

RESOLUTION NO. 20-013

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, MAKING FINDINGS OF DEFAULT AGAINST FOCAL STRATEGIC INVESTMENTS, LLC, AND ACCORDINGLY TERMINATING THAT DEVELOPMENT AGREEMENT BETWEEN THE CITY AND FOCAL DATED NOVEMBER 30, 2018 LOCATED AT 17505 S. MAIN STREET

WHEREAS, the City of Carson ("City") on November 30, 2018, entered into a Development Agreement (the "DA") with Focal Strategic Investments, LLC ("Focal") for the development of two one-story buildings totaling 13,557 square feet on a 0.66 acre lot, which will be used for commercial cannabis operations including the cultivation of cannabis, manufacturing of cannabis products, and storage of residual materials from cannabis cultivation (the "Project").

WHEREAS, The DA incorporated a Schedule of Performance for the submission of plans and design review applications. To date, Focal has not submitted Project site plans and design review applications to the City within the timeframes required, much less timely fulfilled the other obligations following such review and approval of those plans. 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. Focal is particularly in default of its submission deadlines for site plans, design review applications, construction plans, and all approvals attendant to those items. Focal is thus more than one year in arrears on the Project Schedule and has not cured such timeliness defaults.

WHEREAS, The City has issued Focal multiple Notices of Default, engaged Focal in a "meet and confer" process to discuss issues of default, and issued a final "Notice of Termination" setting the DA for possible termination by the City Council pursuant to the terms of the DA. Such hearing for termination of the DA was duly noticed, and heard, by the City Council on January 14 2020.

WHEREAS, Simultaneous with the pending discussions of default, Focal informed the City that it plans to undertake various internal corporate organizational assignments that, pursuant to the terms of the DA, would require approval by the City Council. If such corporate assignments were undertaken without City approval, that would also qualify as grounds for default under the DA.

WHEREAS, With all preliminary procedural matters for a default/termination process being fulfilled, the Council now decides upon the allegations of default against Focal and the Council terminates the DA and the DA's authorizing ordinance.

WHEREAS, Findings of a default or a condition of default must be based upon substantial evidence supporting the following three findings:

1. That a default in fact occurred and has continued to exist without timely cure;
2. That the Non-Defaulting Party's (in this case, the City's) performance has not excused the default; and
3. That such default has, or will, cause a material breach of this Agreement 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.

NOW, THEREFORE, the City Council of the City of Carson, California does hereby resolve and authorize the termination of that Development Agreement with Focal Strategic Investments, LLC, dated November 30, 2018, as follows:

SECTION 1. The DA between the City and Focal is hereby terminated based upon the following findings:

- a) Finding No. 1: That a default in fact occurred and has continued to exist without timely cure. *Supporting evidence:*
 1. The Focal DA incorporated a "Schedule of Performance" for the submission of plans and design review applications, and other Project development benchmarks, which Schedule was incorporated into the DA as Exhibit "G". DA Section 17.10 requires that "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."
 2. Focal has significantly fallen into delinquency of the Project timeframes under the DA's Schedule of Performance. Focal is particularly in default of its submission deadlines for site plans, design review applications, construction plans, and all approvals attendant to those items. Deadlines for initial submittals of 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, Focal is more than a year beyond the initial deadlines set in the DA's Schedule of Performance.
 3. As far as the City is aware, Focal remains unable to secure Project financing, and thus continues to suffer delays in Project implementation.
 4. DA Section 11.3.3 expressly states that City Council authorization is needed to extend Project timeframes beyond 180 cumulative days. Focal's last missed Project deadline was more than a year ago. Thus, absent Council authorization, Focal's delinquency in Project deadlines exceeding 180 days, qualifies as a default.

