



CITY OF CARSON

April 8, 2019

VIA EMAIL AND REGISTERED MAIL

Eric Son
Focal Strategic Investments, LLC
1121 S. Wilton Place
Los Angeles, CA 90019

Re: Notice of Default/Opportunity to Cure-Carson/Focal Development Agreement (DA)

Dear Mr. Son:

As you are aware, Focal Strategic Investments, LLC ("Focal") and the City of Carson ("City") entered into a Development Agreement (DA) for the development of real property at 17505 South Main Street, Assessor Parcel No. 7339-003-900. The City selected Focal to develop the property given Focal's promise to develop a commercial cannabis operation, including the cultivation of cannabis, manufacturing of cannabis products, and storage of residual materials from cannabis cultivation (the "Project"). The DA contains a Schedule of Performance that specifically tied Focal to demonstrating that Focal would be making timely progress towards development of the Project. Please be on notice that Focal has fallen behind scheduled progress deadlines set forth in the DA Schedule of Performance.

As emphasized in DA Section 17.03: "Time is of the essence in: (i) the performance of the provisions of this Agreement as to which time is an element; and (ii) the resolution of any dispute which may arise concerning the obligations of the Developer and the City as set forth in this Agreement." *Focal has fallen behind schedule on the deadlines for submittal of Project site plans and design review applications, which were supposed to be done within 30 days after the DA's effective date, or January 4, 2019. (See, DA Exhibit G.)*

Missing the deadlines for these preliminary events necessarily thwarts Focal's ability to meet the later deadlines stated in the DA's Schedule of Performance, and thus violates the precept that the timeframes in the DA's Schedule of Performance are of the essence. As a result, Focal is in default of the DA. DA Section 11.5 provides for a 30-day notice of default period; this letter serves as such notice. Accordingly, Focal has until May 8, 2019, to take responsive action to cure, if possible, the defaults identified herein and/or otherwise respond to the identified issues of default.

Very truly yours,


John Raymond,
Carson City Manager

CC: Saied Naaseh, Community Development Director
James Nguyen, Project Manager
Sunny Soltani, City Attorney
Christopher Neumeyer, Assistant City Attorney

EXHIBIT NO. 2



**ALESHIRE &
WYNDER** LLP
ATTORNEYS AT LAW

ORANGE COUNTY | LOS ANGELES | RIVERSIDE | CENTRAL VALLEY

llyaymon@awattorneys.com
(949) 223-1170

18881 Von Karman Avenue,
Suite 1700
Irvine, CA 92612
P (949) 223-1170
F (949) 223-1180

AWATTORNEYS.COM

October 11, 2019

Eric Son
FOCAL STRATEGIC INVESTMENTS, LLC
1121 S. Wilton Place
Los Angeles, CA 90019

Re: Notice of Breach of Development Agreement; Meet & Confer Process;
Focal Development Agreement

Dear Mr. Son:

As you know, this office serves as City Attorney to the City of Carson ("City"). On April 8, 2019, the City sent Focal Investments, LLC ("Focal") a Notice of Default with regard to that Development Agreement executed on November 30, 2018 (the "DA"), for the development of real property at 17505 South Main Street, Carson, CA, Assessor Parcel No. 7339-003-900 (the "Site"). As outlined in our April 8, 2019, letter, Focal has fallen behind schedule on the deadlines for submittal of Project site plans and design review applications, which were supposed to be done within 30 days after the DA's effective date, or January 4, 2019. (See, DA Exhibit G.)

Given the passage of time since the City's April notice, Focal is now profoundly in default of the DA's Schedule of Performance and has made no efforts to contact the City. As emphasized in DA Section 17.03: "Time is of the essence in: (i) the performance of the provisions of this Agreement as to which time is an element; and (ii) the resolution of any dispute which may arise concerning the obligations of the Developer and the City as set forth in this Agreement."

We are hereby requesting a "meet and confer" with Focal's designated representative within the next ten (10) days to discuss issues of default. *Please immediately contact Mr. Alvie Betancourt with the City's Community Development Department at abetancourt@carson.ca.us and me at llyaymon@awattorneys.com to set a meeting date in the next ten (10) days.* If needed, we can provide a conference call bridge should the parties elect to meet via telephone. *If we do not hear from Focal by October 23, 2019, and have not conferred by that date, the City will deem any further obligation to confer with Focal to be satisfied.*

Thank you for your prompt attention to this.

