

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

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

X

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: David A. Hulseberg, Village Manager *DH*

DATE: April 6, 2010 (B of T) Date: April 15, 2010

TITLE: French Market Operators' Agreement - 115 E. St. Charles Road

SUBMITTED BY: Department of Community Development *WD*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration a resolution authorizing the signatures of Village President and Clerk on a French Market Operators' Agreement relative to the operation of the French Market at 115 E. St. Charles Road and known as the Hammerschmidt Parking Lot.

Staff recommends approval of this request.

Please place this item on the April 15, 2010 Board of Trustees agenda.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____
 Finance Director X _____
 Village Manager X _____

Date _____
 Date _____
 Date _____

4/6/10

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.



MEMORANDUM

TO: David A. Hulseberg, Village Manager

FROM: William J. Heniff, AICP, Director of Community Development *WJH*

DATE: April 15, 2010

SUBJECT: FRENCH MARKET OPERATORS' AGREEMENT – 115 E. ST. CHARLES (HAMMERSCHMIDT PARKING LOT)

BACKGROUND

On April 1, 2010, the Village Board approved the first reading of an Ordinance granting a Conditional Use for a Farmers Market on the Hammerschmidt parking to be held on Saturdays from 2PM to 7PM. This was a request made by the Lombard Town Centre (LTC). The market used to be located here on Saturdays in 2004 & 2005 (PC 04-06), however it was moved to 102 W St. Charles in 2007 and 2008 (PC 07-22) on Tuesdays to accommodate more vendors. Last year, the market was also held on Tuesday, but was relocated to North Park Avenue right-of-way. The LTC and its operator, Bensidom, were not satisfied with the North Park Avenue location and therefore the LTC is requesting to move the market back to the Hammerschmidt lot. They will be working with the same operator, who has indicated that having the market on Saturday should not impede their ability to get quality vendors. The market will be in operation from 2PM to 7PM.

The existing Hammerschmidt parking lot has 13 parking spaces. Based on the representations made by the LTC and Bensidom, the eastern 27 parking spaces will be used for the tents leaving 86 spaces for customer parking.

As with the existing market, it will be operated according to an Operators' Agreement that will ensure that it will not endanger the public health or safety. The market will meet all code requirements which will assure that all requirements for public utilities and safety concerns will be met during its limited hours and days of operation in a manner consistent with their existing site.

RECOMMENDATION:

To facilitate the French Market's operation on the Hammerschmidt parking lot, an Operators' Agreement is attached for approval by the Village Board. The Agreement is similar in structure to an agreement that was previously entered into by the parties when it operated on the property back in 2004 & 2005. Staff recommends that the Village Board authorize the Village President and Village Clerk to sign the Operators' Agreement with the LTC to use the Hammerschmidt parking lot.

R E S O L U T I O N

R _____ 10

**A RESOLUTION AUTHORIZING SIGNATURES
OF PRESIDENT AND CLERK ON A
FRENCH MARKET OPERATORS' AGREEMENT**

WHEREAS, the Corporate Authorities of the Village of Lombard have received a French Market Agreement between the Village of Lombard and Lombard Town Centre in regard to conducting a French Market operation, as attached hereto and marked Exhibit "A" and,

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such Agreement.

NOW, THEREFORE, Be It Resolved by the President and Board of Trustees of the Village of Lombard, Du Page County, Illinois, as follows:

SECTION 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said document as attached hereto.

SECTION 2: That the Village Clerk be and hereby is authorized to attest said agreement as attached hereto.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and approval as provided by law.

Adopted this _____ day of _____, 2010.

Ayes: _____

Naves: _____

Absent: _____

Approved this _____ day of _____, 2010.

William J. Mueller, Village President

ATTEST:

Brigitte O'Brien, Village Clerk

FRENCH MARKET OPERATORS' AGREEMENT

This French Market Operators' Agreement (the "Agreement") is entered into on _____, 2010, 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"). (The Village and Lombard Town Centre being sometimes referred to herein individually as a "Party" and collectively as the "Parties".)

WHEREAS, this Agreement is entered into for the purpose of providing a french market, which consists of the seasonal, outside display and sale, by multiple vendors, of freshly grown fruits, vegetables, edible grains, nuts and berries, as well as other products (the "French Market"); and

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

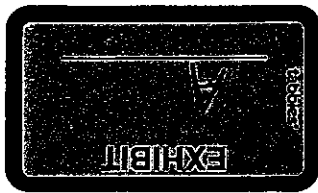
WHEREAS, the Hammerschmidt Parking Lot (the "Property"), is a commuter parking lot owned and maintained by the Village; and

WHEREAS, a portion the Property, as depicted on the drawing attached hereto as Exhibit A and made part hereof (the "Premises") is proposed for use as a French Market; and

WHEREAS, Lombard Town Centre has agreed to manage and operate a French Market on the Premises upon the terms and conditions herein provided;

NOW, THEREFORE, in consideration of the foregoing 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 preambles 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, 2010.
4. Market Season. The French Market shall begin operations no earlier than May 1, 2010 and terminate operations no later than October 31, 2010.



Use of Premises.

