

EXCHANGE/SWAP AGREEMENT

between

**500 WASHINGTON ROAD, LLC**

&

**TOWN OF RYE, NEW HAMPSHIRE**

**CONTRACT FOR PROPERTY EXCHANGE/SWAP**

**THIS CONTRACT FOR THE EXCHANGE AND SWAP** (this "Contract") is made and entered into by and between 500 WASHINGTON ROAD, LLC, a duly organized and existing New Hampshire limited liability company with a mailing address 1393 Ocean Boulevard, Rye, NH 03870 ("500"), and, the **TOWN OF RYE, NEW HAMPSHIRE**, a duly organized and existing New Hampshire Municipality, with a place of business at 10 Central Road, Rye, NH 03870 ("Rye"), acting through its Board of Selectmen, (500 and Rye collectively referred to herein as the "Parties").

**FOR AND IN CONSIDERATION** of Ten Dollars (\$10.00), the mutual agreements herein contained and other good and valuable considerations the receipt and sufficiency of which are hereby acknowledged by the Parties, 500 and Rye hereby covenant and agree as follows:

**TERMS AND CONDITIONS**

**1. Agreement to Exchange/Swap**

The Parties agree to exchange and swap the following properties:

- i. The property to be conveyed by 500 to Rye is that certain real property located at 500 Washington Road, in Town of Rye, Rockingham County, State of New Hampshire being designated as Rye Tax Maps Parcel ID #016-201, together with all rights, easements and interests appurtenant thereto, as more particularly described in the deed to 500 (the "500 Property") together with all buildings, structures and other improvements located thereon, if any (together with the Land, the "500 Property"), free and clear of all contents as of the date of closing.
- ii. The property to be conveyed to 500 by Rye is that certain real property located at 575 Washington Road, in the Town of Rye, Rockingham County, State of New Hampshire being designated as Rye Tax Maps Parcel ID # 012-043, together with all rights, easements and interests appurtenant thereto (the "Rye Property") together with all buildings, structures and other improvements

located thereon, if any (together with land to be subdivided pursuant to this Contract the "Rye Property"), free and clear of all contents as of the date of closing.

**2. Consideration:**

The Parties agree that the consideration for this Contract and Transaction shall be the agreement of each Party to convey the properties to the other Party at equal value, the receipt and adequacy of which is hereby acknowledged by each Party; and, the lack of consideration for this Contract shall not be challenged by either Party.

**3. Title Matters**

The Parties agree that each conveyance shall be made free and clear of all encumbrances with clear title.

**4. Conditions Precedent**

Each Party shall have until 5:00 PM, local time in the County, on the 14<sup>th</sup> calendar day after the Effective Date (the " Inspection Period") in which to undertake its title review and arrange for an appraisal and insurance agent inspection.

Notwithstanding the foregoing, the Parties hereby acknowledge that except in relation to Article 3 and the condition of title and the following two paragraphs, Parties shall have no right to terminate this Contract on the basis of the results of the appraisal or insurance inspection and the Parties specifically waive any rights to conduct further investigation or inspections as to the physical condition of the Properties, matters of zoning and all other matters with respect to the Properties.

The Parties acknowledge that Rye will obtain an appraisal of each property involved in this Contract.

This Contract is conditioned upon approval of the March 12, 2020 Annual Rye Town Meeting. If such approval is not voted, this Contract is null and void.

**5. Closing**

**5.1 Scheduled Closing Date**

The closing of this Contract shall take place on or before the 30<sup>th</sup> day after The Housing Partnership turns the Rye property over to the Town, but in no case earlier than the 30<sup>th</sup> day after the Warrant Article approving this Contract has been approved by the voters of the Town Said closing shall take place at a time and place mutually agreeable to the parties. Rye agrees not to extend the present lease with The Housing Partnership beyond its May 31, 2020 termination date.

## 5.2 Time of the Essence

Time is of the essence with respect to each provision of this Contract which requires that action be taken by either party within a stated time period, or upon a specified date, including, without limitation, the parties' obligation to consummate the Closing on the Scheduled Closing Date.

## 5.3 Free and Clear of All Tenants

At the time of closing each property shall be free and clear of all tenants, occupants and personal property.

If the Rye Property is not free and clear of all tenants on June 1, 2020, 500 may: (1) void this Contract; or (2) take possession of the property within 30 days; or (3) extend the date of closing.

