

Commission Letter # 52-10
Commission Meeting: 2/15/2010

RE: License Agreement – Oakland Avenue Right-of-Way

February 12, 2010

The Honorable Mayor
and
Members of City Commission

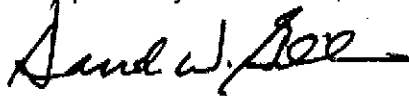
On December 21, 2009, the City Commission unanimously approved a request from Amber Crossing, L.L.C., to install a paved parking area within the Oakland Avenue right-of-way for overflow parking for its multiple family development at 538-594 N. Sherman Drive, subject to related special land use and site plan approval. On February 11, 2010, the Planning Commission recommended approval of the special land use and the site plan with contingencies. The City Commission will be reviewing this recommendation at its February 15, 2010 meeting; if the Commission does grant special land use and site plan approval, an agreement for the use of the right-of-way will be needed.

A proposed License Agreement is attached. Under the proposed Agreement, Amber Crossing would assume the responsibility for the installation and maintenance of the parking area, as well as all related liability. The City would continue to be responsible for any infrastructure not directly related to the special land use. If the proposed Agreement is acceptable, the following resolution is recommended for approval:

BE IT RESOLVED, that the City Commission hereby approves the proposed License Agreement with Amber Crossings, L.L.C., for the use of a portion of the Oakland Avenue right-of-way as a residential accessory off-street parking lot.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk are hereby authorized to execute the proposed License Agreement on behalf of the City.

Respectfully submitted,



David W. Gillam
City Attorney

cc: Donald E. Johnson, City Manager
Melanie Halas, City Clerk
Timothy E. Thwing, Director of Planning

LICENSE AGREEMENT

This License Agreement is entered into as of this _____ day of _____, 2010 by and between AMBER CROSSING, LLC, a Michigan limited liability company, whose address is 380 N. Crooks Road, Clawson, Michigan 48017-3005 (hereinafter referred to as "AMBER"), and the CITY OF ROYAL OAK, a Michigan municipal corporation, whose address is 211 Williams Street, P.O. Box 64, Royal Oak, Michigan 48068-0064 (hereinafter referred to as the "CITY").

RECITALS:

- A. AMBER has approached the CITY with a proposal to develop a parking area on property owned by AMBER and property within the Oakland Avenue right-of-way at its own expense for overflow resident and guest parking associated with multiple-family residential development at 538-594 N. Sherman Drive.
- B. At its meeting on February 9, 2010, the CITY's Planning Commission recommended approval of request for the parking area.

NOW, THEREFORE, in consideration of the premises and mutual covenants of the parties contained in this Agreement, AMBER and the CITY hereby agree as follows:

1. CITY grants AMBER a license to construct, utilize and maintain a fully paved parking area within the Oakland Avenue right-of-way and AMBER's property located on the north side of Oakland Avenue (formerly known as 518 Oakland Avenue), as provided in the site plan attached to this Agreement as Exhibit A. AMBER shall construct, utilize and maintain the parking area pursuant to the terms of this License Agreement.
2. All costs associated with the construction of this parking area shall be the responsibility of AMBER.
3. During the construction of the parking area, all risk of property damage or loss to the parking area itself shall be borne by AMBER.

4. During the construction of the parking area, to the fullest extent permitted by law, AMBER agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY, its elected and appointed officials and employees working on behalf of the CITY against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the CITY, its elected and appointed officials, and employees working on behalf of the CITY, by reason of personal injury, including bodily injury or death and/or property damage, which arises out of or is in any way connected or associated with the construction of the parking area.

5. The construction of the parking area will be complete prior to issuance of a temporary or final certificate of occupancy for the adjacent AMBER apartment development located at 538-594 N. Sherman Drive.

