

RECORDING REQUESTED BY:

Avila Collection, LLC
401 Ryland St., Ste 201-A
Reno, NV 89502

AND WHEN RECORDED MAIL TO:

Office of the Clerk of the Board of Supervisors
San Bernardino County
385 N. Arrowhead Avenue
San Bernardino, CA 92415

FREE RECORDING: *This instrument benefits the County of San Bernardino and is entitled to be recorded without fee per California Government Code § 27383.*

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

APNs: 0257-012-12-0-000; 0257-021-02-0-000,
0257-021-28-0-000 and 0257-031-35-0-000

AFFORDABLE HOUSING AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

This AFFORDABLE HOUSING AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS ("**Agreement**"), dated as of this ____ day of _____, 2024, is made and entered into by and between SAN BERNARDINO COUNTY, a public body, corporate and politic ("**County**") and AVILA COLLECTION, LLC, a Nevada Limited Liability Company ("**Developer**"). County and Developer are sometimes hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, the San Bernardino County Flood Control District ("**District**") is the owner of certain real property known as Assessor Parcel Numbers (APN) 0257-012-12 and 0257-021-02 (collectively "**District Property**"), located in the unincorporated area of Bloomington, San Bernardino County, California; and

WHEREAS, Developer is the owner of certain real property known as APNs 0257-021-28 and 0257-031-35 (collectively "**Adjacent Property**"), located in the unincorporated area of Bloomington, San Bernardino County, California, and adjacent to the District Property (the District Property and Adjacent Property are collectively referred to as the "**Property**"); and

WHEREAS, Developer has entered into a purchase and sale agreement to acquire fee title ownership in the District Property, with escrow is intended to close on a date after the execution of this Agreement; and

WHEREAS, on May 23, 2023, the County conditionally approved a request for a conditional use permit for the construction of a 181-unit multi-family condominium complex and a tentative tract map to create a single lot condominium subdivision (collectively the “**Project**”) on the Property to a corporation affiliated with Developer known as All-Era Properties, LLC; and

WHEREAS, as a public benefit of the County’s consideration of the Project and District’s consideration of the future disposition of District Property, on May 23, 2023, the Parties entered into an Agreement for the Provision of Affordable Housing wherein All-Era Properties, LLC agreed to commit eight condominium units within the Project to an affordable housing restriction and to record a restrictive covenant on the Property prior to the sale and purchase of the District Property; and

WHEREAS, this Agreement is entered into in order to satisfy the terms and conditions of the Agreement for the Provision of Affordable Housing.

NOW, THEREFORE, in consideration of the mutual promises and covenants of the Parties and the foregoing recitals which are hereby incorporated by reference, the Parties agree as follows:

ARTICLE I

DEFINITIONS AND STRUCTURE

Section 1.1 Definitions. As used in this Agreement, the following terms shall have the following meanings.

Affordable Housing. The term “affordable housing” means a restriction of a unit dedicated to either a lower income households or very low income households, as those terms are defined by California Health and Safety Code Sections 50079.5, 50053 and 50105, respectively.

Affordable Unit. The term “affordable unit” means the eight condominium units within the Project that are subject to an affordable housing restriction as set forth in this Agreement and that shall be designated for sale to any combinations of lower income households or very low income households.

Lower Income Household. The term "lower income households" means persons and families as described in California Health and Safety Code, Section 50079.5.

Maximum Household Income. The term "maximum household income" is set forth in Exhibit C.

Maximum Sales Price. The term "maximum sales price" is derived from the County median income for a family of four. The calculations and schedules of maximum sales price are presented in Exhibit C.

Project. The term "Project" means the application for a conditional use permit for the development of a 181-unit multi-family condominium complex and a tentative tract map to create a single lot subdivision on the Property.

Very Low Income Households. The term "very low income households" means persons and families as described in California Health and Safety Code, Section 50079.5.