## 6. Subdivision.

The Parties acknowledge that the Rye Property must be subdivided from a larger property to create a  $\pm 0.4$  acre parcel around the property. Rye will be responsible for the preparation and approval of a subdivision plan. Approval of the subdivision shall be obtained by May 31, 2020. If the subdivision approval is not obtained by May 31, 2020, 500 may: (1) void this Contract; or (2) extend the date of closing.

## 7. Effluent Disposal Easement.

The Parties acknowledge that the effluent disposal system for the Rye Property is located on other land owned by the Town. The Parties agree that Rye, subject to the approval of the March 12, 2020 Annual Town Meeting, shall grant an easement for transmittal and treatment of sanitary waste effluent from the Rye Property.

Said easement shall prorate the future expense of the maintenance, repair and replacement if necessary of the leachfield between 500 and its successors and assigns and Rye based on water consumption data for 2017 and 2018. The future expense of maintaining, repairing and replacement of the sewer service lines connecting the Rye property to the leachfield shall be the sole responsibility of 500 and its successors and assigns. These expenses shall include the complete repair and replacement of parking lot pavements to the satisfaction of the Rye Public Works Director.

## 8. Closing Expenses

Each Party shall pay its State documentary stamps/transfer taxes, and other expenses as is customary in Rockingham County, New Hampshire.

## **9. Taxes, Assessments, and Expenses**

Real and personal property taxes (if any) and utilities shall be prorated as of the closing date.

## **10. Closing Deliveries**

At Closing, each Party shall deliver or cause to be delivered to the other the following:

### **10.1 Deed.**

Each party shall deliver to the other party a special warranty deed (the "Deed") in recordable form conveying the Properties to each other. Each deed shall include any easements, restrictions or covenants of record.

### **10.2 Resolutions**

Each Party shall deliver certified resolutions (if applicable) and such other instruments as may be reasonably required by the title insurer, evidencing the authority of such party to enter into and perform this Contract and to perform such Party's obligations hereunder.

### **10.3 Settlement Statement**

Each Party shall deliver a counterpart, executed by each Party, of a summary statement describing in detail the consideration, prorations, adjustments, costs and expenses associated with this transaction ("Settlement Statement").

### **10.4 Other Documents**

Such other documents and instruments as are contemplated hereunder or as may be reasonably and customarily required by the parties, their respective counsel and/or the title insurer and necessary to consummate this transaction and to otherwise effectuate the agreements of the Parties hereto.

## **11. Use of Rye Property.**

500 agrees that it will use the Rye Property as a multi-family dwelling property of 8 or fewer dwelling units. Rye agrees that the detached carriage house may be used as an office or coffee shop and bakery, subject to receipt of all required land use board approvals and required permits from the building department. Rye also agrees that the main Parsonage building may be used alternatively as a multi-use building with no residential units on the ground floor subject to receipt of all required land use board approvals and required permits from the building department.

500 further agrees that the Rye Property is a nonconforming use under the terms of the Rye Zoning Ordinance and that the nonconforming use shall not be expanded.

Rye agrees that the footprint of the Parsonage building may be expanded by not more than 20% subject to receipt of any required land use board approvals and required permits from the building department

The agreements of this Section 11 shall be incorporated as restrictive covenants in the deed conveying the Rye Property to 500 and shall run with the land.

### **12. Investment by 500.**

500 agrees that it, or its successors and assigns, shall invest \$850,000 into renovations of the Rye Project. Said investment shall be documented by submittal of receipts to Rye. If the receipts do not document expenditures of at least \$850,000, 500 or its successors and assigns, shall donate the balance to the Rye Public Library.

The investment by 500 shall be contingent upon 500 receiving the appropriate approvals for major improvements including but not limited to the expansion of the property to adequately enclose all staircases, install an elevator, new chimneys, and improve all structural and mechanical elements.

This agreement to invest is binding on the successors and assigns of 500. This agreement to invest is a contractual obligation which shall survive the closing on the properties.

### **13. Permits Required by the Town of Rye**

In renovating the Rye Property, 500 shall obtain all permits required by the Rye Building Department, the Rye Historic District Commission and Rye codes and ordinances. 500 may apply for permits prior to closing. The Rye Board of Selectmen will sign as owner whatever permit applications 500 wishes to file prior to closing. The Rye Board of Selectmen will not become involved in permitting disputes between 500, its successors and assigns, and the building department.

