FEE CREDIT / REIMBURSEMENT AGREEMENT
(Victoria Greens Project)

THIS FEE CREDIT / REIMBURSEMENT AGREEMENT ("**Agreement**") is made and entered into as of this __ day of August __, 2019 ("**Reference Date**") by and between the City of Carson, a California charter municipal corporation ("**City**"), and The Carson Project Owner, LLC, a Delaware limited liability company corporation ("**Developer**"). City and Developer are sometimes hereinafter referred to individually as "party" and collectively as "parties".

RECITALS

A. Developer has an equitable interest in certain real property consisting of approximately 8 acres in the City located at the northeast corner of Victoria Street and Central Avenue in the City of Carson, Assessor's Parcel Numbers 7319-003-104; 105 and 106, legally described in Exhibit A attached hereto and incorporated herein (the "**Property**"). The Property is zoned Housing Type D within the Dominguez Hills Village Specific Plan. The General Plan land use designation for the site is Mixed Use.

B. Developer proposes to develop a 175-unit multifamily residential community consisting of 95 three-story row townhome units and 80 three-story stacked flat units, a recreation center, a dog park, and a linear park contained in a secured gated community on the Property (the "**Project**"). City finds and determines that all actions required of City precedent to approval of this Agreement have been duly and regularly taken. In accordance with the requirements of the California Environmental Quality Act (Public Resources Code § 21000, *et seq*. ("**CEQA**"), appropriate studies, analyses, reports and documents were prepared and considered by the Planning Commission and the City Council. The Planning Commission, after a duly noticed public hearing on June 25, 2019, recommended approval of a Mitigated Negative Declaration ("**MND**") for the Project in accordance with CEQA. On the same day, the Planning Commission, after giving notice pursuant to Government Code §§ 65090, 65091, 65092 and 65094, held a public hearing on the Developer's application for this Agreement, as well as a Site Plan and Design Review ("**DOR**") No. 1695-18, Tentative Tract Map ("**TTM**") No. 78226-18, Specific Plan Amendment ("**SPA**") No. 4-93 Revision 4, and Conditional Use Permit ("**CUP**") No. 1040-18, and adopted Resolution No. ___ recommending to the City Council approval of said requests (collectively, the "**Project Entitlements**").

C. In exchange for a dollar-for-dollar credit towards established City development impact fees, Developer is willing to assist the City in addressing traffic in the vicinity of the Project. Developer has therefore requested to have the option of accelerating the installation of a traffic signal at the intersection of S. Central Avenue and Aspen Hill Road which contributions are hereinafter referred to as the "**Off-Site Improvement.**" This option would allow the Off-Site Improvement to proceed in conjunction with the Project with the Developer advancing the costs of such improvements, subject to recognition of certain credits as reimbursement for the Off-Site Improvement to be administered as determined below. The scope of work description, depiction, and design requirements for the Off-Site Improvement are set forth on Exhibit B, attached hereto, which may be updated from time to time with the approval of the City, as provided herein.

EXHIBIT NO. 2

D. The cost of the Off-Site Improvement has been estimated by Developer (the "**Estimate**") and that Estimate has been reviewed by the City Engineer. Developer and City acknowledge that the Estimate shows that the estimated cost of installing the Off-Site Improvement (including those Reimbursement Eligible Costs as defined in Section 6, below) is Six Hundred Fifty One Thousand Seven Hundred and Seventy-two Dollars ($651,722) and that this Estimate has been accepted by Developer and City as the maximum reimbursement amount for the Off-Site Improvement.

E. City and Developer now desire to enter into this Agreement for the following purposes: (i) to ensure that construction of the Off-Site Improvement is undertaken as if such works were constructed under the direction and authority of the City, and (ii) to provide a means by which the Developer's actual costs for right-of-way, planning, engineering, construction, and related contingencies of the Off-Site Improvement will be reimbursed by the City to the extent of the actual or authorized maximum reimbursable costs for construction of the Off-Site Improvement. Such reimbursement shall be in the form of a credit towards certain fees and charges that would otherwise be due to the City in the regular course of Developer's construction of the Project. If this Agreement is not fully performed by Developer by completion of the Off-Site Improvement, Developer shall pay the full amount of regular City fees and charges.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the City and the Developer and of the promises herein contained it is hereby agreed as follows:

AGREEMENT

1. Incorporation of Recitals and Exhibits; Defined Terms. The parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein. For purposes of this Agreement, the term "Developer" shall include any successors or assigns to this Agreement. All attachments to this Agreement as Exhibits are incorporated into this Agreement by this reference. The Exhibits are:

Exhibit A – Legal Description of the Property;

Exhibit B – Scope of Work for the Off-Site Improvement

Exhibit C – Use of Fee Credit Form

Exhibit D – Form of Assignment and Assumption Agreement

2. Description of the Off-Site Improvement. This Agreement is intended to reimburse the Developer in connection with the contribution to, and/or construction of, the Off-Site Improvement. The Off-Site Improvement is described in Exhibit B attached hereto and incorporated herein by this reference. It is understood and agreed that the Developer shall only be reimbursed with Fee Credits (as defined in Section 3, below) as set forth hereinbelow and only for Developer's actual costs of constructing the Off-Site Improvement.

