Order 38-15/16
Passage: 7-2 (Hinck, Costa) on 8/3/2015   Effective 8/13/2015

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER APPROVING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO THE 17 CARLETON STREET CREDIT ENHANCEMENT AGREEMENT WITH AVESTA CARLETON LP

ORDERED, that the credit enhancement agreement between the City of Portland and Avesta Carleton LP related to the 17 Carleton Street Affordable Housing Tax Increment Financing District is hereby approved and the City Manager is authorized to sign the agreement in substantially the same form as attached hereto and any other related documents that are necessary or convenient to carry out the intent of said agreement.

CREDIT ENHANCEMENT AGREEMENT

This Credit Enhancement Agreement, dated as of August _____, 2015, between the City of Portland, Maine, a municipal body corporate and politic and a political subdivision of the State of Maine (the "City"), and Avesta Carleton LP, a Maine limited partnership (the "Developer").

W I T N E S S E T H   T H A T

WHEREAS, the City designated the 17 Carleton Street Affordable Housing Development District (the "District") pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, by vote of the City Council at a meeting held on August 3, 2015 and pursuant to the same City Council Meeting action adopted a development program and financial plan for the District (the "Development Program"), and

WHEREAS, the Director of the Maine State Housing Authority has reviewed and approved the District and the Development Program, and

WHEREAS, the Development Program contemplates the execution and delivery of a credit enhancement agreement between the City and the Developer and the City approved the execution and delivery of a credit enhancement agreement as described in the Development Program pursuant to such City Council Meeting approval and a resolution of the Municipal Officers, adopted August 3, 2015 by vote of the City Council and the City and the Developer desire and intend that this Credit Enhancement Agreement be and constitute the Credit Enhancement Agreement contemplated by and described in the Development Program;

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

ARTICLE I: DEFINITIONS

Section 1.1. <u>Definitions</u>.   The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise:

"Affordable Housing Development Program Fund" means the Affordable Housing Development Program Fund described in Article III of the Development Program and established and maintained pursuant to Article II hereof.

"Agreement" means this Credit Enhancement Agreement between the City and the Developer.

"Captured Assessed Value" means the amount, stated as percentages or stated sums, of the Increased Assessed Value that is utilized from year to year to finance the Capital Program and Public Improvements described in the Development Program; the Captured Assessed Value of the District shall be 65% of the Increased Assessed Value.

"City" means the City of Portland, Maine, a municipality duly organized and existing under the laws of the State of Maine, its successors and assigns.

"Current Assessed Value" means the assessed value of the District certified by the municipal assessor as of April 1st of each year that the District remains in effect.

"Developer" means Avesta Carleton LP, its successors and assigns.

"Development Program" means the Development Program for the District as adopted by the City at a meeting of the City Council held on August 3, 2015.

"District" means the 17 Carleton Street Affordable Housing Development District designated by the City pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, by vote of its City Council at a meeting held on August 3, 2015.

"Financial Plan" means the financial plan described in Article III of the Development Program.

"Fiscal Year" means July 1 to June 30 each year or such other fiscal year as the City may establish.

"Increased Assessed Value" means the valuation amount by which the Current Assessed Value of the District exceeds the Original Assessed Value of the District. If the Current Assessed Value is equal to or less than the Original Assessed Value, there is no Increased Assessed Value.

"Original Assessed Value" means the assessed value of the District as of March 31, 2015, which amount was Two Hundred Sixty-One Thousand Six Hundred Sixty Dollars ($261,660).

"Project" means the design, planning, development, acquisition, construction, financing and installation of the Development Program as described in Section 2.03 of said Development Program.

"Project Costs" means any expenditures or monetary obligations incurred or expected to be incurred that are authorized by section 5249 of title 30-A of the Maine Revised Statutes and included in the Development Program.

"Project Cost Account" means the Developer's Project Cost Account described in Article III of the Development Program and established and maintained pursuant to Article II of this Agreement.

"Property Taxes" means any and all ad valorem property taxes levied, charged or assessed against real estate in the District by the City or on its behalf.

"Qualified Investments" means any and all securities, obligations or accounts in which municipalities may invest their funds under applicable Maine law.

"Tax Increment" means all Property Taxes assessed by the City, in excess of any state, county or special district tax, upon the Increased Assessed Value of all property in the District.

"Tax Increment Revenues (Developer's Share)" means that percentage of the Tax Increment with respect to real estate now or hereafter located in the District retained pursuant to the terms of the Development Program to pay Project Costs of the Capital Program, and which amount is to be deposited each year during the term of this Agreement in the Developer's Project Cost Account to fund payments to the Developer due pursuant to this Agreement. The Tax Increment Revenues (Developer's Share) is sixty-five percent (65%). The Tax Increment Revenues (Developer's Share) will be calculated each year as more particularly described herein and in Exhibit A of the Development Program and will be based on the Increased Assessed Value of the District which percentage or amount shall be captured and retained to pay to the Developer the costs of the Capital Program described in the Development Program.