Very truly yours,
ALESHIRE & WYNDER, LLP

Lona N. Laymon

CC: Sharon Landers, Carson City Manager
John Raymond, Assistant City Manager

Eric Son
October 11, 2019
Page 2

Saied Naaseh, Community Development Director
Alvie Betancourt, Planning Manager
Sunny Soltani, City Attorney



**ALESHIRE &
WYNDER LLP**
ATTORNEYS AT LAW

ORANGE COUNTY | LOS ANGELES | RIVERSIDE | CENTRAL VALLEY

llaymon@awattorneys.com
(949) 223-1170

18881 Von Karman Avenue,
Suite 1700
Irvine, CA 92612
P (949) 223-1170
F (949) 223-1180

AWATTORNEYS.COM

November 15, 2019

Eric Son
FOCAL STRATEGIC INVESTMENTS, LLC
1121 S. Wilton Place
Los Angeles, CA 90019

Re: Notice of Breach of Development Agreement; End of Meet & Confer Process;
Focal Development Agreement; Final Notice of Default

Dear Mr. Son:

On October 28, 2019, Focal's representatives, including yourself, "met and conferred" with City Staff for the City of Carson and the City Attorneys' Office with regard to the above-referenced matter. We appreciate your time discussing with us the delays that Focal has faced in financing and performing the project contemplated in the Development Agreement executed on November 30, 2018 (the "DA"). Nonetheless, it appears that Focal has, after multiple notices of default, placed its performance of the DA so profoundly behind schedule that we must issue this as the City's Final Notice of Default.

As outlined in our April 8, 2019 letter, Focal has fallen far behind schedule on the deadlines for submittal of Project site plans and design review applications, which were supposed to be done within 30 days after the DA's effective date, or January 4, 2019. (See, DA Exhibit G.) During the October 28th meet and confer, Focal claimed that it emailed City Staff on April 14, 2019 with further questions regarding the planning process, but received no response. City Staff has reviewed its files, and found that this is incorrect. In point of fact, City Staff did receive your email of April 14, 2019, and responded to it on April 18, 2019. Staff's response included a link to application forms to be completed and a list of submittal requirements. Furthermore, City Staff left a voicemail to you on April 23, 2019, as a follow-up. City Staff received no response from Focal.

Furthermore, we discussed in detail the financial difficulties faced by Focal in seeking project financial backing from its Korean investment sources. As you noted during the meet and confer, the Korean government has placed stringent restrictions upon financial backing for projects such as the one contemplated in the DA. Such financial and investment policy restrictions imposed by a foreign government are not susceptible to expeditious (or likely) resolution. Nor has the City received any updated information from Focal relating to project performance since October 28, 2019.

Eric Son
November 15, 2019
Page 2

For the foregoing reasons, the City has determined to terminate the need for further meet and confer discussions. In addition, please consider this as Focal's Final Default Notice pursuant to the terms of the DA. Focal must cure its performance defaults under the DA within the contractual timeframes set forth therein. In the absence of such cure, the City may elect to terminate the DA.

Thank you for your prompt attention to this.

Very truly yours,
ALESHIRE & WYNDER, LLP

A handwritten signature in black ink, appearing to read 'Lona N. Laymon', with a stylized, cursive script.

Lona N. Laymon

CC: Sharon Landers, Carson City Manager
John Raymond, Assistant City Manager
Saied Naaseh, Community Development Director
Alvie Betancourt, Planning Manager
Sunny Soltani, City Attorney



**ALESHIRE &
WYNDER LLP**
ATTORNEYS AT LAW

llaymon@awattorneys.com
(949) 223-1170

18881 Von Karman Avenue,
Suite 1700
Irvine, CA 92612
P (949) 223 1170
F (949) 223-1180

ORANGE COUNTY | LOS ANGELES | RIVERSIDE | CENTRAL VALLEY

AWATTORNEYS.COM

November 27, 2019

Eric Son
FOCAL STRATEGIC INVESTMENTS, LLC
1121 S. Wilton Place
Los Angeles, CA 90019

Re: Default of Focal Development Agreement; Focal Corporate Assignment Issues;
Response to Recent Focal Communications

Dear Mr. Son:

We are in receipt of several communications from Focal relating to (i) the assignment of various corporate interests and shares within and amongst your corporate principals and shareholders, and (ii) questions relating to Focal's ability to "cure" its default of the performance timeframes set forth in the Development Agreement executed on November 30, 2018 (the "DA").

With respect to the issue of corporate assignment, we direct your attention to Article 12 of the DA. Focal shall not assign its corporate interests at the level of the "Triggering Percentages" defined in that article without prior written consent of the City of Carson. At this time, we do not have sufficient information from your emails to determine whether or not your corporate restructuring hits the "Triggering Percentages" or not. Please provide sufficient information to demonstrate the level of corporate restructuring undertaken by Focal in light of the "Triggering Percentages" and other provisions of DA Article 12. Please be advised, that corporate restructuring undertaken by Focal in contravention of Article 12 may be a further basis for default under the DA.

