditions as set forth herein;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, representations and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereto agree as follows:

SECTION 1: INCORPORATION OF RECITALS

1.1 Recitals. The Recitals, as set forth above, are incorporated herein by reference.

SECTION 2: LICENSE AND LIMITATIONS

- 2.1 Grant of License and Use Fee.** In consideration of the payment of Ten and No/100 Dollars (\$10.00) for each year that this License Agreement is in effect to the Village, to be paid prior to the start of each year this License Agreement is in effect, the Village hereby grants to Licensee a revocable license (the "License") to occupy and use, subject to all of the terms, conditions and restrictions contained herein, the Licensed Premises, for outdoor dining purposes and the placement of movable landscaping planters, tables and chairs, and a tent from the building to be used for outdoor dining on the Subject Property (the "Permitted Uses").
- 2.2 Scope and Limitations of License.** Said License shall permit Licensee to use and occupy the Licensed Premises for the Permitted Uses only, subject to the restrictions and requirements imposed by this License Agreement, the Lombard Village Code and the Lombard Traffic Code, including, but not limited to, the following restrictions and requirements:
- A. Licensee shall not construct, build or place, or cause to be constructed, built or placed, any permanent structures, on or over the Licensed Premises, including, but not limited to, buildings, houses, dwellings, garages, sheds and/or other structures of a permanent or semi-permanent nature.
 - B. Licensee shall refrain from using the Licensed Premises in any unreasonable, unsafe and/or illegal manner, and shall at all times use the Licensed Premises in full compliance with all applicable provisions of this License Agreement and the Lombard Village Code.
 - C. The use of the Licensed Premise shall be subject to the approval of an Outdoor Dining Permit issued by the Department of Community Development.
- 2.3 Term of License.** Said License provided for herein shall be granted by the Village for a period beginning the date of execution of the License by the Parties through December 31, 2022, subject to the termination provisions set forth in Section 3 hereof. The License may be extended for a period of one (1) year upon mutual agreement by the Parties. The term of the extended period shall be January 1, 2023 through December 31, 2023.
- 2.4 Nonassignability of License.** Said License is personal to the Licensee, only for use relative to the Restaurant on the Subject Property, and shall not be assigned and/or transferred to any other person or entity without the expressed written consent of the Village.

SECTION 3: TERMINATION AND EXPIRATION

3.1 Termination. This License Agreement shall terminate by its terms at its effective date of expiration. Prior to its expiration, the License provided herein is revocable at will by either Party. Said License is for the temporary permissive use of the Licensed Premises only and creates no property and/or other interest in the Licensed Premises on the part of, or for the benefit of, the Licensee.

3.2 Notice of Termination. No written or other notice shall be required when this License Agreement expires. Where termination is at the request of either Party prior to the expiration of this License Agreement, the Party terminating this License Agreement shall serve written notice on the other Party not less than thirty (30) days before the termination is to take effect.

3.3 Improvements Required as Part of Termination or Expiration. Upon termination of this License Agreement at or prior to its expiration, the Licensee shall make such repairs as may be determined by the Director of Public Works to be necessary to bring the Licensed Premises into substantial compliance with applicable Village codes and regulations, utilizing the standard maintenance schedules used by the Village regarding the maintenance and repair of parking lots within the Village's present geographic boundaries. The Village shall provide Licensee a notice of the proposed repairs to be performed and the cost of such repairs. Within ten (10) business days after receipt of such notice, Licensee shall notify Village of Licensee's intention to perform some or all of such repairs, or to have them performed by the Village. If Licensee elects to perform some or all of such repairs, such notice shall specify the date by which repairs to be performed by Licensee shall be completed, which date shall be no later than ninety (90) days from the date of the notice. All repairs performed by Licensee shall be subject to inspection and acceptance by the Director of Public Works. All costs of such repairs performed by the Village shall be borne by the Licensee.

3.4 Maintenance Activity Performed by Village

The Village will attempt to schedule maintenance activities on the Licensed Premise between October 1, 2022 and March 31, 2023. In the event the Village determines that emergency repairs or maintenance activities are required to be performed between April 1st and September 30th ("Outside Dining Period"), the Village will provide the Licensee with sufficient notice prior to work commencing. If license has outside dinning during "off season", between October 1, 2022 and March 31, 2023, in the event that the Village determines that emergency repairs or maintenance activities are required to be performed, the Village will provide the Licensee with sufficient notice prior to construction.