(a) Hours of Operation. Lombard Town Centre may use the Premises solely for setting up, maintaining, and operating the French Market from the hours of 1:00 p.m. to 7:30 p.m. on Saturdays during the Market Season, with sales by vendors to commence no earlier than 2:00 p.m. and terminate no later than 7:00 p.m. on those days. Lombard Town Centre may extend or alter said hours only with the prior written approval of the Village.

(b) Water. Lombard Town Centre shall secure a water meter from the Village'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 the Hours of Operation of the French Market, 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 (3) thirty-three (33)-gallon trash containers to Lombard Town Centre, and to dispose of their contents after each French Market day at no charge to Lombard Town Centre. Trash, in excess of three (3) 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 four (4) type-1 barricades to Lombard Town Centre to limit vehicular traffic movement into the area of the French Market.

(g) Designated Representative. Lombard Town Centre shall designate a French Market manager(s) (the "Market Manager(s)"), and provide his/her/their name(s), address(es) and twenty-four (24)-hour accessible telephone number(s) in writing to the Village. The Market Manager(s), shall manage the general operations of the French Market and Lombard Town Centre's use of the Premises. The Market

Manager(s) shall be readily accessible by telephone and, upon the Village's request, shall respond to the Village's request to come to the Premises, and arrive at the Premises, within a reasonable period of time during the Market Season. The Market Manager(s) 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(s) as well as any changes in the Market Manager(s)' address(es) or twenty-four (24)-hour accessible telephone number(s).

(h) Lombard Town Centre shall locate and store a handicapped accessible portable toilet (the "Portable Toilet") at locations on the Property to be determined by the Village. In addition, the following conditions shall be applicable to said Portable Toilet:

- (i) The Portable Toilet may only be located on the Property during Market season.
- (ii) The Portable Toilet must be kept in a clean and sanitized condition at all times.
- (iii) The Portable Toilet shall be locked at all times while it is stored on the Property, and not in use by vendors and customers of the French Market.

(i) Village's Rules and Regulations. The Village shall have the right, from time to time upon written notice thereof to Lombard Town Centre, to prescribe rules and regulations for public health, welfare and safety purposes, which, in the Village's sole and exclusive judgment, are 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. In this regard, Lombard Town Centre further agrees to enforce the rules and regulations, attached hereto as Exhibit B, and made part hereof, relative to the French Market.

(j) The Lombard Town Centre and its operator shall allow the Village the right to a tent space at no cost to the Village, during the Market Season

6. Condition of Premises. Lombard Town Centre hereby accepts the Premises in an "as is, where 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, agent, employee, successor, or assign. At the close of the Market Season, Lombard Town Centre shall deliver possession of the Premises to the Village in good order, condition and repair, normal wear and tear excepted. At the beginning of the Market Season, Lombard Town Centre shall inspect the Premises, accept the Premises in its "as is, where is"

- condition as of the date thereof, and acknowledge that, upon delivery of possession of the Premises to Lombard Town Centre, the same was in good order, condition and repair.
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 Bensidoun USA, Inc., an Illinois corporation ("Bensidoun"), for the purpose of operating the French Market, pursuant to the provisions of this Agreement, on behalf of Lombard Town Centre.
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 or 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 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 subsection (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 policies secured for the benefit of the Village and Lombard Town Centre pursuant to the terms of this Section 11.
- (c) Lombard Town Centre shall furnish to the Village satisfactory proof of coverage of the above insurance requirements, by a reliable company or companies. Such proof shall consist of a certificate(s) executed by the respective insurance company(ies) and filed with the Village. Said certificate(s) shall contain a clause to the effect that, for the duration of this Agreement, the insurance policy shall not be cancelled, expire or changed as to the amount of coverage without prior written notification thirty (30) days advance to the Village. In addition, said certificate(s) shall indicate that said insurance coverage is primary to, rather than supplemental to, any insurance that the Village may have acquired on its own. Finally, said certificate(s) shall list the Village and its officers, agents, employees, volunteers, representatives and assigns as additional insureds on all required insurance policies.
- Default by Lombard Town Centre. (a) If Lombard Town Centre defaults in the

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

If to Lombard Town Centre:

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

If to the Village:

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:

(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.

(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 vendors' 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 or other property and effects, 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.

(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 Section 12.

(b) performance of any obligation hereunder, the Village may, pursuant to subsection (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.

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 or of 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.

16. This Agreement shall be executed in two (2) counterparts, each of which shall constitute an original, so that each Party retains an original signature copy.

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

LOMBARD TOWN CENTRE

VILLAGE OF LOMBARD

By: _____
Name: _____
Its: _____

By: William J. Mueller, Village President

Attest: _____
By: _____
Name: _____
Its: _____

Brigette O'Brien
Village Clerk

STATE OF ILLINOIS

COUNTY OF _____

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)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY

CERTIFY, that the above named _____ and

_____ being the President and Secretary of Bensidoun USA,

Inc., respectively, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they

signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of Bensidoun USA, Inc., for the uses and purposes therein set forth.

Given under my hand and Notary Seal this _____ day of _____, 2010.

Notary Public

STATE OF ILLINOIS
)
)
)
COUNTY OF _____

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that WILLIAM J. MUELLER and BRIGITTE O'BRIEN, being the Village President and Village Clerk of the Village of Lombard, DuPage County, Illinois, respectively, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of the Village of Lombard for the uses and purposes therein set forth.

Given under my hand and Notary Seal this _____ day of _____, 2010.

Notary Public