

CITY OF FONTANA

SUM IN LIEU OF UTILITY UNDERGROUNDING DEFERRAL AND LIEN AGREEMENT

This SUM IN LIEU OF UTILITY UNDERGROUNDING DEFERRAL AND LIEN AGREEMENT (“**Agreement**”) is entered into this [REDACTED] day of [REDACTED], 2024 (“**Effective Date**”), by and between the City of Fontana, a California municipal corporation (the “**City**”), and Jadel Enterprises, LLC (“**Owner**”). The City and Owner may sometimes hereinafter to be referred to as a “**Party**” or collectively as the “**Parties**.”

RECITALS

WHEREAS, Owner hereby represents and warrants to the City that Owner is the fee owner of certain real property located at 14041 Slover Avenue, Fontana, CA 92337, Assessor Parcel Number 0236-081-48, in the County of San Bernardino, State of California, and more fully described in EXHIBIT A attached hereto and incorporated herein by reference (“**Property**”);

WHEREAS, Section 27-52 of the City’s Municipal Code requires that the Owner place underground of the Property all new, upgraded, or existing on-site or off-site utilities, all as more specifically described in Article 3 of Chapter 27 of the City’s Municipal Code;

WHEREAS, Section 27-54 of the City’s Municipal Code permits the City’s Community Development Director to allow an applicant to pay a sum in lieu of undergrounding off-site utilities if it is determined that it would be impracticable, infeasible or disproportionately financially burdensome to require the undergrounding of off-site utilities pursuant to Section 27-52;

WHEREAS, Section 27-54 of the City’s Municipal Code requires that the amount and time of payment shall be agreed upon in writing by the Parties and the City may require that the Owner provide security for the Owner’s payment in the form of an improvement bond, letter of credit and a lien against the Property;

WHEREAS, the required sum in lieu of undergrounding the utilities due and payable by the Owner represents a proportionate and fair share of costs attributable to the Property, and

WHEREAS, the Owner wishes to enter into this Agreement to defer payment of the sum in lieu of undergrounding the utilities as permitted under Section 27-54 of the City’s Municipal Code and will provide a lien against the Property as security as further described herein.

TERMS

NOW, THEREFORE, in consideration of the above facts and for the covenants and agreements contained herein, the City and Owner agree as follows:

1. No Effect Upon Remaining Conditions. This Agreement is intended to defer

Owner's obligation with respect to the utility undergrounding in lieu of sum. This Agreement does not alter, amend or modify any provision of the City's Municipal Code or other of the conditions of approval, environmental mitigation measures, or other obligation of the Owner with respect to any permit or entitlement with respect to the Property. The Owner hereby reaffirms its consent to and agreement with each and every condition on the Property, all requirements of the City's Municipal Code, and all other permits and entitlements relative to the Property.

2. Amount. Owner shall be obligated to pay to the City, an amount approximating the Owner's proportionate share of the reasonably estimated costs of undergrounding utilities in the general area surrounding the Property. Such amount is hereby agreed and acknowledged by the parties to be ONE HUNDRED EIGHTY FIVE THOUSAND ONE HUNDRED SIXTY DOLLARS AND ZERO CENTS (\$185,160.00).

3. Payment Terms. Owner shall pay to the City the Sum Amount in Lieu of Undergrounding the Utilities ("In Lieu of Sum" in four (4) equal semiyearly installments in the amount of FORTY SIX THOUSAND TWO HUNDRED NINETY DOLLARS AND NO CENTS (\$46,290.00) equaling a total amount of ONE HUNDRED EIGHTY FIVE THOUSAND ONE HUNDRED SIXTY DOLLARS AND ZERO CENTS (\$185,160.00), whereby such payments shall be due and payable one hundred and eighty (180) calendar days following the Effective Date and each subsequent payment due and payable on each one hundred and eightieth day (180th) anniversary thereafter until paid in full ("**Semi-Annual Installments**") without further notice, demand or notice by the City. The last Semi-Annual Installment shall be increased or decreased, as necessary, to effect payment in full of all outstanding amounts owing to the City pursuant to this Agreement. All payments shall be submitted to [insert to whom and where the payment should be made]

In the event the Semi-Annual Installments are not paid in a timely manner, the City shall have the right to elect, at the City's sole discretion, to either: (i) place all outstanding amounts owing to the City pursuant to this Agreement on the property tax roll for the Property, or (ii) demand immediate payment in full by Owner of all outstanding amounts owing to the City pursuant to this Agreement, which Owner shall immediately pay in full. In the event any outstanding amounts owing to the City pursuant to this Agreement are placed on the property tax roll for the Property, then Owner shall pay to the City: (i) a one-time set up fee therefor in the amount of Two Hundred Fifty Dollars and No Cents (\$250.00) ("**Set-Up Fee**"); and (ii) a monthly administrative charge therefor in the amount of Twenty-Five Dollars and No Cents (\$25.00) ("**Administrative Charges**").