"Tax Shift" means the sum of the following amounts as calculated under the Tax Shift Formulas, as hereafter defined: (a) the difference between (i) the county tax payable by the City if the Captured

Assessed Value that under the then existing Tax Shift Formulas is not included in the actual calculation of County Tax were included in the City's valuation in calculating the county tax, and (ii) the county tax payable by the City to the extent that the Captured Assessed Value is excluded from the City's valuation in calculating the county tax; plus (b) the difference between (i) the State aid to education that would be received by the City if the Captured Assessed Value that under the then existing Tax Shift Formulas is not included in the actual calculation of State aid to education were included in the City's valuation in calculating State aid to education, and (ii) the State aid to education that received by the City to the extent that the Captured Assessed Value is excluded from the City's valuation in calculating such amounts of State aid to education; plus (c) the difference between (i) the State revenue sharing that would be received by the City if the Captured Assessed Value that under the then existing Tax Shift Formulas is not included in the actual calculation of State revenue sharing were included in the City's valuation in calculating the amount of State revenue sharing, and (ii) the State revenue sharing received each year to the extent that the Captured Assessed Value is excluded in the City's valuation in calculating such amounts of revenue sharing. Examples of the calculation of the estimated Tax Shifts based on the current Tax Shift Formulas are attached as Exhibit F to the Development Program.

"Tax Shift Formulas" means the formulas utilized by the State of Maine in calculating (a) the county tax payable in accordance with 30-A M.R.S.A. § 706 and 36 M.R.S.A. §§ 305(1), 381, as amended, and any successor provisions; (b) the municipal revenue sharing distribution of the Local Government Fund in accordance with 30-A M.R.S.A. §5681, as amended, and any successor provision, provided, however, that distribution of the Disproportionate Tax Burden Fund (the Revenue II fund), if any, shall not be taken into consideration in such calculation since taxes assessed on captured value within a tax increment financing district are included in the amounts of the property assessed in determining allocations of such Disproportionate Tax Burden Fund; and (c) State aid to education, including aid for total operating costs, total program cost allocation (taking into account the maximum local share or circuit breaker) and total debt service cost allocation (taking into account the maximum local share or circuit breaker), but not taking into account any hold harmless or hardship cushion that results in additional State aid to education to the prior year's level even through the calculation would have resulted in a reduction, all as computed in accordance with Maine Department of Education Form ED 261 or any successor form.

"Tax Payment Date" means the date(s) on which Property Taxes levied by the City are due and payable from owners of property located within the City.

Section 1.2. <u>Interpretation and Construction</u>. In this Agreement, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before the date of delivery of this Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), limited liability companies, trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(e) All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time. All approvals, consents and acceptances required to be given or made by any signatory hereto shall not be withheld unreasonably.

(f) If any clause, provision, Article or Section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision, Article or Section shall not affect any of the remaining provisions hereof.

ARTICLE II: DEVELOPER'S PROJECT COST ACCOUNT OF THE AFFORDABLE HOUSING DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. <u>Creation of Developer's Project Cost Account of the Affordable Housing Development Program Fund</u>. The City hereby confirms the creation and establishment of (a) the 17 Carleton Street Affordable Housing Development District Affordable Housing Development Program Fund; and (b) a segregated fund in the name of the City designated as the "17 Carleton Street Affordable Housing Development District Developer's Project Cost Account of the Affordable Housing Development Program Fund" (the "Developer's Project Cost Account") pursuant to, and in accordance with the terms and conditions of the Development Program. The Affordable Housing Development Program Fund shall consist of the Developer's Project Cost Account as described in the Development Program.

Section 2.2. <u>Deposits into Developer's Project Cost Account of the Affordable Housing Development Program Fund</u>. The City shall deposit into the Developer's Project Cost Account contemporaneously with each payment of Property Tax by owners of property in District during the term of the District an amount equal to that portion thereof constituting the Tax Increment Revenues (Developer's Share) for the period or year to which the payment relates and shall allocate the amount so deposited to fund fully and pay the payments due to Developer under Article III of this Agreement.

Section 2.3. <u>Use of Monies in Developer's Project Cost Account of the Affordable Housing Development Program Fund</u>. Monies deposited in the Developer's Project Cost Account shall be used and applied exclusively to fund the City's payment obligation described in Article III hereof.

Section 2.4. <u>Monies Held in Trust</u>. All monies required to be deposited with or paid into the Developer's Project Cost Account to fund payments of the Developer under the provisions hereof and the provisions of the Development Program, shall be held by the City in trust, for the benefit of the Developer.