5. To date, Focal has not fulfilled any of the required task deadlines following May 31, 2018, and thus such delays in Project performance remain uncured.
 6. DA Article 12 holds that 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.” Nonetheless, on November 19, 2019, Focal informed the City that it was undertaking, or had undertaken, an internal corporate reorganization. On November 27, 2019, Focal acknowledged that its corporate restructuring meets the DA’s “Triggering Percentages,” thus requiring City approval in order to cure any violations of DA Article 12, or else Focal faces default.
 7. Multiple notices of default and opportunities to cure were issued by the City. Nonetheless, no required Project submissions have been proffered by Focal.
 8. All other evidence and facts presented to the Council at its hearing of January 14, 2020, are further incorporated into this Resolution by this reference.
- b) Finding No. 2: That the Non-Defaulting Party’s (in this case, the City’s) performance has not excused the default. *Supporting evidence*:
1. The City has never agreed to waive, release or excuse any default of the DA by Focal. The City has issued multiple notices of default and demands to cure each default identified herein without equivocation.
 2. City Staff and the City Attorney timely responded to Focal inquiries and communications in order to facilitate timely Project performance by Focal. At no time has the City turned-away, delayed or disapproved Project entitlement submissions by Focal. Nonetheless, Focal has still not submitted the required Project applications to the City, much less timely fulfilled the other obligations following such review and approval of those plans.
 3. All other evidence and facts presented to the Council at its hearing of January 14, 2020, are further incorporated into this Resolution by this reference.
- c) Finding No. 3: That such default has, or will, cause a material breach of this Agreement 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. *Supporting evidence*:

1. 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 bring Project construction into compliance with the scheduled timeframes, which were supposed to start within 30 days after the DA's effective date, or January 4, 2019. The Council finds that Focal's delinquencies in Project performance are inherently "material" breaches given the length of such delinquencies (exceeding a year) and the resulting delay or loss of public benefits that were supposed to accrue to the community under the DA.
2. Focal's DA outlined and anticipated a number of public benefits that would accrue to the City, such as local hiring, social justice programs, Focal's participation in community facilities districts and payment of City development impact fees. Further, a significant public benefit of the Project was expected from applicable taxes and fees: Manufacturing: 18% of proceeds; Cultivation: 18% of proceeds plus \$25.00 per square foot for space utilized as cultivation area; Distribution: 18% of proceeds; and, Testing: 18% of proceeds. Focal's default of the DA would abrogate or delay these public benefits and revenue streams to the City.
3. The identity of the Project developer was of particular importance to the City in awarding the DA to Focal. Focal's change of corporate ownership and control has been proposed without proof of (i) the financial strength and capability of the proposed transferee to perform the obligations under the DA; and (ii) the proposed transferee's experience and expertise in the planning, financing, development, ownership, and operation of developments like the Project.
4. The DA was awarded through a competitive process overseen by the City's Cannabis Permit Committee ("CPC") for review based on specified criteria (the "Merit List"). The CPC received five applications for cannabis projects in the City, but was limited to awarding only two such applications. At the September 4, 2018, City Council meeting, based on the CPC's recommendations, the City Council determined to issue two Cannabis Operation Permits, with one being granted to Focal. Therefore, due to awarding the DA and related cannabis permit to Focal, the City foreclosed itself from opportunities to negotiate with an alternative developer (i.e., one of the other competitive permit applicants). Focal's defaults intensify this scenario of lost opportunity faced by the City by leaving the Project site vacant, and public benefits pursuant to the DA abrogated, while the City could have otherwise proceeded with an alternative developer capable of timely project performance.

5. All other evidence and facts presented to the Council at its hearing of January 14, 2020, are further incorporated into this Resolution by this reference.

SECTION 2. This Resolution shall be effective immediately upon its adoption.

SECTION 3. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED and ADOPTED this ____th day of January, 2020.

Mayor Albert Robles

ATTEST:

City Clerk Donesia L. Gause, CMC

APPROVED AS TO FORM:

City Attorney Sunny K. Soltani

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF CARSON)

I, Donesia L. Gause, City Clerk of the City of Carson, California, hereby attest to and certify that the foregoing resolution, being Resolution No. 20-013, adopted by the Carson City Council at its meeting held on the 14th day of January, 2020, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

City Clerk Donesia L. Gause, MMC