3. Recognition of Fee Credit Upon Completion. Upon completion of the Off-Site Improvement, as evidenced by written acceptance of the Off-Site Improvement by the City Engineer, Developer is entitled to receive the fee credit from the City ("**Fee Credits**") in the Fee

Credit Amount. The "**Fee Credit Amount**" shall be equal to the lesser of (i) the Estimate, or (ii) Developer's actual Reimbursement Eligible Costs (defined below);

If Developer either elects to not construct or after making an election to construct fails to complete the Off-Site Improvement, then Developer shall not be entitled to any Fee Credit. Developer hereby acknowledges and agrees that its choice to either (a) construct the Off-Site Improvement in order to obtain a Fee Credit, or (b) not construct the Off-Site Improvement, and thereby be subject to the full amount of those City-imposed Builder Fees (defined below), is completely voluntary and at the discretion of Developer.

4. Use of Fee Credit. The Fee Credit may be used in the same way that cash could be used and the Fee Credit is applicable to the full amount of the Interim Development Impact Fee, also referred to as "**Builder Fees**", which is currently set at $14,000 per multi-family dwelling unit, adopted by Ordinance No. 19-1931, or a subsequent fee replacing or modifying such fees from time to time (with one (1) credit being equal to one (1) U.S. Dollar). Developer or its assignee may use the Fee Credit or any portion thereof by submitting a "**Use of Fee Credits Form**" in substantial conformance with Exhibit C. City authorizes the City's City Manager or his/her designee to sign the Use of Fee Credits Form on behalf of the City. City shall countersign each Use of Fee Credits Form within five (5) City Business days (which is defined as a day City Hall is open for regular business as established by the City Council) of submission to the City by Developer or its assignee. The signing of each Use of Fee Credits by the City and Developer or its assignee shall constitute conclusive evidence that the fees identified on each Use of Fee Credits Form have been fully satisfied by the Developer or its assignee in the amount set forth thereon and shall serve as a receipt of the satisfaction of such fees. City shall be solely responsible for distributing each signed Use of Fee Credits Form to all relevant City departments. The balance of the Fee Credit remaining for use by Developer will be reduced on a one (1) credit-for-one (1) dollar basis as Developer, or its assignee, applies such Fee Credit to offset its Builder Fees until exhausted. Any Fee Credit balance will not earn interest and will not be redeemable for cash. In no event may a Fee Credit be used to pay for anything other than Builder Fees. A Fee Credit shall have no independent monetary value other than as set forth herein. Any portion of the Fee Credit that has not been applied within five (5) years of the Reference Date shall expire and be of no further force and effect.

5. Fee Credit Ledger. City shall establish and maintain a database or ledger ("**Ledger**") that shows the total dollar value of the initial Fee Credit provided to Developer under this Agreement and that tracks the use or transfer of such Fee Credit or portion thereof to satisfy Builder Fees. The Ledger maintained by City shall include the dollar value of Fee Credits used, and the units and/or lots to which the Fee Credits have been applied. City shall make a current copy of the Ledger available to Developer (or its assignee/transferee) within ten (10) City business days of such a request. City shall be entitled to unconditionally rely on a fully-executed Use of Fee Credit Form in connection with its maintenance of the Ledger. Upon Developer's request, City agrees to confirm to any such assignee the availability to such assignee of the Fee Credits.

6. Eligible Costs for Reimbursement by Fee Credit. The following items of direct and actual costs may be eligible for reimbursement (collectively, the "**Reimbursement Eligible Costs**"): (a) Developer and/or consultant costs associated with direct Off-Site Improvement

coordination and support; (b) funds expended in preparing preliminary engineering studies for development of the Off-Site Improvement; (c) funds expended for preparing environmental review documentation for the Off-Site Improvement; (d) any City fees attributed to the processing of approvals for the Off-Site Improvement; (e) costs incurred in the preparation of plans, specifications, and estimates by Developer or consultants for development of the Off-Site Improvement; (f) Developer costs associated with bidding, advertising and awarding of the public works contracts for the Off-Site Improvement; (g) Off-Site Improvement construction costs, including change orders to construction contracts approved by the Developer and signal synchronization costs, if needed; (h) construction management, field inspection and material testing costs for development of the Off-Site Improvement; and (i) preparation and implementation of the plans and traffic safety measures set forth in Section 8(i).

7. Ineligible Costs. Reimbursement Eligible Costs shall not include the following items which costs shall be borne solely by the Developer without reimbursement: (a) Developer administrative costs; (b) Developer costs attributed to the preparation of invoices, billings and payments; (c) expenses for items of work not included within the scope of work in Exhibit B; and (d) costs incurred by Developer due to the development of the Property and/or the Project, rather than construction of the Off-Site Improvement.

8. Off-Site Improvement Development; Final Calculation of Fee Credit. Construction of the Off-Site Improvement and determination of the final amount of the Fee Credit shall occur as follows:

(i) Design Contractor Selection. Developer shall solicit bids from qualified design consultants/engineers and shall publish notice of the bidding process for the design of the Off-Site Improvement. The notice shall be published at least fourteen (14) calendar days before the date of opening the bids in a newspaper of general circulation and PlanetBids. The unopened bids shall be submitted initially and directly to the Purchasing Division and shall remain unopened until the date of bid opening, which shall occur in the presence of Developer and City staff member(s) designated by the City. City will then be provided copies of the opened bids and City shall have ten (10) City Business Days to indicate if any of the bids are unacceptable to City. Developer shall thereafter review the bids deemed acceptable by City and select and enter into a contract with a contractor for design of the Off-Site Improvement in an amount not to exceed the amount of that contractor's bid. If change orders are submitted to Developer, they shall be submitted to City for review and written approval by the City Engineer prior to commencement of the work subject to the change order.