Section 2.5. <u>Investments</u>. The monies in the Developer's Project Cost Account shall be invested and reinvested in Qualified Investments as determined by the City. The City shall have discretion regarding the investment of such monies, provided such monies are invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Developer's Project Cost Account.

Section 2.6. <u>Liens</u>. The City shall not hypothecate or grant or create any liens, security interests, encumbrances, or other interests of any nature whatsoever, with respect to the Developer's Project Cost Account or any funds therein, other than the interest granted to the Developer hereunder in and to the amounts on deposit therein.

ARTICLE III: PAYMENT OBLIGATIONS

Section 3.1. <u>Credit Enhancement Payments</u>. (a) The term of this Agreement shall be for twenty-two (22) years as described below. The City agrees to pay to the Developer within 30 days of the end of each fiscal year (ends June 30 each year) this Agreement is in effect payments equal to the Tax Increment Revenues (Developer's Share) beginning with the designation and approval of the District by the Director of the Maine State Housing Authority, that being the City Fiscal Year beginning July 1, 2015 and ending June 30, 2016 (FY16) and continuing with each Fiscal Year of the City thereafter through and including June 30, 2038 (FY36). The City shall make all such payments of the Tax Increment Revenues (Developer's Share) to the Developer, its successors and assigns according to Exhibit A of the Development Program, based upon the corresponding fiscal year's projected allocation percentage for each payment. The Developer's share will be 100% of the captured revenue (based on 65% of the value captured) as indicated on Exhibit A. The obligation of the City to make such payments shall be a limited obligation payable solely from that portion of the Tax Increment Revenues (Developer's Share) payable to the Developer hereunder, whether or not actually deposited into the Developer's Project Cost Account, and shall not constitute a general debt or obligation on the part of the City or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine or any political subdivision thereof.

(b) If, with respect to any Tax Payment Date, the owner or owners of property in the District fail(s) to pay any portion of the Property Taxes assessed by the City, because of a valuation dispute or otherwise, the Property Taxes actually paid with respect to such Tax Payment Date shall first be applied to taxes due on account of the Original Assessed Value and second shall constitute Tax Increment Revenues.

(c) Annually, Developer will provide operating cash flow statements as back-up documentation of Projects Costs for its TIF payments, which documentation will be kept confidential by the City.

Section 3.2. <u>Completion of Development Program</u>. Prior to receiving the first payment under this Agreement, Developer shall provide evidence reasonably satisfactory to the City of the Company's ability to complete the Project in accordance with State law. Reasonably satisfactory evidence shall include the Company's having closed on the financing for the Project.

Section 3.3. <u>Failure to Make Payment</u>. In the event the City should fail to, or be unable to, make any of the payments required under Section 3.1 hereof, the item or installment so unpaid shall continue from year-to-year, as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid and the City agrees to pay the same with interest thereon at the rate equal to the interest rate per annum payable by owners of property in the City on Property Taxes that are not paid when due, but only from Tax Increment Revenues (Developer's Share) paid to the City by the Developer from time to time, and any earnings thereon, whether or not deposited into the Developer's Project Cost Account of the Affordable Housing Development Program Fund. Payments shall be applied first against accrued interest and then against principal. The Developer shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to deposit all Tax Increment Revenues (Developer's Share) to the Developer's Project Cost Account and its obligation to make payments to the Developer.

Section 3.4. <u>Manner of Payments</u>. The payments provided for in this Article III shall be paid in immediately available funds directly to the Developer in the manner provided hereinabove for its own use and benefit, for qualified Project Costs.

Section 3.5. <u>Obligations Unconditional</u>. The obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have

against the Developer. The City shall not suspend or discontinue any such payment or terminate this Agreement for any cause, including without limitation, any acts or circumstances that may constitute failure of consideration or frustration of purpose or any damage to or destruction of the Project or any change in the tax or other laws of the United States, the State of Maine or any political subdivision of either thereof.

Section 3.6. <u>Limited Obligation</u>. The City's obligations of payment hereunder shall be limited obligations of the City payable solely from monies on deposit in the Developer's Project Cost Account, and any earnings thereon, pledged therefor under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from that portion of the Tax Increment Revenues (Developer's Share) payable to the Developer hereunder, and any earnings thereon, whether or not actually deposited into the Developer's Project Cost Account. This Agreement shall not directly or indirectly or contingently obligate the City, the State of Maine, or any other municipality or political subdivision to levy or to pledge any form of taxation or to levy or to make any appropriation for their payment, excepting the City's obligation to levy Property Taxes upon the property in the District and the pledge of the Tax Increment Revenues (Developer's Share), and earnings thereon, established under this Agreement.

ARTICLE IV: PLEDGE AND SECURITY INTEREST

Section 4.1. <u>Pledge of Developer's Project Cost Account</u>. In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the Developer by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge to the Developer the Developer's Project Cost Account to the extent of Developer's Rights under this Agreement to receive funds from the Developer's Project Cost Account and all sums of money and other securities and investments now or hereafter therein.