Section 1.2 Interpretation. Unless the context clearly requires otherwise, words of any gender shall be construed to include correlative words of the other genders, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties by County. The County represents and warrants as follows:

(A) It (1) is a legal subdivision and body corporate and politic of the State of California, duly organized and existing under and by virtue of the Constitution and laws of the State of California; (2) has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; and (3) by proper action has duly authorized the execution and delivery of this Agreement.

(B) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not conflict with or constitute a breach of or a default under the Constitution or other laws of the State of California or the terms and conditions of any agreement or commitment to which the County is a party or by which the County is bound.

Section 2.2 Representations and Warranties by Developer. The Developer represents and warrants as follows:

(A) It is duly organized, validly existing and in good standing under the laws of the Naveda and has the power and authority to own property and carry on its business as now being conducted, and is duly qualified to do such business wherever such qualifications are required, including the State of California.

(B) It has the power to execute and deliver this Agreement and to carry out the transactions contemplated hereby and has duly authorized the execution, delivery and performance of this Agreement.

(C) Neither the execution or delivery of this Agreement nor the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the terms and conditions hereof conflicts with or results in a breach of any of the terms, conditions or provisions or any legal

restriction of any agreement or instrument to which it is now a party or by which it is bound, or constitutes a default under any of the foregoing or violate any judgment, order, writ, injunction, decree, law, rule or regulation to which it is subject.

(D) It is knowledgeable and experienced in the construction and operation of housing of the magnitude and nature it proposes to undertake in connection with the Project.

(E) It has a legal or equitable interest in the Property and agrees to be bound by this Agreement.

ARTICLE III

DEVELOPER COVENANTS

Section 3.1 Covenants of Developer. The Developer covenants as follows:

(A) Developer has a legal or equitable interest of certain real property located in the unincorporated area of Bloomington, County of San Bernardino, described in Exhibit A.

(B) Developer proposes to construct 181 for-sale units on the property described above.

(C) Developer agrees that eight housing units of the 181 housing units in the Project shall be committed as affordable housing to owner/occupant of any combination of lower income or very low income households as provided below.

(D) In accordance with this Agreement, the Developer shall make available for sale (to any combination of lower income or very low income households as defined herein) eight of the housing units constructed for the Project, at a sales price not exceeding the Maximum Sales Price (as defined in Section 1.1 herein). Affordable units shall be developed at the same time or prior to market rate units. Adjustable rate mortgages, graduated payment mortgages, and mortgage buydowns shall not be utilized to qualify home buyers.

(E) The annual household income for the lower and very low income groups shall have a maximum as defined in Section 1.1. If, after 180 days from the date of final approval of the Project by the County (e.g., occupancy permit or final inspection), escrows have not begun on the required number of affordable units to qualified buyers, income limitations are eliminated for the affordable units which have not been placed in escrow, provided the Developer has documented to the County the following:

1. Developer has advertised, not less than once a week, over a 180-day period. Developer shall place a 1/8 page legal display advertisement in a newspaper of general circulation.
2. Developer has contacted the (Housing Authority or local Board of Realtors) requesting qualified buyers, not less than once a month.
3. Listing of names and addresses of interested qualified potential buyers for the affordable units.

(F) Notwithstanding any other provision of this Agreement to the contrary, under no circumstances shall any of the following be eligible to purchase any of the units in the Project as a lower income or very low income buyer:

1. The Developer, independent contractors of the Developer, and any management companies and sales/rental agencies retained by the Developer.
2. Employees or owners of any entity listed in 1. above.
3. Family members of any individual listed in 2, above. As used herein, the term "family member" means spouse, children, grandparents and parents.

(G) Developer shall not rent housing units(s) committed as affordable housing unless Developer and County of San Bernardino first enter into an Affordable Housing Rental Agreement relating to those units. The County at its discretion may refuse to execute an Affordable Housing Rental Agreement and Developer shall have no recourse against County for such a refusal.

