SUBORDINATION, ATTORNMENT AND RECOGNITION AGREEMENT

This Subordination, Attornment and Recognition Agreement (the "Agreement") is entered into as of this ___ day of _____, 2019 by and among **Avesta Westbrook Street One LP**, a Maine limited partnership with a place of business at and a mailing address of c/o Pinecone Housing Corporation, 307 Cumberland Avenue, Portland, Maine 04101, Attention: Dana Totman, President ("Landlord"), **Maine State Housing Authority**, a public body corporate and politic and an instrumentality of the State of Maine with a place of business at and a mailing address of 353 Water Street, Augusta, Maine 04330 ("MaineHousing"), and the **City of South Portland**, a Maine body corporate and politic with a place of business at and a mailing address of 25 Cottage Road, South Portland, Maine 04106 ("Tenant").

W I T N E S S E T H

WHEREAS, Landlord owns a 64-unit residential rental project in Unit 1 in the West End Apartments Condominium, as described in the Declaration of Condominium of West End Apartments Condominium dated and recorded in the Cumberland County Registry of Deeds on even or near date herewith located at 586 Westbrook Street, South Portland, Cumberland County, Maine with approximately 675 square feet of commercial space on the first floor of the Unit (the "Commercial Space"), Landlord's property being more particularly described in **Exhibit A** attached hereto and made a part hereof (such real estate together with all improvements and fixtures located thereon hereinafter referred to as the "Project"); and

WHEREAS, MaineHousing made loans to Landlord for the acquisition and construction of the Project, which loans are secured by mortgages and security interests covering the Project, including an assignment of all residential and commercial leases at the Project; and

WHEREAS, Landlord and Tenant have this date entered into a Lease Agreement under which Tenant is leasing from Landlord the Commercial Space (the "Lease"), which is depicted on **Exhibit B** attached hereto and made a part hereof (the "Leased Premises"); and

WHEREAS, Landlord and Tenant have agreed to enter into this Agreement in exchange for recognition of the Lease by MaineHousing.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Status of Lease.** Landlord and Tenant represent to MaineHousing that the following statements are true as of the date of this Agreement.

a. The Lease constitutes the complete and entire agreement between Landlord and Tenant with respect to the Leased Premises.

b. Tenant does not have an option to purchase or any other purchase rights with respect to the Leased Premises, or any portion thereof.

2. **Subordination.** Landlord and Tenant hereby subordinate the Lease to (a) a Mortgage, Security Agreement, Assignment of Leases and Rents, and Financing Statement in the original principal amount of $750,000, a Mortgage, Security Agreement, Assignment of Leases and Rents, and Financing Statement in the original principal amount of $250,000, and a Mortgage, Security Agreement, Assignment of Leases and Rents, and Financing Statement in the original principal amount of $1,372,325, each given by Landlord to MaineHousing and dated of even or near date herewith and recorded or to be recorded in the Cumberland County Registry of Deeds, including all amendments, modifications, or replacements thereof (collectively, the "Mortgages"), and (b) certain restrictive covenants on the Project, including an Extended Low-Income Housing Commitment Agreement, a Rental Loan Program Declaration of Covenants, Conditions and Restrictions, and a HOME Declaration of Covenants, Conditions and Restrictions, each entered into by and between Landlord and MaineHousing and dated of even or near date herewith and recorded or to be recorded in said Registry of Deeds, including all amendments, modifications, and replacements thereof (collectively, the "Restrictive Covenants"), as if the Mortgages and the Restrictive Covenants had been executed, acknowledged, delivered and recorded prior to and without knowledge of the Lease. Landlord and Tenant expressly recognize that the Mortgages and the Restrictive Covenants are encumbrances on the Project with priority over the Lease.

3. **Attornment.** Tenant agrees that upon written notice from MaineHousing, Tenant will attorn to and recognize MaineHousing and its successors and assigns, including a receiver or a purchaser at a mortgage foreclosure sale or grantee of a deed identified as a deed in lieu of foreclosure (together with MaineHousing, collectively referred to herein as "Mortgagee"), as its landlord under the Lease for the remaining term of the Lease (including all extension and renewal periods which are hereafter exercised) upon the same terms and conditions as are set forth in the Lease (as may be amended from time to time), and Tenant hereby agrees to pay and perform all of the obligations of Tenant pursuant to the Lease.