Section 4.2. <u>Perfection of Interest</u>. The City authorizes the Developer to file and, if necessary, shall cooperate with the Developer in causing appropriate financing statements and continuation statements naming the Developer as pledgee of all amounts from time to time on deposit in the Developer's Project Cost Account to be duly filed and recorded in the appropriate state offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder. To the extent deemed necessary by the Developer, the City will at such time and from time to time as requested by Developer establish the Developer's Project Cost Account as a segregated fund under the control of an escrow agent, trustee or other fiduciary so as to perfect Developer's interest therein.

Section 4.3. <u>Further Instruments</u>. The City shall, upon the reasonable request of the Developer, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement; provided, however, that no such instruments or actions shall pledge the credit of the City.

Section 4.4.   <u>No Disposition of Developer's Project Cost Account</u>.   Except as permitted hereunder, the City shall not sell, lease, pledge, grant a security interest in, assign or otherwise dispose, encumber or hypothecate any interest in the Developer's Project Cost Account and will promptly pay or

cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part hereof not permitted hereby.

Section 4.5. Access to Books and Records. All books, records and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Developer's Project Cost Account shall at all reasonable times be open to inspection by the Developer, its agents, lenders, designees and employees.

ARTICLE V: DEFAULTS AND REMEDIES

Section 5.1. Events of Default. Each of the following events shall constitute and be referred to in this Agreement as an "Event of Default:"

(a) any failure by the City to pay any amounts due to Developer when the same shall become due and payable;

(b) any failure by the City to make deposits into the Affordable Housing Development Program Fund or the Developer's Project Cost Account as and when due;

(c) any failure by the City or the Developer to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the City or the Developer to be observed or performed, provided, however, that failure of Developer or any other owner of property in the District to pay Property Taxes when due shall not constitute an event of default hereunder; or

(d) if a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the winding up or liquidation of the City's affairs shall have been entered against the City or the City shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the City or of or relating to all or substantially all of its property, including without limitation, the filing of a voluntary petition in bankruptcy by the City or the failure by the City to have a petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the City.

Section 5.2. Remedies on Default. Whenever any Event of Default referred to in Section 6.1 hereof shall have occurred and be continuing, the non-defaulting party may take any one or more of the following remedial steps: (a) the non-defaulting party may take whatever action at law or at equity as may appear necessary or desirable to collect any amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the non-defaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder; and (b) the Developer shall also have the right to exercise any rights and remedies available to a secured party under the laws of the State of Maine.

Section 5.3. Remedies Cumulative. No remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any relinquishment for the future of the rights to insist

upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the City with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Event of Default be continued or repeated.

Section 5.4. <u>Agreement to Pay Attorneys' Fees and Expenses</u>. Notwithstanding the application of any other provision hereof, in the event any party should default under any of the provisions of this Agreement and the non-defaulting party shall require and employ attorneys or incur other expenses or costs for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the City or the Developer herein contained, the defaulting party shall, on demand thereof pay to the non-defaulting party the reasonable attorneys fees, costs and expenses so incurred by the non-defaulting party.

Section 5.5. <u>Disputes</u>. The parties agree that in the event of any dispute or disagreement hereunder the City shall continue to make payment of all amounts due hereunder in the manner and at the times specified herein until final resolution of such dispute, whether by mutual agreement or final decision of a court, arbitrator or other dispute resolution mechanism. The City hereby waives any right to withhold, suspend or setoff payments during the pendency of any such dispute, this waiver being limited and expressly intended to affect only those rights necessarily related to or arising directly under the terms of this Agreement.

ARTICLE VI: EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. <u>Effective Date and Term</u>. This Agreement shall become effective upon its execution and delivery by the parties hereto and shall remain in full force from the date hereof for the entire term of this Agreement and shall expire upon the payment of all amounts due to the Developer hereunder and the performance of all obligations on the part of the City and the Developer hereunder.

Section 6.2. <u>Cancellation and Expiration of Term</u>. At the termination or other expiration of this Agreement and following full payment of all amounts due and owing to the Developer hereunder or provision for payment thereof and of all other fees and charges having been made in accordance with the provisions to this Agreement, the City and the Developer shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

ARTICLE VII: ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST

Section 7.1. <u>Consent to Pledge and/or Assignment</u>. The City hereby acknowledges that it is the intent of the Developer to pledge and assign and to grant security interests in and to this Agreement and the amounts payable to Developer hereunder and Developer's right, title and interest in, to and under this Agreement as collateral for financing for the Project, although no obligation is hereby imposed on the Developer to make such assignment or pledge or to grant such security interests. Recognizing this intention, the City does hereby consent and agree to the grant of such security interests and to the pledge and assignment of all the Developer's right, title and interest in, to and under this Agreement and in and to the payments to be made to Developer hereunder, to third parties as collateral or security for indebtedness and other obligations or otherwise, on one or more occasions during the term hereof.