Applications for permits shall be made no later than 30 days after the March 12, 2020 vote approving this Contract. 500 is not obligated to close on this transaction until all permits applied for within 30 days of March 12, 2020 have been issued.

The Selectmen do not control or have any authority over the land use boards. This Contract does not waive any requirements of land use board approvals or building department permits, nor does this Contract guarantee any needed approvals will be received from the land use boards or the building department.

**14. Further Agreement by Rye as Condition of this Contract**

As a condition of this Contract it is agreed that the three members of the Board of Selectmen shall recommend the Warrant Article which places this Contract before the voters at the 2020 Annual Town Meeting for approval.

It is further agreed that the warrant article for approval of the exchange of property which is the subject of this Contract shall be placed at the top six of the agenda of the 2020 Town of Rye Deliberative Session and shall be one of the first six questions on the March 12, 2020 ballot.

**15. Possession**

Parties shall deliver to each other exclusive possession of each of the Properties.

**16. Representations**

The Parties represent to each other that each Party has full power and authority to enter into this Contract and to comply with the terms of this Contract; all requisite action has been taken to make this Contract valid and binding on each Party in accordance with its terms; and, the persons signing this Contract on behalf of each party are fully authorized to do so under the laws of the State of New Hampshire.

**17. Disclaimer of Representations**

Each Party hereby expressly acknowledges and agrees that except as and to the extent expressly provided to the contrary in this Contract: no Party makes and has made any warranty or representation whatsoever as to the condition or suitability of any portion of the Properties. EACH PARTY ACKNOWLEDGES THAT NO WARRANTY HAS BEEN MADE ABOUT THE CONDITION OF EACH PROPERTY; AND, EACH PROPERTY IS BEING CONVEYED IN IT'S "AS IS" CONDITION.

**18. Casualty and Eminent Domain**

If either Property is materially damaged by fire or other casualty prior to Closing, either Party shall have the right to terminate this Contract by providing written notice to the other within 15 calendar days following the casualty event. Should neither Party exercise its right to terminate this Contract within such 15 day period, such right to terminate shall be deemed waived and the Parties shall proceed to Closing with no adjustment to the Purchase Price.

**19. Parties' Operation of Properties**

Parties covenant and agree that between the date hereof and the Closing Date each Party shall perform or observe the following with respect to the Properties:

### 19.1 Maintenance of Properties

Parties will keep and maintain the Properties in its present condition (ordinary wear and tear excepted), will not violate or breach any zoning ordinance or building ordinances nor commit any waste or nuisance, and will promptly advise either Party of any litigation, arbitration or administrative hearing before any governmental authorities concerning or affecting the Properties arising or threatened after the Effective Date.

Rye agrees that 500 may, at its discretion, make repairs and modifications to the exterior of the 500 Property (siding, windows, doors and shutters or a portion thereof) prior to closing, subject to whatever permits and approvals may be required.

### 19.2 Advice of Hearing

The Parties will promptly advise each other of any litigation, arbitration or administrative hearing before any governmental authorities concerning or affecting the Properties arising or threatened after the Effective Date.

### 19.3 Parties' Permissions.

Parties will not hereafter sell, assign, or convey any right, title or interest whatsoever in or to the Properties or create any lien, encumbrance or charge thereon without promptly discharging the same, except as otherwise expressly provided for herein.

## **20. Compliance with Right-To-Know**

This Contract is not exempt from New Hampshire's Right-to-Know statutes.

## **21. Remedies for Default**

The Parties agree that if one party shall default in its obligations pursuant to this Contract, the other Party shall have the right to petition the Rockingham County Superior Court to Order the parties to comply with this Contract.

## **22. Choice of Law/Venue**

This Contract shall be governed, construed, and enforced in accordance with the laws of the State of New Hampshire. In connection with any litigation arising out of this transaction, or the interpretation or enforcement of this Contract, the prevailing party shall be entitled to recover from the party not prevailing its reasonable costs and attorney, paralegal and experts' fees in connection with all proceedings and all levels of proceedings. Venue for any litigation arising out of this Contract shall lie only in the Rockingham County Superior Court of the State of New Hampshire. This Section shall survive the Closing or the earlier termination of this Contract.