(H) The Affordable Units shall be sold only to any combination of lower income or very low income buyers for a period of 55 years from date of the individual buyer's sales contract pursuant to the terms in this Agreement. A restriction to this effect shall be set forth on the Deed of Trust for each Affordable Unit.

(I) Developer shall complete and document to the County for each Affordable Unit within 30 days of close of escrow on each unit, the following:

1. A copy of all affordable housing sales closing statements.
2. An original, signed Sale Agreement for each Affordable Unit (Exhibit B).
3. A declaration under penalty of perjury setting forth sales prices for each affordable housing unit.
4. Substantiating documentation that buyer is qualified as a lower income or very low income household. Such documentation may include, but is not limited to, at least one of the following:
 - (A) Copy of most recent Federal Income Tax statement(s)
 - (B) Copy of W-2 forms from current employer(s)
 - (C) Copy of check stub of SSDI or other income source
5. Copy of cancellation agreement, signed by all parties, should escrow not be completed with the purchase of the designated affordable housing unit by buyers.

(J) Subject to Section 6.13, the Developer shall have the right to sell, encumber, convey, assign or otherwise transfer (collectively “assign”), in whole or in part, its rights, interests and obligation to the Project subject to the assignment of this Agreement to a third party during the Term. The Developer shall give written notice to the County of any assignment of this Agreement prior to the close of escrow, specifying the names or names of the transferee, the transferee’s mailing address, and the name and address of a single person to whom any notice relating to this Agreement shall be given.

ARTICLE IV AMENDMENTS

Section 4.1 Amendment. This Agreement is subject to maximum sales prices and maximum income levels defined by state law, and all changes to such law shall, where necessary constitute an automatic amendment to this Agreement. Such automatic amendments include modifications to the maximum sales prices and/or maximum income levels by the State Department of Housing and Community Development. This Agreement may further be amended from time to time by mutual consent of the Parties.

ARTICLE V PENALTIES FOR DEFAULT

Section 5.1 Default Defined: Penalties. If Developer sells an affordable unit for an amount in excess of the affordable housing Maximum Sales Price, Developer shall pay to the County twice the difference between the affordable Maximum Sales Price and actual sales price. If Developer sells an affordable unit to a buyer whose income exceeds the allowable maximum, defined in Section 1.1, Developer shall pay County \$5,000 for each and every such violation. County shall allocate any money collected pursuant to this Section for the provision of additional affordable housing.

ARTICLE VI OTHER MATTERS

Section 6.1 Recordation of Agreement. This Agreement shall be recorded in the official records of the County, such recordation to be effected by Developer at the closing of escrow and Developer acquiring fee title to the District Property.

Section 6.2 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, such counterparts shall constitute but one and the same instrument.

Section 6.3 Saturdays, Sundays and Holidays. If any action is required to be taken hereunder on a date which falls on a Saturday, Sunday or a holiday, such action shall be taken on the next succeeding business day.

Section 6.4 Entire Agreement. The Exhibits hereto are incorporated herein by this reference. This Agreement shall be construed in accordance with the laws of the State of California and constitutes the entire agreement between the parties and supersedes all prior negotiations, discussions,

and preliminary understandings. This Agreement may be amended as the County and Developer mutually agree in writing. Any such amendment must be approved and signed by authorized representatives of the County and Developer.

Section 6.5 Notices. All notices, certificates or other communications shall be addressed as follows:

If to the County: Land Use Services Department
 Planning Division
 385 N. Arrowhead Ave. 1st Floor
 San Bernardino CA 92415-0182

With Copy To:
San Bernardino County Counsel
385 N. Arrowhead Avenue, 4th Floor
San Bernardino, CA 92415

If to the Developer: Avila Collection, LLC
 P.O. Box 11503
 Carson, CA 90749

With Copy To:
TLKM, LLC
449 W. Foothill Blvd. #104
Glendora, CA 91741
Attn: Kevin Kent

The County and the Developer may, by notice given hereunder, designate any further or different addresses to which subsequent notice, certificates or other communications shall be sent.