All costs related to the relocation of material shall be borne by the Licensee, unless the Village fails to provide at least twenty-four (24) hours' notice in the case of an emergency or fourteen (14) days' notice in the case of non-emergency maintenance or repair work to occur during the Outdoor Dining Period.

- 3.5. **Restoration.** Upon termination of this License Agreement by lapse of time or otherwise, the Licensee, at its own expense, shall return and restore the Licensed Premises to as good a condition as pre-dated this License Agreement, ordinary wear and tear excepted. The Director of Public Works shall direct the Licensee to make such repairs and restorations as the Director of Public Works deems necessary in order to restore the Licensed Premises to its previous condition.
- 3.6. **Care and Maintenance.** The Licensee shall, at its own expense and at all times, be responsible for maintaining the Licensed Premises in good condition and free from litter and other debris generated by the use of the Licensed Premises authorized by this License Agreement. The Licensee shall, at its own expense, hire personnel to clean up all litter and debris attributable to the Licensee's use of the Property, to wash the Property in order to remove any dirt, food or drink residue, and to repair or replace any damaged public or private real property, equipment, fixtures or personal property caused by the Licensee's use of the Licensed Premises.

SECTION 4: NOTICES

- 4.1 **Delivery and Effective Date.** All notices given in relation to this License Agreement shall be deemed to have been effectively given, in accordance with the terms and conditions of this License Agreement, when personally delivered, whether by overnight carrier or otherwise, or on the third day after mailing said notice, via certified mail, return receipt requested, addressed as follows:

A. If to the Licensee:

GroundLevel 105, LLC.
105 W. St. Charles Road
Lombard, Illinois 60148
Attn: Tom Kidwell

B. If to the Village:

Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148
Attn: Director of Public Works

or to such other address, or additional Parties, as either Party may from time to time designate in a written notice to the other Party.

SECTION 5: MISCELLANEOUS PROVISIONS

- 5.1 Hold Harmless and Indemnification.** Licensee covenants and agrees to indemnify, defend, save and hold forever harmless the Village and its elected officials, officers, agents and employees (the "Village Affiliates") from and against any and all claims, losses, lawsuits, actions, injuries, accidents, costs and/or expenses (including reasonable attorneys' fees) for damages to person(s) or property arising out of or in relation to the acts or omissions of the Licensee, or the Licensee's officers, managers, members, agents, contractors, invitees, customers or employees, relative to the use, maintenance or repair of the Licensed Premises, during the term of this License Agreement, but not for acts or omissions occurring after the early termination of this License Agreement by either Party.
- 5.2 Insurance.** Licensee shall maintain liability insurance coverage for the Licensed Premises from the commencement of the term of this License Agreement until its termination, in an amount acceptable to the Village, and shall provide the Village with a certificate of insurance describing such insurance coverage within ten (10) business days after the commencement of the term of this License Agreement, and shall update same, as necessary thereafter, during the term of this License Agreement. Such insurance coverage shall name the Village, its elected officials, officers, agents and employees as additional insureds, and shall provide that the insurance coverage provided by the Licensee shall be primary and non-contributory to any insurance coverage of the Village. Failure of the Licensee to provide such insurance certificate, within ten (10) business days after notice from the Village of Licensee's failure to provide a current certificate of insurance, shall terminate this License Agreement without further action by either Party.
- 5.3 Risk of Injury.** Licensee assumes the full risk of death, illness and personal injuries of any kind and all damages or losses of any kind which it or its officers, officials, managers, members, employees, contractors, subcontractors, volunteers, agents and invitees or members of the public may sustain arising out of or relating to the Permitted Uses, Licensee's use or the public's use of the Licensed Premises, or any matters arising out of or relating to matters covered under this License Agreement.
- 5.4 Waiver of Claims.** Licensee agrees to waive and relinquish any and all claims or causes of action of any kind that it or its officers, officials, managers, members, employees, contractors, subcontractors, volunteers, agents and invitees may have against the Village

and the Village Affiliates arising out of or relating to the Permitted Uses, or the Licensee's use or the public's use of the Licensed Premises, or the areas used for activities associated with the Permitted Uses, or any matters arising out of or relating to matters covered under this License Agreement.

