



Office of The City Attorney

## CITY OF ANN ARBOR, MICHIGAN

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October 18, 2007

XY, LLC

Attn: Michael H. Jacobson

43155 Main Street, Suite 2202

Novi, MI 48375

**Via E-mail and Overnight Courier**

**Re: William Street Station**

Gentlemen:

This letter is written pursuant to the Option Agreement dated as of October 12, 2007 between the City of Ann Arbor and XY, LLC, and constitutes formal notice your of default under the Option Agreement.

As you know, Paragraph 8.A of the Option Agreement establishes clear and incontrovertible Project Milestones (as defined therein) which comprise the basis and material consideration for the City's agreement to enter into the Option Agreement. One of those Project Milestones requires that XY must "submit a full, complete and adequate demolition and staging plan, and application for demolition permits on the City Property and the AATA Property, to City by October 15, 2007."

On October 15, 2007, you submitted electronically a reduced (8.5" by 11") drawing purporting to be a "site utilization plan". You were notified by Jayne Miller on the afternoon of the 15<sup>th</sup> that this submittal lacked a staging (sequencing) plan, and that you had also not filed an application for demolition permits as to either the City Property or the AATA Property by that date. In addition to not filing at all two parts of the required October 15 submittals, what you did file had deficiencies as specified in Jayne's email, which states in part:

"Mike, I have a number of concerns with your submitted site utilization plan. First, this plan is very difficult to read. I enlarged it and still found it difficult to read. Please provide a larger scale and legible plan for our review. Since we just received this plan today, staff has not had time and is unable to review it due to it's difficulty to read it. Second, the plan provided simply provides a site utilization plan, it does not provide a staging (sequencing) plan for

the development of the site. For example, the staging needs for AATA (the terminal) are not addressed and how the on street traffic changes/needs are going to be handled at the intersections on 4th Avenue are not addressed adequately. Third, no demolition plan has been provided. Finally, it is my understanding that you have also not applied for a demolition permit.”

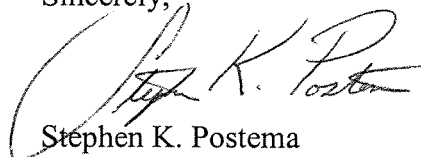
Jayne’s October 15 email concluded by stating: “If the necessary information is not provided by 11:59 pm today, then this project will require City Council approval for an extension of this project milestone.” Even given this opportunity to complete the October 15 Project Milestone, no response was given, nor has a response been provided to date.

As you also know, Paragraph 8.A provides a specific mechanism for XY, LLC to anticipate a delay in meeting a Project Milestone, and to request, in advance, an extension. You failed to notify the City of any potential for delay or request for extension. Obviously, City Council approval would be required for such an extension, but you didn’t even request one. As such, it is clear that you have failed to timely make the Project Milestone filing with respect to: (i) filing a full and complete staging plan, and (ii) filing an application for demolition permits.

Having failed to timely make this Project Milestone filing, you are not entitled to the benefit of the last sentence of Paragraph 8.A with respect to the elements not filed. That sentence reads: “The above provisions notwithstanding, in the event that a Milestone filing is timely made but the City determines that a Milestone has not been met, it shall notify XY in writing specifying why the Milestone has not been meet and XY shall have five (5) business days from the effective date of the notice to cure the basis for such objection.” As to the partial submission actually made on October 15, please consider Jayne Miller’s above-cited comments restated in their entirety as the required notice.

The City is extremely disappointed that XY would default in a Project Milestone filing so quickly after executing the Option Agreement. Because of your default, please be fully informed that we now reserve the right to exercise all remedies available to the City under the Option Agreement and/or under applicable law, including in particular but without limitation the right to terminate the Option Agreement pursuant to Paragraph 16.A.

Sincerely,



Stephen K. Postema  
City Attorney

cc: Richard W. Pennings (via overnight courier)  
Karl L. Gotting (via overnight courier)  
Jayne Miller