

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Manatt, Phelps & Phillips, LLP
695 Town Center Drive, 14th Floor
Costa Mesa, California 92626
Attention: Grace Winters, Esq.

ASSIGNMENT AND ASSUMPTION OF AND FIRST AMENDMENT TO REGULATORY
AND LAND USE RESTRICTION AGREEMENT

(Blunn Creek Apartments)

This Assignment and Assumption of and First Amendment to Regulatory and Land Use Restriction Agreement (“Agreement”) is dated as of [____], 2018, by and between Blunn Creek, Ltd., a Texas limited partnership (“Assignor”), Avanath Blunn Creek, LLC, a Delaware limited liability company (“Assignee”), Austin Housing Finance Corporation, a nonprofit housing finance corporation (“Issuer”), and Wells Fargo Bank Texas, N.A., a national banking association organized and existing under the laws of the United States of America (“Trustee”).

RECITALS

- A. Assignor is the owner of that real property known as Blunn Creek Apartments, located in the City of Austin, County of Travis, State of Texas (“Property”), as more particularly described on *Exhibit A* attached hereto.
- B. The Property is subject to that certain Regulatory and Land Use Restriction Agreement, dated as of August 1, 2001, by and between the Issuer, Trustee, and Assignor, as recorded on August 28, 2001 in the office of the County Recorder of Travis County, Texas as Document No. 2001144191 (“Regulatory Agreement”).
- C. Pursuant to the Regulatory Agreement, the Issuer issued Austin Housing Finance Corporation Multifamily Housing Revenue Bonds (Blunn Creek Apartments Project) Series 2001 in the aggregate principal amount of \$15,000,000 (“Bonds”), the proceeds of which were to be used to fund a certain Loan to Assignor pursuant to the Loan Agreement, Indenture, Loan Documents (as defined in the Loan Agreement) and other documents evidencing or securing the Assignor’s obligations to the Issuer relating to the Project (collectively, the “Bond Documents”).
- D. As of the Transfer Date (as defined below), the Bonds have been extinguished and Assignor has paid off the Loan.
- E. Assignor is selling the Property to Assignee. In connection therewith, the assignment of the Regulatory Agreement is being made pursuant to Section 9 of the Regulatory Agreement.

- F. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Regulatory Agreement.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor, Assignee, Trustee, and Issuer agree as follows:

1. Assignment of Regulatory Agreement. As of the date the Property is transferred to Assignee (the “Transfer Date”), Assignor hereby assigns and delivers to Assignee the Regulatory Agreement and all of the rights, interests, benefits and privileges of the Assignor thereunder, and Assignee hereby accepts such assignment. Assignor shall be responsible for all obligations and liabilities under the Regulatory Agreement arising or accruing on or prior to the Transfer Date and Assignee shall be responsible for all obligations and liabilities under the Regulatory Agreement solely to the extent arising or accruing after the Transfer Date; provided that, notwithstanding the foregoing, Assignee shall not assume any obligations, payments or liabilities whatsoever (including but not limited to any indemnity obligations) with respect to the Loan, the Bonds or any of the Bond Documents (the “Excluded Obligations”). For the avoidance of doubt, any and all references to the following terms in the Regulatory Agreement are hereby deleted and are no longer applicable or have any effect as of the Transfer Date as to the Assignee: Bonds, Loan, Loan Agreement, Promissory Note, Indenture, Loan Documents (except for the Regulatory Agreement), Facility Documents, and Intercreditor Agreement.

2. Assumption of Obligations. By acceptance of this Assignment, from and after the Transfer Date, Assignee hereby assumes and agrees in favor of Issuer to perform and to be bound by all of the terms, covenants, conditions and obligations of Assignor under the Regulatory Agreement solely to the extent arising or accruing after the Transfer Date, other than the Excluded Obligations, and Issuer and Trustee hereby acknowledge and agree to the foregoing.

3. Release. Assignor shall be released from all liability for obligations to be performed under the Regulatory Agreement on and after the Transfer Date but shall remain liable for (i) any obligation accruing prior to the Transfer Date in accordance with the terms of the Regulatory Agreement and (ii) any Excluded Obligations. The Issuer, Trustee and Assignee acknowledge and agree that, except with respect to the Excluded Obligations or as otherwise modified by this Agreement, all of the terms, conditions, and provisions of the Regulatory Agreement shall remain in full force and effect as to the Assignee.

