

EXHIBIT 11

**CONTRACT ZONING AGREEMENT
BETWEEN THE TOWN OF SCARBOROUGH AND
AVESTA HOUSING DEVELOPMENT CORPORATION**

This Contract Zoning Agreement made as of the _____ day of _____, 2015, by and between the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter the “Town”), and AVESTA HOUSING DEVELOPMENT CORPORATION, a Maine nonprofit corporation, with an address of 307 Cumberland Avenue, Portland, Maine 04101 (together with its successors and assigns, including subsequent record owners of the property described in this Agreement, hereinafter “Avesta”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Scarborough Zoning Ordinance:

WHEREAS, Avesta intends to purchase a parcel of real estate located at 577 U.S. Route One, Scarborough, Maine, consisting of approximately 3.05 acres with the buildings and improvements thereon, being Parcel 37 on the Town’s Tax Map U034 (hereinafter the “Property”); and

WHEREAS, the Property is currently in the Town and Village Centers Fringe (TVC3) District and a portion of the Property is also subject to the Shoreland Overlay District provisions of the Shoreland Zoning Ordinance; and

WHEREAS, the TVC3 District presently allows, as a permitted use, multifamily dwellings limited to no more than twelve (12) units per building, so long as such building is serviced by public sewer, and accessory units subject to certain performance standards, but not multifamily dwellings containing a greater number of units per building; and

WHEREAS, Avesta wishes to develop the Property as an affordable rental housing complex consisting of the existing 7-unit historic building that will be renovated to include 8 units, a to-be-constructed 42-unit building, an existing barn that will be renovated and may include community space for occupants, and a second existing barn that may be preserved due to its historic value (the “Project”). The new 42-unit building will exceed the maximum number of units per building currently permitted in the TVC3 Zone; and

WHEREAS, Avesta demonstrates that the proposed use can be carried on with fewer parking spaces than required by the off-street parking regulations in Section XI of the Zoning Ordinance; and

WHEREAS, the maximum density within the TVC3 Zone for multi-family dwellings is 5 dwelling units per acre of net lot area, and the Project will exceed this maximum density; and

WHEREAS, the Project would qualify for Additional Residential Density Thru Affordable Housing pursuant to Section XVIII.D(E)(3) of the Scarborough Zoning Ordinance, the Project as proposed would still exceed the maximum density; and

WHEREAS, the Property contains an existing multi-family building and a barn that will be rehabilitated in a good and worker-like manner; and

WHEREAS, the Planning Board, pursuant to Section II(I)(4), of the Zoning Ordinance and 30-A M.R.S.A. §4352(8), and after notice and hearing and due deliberation thereon, recommended the rezoning of the Property as aforesaid; and

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WHEREAS, the Project will serve the Town's objective of encouraging affordable housing both generally and through density bonus provisions within the Town's residential areas and districts (Chapter 5, Objective A.4.a. of the Comprehensive Plan) by constructing an affordable housing opportunity within a growth area; and

WHEREAS, the Project serves the goals of Chapter 5 (Objective A.2.) of the Comprehensive Plan by using public sewer and water facilities; and

WHEREAS, the Project fulfills the goals of Chapter 5 (Objective A.4.b.) of the Comprehensive Plan encouraging a choice of housing for residents of all ages and incomes by providing affordable housing within a growth area;

WHEREAS, the Project helps to achieve the objectives of Chapter 5 (Objective H.2), in which the Town endeavors to assure that at least ten percent of new housing units created in Scarborough are affordable; and

WHEREAS, the rezoning provided in this Agreement, therefore, would be consistent with the Policies and Future Land Use Plan of Part B of the Scarborough Comprehensive Plan; and

WHEREAS, the Town of Scarborough, by and through its Town Council, therefore, has determined that the said rezoning would be pursuant to and consistent with the Town's local growth program and Comprehensive Plan adopted pursuant to Title 30-A, Maine Revised Statutes, Chapter 187, Subchapter 2, and consistent with the existing and permitted uses within the original zoning district classification and has authorized the execution of this Contract Zoning Agreement.

NOW, THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. The Town hereby amends the Zoning Map of the Town of Scarborough, by adopting the map change amendment shown on Attachment 1.

2. Avesta is authorized to create the Project, including the renovation of the existing 7-unit building such that it includes 8 units, construction of a new 42-unit building, renovation of an existing barn to provide community space for Project occupants, and preservation of a second barn on the Property. Construction and use of the Project shall be subject to the following conditions:

- (a) Building Height: The maximum building height for the new 42 unit building shall be four (4) stories and as shown on the Site Plan approved by the Town of Scarborough Planning Board. The new 42 unit building shall be a maximum height of approximately 45 feet. The final building height for the Project shall be approved by the Planning Board as part of site plan and subdivision approval.
- (b) Permitted Uses: The uses allowed or permitted on the Property shall be limited to (i) an affordable housing complex with one 8-unit building and one 42-unit building, (ii) a separate building for community space, for use by Project occupants, and (iii) accessory uses. Avesta also may either (a) retain and maintain the existing barn on the Property furthest from Route 1 which will not be converted into community recreation and/or meeting space, the use of which will be consistent with, and incidental to the affordable housing use, such as equipment storage, security or maintenance, office and staff accommodations, or merely historic preservation; or (b) remove and/or demolish said barn, provided that such removal or demolition shall be approved by the Planning Board prior to any such action.