With regard to Focal's ability to cure its timeliness defaults, we can only point you to DA Exhibit G. Unfortunately, Focal has fallen so far behind schedule on the deadlines for submittal of Project site plans and design review applications that it is difficult to perceive how Focal can now restore its project to compliance with the timeframes in Exhibit G, which were supposed to be done within 30 days after the DA's effective date, or January 4, 2019. Moreover, DA Section 11.3.3 expressly states that City Council authorization is needed to extend timeframes beyond 180 cumulative days—a threshold that Focal is significantly beyond: "The City Manager shall have authority to approve extensions of time without City Council action not to exceed a cumulative total of 180 days." Thus, in any event, Council action would be needed to effect any extension of performance timeframes.

Very truly yours,
ALESHIRE & WYNDER, LLP

Lona N. Laymon

Eric Son
November 27, 2019
Page 2

CC: Sharon Landers, Carson City Manager
John Raymond, Assistant City Manager
Saied Naaseh, Community Development Director
Alvie Betancourt, Planning Manager
Sunny Soltani, City Attorney



**ALESHIRE &
WYNDER LLP**
ATTORNEYS AT LAW

ORANGE COUNTY | LOS ANGELES | RIVERSIDE | CENTRAL VALLEY

llaymon@awattorneys.com
(949) 223-1170

18881 Von Karman Avenue,
Suite 1700
Irvine, CA 92612
P (949) 223-1170
F (949) 223-1180

AWATTORNEYS.COM

December 5, 2019

Eric Son
FOCAL STRATEGIC INVESTMENTS, LLC
1121 S. Wilton Place
Los Angeles, CA 90019

Re: Default of Focal Development Agreement; Focal Corporate Assignment
Issues; Response to Recent Focal Communications

Dear Mr. Son:

We are in receipt of your communication from Focal yesterday relating to (i) the assignment of various corporate interests and shares within and amongst your corporate principals and shareholders, and (ii) questions relating to Focal's ability to "cure" its default of the performance timeframes set forth in the Development Agreement executed on November 30, 2018 (the "DA"). Please note that we did respond to your communications following November 15, 2019, especially via that letter emailed to you (receipt confirmed) on November 27, 2019.

With respect to the issue of corporate assignment, we again direct your attention to Article 12 of the DA. As noted there, a corporate assignment above the level of "Triggering Percentages" shall be subject to City approval of an assignment and assumption agreement "in a form reasonably approved by the City." We propose that Focal's counsel should prepare such agreement for our review and presentation to the City Council. Please note the provisions in Article 12 relating to the financial strength and expertise of the proposed transferee. Such considerations should be addressed in any proposed assignment/assumption instrument.

With regard to Focal's ability to cure its timeframe defaults, DA Exhibit G demonstrates that Focal is particularly in default of its submission of site plans, design review applications, construction plans, and all approvals attendant to those items. We still have not received these submittals, placing Focal far behind the scheduled start date for construction. Moreover, as emphasized in our letter of November 27, 2019, DA Section 11.3.3 expressly states that City Council authorization is needed to extend timeframes beyond 180 cumulative days—a threshold that Focal is significantly beyond.

Thus, in any case, the assignment of Focal's corporate interests *and* the extension of performance timeframes will require presentation to the Carson City Council. If you wish

Eric Son
December 5, 2019
Page 2

the Council to review your proposed corporate transfer, please provide us a form of assignment and assumption agreement as outlined in DA Article 12.

Very truly yours,
ALESHIRE & WYNDER, LLP

A handwritten signature in black ink, appearing to read "Lona N. Laymon", with a large, stylized loop at the end.

Lona N. Laymon

CC: Sharon Landers, Carson City Manager
John Raymond, Assistant City Manager
Saied Naaseh, Community Development Director
Alvie Betancourt, Planning Manager
Sunny Soltani, City Attorney



December 23, 2019

Eric Son
FOCAL STRATEGIC INVESTMENTS, LLC
1121 S. Wilton Place
Los Angeles, CA 90019

Re: Default of Focal Development Agreement; City Council Public Hearing on
Agreement Default, Corporate Assignment Issues and Notice of Termination

Dear Mr. Son:

As communicated to you in multiple correspondence over the last two months, Focal remains in uncured default of the Development Agreement executed on November 30, 2018 (the "DA"). Pursuant to DA Section 11.6.2, please consider this a "Termination Notice" setting consideration of the following charges of default, and related issues, for consideration by the Carson City Council:

1. *Schedule of Performance Defaults.* We appreciate that Focal has been open in acknowledging its defaults under the Schedule of Performance in DA Exhibit "G," a copy of which is attached hereto. Most notably, despite being expressly referenced in prior correspondence from the City, Focal has still not submitted Project site plans and design review applications to the City, much less timely fulfilled the other obligations following such review and approval of those plans.