4. Issuer Consent. Subject to the terms of this Agreement, Issuer hereby consents to the transfer of the Property from Assignor to Assignee pursuant to Section 9 of the Regulatory Agreement and Issuer hereby acknowledges that Assignee has satisfied all transfer conditions under the Regulatory Agreement. Issuer hereby acknowledges that, to the Issuer’s actual knowledge, no default or non-compliance by the Assignor under the Loan, the Bond Documents or Regulatory Agreement has occurred and is continuing and no event has occurred and is continuing which, with the giving of notice or passage of time or both, would constitute a default or non-compliance of Assignor under the Loan, the Bond Documents or Regulatory Agreement.

5. Amendment. The following sentence is hereby added as the last sentence of Section 9 of the Regulatory Agreement: “Notwithstanding anything contained in this Section 9, the transfer, conveyance or pledge of any or all of the Project or any direct or indirect interests in the Owner is hereby deemed expressly permitted hereunder, so long as (i) with respect to an interest transfer, the manager or managing member of any transferee controls, is controlled by or is under common control with Avanath Capital Management, LLC, and (ii) with respect to a fee transfer of the Project, (a) the manager or managing member of the transferee is controlled by or is under common control with Avanath Capital Management, LLC, (b) such transferee expressly agrees to assume Owner’s duties under the Regulatory Agreement in writing pursuant to an assignment and assumption agreement acceptable to Issuer, and (c) written notice of such proposed transfer is provided to Issuer prior to the consummation of such transfer.”

6. Qualified Project Period. Assignor, Assignee, Issuer and Trustee hereby agree and acknowledge that the Qualified Project Period shall expire on March 31, 2023.

7. Amenities and Resident Services Schedule. Issuer and Trustee hereby agree and acknowledge that Assignor has complied with the requirements of Section 5.24 of the Loan Agreement and that Assignor has sufficiently constructed all improvements and facilities required in the Amenities and Resident Services Schedule attached to the Loan Agreement.

8. Notices. From and after the Transfer Date, all notices required or permitted to be sent to “Owner” under the Regulatory Agreement shall be sent to Assignee at the following address, in the manner required under the Regulatory Agreement:

Avanath Blunn Creek, LLC
1920 Main Street, Suite 150
Irvine, California 92614
Attention: Jun Sakumoto
E-mail Address: jsakumoto@avanath.com

With a copy to:

Manatt, Phelps & Phillips, LLP
695 Town Center Drive, 14th Floor
Costa Mesa, California 92626
Attention: Grace Winters, Esq.
E-mail Address: GWinters@manatt.com

9. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, heirs and legatees of the respective parties hereto.

10. Governing Law. This Assignment shall be governed by, interpreted under, and construed and enforceable with, the laws of the State of Texas.

11. Counterparts. This Agreement may be executed in counterparts which together shall constitute one and the same Agreement.

[Signature Pages Follow]

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

ASSIGNOR:

BLUNN CREEK, LTD.,
a Texas limited partnership

By: Blunn Creek Housing, LLC,
a Texas limited liability company,
its General Partner

By: TWC Housing, LLC,
a Texas limited liability company,
its Managing Member

By: Hunt ELP, Ltd.,
a Texas limited partnership,
its sole Member

By: HB GP, LLC,
a Nevada limited liability company,
its General Partner

By: _____
Name: Peter A. Spier
Title: Senior Vice President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

(Seal)

ASSIGNEE:

Avanath Blunn Creek, LLC,
a Delaware limited liability company

By: Avanath AH III Holdco, Inc.,
a Delaware corporation,
its managing member

By: _____
Name: Jun Sakumoto
Title: Chief Operating Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

(Seal)

ISSUER:

AUSTIN HOUSING FINANCE CORPORATION

By: _____
Name: _____
Title: _____

DRAFT

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STATE OF _____)
) ss.
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

(Seal)

TRUSTEE:

WELLS FARGO BANK TEXAS, N.A.

By: _____

Name: _____

Title: _____

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STATE OF _____)
) ss.
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

(Seal)

EXHIBIT A

Legal Description

All that real property situated in the City of Austin, County of Travis, State of Texas and more particularly described as follows:

Lot 1, Block A, RESUBDIVISION OF A PORTION OF TRACT 2, PENICK SUBDIVISION, an Addition in Travis County, Texas, according to the map or plat thereof, recorded in Plat Book 101, Page 41, of the Plat Records of Travis County, Texas.

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