(ii) Construction Contractor Selection. Developer shall solicit bids from qualified construction contractors and shall publish notice of the bidding process for the construction of the Off-Site Improvement. The notice shall be published at least fourteen (14) calendar days before the date of opening the bids in a newspaper of general circulation and PlanetBids. The unopened bids shall be submitted initially and directly to the Purchasing Division and shall remain unopened until the date of bid opening, which shall occur in the presence of Developer and City staff member(s) designated by the City. City will then be provided copies of the opened bids and City shall have ten (10) City Business Days to indicate if any of the bids are unacceptable to City. Developer shall thereafter review the bids deemed acceptable by City and select and enter into a contract with a contractor for construction of the

Off-Site Improvement in an amount not to exceed the amount of that contractor's bid. If change orders are submitted to Developer, they shall be submitted to City for review and written approval by the City Engineer prior to commencement of the work subject to the change order.

(iii) Interim Safety Measures and Permits. Developer shall prepare and obtain City approval of a traffic control plan and secure all needed encroachment and related permits required by the City for purposes of construction in or along the public right-of-way. Such plans and permits shall include Developer's interim plans to ensure safe traffic circulation on any City streets and intersections during Developer's course of constructing the Off-Site Improvement. Developer shall strictly implement all reasonable measures to protect public safety and minimize impacts upon traffic circulation during the Off-Site Improvement's construction.

(iv) Schedule of Performance for Off-Site Improvement. The parties shall begin and complete all plans, reviews, construction and development of the Off-Site Improvement within the following timeframes, or such reasonable extensions of said dates as approved in writing by the parties:

a) No later than four (4) City business days prior to City Council consideration of Developer's application for the Project, Developer shall notify the City in writing of its election to proceed with construction of the Off-Site Improvement in conjunction with development of the Project (the "**Election to Proceed**") and receive the Fee Credit, subject to Developer's compliance with the terms and conditions of this Agreement. Developer's delivery of an Election to Proceed shall be irrevocable and binding upon any successor to the Project. If Developer's Project is not approved by the City Council, the Election to Proceed shall be of no further force and affect and this Agreement shall automatically terminate.

b) If Developer gives an Election to Proceed, Developer shall submit all plans and permit applications required by Section 8(ii) within 365 days of the Project's approval by the City Council.

c) Developer shall commence construction of the Off-Site Improvement no later than ninety (90) days of obtaining all approvals required to proceed with construction of the Off-Site Improvement.

d) If Developer has given an Election to Proceed, completion of the Off-Site Improvement shall occur prior to issuance of the first Certificate of Occupancy to be issued in the Project (excluding model units), and such timely completion shall be a condition to issuance of that permit.

In no event, however, if Developer has given notice of Election to Proceed, shall completion of the Off-Site Improvement take longer than 270 days from the commencement of construction of the Off-Site Improvement.

e) The time periods set forth herein may be altered or amended by written agreement signed by both Developer and City. However, minor adjustments may be implemented by the City Manager as needed to conform with the parties' actual performance of this Agreement and/or undertaking of Project activities. 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 of the City shall have the authority to approve extensions of time without City Council action if such extensions do not exceed fifteen (15) consecutive days or a cumulative total of all extensions of thirty (30) days.

(v) Completion of Construction. Once construction of the Off-Site Improvement is commenced, Developer shall pursue to completion the entire Off-Site Improvement and shall not abandon any construction for more than five (5) consecutive days. Developer shall keep the City informed of the progress of Off-Site Improvement construction and submit to the City written reports of the progress of the construction when and in the form reasonably requested by the City, but not more than weekly. Developer shall accrue no Fee Credit for partial construction of the Off-Site Improvement and abandonment of construction shall constitute a default. Completion of the Off-Site Improvement shall in no event be deemed to have occurred until City's written acceptance of the Off-Site Improvement by the City Engineer.

(vi) Determination of Credit.

(1) No Default. Developer shall not be in default in any of its obligations under the terms of this Agreement and all material representations and warranties of Developer contained herein shall be true and correct in all material respects.

(2) Submission of Bills/Invoices. Developer shall have made full and complete payment of all undisputed claims for work performed on the Off-Site Improvement, or in the event of a dispute between Developer and the general contractor or a subcontractor, Developer shall have obtained a commercially reasonable bond reasonably satisfactory to City to release any applicable mechanics' lien or stop notice and Developer shall have submitted and City shall have approved the final reimbursement request, including copies of all bills and/or invoices evidencing the hard costs and soft costs of constructing the Off-Site Improvement actually incurred by Developer.

(3) As-Built Drawings. Developer shall have submitted two (2) sets of final as-built drawings for the Off-Site Improvement to the City Public Works Director.

