

**CITY OF FERNDALE
REQUEST FOR COUNCIL ACTION**

FROM: Marsha Scheer, CDS Director

SUBJECT: License Agreement with Blumz

SUMMARY & BACKGROUND:

Jerome Raska of Blumz . . . by JRDesigns has requested use of the area in front of his store at 503 East Nine Mile Road. He intends to install fencing, lighting and landscaping; a sidewalk café is possible and would fall under that ordinance. He is permitted to display and sell merchandise under a variance granted by the BZA in September 2004.

It should be noted that the DPW has reservations about relinquishing this area as future infrastructure work may encroach on this space and the installation of mast arms definitely will. Easement rights are maintained in the Agreement. Also, the existing pole sign is recommended to be removed; replacement by a ground sign that complies with the Sign Ordinance is encouraged.

ATTACHMENTS: Licensing Agreement
Drawing referencing extent of encroachment
Recommended disapproval from DPW

COUNCIL AGENDA DATE: July 14, 2008 Tabled to July 28, 2008

CITY ATTORNEY REVIEW: P. Daniel Christ, 7/3/2008

FINANCE DIRECTOR REVIEW: N/A

CITY MANAGER APPROVAL: Robert J. Bruner, Jr.

COMMENTS:

RECOMMENDED ACTION:

Moved by, seconded by, to approve the attached Public Right-of-Way Use Permit Agreement and to authorize the Mayor and City Clerk to sign the Agreement.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”) is entered into as of _____, 2008, by the City of Ferndale (“City”), a Michigan Municipal Corporation, whose address is 300 East Nine Mile Road, Ferndale, Michigan 48220 and Blumz. . . by JRDesign (“Licensee”) whose address is 503 E. 9 Mile Road, Ferndale, Michigan 48220.

Licensee would like to utilize certain real property owned by City between Licensee’s building and the sidewalk at 503 E. 9 Mile Road; and

City is willing to allow Licensee to utilize certain City property upon certain terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants set forth, the parties agree as follows:

1. Grant of License. Subject to, and conditioned upon, Licensee’s continued fulfillment of the terms and conditions set forth in this Agreement, City grants Licensee a personal, non-exclusive, revocable license allowing Licensee to use and occupy City property.

2. Description of Land. This license is being voluntarily provided by City to Licensee and this license gives Licensee no rights which may be considered adverse. The City property subject to this license is described as that property of the City located between the existing sidewalk and Licensee’s building at 503 E. 9 Mile Road, Ferndale, Michigan (“Subject Property”), more particularly being the property consisting of 13 feet north of the sidewalk for lots 19-24, Block 25 - Urbanrest Subdivision, East ½ of Southeast ¼ of Section 27, T1N, R11 E., City of Ferndale, Oakland County, Michigan as depicted on the attached survey.

3. Term. This Agreement shall commence on the date that this Agreement has been fully executed by both parties and shall remain in effect until such point that the City or Licensee terminates this Agreement with at least thirty (30) days written notice to the other party.

4. License Fee. Licensee shall pay to City a license fee in an amount of one dollar (\$1.00).

5. City’s Rights and Other Encumbrances. This Agreement is subject to the City’s rights to construct and repair any other improvements which are or may be on the Subject Property. This Agreement is also subject to all now existing and future easements, restrictions and encumbrances affecting the Subject Property.

6. Purposes of Permitted License Use. Licensee acknowledges that this Agreement is intended as a license to use public property regulated and controlled by the City of Ferndale and Licensee shall comply with all City of Ferndale ordinances and regulations with respect to the Subject Property.

7. Structures. No signs or fixtures shall be attached or affixed to the Subject Property without written consent of City. The existing pole sign shall be removed. A perimeter fence no higher than thirty-two (32) inches may be installed at the perimeter of the current lawn area, once a permit and approval from the Appearance Review Committee are obtained. A sidewalk café may be placed on the Subject Property in compliance with the Sidewalk Café Ordinance.

8. Maintenance. Licensee shall be responsible for the upkeep, repair and maintenance of the Subject Property for the term of this Agreement.

9. Risk of Damage. Licensee may use the Subject Property at its sole risk. The City shall not be liable to Licensee for any damage whatsoever in the event that Licensee's use of the Subject Property is impaired or terminated or in the event Licensee's personal property is damaged or destroyed. Further, Licensee shall, to the fullest extent permitted by law, agree to defend, indemnify, pay on behalf of, and hold harmless the City of Ferndale, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Ferndale against any and all claims, demands, suits, losses, including all costs and reasonable attorney fees, for any damages which may be asserted, claimed or recovered against or from the City of Ferndale which arise out of or is in any way connected or associated with this Agreement or with Licensee's (or its invitees) use of the Subject Property.