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- (c) Building Design: Project design, style and materials shall be substantially as depicted on the building elevations submitted during site plan and subdivision review, with any changes thereto as approved by the Planning Board.
- (d) Landscaping: The Property shall be landscaped to enhance the general appearance of the project from surrounding properties as determined by the Planning Board at the time of site plan and subdivision approval. The landscaping shall be maintained by Avesta or its successors or its successors in interest. After the date of approval of this Contract Zoning Agreement, there shall be no significant amount of removal of existing trees or other vegetation except as indicated on an approved Site Plan.
- (e) Density: The maximum net residential density shall be fifty (50) dwelling units, including the renovation of the existing building such that it includes eight (8) units and the construction of a new 42 unit building.
- (f) Residents: The Project shall be “Affordable Housing” as defined on the zoning Ordinance, and occupancy of the Project shall be limited to individuals or families with an income that is less than or equal to Eighty Percent (80%) of area median income as more particularly defined in Article VI of the Zoning Ordinance.
- (g) Sewer and Water: The facility will be served by both public water and public sewer.
- (h) Setbacks: The front yard shall be a minimum of 25 feet, and side and rear yards shall be a minimum of 15 feet, excluding accessory buildings and excluding the existing location of a barn within 15 feet from the sideline of the Property. The existing, nonconforming setback of the barn will be maintained. Additionally, the maximum front yard shall be increased to allow for the removal of an existing porch. All of the setbacks and building locations shall be as shown on the Site/Subdivision Plan, approved by the Planning Board.
- (i) Parking: The Project shall provide a minimum of fifty five (55) off-street parking spaces. The dimensions and arrangement of the parking spaces shall be as generally shown on the Site/Subdivision Plan, approved by the Planning Board.
- (j) Site/Subdivision Plan: The property subject to this Contract Zoning Agreement shall be developed and used only in accordance with the preliminary site and subdivision plan approved by the Scarborough Planning Board on June 22, 2015, as that site plan may be amended from time to time pursuant to the provisions of the Scarborough Site Plan Ordinance. Any amendment which involves the following changes will require an amendment to this Contract Zoning Agreement:
 - (a) any change to the use of the Property; and
 - (b) any increase in the number of units.

3. Avesta shall record this Contract Zoning Agreement in the Cumberland County Registry of Deeds within 30 days after its execution by the Town Council.

4. The provisions of this Contract Zoning Agreement shall be deemed restrictions on the use of the Property except as this Contract Zoning Agreement may be amended by future written agreement with the Town of Scarborough and Avesta or its successors in interest. This Agreement shall be binding upon subsequent record owners of the Property.

The provisions of this Contract Zoning shall operate as an “overlay” zone and except as otherwise set forth in the aforesaid conditions, all other requirements of the underlying Zoning District shall apply

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(other than the maximum net residential density, use, height, setbacks and parking). The restrictions, provisions and conditions of this Agreement are an essential part of the rezoning, shall run with the Property, shall bind Avesta, its successors in interests and assigns of said Property or any part thereof, and shall inure to the benefit of and be enforceable by the Town of Scarborough.

Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Zoning Ordinance of the Town of Scarborough (as applicable) and any applicable amendments thereto or replacement thereof.

The Town shall have the power to enforce all conditions and restrictions of this Agreement, both through enforcement action pursuant to Section IV of the Scarborough Zoning Ordinance and through legal action for specific performance of this Agreement. In the event that Avesta, or its successors, or assigns, fail to develop the project in accordance with this Contract, or in the event of any other breach hereof, and such failure or breach continues for a period of thirty (30) days after written notice of such failure or breach cannot reasonably be remedied or cured within such thirty (30) day period, if Avesta, its successors or assigns, fails to commence to cure or remedy such failure or breach within said thirty (30) day period and thereafter fails to diligently prosecute such cure or remedy to completion in a reasonable time, then this Contract may be terminated by vote of the Scarborough Town Council. In that event, the Property may then be used only for such uses as otherwise allowed by law.

WITNESS:

TOWN OF SCARBOROUGH
By: _____
Thomas Hall, its Town Manager
duly authorized by vote of the
Scarborough Town Council on
_____, 2015

WITNESS:
CORPORATION

AVESTA HOUSING DEVELOPMENT
By: _____
Dana Totman, its President

STATE OF MAINE
CUMBERLAND, SS

_____, 2015

PERSONALLY APPEARED the above named Thomas Hall, Town Manager of the Town of Scarborough as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Town of Scarborough.

Before me,

Notary Public/Attorney at Law

Print name:
My commission expires:

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STATE OF MAINE
CUMBERLAND, SS

_____, 2015

PERSONALLY APPEARED the above named Dana Totman, President of Avesta Housing Development Corporation as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said nonprofit corporation.

Before me,

Notary Public/Attorney at Law

Print name:

My commission expires:

Attachment 1
Zoning Map Amendment