(4) Acceptance of Off-Site Improvement by City. City, through the City Engineer, shall have accepted title to the Off-Site Improvement, as required to ensure the Off-Site Improvement is owned by City, and Developer shall have provided a one-year warranty bond in a form reasonably required by City. The City agrees it will not unreasonably withhold or condition its acceptance of title to the Off-Site Improvement.

(5) Review and Reimbursement by City. Upon verification of Developer's Reimbursement Eligible Costs by City, City shall advise Developer of the Fee Credits received by Developer.

9. Term. The term of this Agreement shall commence from the date Developer acquires fee ownership of the Property until the later of: (i) the date City accepts the Off-Site Improvement as complete in accordance with Sections 3 and 8, above, and Developer has been fully reimbursed for the construction of the Off-Site Improvement via use of the Fee Credit; (ii) Developer has fully satisfied its obligations under this Agreement; or (iii) termination of this Agreement pursuant to Section 13. All indemnification obligations provided in this Agreement shall remain in effect following the termination of this Agreement. If Developer or its successor or assigns has not acquired the Property within one (1) year from the Reference Date, this Agreement shall terminate and be deemed of no further force and effect.

10. Representatives of the Parties. City's City Engineer, or his or her designee, shall serve as City's "**Representative**" and shall have the authority to act on behalf of City for all purposes under this Agreement. Developer shall designate a person to act as Developer's "**Representative**" to City at least thirty (30) days prior to commencement of work on the Off-Site Improvement work. Developer's Representative shall have the authority to act on behalf of Developer for all purposes under this Agreement and shall coordinate all activities of the Off-Site Improvement under Developer's responsibility. Developer shall work closely and cooperate fully with City's Representative and any other agencies which may have jurisdiction over or an interest in the Off-Site Improvement. A party may change its Representative by providing two (2) City business days written notice thereof, an email being sufficient.

11. Expenditure of Funds by Developer Prior to Execution of Agreement. Nothing in this Agreement shall be construed to prevent or preclude Developer from expending funds on the Off-Site Improvement prior to the execution of the Agreement, or from accruing Fee Credit for such expenditures. However, Developer understands and acknowledges that any expenditure of funds on the Off-Site Improvement prior to the execution of the Agreement is made at Developer's sole risk, and that some expenditures by Developer may not be eligible for reimbursement under this Agreement.

12. Review of Services. Developer shall allow City's Representative to inspect or review the progress of the Off-Site Improvement during normal business hours and upon reasonable notice at any reasonable time in order to determine whether the terms of this Agreement are being met.

13. Termination.

13.1 Notice of Default. Either Developer or City may give a notice of default, by written notice to the other party which notice shall provide in reasonable specificity the alleged default. The written notice shall provide a thirty (30) day period to cure any alleged default. During the thirty (30) day cure period, cure shall be diligently pursued by the defaulting party and the parties shall discuss, in good faith, the manner in which the default can be cured. In the event of a non-monetary default that cannot reasonably be cured within the above-prescribed thirty (30) day period, a longer period shall apply if the defaulting party does all the following:

(i) Notifies the nondefaulting party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;

(ii) Notifies the nondefaulting party of the proposed action plan to cure the default;

(iii) Promptly commences to cure the default within the thirty (30) day period;

(iv) Makes periodic reports to the nondefaulting party as to the progress of the program of cure; and

(v) Diligently prosecutes such cure to completion.

13.2 Notice of Termination; Effect of Termination. If, after giving a notice of default as required by section 13.1, the default is not cured, or if the cure requires more than thirty (30) days and the party alleged to be in default has not commenced to cure the default and diligently pursued such cure, then the other party may terminate this Agreement by written notice of termination. In the event that termination occurs before the end of the term set forth in Section 9, no Fee Credit shall have accrued and Developer shall be subject to paying the full amount of those City-imposed Builder Fees.

13.3 Exclusive Remedies. The rights and remedies of the parties provided in this Section 13 are the sole and exclusive remedies under this Agreement.

14. Prevailing Wages. Developer and any other person or entity hired to perform services on the Off-Site Improvement are alerted to the requirements of California Labor Code Sections 1770, *et seq*., which would require the payment of prevailing wages were the services or any portion thereof determined to be a "public work," as defined therein. Developer shall ensure compliance with these prevailing wage requirements by any person or entity hired to perform work on the Off-Site Improvement. Developer shall defend, indemnify, and hold harmless City, its officers, employees, consultants, and agents from any claim or liability, including without limitation attorneys' fees, arising from its failure or alleged failure to comply with California Labor Code Sections 1770, *et seq.*

15. Indemnification.

15.1 Developer Responsibilities. In addition to the indemnification required under Section 14, Developer agrees to indemnify, defend, and hold harmless City, and its officers, agents, consultants, and employees ("**City Parties**") from any and all claims, demands, costs, losses, expenses, or liability arising from or connected with all activities governed by this Agreement including (i) the construction, or installation of the Off-Site Improvement by Developer and its officers, agents, consultants, and employees ("**Developer Parties**"); (ii) the untruth or inaccuracy of any representation or warranty made by Developer in this Agreement or in any certifications delivered by Developer hereunder; (iii) Developer's failure to perform the construction of the Off-Site Improvement in accordance with the requirements of this Agreement; (iv) any act or omission of Developer or any of the Developer Parties, (v) any third party challenge to the calculation and establishment of the Fee Credit and the application/crediting of such Fee Credit to Builder Fees, or (vi) any State or Federal Constitutional, or Mitigation Fee Act (Government Code § 66000 *et seq.*), claims in connection with the Off-Site Improvement. If Developer fails to do so, City shall have the right, but not the obligation, to defend the same and charge all of the direct and/or incidental costs of such defense, including any reasonable attorneys' fees or court costs, to and recover the same from Developer.