Section 7.2. <u>Pledge, Assignment or Security Interest</u>. The City hereby consents to the pledge, assignment or granting of a security interest by the Developer (or the pledge and assignment by any one Developer) of its right, title and interest in, to and under this Agreement. The City agrees to execute and

deliver any assignments, pledge agreements, consents or other confirmations required by the prospective secured party, pledgee or assignee, including without limitation, recognition of the secured party, pledgee or assignee as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder and any and all such other documentation as shall confirm to such secured party, pledgee or assignee the position of such secured party, assignee or pledgee and the irrevocable and binding nature of this Agreement and provide to the secured party, pledgee or assignee such rights and/or remedies as it may deem necessary for the establishing, perfection and protection of its interest herein.

Section 7.3. <u>Assignment</u>. Except as provided in this Article VII, the Developer shall not have the right to transfer and assign to any person or entity all or any portion of its rights in, to and under this Agreement; provided however, that any transfer of the real property within the District shall carry with it the benefit of this Agreement so long as (i) the rental units within the District remain affordable after such transfer; (ii) the prospective owner establishes to the reasonable satisfaction of the City that the financial benefits provided by this Agreement are still necessary to maintain the viability of the Project and (iii) the City Council approves the transfer.

ARTICLE VIII: MISCELLANEOUS

Section 8.1. <u>Successors</u>. The covenants, stipulations, promises and agreements set forth herein shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

Section 8.2. <u>Severability</u>. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 8.3. <u>No Personal Liability of Officials of the City</u>. No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his individual capacity and neither the members of the City Council of the City nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 8.4. <u>Counterparts</u>. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

Section 8.5. <u>Governing Law</u>. The laws of the State of Maine shall govern the construction and enforcement of this Agreement.

Section 8.6. <u>Notices</u>. All notices, certificates, requests, requisitions or other communications by the City or the Developer pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when hand delivered or mailed by first class mail, postage prepaid, addressed as follows:

If to the City: City Manager
       City Portland
       389 Congress Street
       Portland, Maine 04101

If to the Developer: Avesta Carleton LP

Any of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

Section 8.7. Amendments. This Agreement may be amended only with the concurring written consent of the parties hereto.

Section 8.8. Net Agreement. This Agreement shall be deemed and construed to be a "net agreement," and the City shall pay absolutely net during the term hereof all payments required hereunder, free of any deductions, and without any abatement, deductions or setoffs.

Section 8.9. Benefit of Assignees or Pledgees. The City agrees that this Agreement is executed in part to induce secured parties, assignees or pledgees to provide financing for the Project and accordingly all covenants and agreements on the part of the City as to the amounts payable hereunder are hereby declared to be for the benefit of any such secured parties, assignee or pledgee from time to time of the Developer's right, title and interest herein.

Section 8.10. MaineHousing Rules and Requirements. The Developer and the City shall comply with any rules adopted by the Maine State Housing Authority and with any conditions of approval imposed by the Maine State Housing Authority following designation of the District. The City shall report annually to the Director of the Maine State Housing Authority regarding the status of the District, including the following matters as required by law: (a) certify that the public purpose of the District is being met; (b) account for any sales of property within the District; and (c) certify that rental units within the District remain affordable. The parties shall comply with the rule provisions for recovery of public revenue if conditions for approval of the District are not maintained for the duration of the District, as provided by rules adopted by the Maine State Housing Authority in accordance with applicable law. The Developer agrees to provide all information as required by the City to satisfy its reporting obligations.

Section 8.11. Affordability Covenants. The Developer and the City shall, in order to assure the continued affordability of the rental units as required by the Development Program, Maine State Housing Authority and applicable laws, regulations and ordinances, execute a declaration which is substantially in the same form as the "Declaration of Covenants, Conditions and Restrictions which is attached to the Development Program as Exhibit I.

Section 8.12   Valuation Agreement. The Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates, estimated amounts of the Increased Assessed Value and the Tax Increment, estimated amounts of the Tax Increment Revenues (Developer's Share), estimated development costs and other estimates. The City and the Developer hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the Development Program shall in no way (a) prejudice the rights of any party to be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise with respect to Developer's property for purposes of ad valorem property taxation or any tax abatement proceeding or (b) modify or change in any way the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

Section 8.13. Integration. This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and the

Developer relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed in their respective names and their respective seals to be hereunto affixed and attested by the duly authorized officers, all as of the date first above written.