Section 6.6 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 6.7 Further Assurances and Corrective Instruments. To the extent permitted by law, the County, and the Developer agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of or facilitation of the performance of this Agreement.

Section 6.8 Limited Liability.

(A) Nothing contained herein shall create or constitute a debt or indebtedness of the State or the County within the meaning of any provision or limitation of the Constitution or statutes of the State or shall create or constitute or give rise to a pecuniary liability of the State or the County or a charge against its general credit or taxing powers. No supervisors or officer, agent or employee of the County shall be individually or personally liable for any obligation of the County hereunder; but nothing

herein contained shall relieve any such Supervisor, officer, agent or employee from the performance of any official duty provided by law.

(B) Developer and/or its successors and assigns agrees to indemnify, defend and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim therefore, except where such indemnification is prohibited by law..

Section 6.9 Waiver. No waiver of a breach of any provision of this Agreement shall constitute a waiver of any other breach or other provision. Failure of Developer or County to enforce at any time, or from time to time, any provision in this Agreement shall not be construed as a waiver thereof. The remedies herein reserved shall be cumulative and in addition to any other remedies in law or equity.

Section 6.10 Captions and Paragraph Headings. Captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and shall not be used in the interpretation thereof.

Section 6.11 Breach. In the event Developer shall violate any provision of this Agreement, including a default as defined in paragraph 5.1 hereof, Developer shall reimburse County for all costs, including reasonable attorney's fees, to the extent provided by law, incurred by County in enforcing this Agreement or its rights hereunder.

Section 6.12 Venue. The Parties acknowledge and agree that this Agreement was entered into and intended to be performed in San Bernardino County, California. The Parties agree that the venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, San Bernardino County, San Bernardino District. Each Party hereby waives any law or rule of court, which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by a third party and filed in another venue, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

Section 6.13 Equitable Servitudes and Covenants Running With the Land. Any successors in interest to Developer shall be subject to the provisions set forth in this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do, or refrain from doing, some act with regard to the development and use of the Property: (a) is for the benefit of any is a burden upon the property; (b) runs with the Property and each portion thereof; and (c) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof.

[Signatures Follow on Next Pages]

IN WITNESS WHEREOF, the Parties have executed this Agreement which is effective as of the date set forth above.

COUNTY:

SAN BERNARDINO COUNTY,
a political subdivision of the State of California

APPROVED AS TO FORM:

TOM BUNTON
County Counsel

By: _____

Name: Dawn Rowe

Title: Chair, Board of Supervisors

By: _____

Name: Jason M. Searles

Title: Supervising Deputy County Counsel

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN
DELIVERED TO THE CHAIR OF THE
BOARD OF SUPERVISORS

Lynna Monell,
Clerk of the Board of Supervisors

By: _____

Deputy

DEVELOPER:

AVILA COLLECTION, LLC,
a Nevada Limited Liability Company

By: _____

Name: Bryon L. Walker

Title: Director

EXHIBIT A

DESCRIPTION OF REAL PROPERTY

APNs: 0257-012-12-0-000; 0257-021-02-0-000,
0257-021-28-0-000 and 0257-031-35-0-000

THE EAST 25.00 FEET OF THE WEST HALF OF LOTS 363, 370, 371 AND 378 TOGETHER WITH THE WEST 25.00 FEET OF THE EAST HALF OF SAID LOTS 363, 370, 371 AND 378. ALL PER MAP OF SEMI-TROPIC LAND COMPANY, RECORDED IN BOOK 11, PAGE 12 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SAN BERNARDINO, IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA.

EXHIBIT B

SAN BERNARDINO COUNTY
SALE AGREEMENT CONTRACT NUMBER:

The sale of this housing unit is subject to an affordable housing restriction. To comply with restriction, this form must be completed and signed by both the Home Seller and Home Buyer.