15.2 City Responsibilities. City agrees to indemnify and hold harmless Developer and Developer Parties from any and all claims, demands, costs or liability arising from or connected with all activities governed by this Agreement due to active negligent acts, errors or omissions or willful misconduct of City or City Parties. City will reimburse Developer for any expenditures, including reasonable attorneys' fees, incurred by Developer or Developer Parties, in defending against claims ultimately determined to be due to active negligent acts, errors or omissions or willful misconduct of City or City Parties.

15.3 Effect of Acceptance. Developer shall be responsible for the professional quality, technical accuracy and the coordination of any services provided to complete the Off-Site Improvement. City's review, acceptance or funding of any services performed by Developer or any other person or entity under this Agreement shall not be construed to operate as a waiver of any rights City may hold under this Agreement or of any cause of action arising out of this Agreement. Further, Developer shall be and remain liable to City, in accordance with applicable law, for all damages to City caused by Developer's negligent performance of this Agreement or supervision of any services provided to complete the Off-Site Improvement.

16. Insurance. Developer shall require, at a minimum, all persons or entities hired to perform the Off-Site Improvement to obtain, and require their subcontractors to obtain, insurance of the types and in the amounts described below and satisfactory to Developer and City. Such insurance shall be maintained throughout the term of this Agreement.

16.1 Commercial General Liability Insurance. Commercial general liability insurance or equivalent form with a combined single limit of not less than $1,000,000.00 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Off-Site Improvement or be no less than two times the occurrence limit. Such insurance shall:

16.1.1 Name City and Developer, and their respective officials, officers, employees, agents, and consultants as insured with respect to performance of the services on the Off-Site Improvement;

16.1.2 Be primary with respect to any insurance or self-insurance programs covering City and Developer, and/or their respective officials, officers, employees, agents, and consultants; and

16.1.3 Contain standard separation of insured provisions.

16.2 Business Automobile Liability Insurance. Business automobile liability insurance or equivalent form with a combined single limit of not less than $1,000,000.00 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.

16.3 Professional Liability Insurance. Errors and omissions liability insurance with a limit of not less than $1,000,000.00 per occurrence. Professional liability insurance shall only be required of design or engineering professionals.

16.4 Workers' Compensation Insurance. As required by law, workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than $1,000,000.00 each accident.

16.5 Builder's Risk: Developer shall procure and shall maintain in force "all risks" builder's risk insurance including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction managers' tools and equipment and property owned by contractor's or subcontractor's employees, with limits in accordance with subsection (a) above.

16.6 General Insurance Requirements. All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents may apply in excess of, and not contribute with Developer's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. The insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Developer shall, prior to the cancellation date, submit new evidence of insurance in conformance with this section to the City's Risk Manager. No work or services under this Agreement shall commence until the Developer has provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsement to all required insurance policies at any time. Any

failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City's Risk Manager or other designee of the City due to unique circumstances.

17. Transfer or Assignment Prohibited Except as Provided. Developer shall not transfer or assign its rights and obligations under this Agreement except as provided herein. Developer shall not transfer the Property or the Project Entitlements without assigning this Agreement. Developer hereby covenants and agrees that it shall include in any purchase and sale, lease, or other transfer instrument for transferring the Property or the Project Entitlements that, as a condition to closing or consummation, upon such transfer the assignee shall execute an assignment and assumption agreement substantially in the form attached hereto as Exhibit D, by which the assignee agrees that all terms of the this Agreement shall inure to assignee as though such assignee were the Developer. Any proposed assignee shall have the financial strength and capability to perform its obligations under this Agreement. In connection with any such assignment, Developer shall provide, or shall direct any escrow officer to provide, City with a copy of the fully-executed assignment agreement on or before the effective date of such assignment. Upon effective date of the assignment and assumption agreement, Developer shall be released from any liabilities or obligations under this Agreement. Upon a transfer of the Property or Project Entitlements whereupon the transferor has not effected an assignment and assumption agreement in compliance with this Agreement, this Agreement shall automatically terminate and be of no further force and effect, excepting that any abandonment of the Off-Site Improvement following commencement of construction or demolition related to the Off-Site Improvement due to a failure to assign in compliance with this Agreement shall constitute a default and all default provisions hereof shall survive.

17.1 Developer's unauthorized transfer or assignment of this Agreement shall qualify as a default hereof.

18. Off-Site Improvement Modifications. Changes to the characteristics of the Off-Site Improvement, including any extensions of time for completion of the Off-Site Improvement, and/or any responsibilities of Developer or City may be requested in writing by Developer and are subject to the approval of City's Representative, in his or her sole discretion. Any approval or denial of a Developer request shall be given in writing (an email being sufficient) within thirty (30) days or a denial of the request may be assumed. Nothing in this Agreement shall be construed to require or allow completion of the Off-Site Improvement without full compliance with CEQA and the National Environmental Policy Act of 1969 (42 USC 4231, et seq.), if applicable, but the necessity of compliance with CEQA and/or NEPA shall not justify, excuse, or permit a delay in completion of the Off-Site Improvement.