WITNESS   CITY OF PORTLAND

By: _____
            Jon Jennings, Its City Manager

AVESTA CARLETON LP

BY: Pinecone Housing Corporation, its
          General Partner

By: _____
            Dana Totman, Its President

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<div align="center">**Declaration of Covenants, Conditions and Restrictions**</div>

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is entered into by and between the City of Portland, a public body corporate and politic with its principal place of business at 389 Congress Street, Portland, Maine, 04101 ("City") and Avesta Carleton Street LP ("Developer") with a mailing address of 307 Cumberland Avenue, Portland, Maine 04101.

<div align="center">**W I T N E S S E T H**</div>

WHEREAS, the Developer acknowledges that City is providing Affordable Housing Tax Increment Financing to the Developer (the "AHTIF") for project operating costs associated with the development of a total of thirty-seven (37) units of affordable rental housing located at 17 Carleton Street (the "Development"); and

WHEREAS the Developer acknowledges City's resulting beneficial interest in the Development, and Developer acknowledges that its ownership and operation of the Development are in furtherance of discharge of the public trust; and

WHEREAS, City has provided the AHTIF to Developer in consideration of the Developer's agreement to abide by the provisions of this Declaration.

NOW THEREFORE, City and the Developer agree as follows:

1.   The covenants and restrictions of the Developer set forth herein are intended to be and shall be considered covenants which run with the real estate described in Exhibit A attached hereto and shall bind all subsequent owners of the real estate described in Exhibit A attached hereto, except to the extent provided herein.

2.   The covenants of the Developer set forth herein are enforceable by City as a contract beneficiary whether or not the Developer is or remains indebted to City under the AHTIF, except to the extent provided herein.

3.	The covenants of the Developer set forth herein shall survive a sale, transfer, or other disposition of the Development by the Developer, foreclosure or transfer of title in lieu of foreclosure, , except to the extent provided herein, but shall cease to apply to the Development in the event of involuntary noncompliance caused by fire or other substantial destruction, seizure, requisition or other event that prevents City from enforcing the Developer's covenants contained herein.

4.	The term "Qualified Project Period" as used herein shall mean the period beginning on the date of completion of the construction of the Development, as determined by City, and terminating on a date twenty-two (22) calendar years thereafter, except for the shorter period provided in subsection (f) below, for a portion of the Development.

5.	The Developer agrees to comply with this Declaration throughout the Qualified Project Period.

6.	The Developer hereby covenants and represents to City as follows:

a.	The Development shall be located on the real estate described in Exhibit A attached hereto and shall consist of the facilities described in Developer's application to City.

b.	The Development shall consist of the land described in Exhibit A together with a building or a portion of a building or structure or several proximate and interrelated buildings or structures and facilities functionally related and subordinated thereto:

i.	each containing one or more similarly constructed units and facilities which are functionally related and subordinate to such units; and

ii.	all of the thirty-seven residential units of which will, on a continuous basis, be rented or available on a non-transient basis for rental to members of the general public.

c.	The total housing costs including rent and utilities of tenants occupying the rent restricted units in Development as of the date of this Declaration may not increase for twelve months beginning on the date of this Declaration.

d.	The Developer shall maintain all of the units included in the Development rented or available for rental on a continuous basis to members of the general public throughout the Qualified Project Period.

e.	The Developer acknowledges and represents to City that the Development consists of thirty-seven (37) residential rental units. Throughout the Qualified Project Period, the thirty-seven (37) residential units in the

Development must be occupied by individuals or families with the following income requirements:

5   units occupied by households at or below 40% of area median income

18   units occupied by households at or below 50% of area median income

14   units occupied by households at or below 60% of area median income

In its operation of the Project, Grantor agrees to comply with all applicable federal, state and local laws and regulations.

     i.   Income and area median income shall be as determined by the United States Department of Housing and Urban Development and income limits shall be adjusted for family size.

     ii.   At least annually, City shall determine whether the income, based on the current income, of the tenants residing in the Development exceeds the applicable income limits as described in this Section 6 (the "Determination"). The Developer shall furnish to City such information as City shall require, including certification of occupancy and tenant income, in order to assure that the covenants set forth herein are being fully satisfied. Income certifications and related information submitted to and accepted by Maine State Housing Authority shall be acceptable to the City for purposes of this subsection.

     iii.   A unit occupied by a tenant who, at the commencement of occupancy, met the applicable income limitations shall continue to be treated as occupied by a qualified tenant even though the tenant's income may exceed the applicable income limitations at the time of the most recent Determination.

     iv.   After initial occupancy but upon again becoming vacant, a unit shall be treated as occupied by an individual or family meeting the applicable income limitations until occupied, at which time the character of the unit shall be redetermined in light of the new occupants income, other than occupancy by another tenant for a temporary period not to exceed thirty-one (31) days.

f.   Developer shall not make any change in the nature, size, number or location of the units in the Development or the amount of commercial or non-residential space.