1. Maximum allowable gross income \$ _____
Buyers gross income for 20____ \$ _____ (line _____ of IRS Form _____).

(Note: If after one hundred eighty (180) days from the date of final approval by the County, escrows have not begun on the required number of Affordable Units to qualified buyers, income limitations are eliminated.)

2. Project Address (Include Assessor Parcel Number)

3. Maximum allowable sales price \$ _____ at _____ % Interest Rate
Sales price of affordable housing unit \$ _____ at _____ % Interest Rate
(Adjustable rate mortgages, graduated payment mortgages, and mortgage buydowns shall not be used to qualify home buyers.)
4. Affordable Unit must be occupied by owner whose eligibility has been determined to the satisfaction of the County.
5. Buyer and Seller attest under penalty of perjury under the laws of the State of California that income and sales price do not exceed maximums set forth above.

Buyer's name (please print)

Buyer's signature

Date

Seller's name (please print)

Seller's signature

Date

EXHIBIT C

2023 INCOME LEVELS FOR LOW- AND VERY LOW-INCOME 4-PERSON HOUSEHOLDS

Median	\$94,500	Lower	\$74,550	Very Low	\$46,600
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Procedure for Computing Maximum Sales Prices

Calculate Maximum Price:

The affordable housing payment is equal to 30% of a household's annual income. The maximum sale prices listed below are based on 30% of the top income level for each income category—very low-income (50% of the area median income) and low-income (80% of the area median income)—for a four-person household. Actual sales prices shall be based on the individual household income and household size of the purchaser.

The maximum sales prices listed below are determined based on the following terms:

- FHA-insured 30-year mortgage with a 5% downpayment
- 1.75% upfront private mortgage insurance
- 0.55% annual private mortgage insurance, paid monthly
- 0.57% annual property insurance, based on the house sales price, paid monthly
- 1.25% annual property tax, based on the house sales price, paid monthly
- \$60 monthly allowance for HOA fees and other miscellaneous costs

MAXIMUM MONTHLY PAYMENT, MAXIMUM SALE PRICES, AND INTEREST RATES

Using various mortgage rates, the maximum sales prices are as follows. No restrictions regarding minimum unit size apply. The following minimum number of bedrooms shall be required based on the household size of the purchasing household:

- 1- and 2-person households: Minimum 1 bedroom
- 3-person households: Minimum 2 bedrooms
- 4- and 5-person households: Minimum 3 bedrooms
- 6-person households: Minimum 4 bedrooms
- 7- and 8-person households: Minimum 5 bedrooms
- 9-person households: Minimum 6 bedrooms

<u>Lower Income:</u>		5.0%	\$252,256
		6.0%	\$232,531
Share of Income	30%	7.0%	\$214,917
Monthly payment cannot exceed	\$1,863	8.0%	\$199,205
		9.0%	\$185,192
<u>Very Low Income:</u>		5.0%	\$154,535
		6.0%	\$142,452
Share Income	30%	7.0%	\$131,661
Monthly Payment cannot exceed	\$1,165	8.0%	\$122,035
		9.0%	\$113,451

Note: While the mortgage rate for a particular project may be designated at a specific level when a project receives approvals, mortgage rates typically fluctuate over time, and so the specific rate(s) utilized as the project is marketed may be subject to negotiation between the Project Developer and San Bernardino County.

EXHIBIT D

2023 INCOME LEVELS FOR LOW AND VERY LOW HOUSEHOLDS

Median	\$94,500	Lower*	\$74,550	Very Low	\$46,600
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MAXIMUM INCOME LIMITS BY HOUSEHOLD SIZE

Lower Income:

Size		Size	
1	\$52,200	5	\$80,550
2	\$59,650	6	\$86,500
3	\$67,100	7	\$92,450
4	\$74,550	8	\$98,450

Very Low Income:

Size		Size	
1	\$32,650	5	\$50,350
2	\$37,300	6	\$54,100
3	\$41,950	7	\$57,800
4	\$46,600	8	\$61,550