19. Conflict of Interest. For the term of this Agreement, no member, officer or employee of Developer or City, during the term of his or her service with Developer or City shall

have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

20. Limited Scope of Duties. City's and Developer's duties and obligations under this Agreement are limited to those described herein. City has no obligation with respect to the safety of any work performed at a job site. In addition, City shall not be liable for any action of Developer or its contractors relating to the construction related to the Off-Site Improvement.

21. Books and Records. Each party shall maintain complete, accurate, and clearly identifiable records with respect to costs incurred for the Off-Site Improvement under this Agreement. Each party shall make available for examination by the other party, its authorized agents, officers or employees any and all ledgers and books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or related to the expenditures and disbursements charged to the other party pursuant to this Agreement. Further, each party shall furnish to the other party, its agents or employees, such other evidence or information as they may require with respect to any such expense or disbursement charged by them. All such information shall be retained by the parties for at least four (4) years following termination of this Agreement, and they shall have access to such information during the four-year period for the purposes of examination or audit.

22. Equal Opportunity Employment. The parties represent that they are equal opportunity employers and they shall not discriminate against any employee or applicant of reemployment because of race, religion, color, national origin, ancestry, sex, sexual orientation or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

23. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

24. Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

25. Time of Essence. Time is of the essence for each and every provision of this Agreement.

26. Headings. Article and section headings and paragraph captions contained in this Agreement are for convenience only and shall have no effect in the construction or interpretation of any provision herein.

27. No Joint Venture. This Agreement is for funding purposes only and nothing herein shall be construed to make City a party to the construction of the Off-Site Improvement or to make it a partner or joint venturer with Developer for such purpose. City maintains no proprietary interest in the Project.

28. Compliance With the Law. Developer shall comply with all applicable laws, rules and regulations governing the implementation and construction of the Off-Site

Improvement, including, where applicable, the rules and regulations pertaining to the participation of businesses owned or controlled by minorities and women promulgated by the Federal Highway Administration and the Federal Department of Transportation.

29. Notices. Any notice, request, demand, consent, approval and other communications under this Agreement shall be in writing, and shall be deemed duly given or made at the time and on the date when received by electronic mail before 5:00 pm on a City business day (provided that notice by email shall be confirmed by follow-up notice within seventy-two (72) hours by another method authorized below), or when personally delivered as shown on a receipt therefor, or one (1) City business day following its deposit with a reputable overnight courier (such as Federal Express) for overnight delivery, or three (3) City business days after being mailed by prepaid registered or certified mail, return receipt requested, to the address for each party set forth below. Any party, by written notice to the other in the manner herein provided, may designate an address different from that set forth below.

Developer: The Carson Project Owner, LLC
c/o Integral Communities, LLC
888 San Clemente, Suite 100
Newport Beach, CA 92660
Attention: Evan Knapp/Caren Read, Esq.
Telephone: 949-720-3612
Email: eknapp@integralcommunities.com
cread@integralcommunities.com

With a copy to: Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92628
Attn: Hans Van Ligten
Telephone: 714-641-5100
Email: hvanligten@rutan.com

City: City of Carson
701 East Carson Street
Carson, California 90745
Attn: Planning Manager
Telephone: 310-830-7600
Email: SNaaseh@carson.ca.us

With a copy to: Aleshire & Wynder, LLP
18881 Von Karman Avenue, Suite 1700
Irvine, CA 92612
Attn: Sunny Soltani, Esq.
Telephone: 949-250-5407
Email: ssoltani@awattorneys.com

29. Integration; Amendment. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. Any agreement or representation respecting

matters addressed herein that are not expressly set forth in this Agreement is null and void. This Agreement may be amended only by mutual written agreement of the parties.

30. Severability. If any term, provision, condition or covenant of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

31. Conflicting Provisions. In the event that provisions of any attached exhibits conflict in any way with the provisions set forth in this Agreement, the language, terms and conditions contained in this Agreement shall control the actions and obligations of the parties and the interpretation of the parties' understanding concerning the Agreement.

32. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument..

33. Independent Contractors. Any person or entities retained by Developer or any contractor to work on the Off-Site Improvement shall be retained on an independent contractor basis and shall not be employees of City. Any personnel performing services on the Off-Site Improvement shall at all times be under the exclusive direction and control of Developer or its contractor, as applicable. Developer or its contractor shall pay all wages, salaries and other amounts due such personnel in connection with their performance of services on the Off-Site Improvement and as required by law. Developer or its consultant shall also be responsible for all reports and obligations respecting such personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance and workers' compensation insurance.

34. Authority to Execute. The person(s) executing this Agreement on behalf of each party represent and warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of such party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first above written.