Tenant agrees that, in the event any such Mortgagee succeeds to the interest of Landlord under the Lease, Mortgagee (a) shall not be liable for any act or omission of any prior landlord (including Landlord); (b) shall not be liable for the return of any security deposit; (c) shall not be bound by any rent or additional rent which Tenant might have prepaid for

more than the current month under the Lease except as expressly permitted by the Lease; (d) shall not be bound by any amendments or modifications of the Lease made without the prior written consent of Mortgagee; and (e) shall not be subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord).

4. **Recognition.** In the event any Mortgagee takes possession of, or acquires title to, the Project pursuant to the Mortgages through a foreclosure of the Mortgages or by exercising any of the other rights and remedies under the Mortgages, either directly or through a receiver or agent, Mortgagee shall not disturb Tenant's right of possession of the Leased Premises under the terms of the Lease so long as Tenant is not then in default of any term, covenant or condition of the Lease and Tenant continues to promptly pay and perform its obligations under the Lease.

5. **Default.** Tenant and Landlord agree to give Mortgagee a copy of any notice of default under the Lease served upon either party at the same time as such notice is given to either party. Tenant and Landlord further agree that if such default shall not be cured within any applicable cure period provided in the Lease, or if no cure period is therein provided, then Mortgagee shall have an additional thirty (30) days within which to cure such default or, if such default cannot be cured within such thirty (30) day period, Mortgagee shall have a reasonable period in which to cure such default provided Mortgagee has commenced and is diligently pursuing the remedies necessary to cure such default, and in any such event the Lease shall not be terminated while such remedies are being diligently pursued.

6. **Application of Proceeds/Awards**. Tenant agrees that, notwithstanding any provision of the Lease to the contrary, the terms of the Mortgages shall continue to govern with respect to the disposition of any insurance proceeds or eminent domain awards, and any obligation of Landlord to restore the Leased Premises shall be limited to insurance proceeds or eminent domain awards received by Landlord, less all costs and expenses incurred in obtaining such proceeds or awards and all amounts necessary to restore the use, occupancy and operation of the 64 residential rental units and associated facilities at the Project.

7. **Modification or Termination of Lease; Prepayment of Rent.** Tenant and Landlord agree that the Lease shall not be amended or modified in any manner without the prior written consent of MaineHousing. Tenant and Landlord agree to notify MaineHousing promptly of any cancellation or termination of the Lease prior to the scheduled expiration thereof. Tenant agrees not to prepay the rent more than thirty (30) days in advance, except as otherwise expressly permitted by the Lease.

8. **Assignment of Lease; Transfer or Sublease of Leased Premises.** Landlord and Tenant shall not by operation of law or otherwise, assign, mortgage or encumber their respective interests in or under the Lease or the Leased Premises, or sublet or permit the Leased Premises or any part thereof to be used by others, without the prior express written consent MaineHousing. Maine Housing hereby consents to the sublease of the Leased Premises by Tenant to The Opportunity Alliance pursuant to a Sublease Agreement of even or near date herewith, provided that Tenant shall remain directly and primarily liable to Landlord under the Lease and this Agreement and to MaineHousing under this Agreement notwithstanding such sublease.

9. **Mortgagee Liability.** Landlord and Tenant agree that the Landlord is solely responsible for the performance of the obligations, duties and liabilities of Landlord under the Lease. Mortgagee shall not be obligated to perform or discharge any of the obligations, duties or liabilities of Landlord under the Lease unless and until Mortgagee shall specifically assume the same in writing by instrument duly recorded in the appropriate Registry of Deeds. Any sale or transfer of Mortgagee's interest in the Project by foreclosure of the Mortgages, assignment or otherwise shall release Mortgagee from any and all liability under the Lease, provided however that the assignee shall assume and agree in writing to perform Landlord's obligations under the Lease arising thereafter.