### **23. Notices**

Any notice, request, demand, instruction or other communication to be given to either Party, except where required by the terms of this Contract to be delivered at the Closing, shall be in writing and shall be sent by registered or certified mail, return receipt requested, express overnight courier or transmitted by electronic mail to the email addresses set forth herein (provided that notice is also simultaneously sent by registered or certified mail or by express overnight courier), as follows:

As to 500: Daniel J. Philbrick  
1393 Ocean Boulevard  
Rye, NH 03870  
Phone: (603) 743- 9333  
Email: danphilbrick@icloud.com

As to Rye: Town of Rye, New Hampshire  
Ten Central Road  
Rye, NH 03870  
Email: [bbergeron@town.rye.nh.us](mailto:bbergeron@town.rye.nh.us)  
[mdonovan@town.rye.nh.us](mailto:mdonovan@town.rye.nh.us)  
[jireland2@town.ry.nh.us](mailto:jireland2@town.ry.nh.us)

### **24. Interpretation**

This Contract embodies the entire agreement between the Parties and supersedes all prior and contemporaneous written, oral, implied, and express agreements and understandings relating to the Properties. No covenant, agreement, representation or warranty, whether written or oral, made or executed by any party hereto or its agent shall bind any party hereto unless specifically set forth in this Contract. The provisions of this Contract may be waived or amended only by written instrument executed by the party against whom enforcement of the waiver or amendment is sought. The section headings herein contained are for the purposes of identification only and shall not be considered in construing this Contract. All of the Parties to this Contract have participated freely in the negotiation and preparation of this Contract and this Contract shall not be more strictly construed against any one of the Parties hereto. The term parties shall include the heirs, executors, administrators, personal representatives, successors and assigns of the respective Parties hereto. Whenever used the singular number shall include the plural and the plural the singular, and the use of any gender shall include all genders. No reference or use shall be made of any previous draft of this Contract or of any negotiations with respect thereto in construing this Contract. As used herein, the word "including" shall be construed to mean "including, without limitation."



**25. Assignment.**

500 may assign its interest in this Contract to another legal entity provided that the entity is controlled by Daniel J. Philbrick, or is a family trust, subject to the approval of the Board of Selectmen. All of the terms of this Contract shall be binding on any such assignee.

**26. Terms Which Survive Closing.**

The agreements embodied in the following sections of this Contract remain binding on the Parties after closing and may be enforced by an action in Contract.

- Section 11 Use of Property.
- Section 12 Investment by 500
- Section 13 Permits Required by Town of Rye
- Section 21 Default
- Section 22 Choice of Law
- Section 24 Interpretation.

**27. Brokers**

Parties represent and warrant to the other that, no broker, realtor or finder has been engaged by it in connection with this transaction, but it is known by all parties that Daniel J. Philbrick is a licensed New Hampshire Real Estate Broker.

**28. Relationship**

Nothing contained in this Contract shall be construed to be or to create a partnership, joint venture, or relationship between the Parties other than as parties with interest in the Properties pursuant to this Contract. This Contract shall bind, inure to the benefit of, and be enforceable by the Parties hereto and their respective heirs, personal representatives, successors and assigns.

**29. Advice of Counsel**

EACH PARTY ACKNOWLEDGES THAT IT HAS BEEN ADVISED BY ITS OWN COUNSEL WITH RESPECT TO THE TRANSACTION GOVERNED BY THIS CONTRACT.

**30. Copies.**

Two copies of this Contract shall be signed by the Parties, with each Party retaining a signed copy. Each Party hereby waives any defenses to the enforcement of the terms of this Contract based on the form of signature.

**21. Effective Date.**

Effective Date means the last date that the last signatory for either party executes this Contract. Any reference to "days" herein shall be deemed to mean calendar days and any time period provided for herein which ends on a Saturday, Sunday or legal holiday shall automatically extend through and including the next business day.

IN WITNESS WHEREOF, parties have executed this Contract on the date(s) set forth below.

*Signed, sealed and delivered  
in the presence of:*

**500:**

**500 WASHINGTON ROAD, LLC**

By: \_\_\_\_\_

Title: Sole Manager

Date: \_\_\_\_\_

**RYE:**

By: \_\_\_\_\_

Name: Phil Winslow

Title: Chair, Rye Board of Selectmen

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: Keriann Roman

Title: Vice-Chair, Rye Board of Selectmen

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: William Epperson

Title: Rye Selectman

Date: \_\_\_\_\_

\_\_\_\_\_  
Witness  
Print Name:

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Witness  
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