"DEVELOPER"

THE CARSON PROJECT OWNER, LLC,
a Delaware limited liability company

By: KPMW Integral, LLC
a California limited liability company
its Managing Member

By: ___________________________
Name: ___________________________
Its: Authorized Representative

Dated: ______________________, 2019

"CITY"

CITY OF CARSON, a municipal corporation

By: ____________________________
Name: Albert Robles
Title: Mayor

Dated: ____________________, 2019

ATTEST:

By: _____________________________
Name: _______________
Title: City Clerk

APPROVED AS TO FORM

ALESHIRE & WYNDER, LLP

By: _______________________________
Name: Sunny Soltani
Title: City Attorney

EXHIBIT A

Legal Description of the Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CARSON, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCELS 2, 3 AND 4 OF PARCEL MAP NO. 24971, IN THE CITY OF CARSON, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 289, PAGES 13 AND 14 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM ALL OIL, GAS, PETROLEUM, HYDROCARBON SUBSTANCES, WATER AND OTHER MINERALS BELOW A DEPTH OF 500 FEET MEASURED VERTICALLY FROM THE PRESENT SURFACE OF SAID LAND, TOGETHER WITH THE RIGHT OF ENTRY BELOW SAID DEPTH OF 500 FEET BY SLANT OF DIRECTIONAL DRILLING FROM OTHER LANDS TO DEVELOP AND PRODUCE OIL, GAS, PETROLEUM, HYDROCARBON SUBSTANCES, WATER AND OTHER MINERALS, AND THE RIGHT TO USE THE STRUCTURES BELOW SAID DEPTH OF 500 FEET FOR THE STORAGE AND SUBSEQUENT REMOVAL OF GAS OR OTHER SUBSTANCES, BUT WITHOUT ANY RIGHT OF SURFACE ENTRY.

APN(s): 7319-003-104; 7319-003-105; 7319-003-106

<u>EXHIBIT B</u>

Scope of Work and Cost Estimate of Off-Site Improvement

EXHIBIT B
SCOPE OF WORK FOR THE SIGNALIZED INTERSECTION at So. CENTRAL AVE. & ASPEN HILL DRIVE, CITY OF CARSON

		Qty		Unit Price		Extended
Design & Engineering:						
Signal design		1	$	66,000.00	$	66,000
Signal traffic study		1	$	5,000.00	$	10,000
Traffic control plan		1	$	6,500.00	$	6,500
Dry utility planning		1	$	9,500.00	$	15,500
	Subtotal				$	98,000
Plan Check & Permitting						
Traffic Control Permit		1	$	1,250.00	$	1,250
Traffic Signal Plan Check. LA DPW		1.5%	$	844,210	$	12,663
City inspector (hrs)		25	$	120.00	$	3,000
	Subtotal				$	16,913
Poles/Arms/Signal Heads:						
Type 29-5-100, 30' pole		1	$	23,000.00	$	23,000
Type 1A 14' pole		1	$	16,000.00	$	16,000
Type 15TS 30' pole		2	$	17,500.00	$	35,000
Type 19-3-100 30' pole		1	$	19,000.00	$	19,000
Pour footings		5	$	8,500.00	$	42,500
Program Visibility Signal Heads		4	$	10,500.00	$	42,000
Pedestrian Signals		4	$	6,500.00	$	26,000
Mast Arm type 3-MAS		2	$	400.00	$	800
Mast Arm type 2-MAS		2	$	600.00	$	1,200
Relocate post lights		2	$	3,200.00	$	6,400
LED Luminaire (Leotek or equal)		4	$	4,500.00	$	18,000
Remove stop sign		4	$	100.00	$	400
Hourly Rate for Crane Operator		16	$	145.00	$	2,320
	Subtotal				$	232,620
Loop Detectors:						
Type "E" 6' diameter per State Std ES-5B		17	$	1,250.00	$	21,250
Bicyce loop detector		10	$	1,250.00	$	12,500
	Subtotal				$	33,750
Traffic Signal Controller:						
Construct concrete foundation		1	$	4,500.00	$	4,500
Furnish and install Type 332 Controller Cabinet		1	$	15,000.00	$	15,000
Furnish and install Type 2070E Controller		1	$	30,000.00	$	30,000
3 DC Dual Channel Isolator		1	$	500.00	$	500
6 - 8 load switches		7	$	35.00	$	245
Conflict monitor (EBERLE 210E or approved equal)		1	$	1,250.00	$	1,250
8 dual channel loop detectors (EBERLE LM222 or equal)		8	$	1,000.00	$	8,000
Configure cabinet, custom work		1	$	16,000.00	$	16,000
	Subtotal				$	75,495
Electric Service to Controller:						
Meter Pedestal		1	$	14,000.00	$	14,000
SCE Service, Rule 16		1	$	3,500.00	$	3,500
Bore & conduit		1	$	18,000.00	$	18,000
Traffic Control		2	$	7,500.00	$	15,000
	Subtotal				$	50,500
Other:						
Erosion Control		1	$	4,500.00	$	4,500
Ashphalt repair		3	$	4,500.00	$	13,500
Signing and Striping		1	$	20,000.00	$	20,000
Handicap Access Ramps		4	$	5,370.00	$	21,480
	Subtotal				$	59,480
ESTIMATED COST BEFORE CONTINGENCY					$	566,758
CONTINGENCY		15.0%	$	566,758	$	85,014
TOTAL ESTIMATED COST, INCLUDING CONTINGENCY					$	651,772