7.   Developer agrees to furnish to City such information as City may require in form acceptable to City, including without limitation certifications and/or verification of occupancy and tenant income certifications (subject to Section 6(e)(ii) above), to determine Developer's compliance with the covenants set forth herein.

8.   Developer shall maintain and keep current all books, documents, plans and records concerning the Development, including, but not limited to, books and records related to compliance with the covenants contained in this Declaration. Such books, records, documents and plans shall be kept for: (a) a minimum of six (6) years after the expiration of the Qualified Project Period for those books, records, documents and plans pertaining to the rent and occupancy requirements described in Section 6 of this Declaration and the rent roll for all units in the Development; and (b) for a minimum of six (6) years after the end of the fiscal year or calendar year, as applicable, for all other books, records, documents and plans pertaining to the Development. Upon reasonable notice, City may audit and examine these books, records, documents and plans, and may inspect the buildings, grounds, equipment offices of the Development.

9.   Developer shall use tenant lease forms acceptable to City, or, if there are no written leases, written and signed certifications by tenants to determine whether tenants meet the applicable income limits. Such leases or certifications shall contain clauses wherein each tenant certifies as to the accuracy of statements made relating to income and agrees that family income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy, that the tenant will comply with all requests for information with respect thereto from the Developer or City, and that failure to provide accurate information or refusal to comply with a request for information shall be deemed a violation of the tenancy. Lease forms which have been approved by Maine State Housing Authority shall be deemed approved by City.

10.   Developer agrees that it shall pay real estate taxes, as assessed by City, on Development. In the event that ownership of the Development or a portion thereof becomes tax exempt, either by transfer, conversion or otherwise, an amount shall be paid annually to City, equal to the amount that would have been assessed as real estate taxes had the Development or a portion thereof remained taxable. Developer shall notify any party to whom it transfers any of its interest in the Development of this requirement.

11.   Developer covenants and agrees to take such action as City deems necessary to comply with the covenants herein or to correct or cure any failure of the Developer to comply with the covenants herein, including, without limitation, the eviction of any tenant in accordance with applicable law. The Developer shall immediately notify City if the Developer anticipates that occupancy may fall below the limits set forth in Section 6(e) of this Declaration and agrees to take such action as City deems necessary to prevent non-compliance with such paragraph.

12.   In the event the Developer fails to comply with the covenants set forth herein, and fails to cure such non-compliance within any applicable cure period, City shall be able to exercise any of its rights under the documents executed in connection with the AHTIF, maintain an action in law or in equity against the Developer to recover damages incurred by City from such failure, and to require the Developer (through injunctive relief or specific performance) to

comply with the provisions and covenants set forth herein and to immediately cure any failure to comply with the covenants set forth herein by the Developer.

13.   Developer shall indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to attorney's fees and other costs of litigation) which may be incurred by City arising out of or in any way related to the Developer's breach of any of its obligations under this Declaration as a result of such breach. The obligations survive the termination or expiration of this Declaration as necessary to effect its provisions.

14.   This Declaration may be amended or modified in whole or in part only by written agreement of Developer and City clearly expressing the intent to modify this Declaration.

15.   The validity of any clause, part or provision of this Declaration shall not effect the validity of the remaining portions of thereof.

16.   This Declaration shall be binding upon Developer's respective heirs, personal representatives, executors, administrators, successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns.

17.   This Declaration is created pursuant to, and shall be construed in accordance with and governed by the laws of the State of Maine, including but not limited to 33 M.R.S.A. § 121 et. seq.

IN WITNESS WHEREOF, this Declaration has been duly executed by the Developer and City effective _____, 2015.

CITY OF PORTLAND

Witness _____   _____

Jon Jennings
Its City Manager

AVESTA Carleton LP

BY: Pinecone Housing Corporation

Its General Partner

_____   _____
                                         By: Dana Totman
                                         Its: President

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STATE OF MAINE
COUNTY OF CUMBERLAND, ss.   _____, 2015

     Personally appeared the above named Jon Jennings, City Manager to the City of Portland, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland.

Before me,

_____
Notary Public/Attorney-at-Law

_____
(Print or type name)

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.   _____, 2015

       Personally appeared the above named <u>Dana Totman, President </u>of Pinecone Housing Corporation, General Partner of Avesta Carleton L.P., a Maine limited partnership, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said limited partnership and corporation.