10. Insurance. Licensee and its contractors must maintain a general liability insurance policy that is satisfactory to the City in form and substance. The policy must cover liability assumed in this Agreement for not less than \$1,000,000 per occurrence for personal injury and property damaged combined. The policy must remain in effect during the time the Licensee or its contractors are working on the Subject Property and for the full term of the license. Prior to any encroachment and use of the Subject Property, certificates of insurance required by this Agreement must be provided to the City. The certificates shall evidence the City as an additional insured. Coverage shall be primary to any coverage that may be available to the additional insured, whether any other coverage be primary, contributing or excess. Certificates must state that the City will have at least thirty (30) days prior written notice of cancellation or material change to this insurance.

11. Duration. This Agreement shall be revocable by the City, at any time, in its sole discretion. The City shall provide Licensee thirty (30) days written notice of its intent to revoke this Agreement. Upon revocation of this Agreement, Licensee shall remove any encroachments or personal property, at its cost, from the Subject Property and shall restore the Subject Property to its prior condition.

12. Compliance with Law. Licensee shall comply with all local, state and federal laws and regulations in the performance of this Agreement.

13. Assignment. Licensee may not assign or transfer this license, or sublicense any part of the Subject Property without the City's prior written consent.

14. Notices. Any notice which either party may be required to give shall be delivered by First Class Mail, postage prepaid, and addressed to:

If to City: City of Ferndale
Office of the Clerk
300 East Nine Mile Road
Ferndale, Michigan 48220

If to Licensee: Blumz. . . by JRDesign
503 E. 9 Mile Road
Ferndale, Michigan 48220

15. Headings. Topical headings appearing in this Agreement are for convenience only. They do not define, limit or construe the contents of any paragraphs or clauses.

16. Amendment. This Agreement may be modified or amended only by written agreement signed by both parties.

17. Law. The laws of the State of Michigan will control in the construction and enforcement of this Agreement.

18. Entire Agreement. This Agreement sets forth the entire agreement of the parties and supercedes any prior understanding and agreement that may have existed between the parties.

19. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which when so executed shall be deemed an original, and such counterparts when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this License Agreement on the date and year first above written.

City of Ferndale

Blumz. . . by JRDesign

By: _____
Craig S. Covey, Mayor

By: _____

By: _____
J. Cherilynn Tallman, Clerk

Its: _____

Date: _____

Date: _____

DEPARTMENT OF PUBLIC SERVICES
CHECKLIST FOR INFRASTRUCTURE ISSUES
SITE PLAN REVIEW

LEGAL DESCRIPTION/LOCATION: 503 E. NINE MILE

DATE REQUIRED TO BE RETURNED TO CDS:

WATER SUPERINTENDENT

WATER SERVICE - COMMENTS/RECOMMENDATIONS/PROBLEMS:

Water main between Payton &
Hiller will need to be replaced
in future. This may or may not
require right-of-way. I recommend
we not relinquish any right-of-way
we now have.

REVIEWER'S SIGNATURE

J. Queen

DATE

11/8/07

DEPARTMENT OF PUBLIC SERVICES
CHECKLIST FOR INFRASTRUCTURE ISSUES
SITE PLAN REVIEW

LEGAL DESCRIPTION/LOCATION: 503 E. NINE MILE

DATE REQUIRED TO BE RETURNED TO CDS:

ENGINEERING TECHNICIAN

ROADS - COMMENTS/RECOMMENDATIONS/PROBLEMS:

Property is part of road right-of-way. Have discussed w/DPW Director and we are opposed to Mr. Raska's request to vacate a portion of the RIW

REVIEWER'S SIGNATURE C. Tucker DATE 11/2/07

SIDEWALKS - COMMENTS/RECOMMENDATIONS/PROBLEMS:

REVIEWER'S SIGNATURE _____ DATE _____

APPROACHES - COMMENTS/RECOMMENDATIONS/PROBLEMS:

REVIEWER'S SIGNATURE _____ DATE _____

GENERAL ENGINEERING - COMMENTS/RECOMMENDATIONS/PROBLEMS:

REVIEWER'S SIGNATURE _____ DATE _____

OTHER - COMMENTS/RECOMMENDATIONS/PROBLEMS:

Adjacent property owners are always responsible for maintaining berm/lawn areas within road right-of-way

REVIEWER'S SIGNATURE C. Tucker DATE 11/2/07

DEPARTMENT OF PUBLIC SERVICES
CHECKLIST FOR INFRASTRUCTURE ISSUES
SITE PLAN REVIEW

LEGAL DESCRIPTION/LOCATION: 503 E NINE MILE

DATE REQUIRED TO BE RETURNED TO CDS:
DPS SUPERINTENDENT

SEWER - COMMENTS/RECOMMENDATIONS/PROBLEMS:

NO SEWERS IN THIS AREA BUT
I DON'T RECOMMEND GIVING UP THIS PROPERTY

REVIEWER'S SIGNATURE



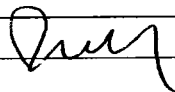
DATE

11/07/07

OTHER UTILITIES - COMMENTS/RECOMMENDATIONS/PROBLEMS:

IF YOU TO LOC THIS WITH SEPTIC
SIGNAL ~~WILL~~ ~~WE~~ WE WILL ~~DO~~ NEED
THIS FOR MAINTENANCE INSTALLATION

REVIEWER'S SIGNATURE



DATE

11/07/07