EXHIBIT C

USE OF FEE CREDITS FORM, DATED_______________

Per the terms of the REIMBURSEMENT AND FEE CREDIT AGREEMENT ("Agreement") dated _______ between the City of Carson, a California municipal corporation ("City") and The Carson Project Owner, LLC, a Delaware limited liability company ("Developer"), Developer was granted $________ in Fee Credits from City. To date, Developer and/or assignee(s) has/have used ___________________ in Fee Credits. Developer or its assignee hereby uses _____ ______ in Fee Credits toward the satisfaction of the following Building Fees:

PROJECT NAME: Victoria Gardens PROJECT OWNER:_______________________
TRACT NUMBER: ___________________LOT NUMBERS:_____________________

	FEE PER UNIT	UNITS	FEE AMOUNT
Impact Fees	$__________	_____	$___________
TOTAL FEE AMOUNT			

Fee Credits per Agreement	[$______.00]
Previous Fee Credits Used Under This Agreement	( )
This Use of Fee Credits	( )
REMAINING FEE CREDITS AFTER THIS USE	

The City hereby acknowledges this use of Fee Credits, concurs with the remaining fee credit amount, and agrees that all fees included in this request are now satisfied in full.

AGREED AND ACCEPTED

CITY:
CITY OF CARSON
a California municipal corporation
Signature:_____________________
Date Executed:__________________
Name:_________________________
Title:__________________________

DEVELOPER/ASSIGNEE:
Entity:___________________________
____
Signature:_____________________
Date Executed:__________________
Name:_________________________
Title:_________________________

EXHIBIT D

ASSIGNMENT AND ASSUMPTION OF REIMBURSEMENT AGREEMENT

This Assignment of Reimbursement Agreement (this "***Assignment***") is made as of _____________, 20__ (the "***Effective Date***") by and between THE CARSON PROJECT OWNER, LLC, a Delaware limited liability company ("***Assignor***"), and ________, a _______ ("***Assignee***").

R E C I T A L S

A. Assignor and Assignee are parties to that certain Agreement to Assign Purchase and Sale Agreement dated as of ________ (the "***Purchase Agreement***") pursuant to which Assignor has agreed to assign to Assignee, and Assignee has agreed to accept from Assignor, Assignor's rights, title and interest under that certain Reimbursement Agreement dated _____, 2019, executed by Assignor and the City (the "***Reimbursement Agreement***") and Assignee has agreed to assume the obligations under the Reimbursement Agreement in accordance with and on subject to the terms of the Purchase Agreement.

B. Assignee expressly acknowledges and agrees that Assignor may elect to exercise the obligation to build the traffic signal improvements under the Reimbursement Agreement prior to the Closing and that such obligation shall constitute a Post-Closing Obligation (as defined below) .

C. Capitalized terms contained herein which are not expressly defined in this Assignment shall have the meaning given to them in the Purchase Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment. As of the Effective Date, Assignor hereby assigns, sells, conveys, and otherwise transfers to Assignee (i) all of Assignor's rights, title and interest under the Reimbursement Agreement; and (ii) all obligations under the Reimbursement Agreement arising on and after the Closing (collectively, the "***Post-Closing Obligations***"). Assignee's assumption of this Assignment Agreement shall be a condition to closing under the Purchase Agreement.

2. Assumption. As of the Effective Date, Assignee does hereby accept the foregoing assignment, assumes the Post-Closing Obligations. and agrees to perform all of Assignor's corresponding obligations, terms, covenants, and conditions under the Reimbursement Agreement arising after the Effective Date, including Assignor's indemnity obligation under Section 15.1 of the Reimbursement Agreement.

3. Attorney's Fees. In the event of any dispute between the parties hereto arising out of the subject matter of this Assignment, the prevailing party in such action shall be entitled to have and to recover from the other party its reasonable attorneys' fees and other reasonable

expenses (including expert witness fees) in connection with such action or proceeding in addition to its recoverable court costs.

4. Order of Reference. The Order of Reference provisions applicable to an "Action" under the Purchase Agreement shall similarly apply to any action or proceeding brought to enforce or interpret any provision of this Assignment or otherwise arising out of the transaction described herein.

5. Counterparts. This Assignment and any modifications, amendments or supplements thereto may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart. The parties may also deliver executed copies of this Assignment to each other by facsimile or electronic mail, which facsimile or electronic mail signatures shall be binding. Any facsimile or electronic mail delivery of signatures shall be followed by the delivery of executed originals.

6. Due Execution. The person(s) executing this Assignment on behalf of the parties hereto warrant that: (i) such party is duly organized and existing; (ii) they are duly authorized to execute and deliver this Assignment Agreement on behalf of said party; (iii) by so executing this Assignment, such party is formally bound to the provisions of this Assignment Agreement; and (iv) the entering into of this Assignment Agreement does not violate any provision of any other agreement to which said party is bound.

7. Affect on Assigned Documents. Except for the assignment of Assignor's interests to Assignee in accordance with the provisions of this Assignment, the parties further agree that nothing in this Assignment shall be deemed as modifying or otherwise affecting any of the provisions of the Reimbursement Agreement.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first set forth above.

"ASSIGNOR"

THE CARSON PROJECT OWNER, LLC,
a Delaware limited liability company

By: KPMW Integral, LLC,
a California limited liability company,
Its Managing Member

By: ______________________________
Name: ______________________________
Title: ______________________________

"ASSIGNEE"

____
a ______________________

By:

By:	______________________________
Name:	______________________________
Title:	______________________________