                     Before me,

                     _____

                     Notary Public/Attorney-at-Law

                     _____

                     (Print or type name)

Exhibit A

Property Description
17 Carleton Street, Portland, Maine

AH TIF for 17 Carleton Street
OAV a/o 3/31/2015: $261,600

							Captured	Captured	
							Revenue to	Revenue to	City Non-
		Increased			Total Projected	Business	Municipal	Captured
	Tax Year-	Assessed Value	% of Value	Captured	Projected	New Taxes	Project	Project	General Fund
TIF Year	April 1	Real Prop.	Captured	Valuation	Mill Rate	Captured	Account	Account	Revenues
1	2015	$138,340	0.00%	$0	19.80	$0	$0	$0	$2,739
2	2016	$538,340	0.00%	$0	20.19	$0	$0	$0	$10,871
3	2017	$2,238,340	65.00%	$1,454,921	20.60	$29,969	$29,969	$0	$16,137
4	2018	$2,238,340	65.00%	$1,454,921	21.01	$30,568	$30,568	$0	$16,460
5	2019	$2,238,340	65.00%	$1,454,921	21.43	$31,179	$31,179	$0	$16,789
6	2020	$2,238,340	65.00%	$1,454,921	21.86	$31,803	$31,803	$0	$17,125
7	2021	$2,238,340	65.00%	$1,454,921	22.30	$32,439	$32,439	$0	$17,467
8	2022	$2,238,340	65.00%	$1,454,921	22.74	$33,088	$33,088	$0	$17,816
9	2023	$2,238,340	65.00%	$1,454,921	23.20	$33,749	$33,749	$0	$18,173
10	2024	$2,238,340	65.00%	$1,454,921	23.66	$34,424	$34,424	$0	$18,536
11	2025	$2,238,340	65.00%	$1,454,921	24.13	$35,113	$35,113	$0	$18,907
12	2026	$2,238,340	65.00%	$1,454,921	24.62	$35,815	$35,815	$0	$19,285
13	2027	$2,238,340	65.00%	$1,454,921	25.11	$36,531	$36,531	$0	$19,671
14	2028	$2,238,340	65.00%	$1,454,921	25.61	$37,262	$37,262	$0	$20,064
15	2029	$2,238,340	65.00%	$1,454,921	26.12	$38,007	$38,007	$0	$20,465
16	2030	$2,238,340	65.00%	$1,454,921	26.65	$38,767	$38,767	$0	$20,875
17	2031	$2,238,340	65.00%	$1,454,921	27.18	$39,543	$39,543	$0	$21,292
18	2032	$2,238,340	65.00%	$1,454,921	27.72	$40,334	$40,334	$0	$21,718
19	2033	$2,238,340	65.00%	$1,454,921	28.28	$41,140	$41,140	$0	$22,153
20	2034	$2,238,340	65.00%	$1,454,921	28.84	$41,963	$41,963	$0	$22,596
21	2035	$2,238,340	65.00%	$1,454,921	29.42	$42,802	$42,802	$0	$23,047
22	2036	$2,238,340	65.00%	$1,454,921	30.01	$43,658	$43,658	$0	$23,508
22 Year TIF Total		$45,443,480		$29,098,420		$728,156	$728,156	$0	$405,694

City of Portland- TIF Projection Table for 17 Carleton St AHTIF

Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland- TIF Model for 17 Carleton Street AH TIF

0% Sheltered - Years 1 and 2 with 100% to City General Fund; 65% to Developer Project Account Years 3 to 22, and 35% to City General Fund Years 3 to 22

TIF Year	Tax Year- April 1	Total Added Valuation	Sheltered Valuation	Avoided Formula Impacts from Sheltering of Valuation			
				Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
1	2015	$138,340	$0	$0	$0	$0	$0
2	2016	$538,340	$0	$0	$0	$0	$0
3	2017	$2,238,340	$1,454,921	$0	$948	$770	$1,718
4	2018	$2,238,340	$1,454,921	$3,928	$948	$770	$5,646
5	2019	$2,238,340	$1,454,921	$7,857	$948	$770	$9,574
6	2020	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
7	2021	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
8	2022	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
9	2023	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
10	2024	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
11	2025	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
12	2026	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
13	2027	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
14	2028	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
15	2029	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
16	2030	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
17	2031	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
18	2032	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
19	2033	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
20	2034	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
21	2035	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
22	2036	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
22 Year TIF Total		$45,443,480	$29,098,420	$212,127	$18,953	$15,403	$246,484

53
29
41 - 55
40 - 54
36 - 72
33 - 69
21 - 39
20 - 38
WEST ST
5 - 17
6 - 14
Andrews' Square
30
71 - 85
72 -
34
20
54
50
46
40
77
28
PINE ST
103
101
99
22
82
97
84
95
NEAL ST
87
93
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82 - 112
81 - 111
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105
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2 - 34
1 - 31
143
107
137
129
119
117
ALLEY
103 - 113
104 - 114
99 - 101
100 - 102
87 - 97
88 - 98
133
EMERY ST
106
127 - 143
128 - 144
119 - 125
120 - 126
130
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116 114
128
-138
-139
127
144 142 140 138
130
126
124 122
33
CARLETON ST
OMAS ST
0 - 0
-80
-79