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**Title:** CONSIDER APPROVAL OF SETTLEMENT AGREEMENT IN THE MATTER OF CITY OF CARSON V. CARCOM CENTER, LLC, ET AL, LOS ANGELES SUPERIOR COURT CASE NO. 19STCV20812 (CITY COUNCIL)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Ex. 1 - CarCom Settlement Agreement

Date	Ver.	Action By	Action	Result
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**Report to Mayor and City Council**

Tuesday, September 15, 2020

Consent

**SUBJECT:**

**CONSIDER APPROVAL OF SETTLEMENT AGREEMENT IN THE MATTER OF CITY OF CARSON V. CARCOM CENTER, LLC, ET AL, LOS ANGELES SUPERIOR COURT CASE NO. 19STCV20812 (CITY COUNCIL)**

**I. SUMMARY**

This report concerns settlement of the litigation in the matter of *City of Carson v. CarCom Center, LLC, et al* (LASC Case Number 19STCV20812). The lawsuit arises out of a real estate transaction under which CarCom Center, LLC was to purchase a parcel of real property owned by the City, for which California Processing Company, LLC had been awarded a development agreement. CarCom Center, LLC failed to effectuate the transaction, however, making the development agreement ineffective.

The Council initially authorized the settlement in closed session on September 1, 2020, and staff is now reporting back to the Council with the written settlement agreement for final Council approval to resolve the litigation (Exhibit 1). The settlement includes the release of a \$100,000 deposit made by CarCom Center, LLC currently being held in escrow to CarCom Center, LLC, the return of a \$125,000 deposit made by California Processing Company, LLC pursuant to a Reimbursement Agreement, and \$75,000 for the removal of the development agreement and lis pendens from title to the property. The

settlement agreement provides for each party to bear its own costs of litigation.

## **II. RECOMMENDATION**

TAKE the following actions:

1. Approve the Settlement Agreement, General Release of All Claims, and Escrow Instructions (Exhibit 1).
2. Authorize the City Manager to execute the settlement agreement, and any related documents, to resolve the litigation.

## **III. ALTERNATIVES**

TAKE another action the City Council deems appropriate.

## **IV. BACKGROUND**

The City and CarCom Center, LLC (“CarCom”) entered into an Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions, dated August 27, 2018 (“PSA”) for CarCom’s acquisition of the property located at 2403 E. 223rd Street. The Purchase Price for the property was Four Million Five Hundred Thousand Dollars (\$4,500,000.00). Under the PSA, CarCom was required to deposit \$100,000 concurrently with the opening of escrow, which it did on August 29, 2018. This deposit remains in escrow.

In conjunction with the PSA, the City negotiated and entered into a Development Agreement (“DA”) with California Processing Company, LLC (“California Processing”) as of December 3, 2018. DA Sections 1.35 and 3.3 specifically state that the DA is not effective unless and until Defendant California Processing acquires either a legal or equitable interest in the Property. California Processing entered into a Reimbursement Agreement with the City on October 10, 2018, pursuant to which California Processing deposited \$125,000 with the City for costs related to the DA.

Escrow was required to close not later than sixty (60) days after the end of the Due Diligence Date, which put the closing date at January 26, 2019. While the City timely delivered all documents required to close escrow, CarCom did not provide the required funds and documents to close escrow by January 26, 2019 or thereafter. As a result, CarCom failed to close escrow on the property.

Because California Processing has not acquired a legal or equitable interest in the property, the DA is not effective. Despite the fact that the DA never became effective, it remains recorded upon the Property as an instrument of record and clouds title to same. As a result, the City was forced to file suit in order to have the recordation of the DA

cancelled and removed from the property's title.

The Council has agreed to settle the lawsuit by releasing the \$100,000 deposit held in escrow to CarCom, returning the \$125,000 deposit made by California Processing to the City, and paying a nuisance settlement sum of \$75,000 to remove the DA and a lis pendens from title, for a total settlement sum of \$300,000.

## **V. FISCAL IMPACT**

The fiscal impact to the City is \$75,000. \$100,000 of the \$300,000 settlement sum will be paid from the deposit held in escrow, and \$125,000 will be the return of the deposit made under the Reimbursement Agreement.

## **VI. EXHIBITS**

1. Settlement Agreement, General Release of All Claims, and Escrow Instructions. (pgs. 4-20)

Prepared by: City Attorney's Office