4. Lien and Recordation of Lien Notice. Owner hereby authorizes the City to record a valid and effective lien instrument therefor against the Property in the Official Records of the County of San Bernardino, California in the amount of all outstanding amounts owing to the City pursuant to this Agreement, including, without limitation, interest accruing thereon. The City's Lien shall occupy a priority position against the Property senior to all other non-statutory monetary liens and encumbrances against the Property. The lien placed pursuant to this Agreement shall run with the Property and the requirements imposed by this Agreement shall bind the successors and assigns of the Owner until satisfied in full.

5. Approval by Lienholders. Owner agrees that it shall not be eligible for deferment of the In Lieu of Sum under this Agreement unless and until the Owner obtains the consent of any and all lienholder(s) (existing or future) of the Property. Such consent shall be manifested by a recorded instrument subordinating the lienholder(s) lien(s) to that of the City for any outstanding amounts owed under this Agreement.

6. Release of Lien. Upon payment in full of all amounts due and payable to the City pursuant to this Agreement, the City will file a release document in the Official Records of the County of San Bernardino, California, releasing the City's Lien placed against the Property pursuant to this Agreement, if necessary. Owner shall pay all fees, if any, charged by the County Recorder of the County of San Bernardino, California for recordation of such release document.

7. Sale of Property. All outstanding amounts owing to the City pursuant to this Agreement shall become immediately due and payable, without demand or other action by the City, upon the commencement of any sale, refinancing of a mortgage and/or ownership transfer, whether voluntary or involuntary, respecting the Property. In the event Owner fails to pay such amounts prior to the opening of an escrow account in connection with any such sale, refinancing of a mortgage and/or ownership transfer, such outstanding amounts shall then be paid to the City from funds otherwise due to Owner from the escrow account prior to the close of such escrow account.

8. Form of Payments and Application. All amounts due and payable to the City pursuant to this Agreement: (i) are payable in lawful money of the United States of America; and (ii) excepting for the Inspection Fee, the Set-Up Fee and the Administrative Charge(s), shall be applied first to accrued interest pursuant to this Agreement. All amounts due and payable to the City pursuant to this Agreement may be prepaid in full at any time without penalty.

9. Executory Acts. The City and Owner shall execute such instruments and documents and diligently undertake such actions as may be required to carry out the terms and provisions of this Agreement.

10. Time of Essence. Time is of the essence for each and every term, condition, obligation and provision of this Agreement.

11. Captions. Any captions to, or headings of, the paragraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

12. Notices. Notices required or permitted under this Agreement shall be sent to the addresses identified below. Notices shall be deemed received on the third business day following deposit in the United States Mail, postage prepaid, or upon actual receipt if the method of delivery is facsimile, messenger, or overnight delivery service such as Federal Express. Notices shall be addressed as follows:

If to the City:

City of Fontana
8353 Sierra Avenue
Fontana, California 92335
Attention: City Manager

If to Owner:

13. Waiver. The waiver of failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

14. Severability. If any section, term, clause or provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, then that invalid portion shall be deemed severed from this Agreement and the remainder of this Agreement may be enforced in accordance with its terms.

15. Governing Law. Any legal action or proceeding concerning this Agreement shall be filed and prosecuted in the appropriate California state court in the County of San Bernardino, California. Both Parties hereto irrevocably consent to the personal jurisdiction of that court. The City and Owner each hereby expressly waive the benefit of any provision of federal or state law or judicial decision providing for the filing, removal, or change of venue to any other court or jurisdiction, including, without implied limitation, federal district court, due to any diversity of citizenship between the City and Owner, due to the fact that either the City is a party to such action or proceeding or due to the fact that a federal question or federal right is involved or alleged to be involved. Without limiting the generality of the foregoing, Owner and the City specifically waive any rights provided to it pursuant to California Code of Civil Procedure Section 394. Owner acknowledges that the provisions of this Section 18 are material consideration to the City for its entry into this Agreement, in that the City will avoid the potential cost, expense and inconvenience of litigating in a distant forum.

16. Attorneys' Fees and Costs. If either party commences an action against the other party, either legal or administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

17. Entire Agreement. This Agreement supercedes any and all prior agreements and communications, oral or written, and contains the entire agreement between the City and Owner as to the subject matter hereof.

18. Modification. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by both the City and Owner.

[signatures on following page]

SIGNATURE PAGE TO
SUM IN LIEU OF UTILITY UNDERGROUNDING
DEFERRAL AND LIEN AGREEMENT

IN WITNESS WHEREOF, the City and Owner have caused this Agreement to be executed in the County of San Bernardino as of the date first written above.

CITY:

CITY OF FONTANA,
a California municipal corporation

By: _____
Matthew Ballantyne, City Manager

OWNER:

Jadel Enterprises, LLC

[Printed Name]

ATTEST:

By: _____
Germaine Key, City Clerk

APPROVED AS TO FORM:

Best Best & Krieger, LLP

By: _____
Ruben Duran, City Attorney

(Note: Please attach a copy of the County of San Bernardino's Tax Bill for the current year)

EXHIBIT A TO
UTILITY UNDERGROUNDING
DEFERRAL AND LIEN AGREEMENT

Legal Description of Property
APN: 0236-081-48