6. Once the construction of the parking area is complete, all risk of property damage to the parking area itself shall be borne by AMBER. The CITY retains responsibility for drainage and other below ground and above ground infrastructure that includes, but is not limited to, water, sewer, storm water and public lighting. In the repair and/or maintenance of its infrastructure, the CITY shall not do any unnecessary damage to the parking area. After the repair and/or maintenance has been completed, the City shall restore the parking area to substantially the same condition that it was prior to the repair and/or maintenance.

7. Once the construction of the parking area is complete, AMBER shall be responsible for all maintenance and upkeep of the paved portion of the parking area, excluding any repairs or damage associated with the CITY's infrastructure described in Paragraph 6 above.

8. Once construction of the parking area is complete, the use of the parking area shall be at all hours for the residents and guests of those residing at the Amber

Crossing development located at 538-594 N. Sherman Drive. Amber agrees to maintain access through the parking area to the adjacent electric utility service yard at the southeast end of Oakland Avenue pursuant to the approved site plan.

9. Once the construction of the parking area is complete, to the fullest extent permitted by law, AMBER agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY, its elected and appointed officials, and employees working on behalf of the CITY against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the CITY, its elected and appointed officials, and employees working on behalf of the CITY, by reason of personal injury, including bodily injury or death and/or property damage, which arises out of or in consequence of any negligent or intentional acts or omissions of AMBER, its officials, employees or agents in the maintenance of the paved portion of the parking area.

10. Once the construction of the parking area is complete, to the fullest extent permitted by law, CITY agrees to defend, pay on behalf of, indemnify, and hold harmless AMBER, its directors, officers, employees, and representatives working on behalf of AMBER against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from AMBER, its directors, officers, employees, and representatives working on behalf of AMBER, by reason of personal injury, including bodily injury or death and/or property damage, which arises out of or in consequence of any negligent or intentional acts or omissions of CITY, its officials, employees or agents in the maintenance, drainage and other below ground and above ground infrastructure that includes, but is not limited to, water, sewer, storm water and public lighting.

11. During the life of this Agreement, AMBER agrees that it will maintain comprehensive general liability insurance with minimum limits of One Million Dollars (\$1,000,000.00) combined single limit, each occurrence, for bodily injury, property damage, products, completed operations and blanket contractual liability as well as workers' compensation insurance for employees which meet Michigan's statutory requirements and employers' liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000.00) each accident. The Certificate of Insurance evidencing such coverage shall be submitted to the CITY prior to the commencement of any work on the Property. The Certificate of Insurance shall be endorsed to provide thirty (30) days notice of cancellation, amendment or modification to the CITY and the CITY shall be named as additional insureds as follows: City of Royal Oak, including all elected and appointed officials, all employees and all boards, commissions and/or authorities and their board members, and employees.

12. Once the construction of the parking area is complete, this agreement may be terminated by either AMBER or the CITY upon one (1) year written notice to the other party. Notwithstanding the foregoing, neither CITY nor AMBER shall exercise its termination right until a date after fifteen (15) years from the date of this Agreement.

13. This Agreement shall be considered by the parties as for an indefinite period of time, subject to the termination provisions provided in Paragraph 12 above. AMBER may assign its rights and responsibilities under this Agreement to others in the event of a change of ownership (or operation) of 538-594 N. Sherman Drive.

14. AMBER shall post signage, consistent with MCLA 257.252k, concerning authorization for the towing or removal of a vehicle from the parking area without the consent of the owner. For purposes of towing or removing a vehicle only, the parking area shall be considered private real property and governed by MCLA 257.252, et. al. However, nothing hereunder shall be construed to limit the Royal Oak Police Department from taking

action under its police powers to remove a vehicle from the parking area including, but not limited to, those circumstances stated in MCLA 257.252d.

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

WITNESSES:

CITY OF ROYAL OAK,
a Michigan municipal corporation

By: _____

James Ellison

Its: Mayor

By: _____

Melanie Halas

Its: City Clerk

AMBER CROSSING, LLC,
a Michigan limited liability company

By: _____

Jerome S. Amber

Its: President

Approved as to form:

David W. Gillam
City Attorney, City of Royal Oak