- 5.5 Release from Liability.** Licensee fully releases and discharges the Village and the Village Affiliates from any and all claims or causes of action of any kind, including but not limited to illness, injury, death, damages or losses which Licensee or its officers, officials, managers, members, employees, contractors, subcontractors, volunteers, agents and invitees or members of the public may have or which arise out of or relate to the Permitted Uses, or the Licensee's use or the public's use of the Licensed Premises, or the areas used for activities associated with the Permitted Uses, or any matters arising out of or relating to matters covered under this License Agreement.
- 5.6 Interference.** Licensee represents and warrants that its use of the Licensed Premises shall not interfere in any way with the use of any other portion of the 115 Parking Lot for public parking purposes.
- 5.7 Taxes.** If property taxes are assessed on the Licensed Premises due to Licensee's use of the Licensed Premises, or the Permitted Uses occurring on the Licensed Premises, Licensee shall be solely responsible for the prompt and timely payment of all such property taxes.
- 5.8 Severability of Agreement.** The terms and conditions set forth in this License Agreement shall be severable. In the event that any of the provisions contained herein are declared by a court of competent jurisdiction to be inconsistent with federal, state or local law, or otherwise unenforceable for any reason whatsoever, the remaining provisions shall remain in full force and effect as to the Parties.
- 5.9 Merger Clause.** This License Agreement constitutes the entire understanding between the Parties, and supersedes any prior understandings and/or agreements between the Parties. Any representations, agreements, promises or understandings not expressly set forth herein are hereby rendered null, void and of no legal effect.
- 5.10 Choice of Law.** This License Agreement is entered into under, and shall be governed for all purposes by, the laws of the State of Illinois, and venue in relation to any court action relating in any way to this License Agreement shall be in DuPage County, Illinois.
- 5.11 Complete Defense.** It is expressly understood and agreed by the Parties that this License Agreement may be pleaded by the Village as a complete defense to, and in bar of, any and all claims or causes of action of any kind brought, maintained or conducted by

Licensee or by a third party in connection with or on account of any of the matters set forth in this License Agreement. The Parties agree that this License Agreement shall be admissible in evidence in any action in which the terms of this License Agreement are sought to be enforced.

- 5.12 **Authority to Bind.** The Parties warrant and represent that the execution, delivery of and performance under this License Agreement is pursuant to authority, validly and duly conferred upon the Parties and the signatories hereto.
- 5.13 **Continuing Effect.** The provisions of Sections 5.1, 5.3, 5.4 and 5.5 above shall survive the termination of this License Agreement in regard to anything occurring while this License Agreement was in effect, or in regard to anything occurring as a result of Licensee's actions relative to the Licensed Premises, after the termination of this License Agreement, but relating to the terms of this License Agreement.
- 5.14 **Effective Date.** This License Agreement shall become effective upon the date the last of the Parties executes this License Agreement, which date shall be inserted on the first page hereof.

IN WITNESS WHEREOF, the Parties have executed this License Agreement, on the dates as set forth below.

Village of Lombard,
an Illinois municipal corporation

Licensee:
GroundLevel 105, LLC.

By: _____
Keith Giagnorio
Village President

By:  _____
Tom Kidwell
Member

Date: _____, 2022

Date: May 3rd, 2022

ATTEST:

Elizabeth Brezinski
Village Clerk

Date: _____, 2022

STATE OF ILLINOIS)
) SS
COUNTY OF ~~DUPAGE~~)
 Cook

ACKNOWLEDGMENT

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Tom Kidwell, personally known to me to be a Member of GroundLevel 105 LLC., an Illinois limited liability company (the "Company"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that, as such Manager, ~~she~~^{he} signed and delivered the said instrument, pursuant to authority given by the Member(s) of said Company, as ~~her~~^{he} free and voluntary act, and as the free and voluntary act and deed of the Company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 2nd day of May, 2022.



Notary Public



STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ACKNOWLEDGMENT

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Tom Kidwell, personally known to me to be a Member of GroundLevel 105 LLC., an Illinois limited liability company (the "Company"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that, as such Manager, he signed and delivered the said instrument, pursuant to authority given by the Member(s) of said Company, as his free and voluntary act, and as the free and voluntary act and deed of the Company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2022.

Notary Public

Exhibit A

**Depiction of
the Subject Property**



Exhibit B-1

**Legal Description of
the Licensed Premises**

Legal:

LOT 2 IN BLOCK 19 TOWN OF "LOMBARD", BEING A SUBDIVISION IN SECTIONS 5, 6, 7, 8 AND 18, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 23, 1868 AS DOCUMENT 9483, IN DUPAGE COUNTY, ILLINOIS.

CONTAINING: 18,042.97 sq.ft. (0.41 acres)

PROPERTY COMMONLY KNOWN AS: 115 W. ST. CHARLES ROAD, LOMBARD, ILLINOIS.

Exhibit B-2

**Depiction of
the Licensed Premises**