- a. Further, DA Section 11.3.3 expressly states that City Council authorization is needed to extend timeframes beyond 180 cumulative days—a threshold that Focal is significantly beyond: "The City Manager shall have authority to approve extensions of time without City Council action not to exceed a cumulative total of 180 days." This same language is repeated in DA Exhibit "G." Project site plans and design review applications were supposed to be done within 30 days after the DA's effective date, or January 4, 2019. Thus, an extension of the date for such initial submissions would alone equal more than 180-days in extensions, and thus would require City Council approval.
- b. Supporting the materiality of Focal's timeliness default is the language in DA Section 17.10, which reads:

"Time of Essence. Time is of the essence in: (i) the performance of the provisions of this Agreement as to which time is an element; and (ii) the resolution of any dispute which may arise concerning the obligations of the Developer and the City as set forth in this Agreement."

- c. Exacerbating Focal's timeliness default under DA Exhibit "G" is the fact that, as far as the City is aware, Focal remains unable to secure Project financing.

2. *Corporate Assignment Issues.* Focal's recent communiques to the City acknowledge its understanding that various, proposed corporate assignments will exceed the "Triggering Percentages" under Article 12 of the DA. Therefore, City approval for such assignments is required. Your proposed corporate assignment, if undertaken in the absence of City approval, would thus be a further basis for default under the DA. The City Council must take action on this proposal, and may determine to deny the assignment subject to those factors listed in the third paragraph of DA Section 12.1.1.

3. *Potential for Termination.* Pursuant to DA Section 11.6.3, the City hereby notifies Focal that a "Termination Hearing" will be held by the City Council within 30 days of this Notice. The Termination Hearing will be held at a regular City Council meeting as a public hearing item. The next scheduled regular City Council meeting within 30 days of this Notice is January 14, 2020.

At the Termination Hearing, you may present evidence to demonstrate that Focal is not in default and to rebut any evidence presented in favor of DA termination. Findings of a default or a condition of default must be based upon substantial evidence supporting the following three findings: (i) that a default in fact occurred and has continued to exist without timely cure, (ii) that the City has not excused the default; and (iii) that such default has, or will, cause a material breach of the DA and/or a substantial negative impact upon public health, safety and welfare, or the financial terms established in the Agreement, or such other interests arising from the Project. Based on those findings, the Council may take one of the following actions:

- a. Decide to terminate the DA, or.
- b. Determine that Focal is innocent of a default and, accordingly, dismiss the Termination Notice and any charges of default; or
- c. Impose conditions on a finding of default and a time for cure, such that Focal's fulfillment of said conditions will waive or cure any default.

Thank you for your prompt attention to this matter.

Very truly yours,
ALESHIRE & WYNDER, LLP



Lona N. Laymon

Eric Son
December 23, 2019
Page 3

CC: Sharon Landers, Carson City Manager
John Raymond, Assistant City Manager
Saied Naaseh, Community Development Director
Alvie Betancourt, Planning Manager
Sunny Soltani, City Attorney

EXHIBIT G

SCHEDULE OF PERFORMANCE

October 30, 2018

	<u>Item To Be Performed</u>	<u>Time For Performance / Responsible Party</u>	<u>Agreement Reference</u>
1.	Submit Planning applications for Administrative Review (DOR or other required Planning applications)	January 31, 2018 / Developer	
2.	Review and approval of Planning applications (permits required for, and specific to, individual tenants may be obtained at a later date based upon anticipated tenant occupancy)	May 31, 2018 / City	
3.	Effective Date of the Development Agreement	January 4, 2019	
4.	Submittal of the Site Plan and Design Review Application	30 days after Effective Date of the Development Agreement/Developer	
5.	Approval of the Site Plan and design Review Application	4 months from #4/City	
6.	Submittal of construction plans for City review	5 months from #5 / Developer (may submit prior to approval of Site Plan and Design Review applications with approval of a Hold Harmless agreement)	
7.	Issuance of Building / Grading Permits	4 months after #6 / City	
8.	Start of construction	15 days after #7/ Developer	
9.	Completion of construction	1 year after #8/ Developer	
10.	Start of operations	15 days after #9/ Developer	

It is understood that the foregoing Schedule of Performance is subject to all of the terms and conditions set forth in the text of the Agreement. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the text; in the event of any conflict or inconsistency between this Schedule of Performance and the text of the Agreement, the text shall govern.

The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both Developer and the City. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The City Manager shall have the City approve extensions of time without City Council action not to exceed a cumulative total of 180 days.