10. **Authority.** Tenant and Landlord represent and warrant that (a) they are duly organized and validly existing under the laws of the State of Maine, with all power, authority and legal right to perform the obligations set forth in this Agreement; (b) they are duly authorized to execute and deliver this Agreement and to perform their obligations set forth herein; and (c) their respective undersigned representatives are duly authorized to execute and deliver this Agreement on their behalf and to bind them to the terms and conditions of this Agreement.

11. **Notices.** Any notice required or provided for in this Agreement must be in writing and will be deemed to have been sufficiently given for all purposes when given by (a) hand delivery, (b) overnight United States mail or recognized overnight commercial courier or delivery service, (c) certified mail, return receipt requested, or (d) registered mail to the parties at their respective addresses set forth opposite their names below, or at such other address as any of them may from time to time hereafter designate by notice given to the other as herein provided. Any such notice or communication will be deemed received two (2) business days after said notice is deposited in the United States mail or with a commercial courier or delivery service as aforesaid, and in the case of hand delivery, upon acceptance at the physical address of the addressee.

To Mortgagee: Attn: Legal Services Department
Maine State Housing Authority
353 Water Street
Augusta, Maine 04330-4633

To Landlord: Avesta Westbrook Street One LP
c/o Pinecone Housing Corporation
307 Cumberland Avenue
Portland, Maine 04101
Attention: Dana Totman, President

with a copy to

Amy Devin, Esq.
Curtis Thaxter
One Canal Plaza, Suite 1000
Portland, Maine 04101

To Tenant: City of South Portland
25 Cottage Road
South Portland, Maine 04106
Attn: _____

with a copy to

_____
_____
_____

MaineHousing shall endeavor to provide a copy of any notice to Landlord or Tenant hereunder simultaneously to Boston Capital Corporate Tax Credit Fund XLVII, A Limited Partnership, c/o Boston Capital Partners, Inc., One Boston Place, Boston, Massachusetts 02108, or such other address as may be designated by notice to MaineHousing as provided herein.

12. **Successors and Assigns.** This Agreement shall be binding upon the parties hereto and their respective heirs, successors, transferees and assigns.

13. **Modification.** This Agreement may not be modified in any manner other than by an agreement in writing signed by all of the parties hereto clearly expressing the intent to modify this Agreement.

14. **Severability**. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

15. **Governing Law**. This Agreement shall be construed in accordance with and governed by the laws of the State of Maine.

IN WITNESS WHEREOF, this Agreement is executed by duly authorized representatives of Tenant, Landlord and MaineHousing as of the date first set forth above.

LANDLORD:

AVESTA WESTBROOK STREET ONE LP

By: Pinecone Housing Corporation
Its General Partner

_____
Witness

By: _____
Dana Totman
Its President

STATE OF MAINE
COUNTY OF CUMBERLAND

Date: _____, 2019

Personally appeared the above-named Dana Totman, President of Pinecone Housing Corporation, General Partner of Avesta Westbrook Street One LP, and acknowledged the foregoing to be his free act and deed in his said capacity, the free act and deed of Pinecone Housing Corporation, in its said capacity, and the free act and deed of Avesta Westbrook Street One LP.

_____
Name:
Notary Public/Maine Attorney-at-Law

[Signatures continue on next page]

TENANT:

CITY OF SOUTH PORTLAND

_____
Witness

By: _____
Scott Morellli
Its City Manager

STATE OF MAINE
COUNTY OF CUMBERLAND

Date: _____, 2019

Personally appeared the above-named Scott Morelli, City Manager of City of South Portland (Tenant) and acknowledged before me the foregoing to be his/her free act and deed in his/her said capacity and the free act and deed of City of South Portland.

_____
Name:
Notary Public/Maine Attorney-at-Law

[Signatures continue on next page]

MAINE STATE HOUSING AUTHORITY

_____ By: _____

Witness Christopher DeMerchant
Its Multifamily Underwriter

STATE OF MAINE
COUNTY OF CUMBERLAND Date: _____, 2019

Personally appeared the above-named Christopher DeMerchant, Multifamily Underwriter of Maine State Housing Authority, and acknowledged before me the foregoing to be his free act and deed in his said capacity and the free act and deed of Maine State Housing Authority.

_____
Name:
Notary Public/Maine Attorney-at-Law

EXHIBIT A
Legal Description of Landlord's Property

EXHIBIT B
Leased Premises