

November 6, 2020

AMENDMENT TO CONTRACT FOR PROPERTY EXCHANGE/SWAP

NOW COME 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 to amend the Contract for Property Exchange/Swap signed by 500 and Rye on 12/16/19 ("Swap Contract"), as set forth herein.

All provisions of the Swap Contract remain in effect between 500 and Rye unless expressly changed by this Amendment.

PART I: AMENDMENTS TO SPECIFIC SECTIONS OF SWAP CONTRACT.

The following sections of the Swap Contract are amended as described herein.

§ 1. Agreement to Exchange/Swap. Subsection ii is amended to clarify that the property to be conveyed to 500 by Rye is ± 0.4 acres bounded by Olde Parish Road, Washington Road and the edges of the sidewalks providing access to the Rye Public Library. The ± 0.4 parcel is presently part of Rye Tax Map 12/Lot 43.

Subsection i remains as set forth in the Swap Contract.

§ 5. Closing. § 5 is deleted in its entirety and replaced with the following:

§ 5. Closing. Closing will not take place until all permits and approvals including building, plumbing, electrical, landscaping, hardscaping stone walls, paving, fencing, exterior lighting, HDC approval and DES approval are obtained.

Closing shall take place not later than February 28, 2021. If closing does not take place by February 28, 2021 either party may nullify the Swap Contract, as amended by this Amendment.

The Housing Partnership and all tenants have vacated the Rye property. By signing this amendment 500 waives any right it may have had to void the Swap Contract because the Rye property was not vacant as of June 1, 2020.

§ 6. Subdivision. § 6 is deleted in its entirety and replaced with the following.

§ 6. Subdivision. The Parties acknowledge that the Rye Property must be subdivided from a larger property to create a ± 0.4 acre lot. Rye will be responsible for the preparation and approval of a subdivision plan. Approval of the subdivision by the Rye Planning Board shall be obtained by November 10, 2020. If the subdivision approval is not obtained from the planning board by November 10, 2020, 500 may: (1) void this Contract; or (2) extend the date required for planning board approval. If

November 6, 2020

the Planning Board makes a decision that materially affect a term(s) of this agreement, 500 may void this Contract.

6.1 Sidewalk and Lighting Easement. The subdivision plan shall include a 3 ft. wide Sidewalk Maintenance and Lighting Easement to be reserved by Rye measured from the edge of the two sidewalks serving the library. Within this easement Rye, acting through its Library Board of Trustees shall have the following rights: (a) snow storage for snow removed from sidewalks provided green snow removal substances are used on sidewalk; (b) right to repair sidewalk; (c) right to operate, maintain and repair the existing lighting of the sidewalk until such time as the lighting is replaced by 500 (see below).

Said easement shall give 500 the right to replace the existing sidewalk lighting with fixtures to be approved by the Historic District Commission. Said lighting will then be owned by 500, which shall control its operation, provided the lights are operated during such times as the Library Board of Trustees may require. 500 shall pay the utility costs of said lighting.

The easement shall be reserved in the deed conveying the Rye property to 500.

6.2 Driveway. The subdivision plans shall include the discontinuance of the Washington Road driveway and a new driveway on Olde Parish Road.

§ 7. Effluent Disposal Easement. f § 7 is amended as follows: (New language *boldened and italicized*. Deleted language ~~struck through~~).

The Parties acknowledge that the effluent disposal system for the Rye Property is located on other land owned by the Town. *500 shall have the right to connect to the existing effluent disposal system that currently serves the eight units at the Parsonage property. The system must be approved by DES and the Town of Rye to accommodate the proposed five units.* ~~The Parties agree that Rye, subject to the approval of the March 12, 2020 Annual Town Meeting, Rye shall grant an easement to 500~~ 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 anticipated 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 pavement to the satisfaction of the Rye Public Works Director.

§ 11. Use of Rye Property. § 11 is deleted in its entirety and replaced with the following.

11. Use of Property.

11.1 Razing of Buildings. The Board of Selectmen shall demolish the Parsonage and its Carriage House on or before November 25, 2020. The demolition will be managed by 500. The expense of the demolition of the Parsonage will be paid by 500. If closing does not occur Rye shall reimburse 500 for the expense of demolition up to an amount of \$32,000.

11.2 Redevelopment of Property. 500 may build a structure containing up to five (5) dwelling units on the Rye Property. 500 may use one of these dwelling units as an office.

11.3 Open Space. The deed conveying the Rye Property to 500 shall include a restriction which preserves the portion of the Rye Property located within 75 feet of the library sidewalk to Washington Road as privately owned landscaped open space. Landscaping in this area may include stonewalls, hardscape, arbors and underground utilities. 500 may locate a statute anywhere on the parcel as a memorial to Jackie Philbrick and dedicated to the children of Rye. The open space shall be non buildable, other than for these landscaping improvements.

The deed conveying the Rye Property to 500 shall contain a provision extinguishing the deed restriction in the event the license for three parking spaces set forth in § 11.4 below is not renewed.

11.4 Parking Spaces. Rye shall license to 500 the use of three (3) parking spaces located at the east end of the town parking lot used for the Rye Public Library and the Rye Town Museum.. These spaces shall be available to 500 365 days a year on a 24/7 basis. 500 will be allowed to install signage indicating that the three spaces are reserved for 500. The board of selectmen will make four (4) parking spaces in the Rye Congregational Church lot available for use of Rye Public Library employees.

11.5 HDC Approval. 500's redevelopment of the Rye property shall comply with § 190-3.3 of the Rye Zoning Ordinance as it pertains to D and E(4) only.

§ 12. Investment By 500. § 12 is deleted in its entirety from the Swap Contract.

§ 13. Permits Required By the Town of Rye. § 13 of the Swap Contract is deleted in its entirety and replaced with the following.

§ 13 Permits Required By the Town of Rye.

In developing Lot A, 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.

November 6, 2020

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.

Notwithstanding the foregoing, Rye agrees that: (1) site plan review by the Rye Planning Board is not required for the uses set forth in § 11; (2) the mixed use structure to be built on the Rye Property is grandfathered to the setbacks of the Parsonage buildings; (3) zoning variances to parking requirements and uses set forth in § 11 are not required.

500 is not obligated to close on the swap transaction until a building permit is issued for the dwelling to be built on the Rye Property.

§ 19 Parties Operation of Properties. § 19.1 is amended as follows. (Deleted language struck through. New language emboldened and italicized.) § 19.2 and 19.3 are unchanged.

19.1 Maintenance of Properties.

Parties **500** will keep and maintain the **Properties 500 Property** 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 **Rye** of any litigation, arbitration or administrative hearing before any governmental authorities concerning or affecting the **Properties 500 Property** 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 shutter or a portion thereof) prior to closing, subject to whatever permits and approvals may be required.

Rye agrees that it will promptly advise 500 of any litigation, arbitration or administrative hearing before any governmental authorities concerning or affecting the Rye Property arising or threatened after the Effective Date.

§ 26 Terms Which Survive Closing. The listing of sections of the Swap Contract which survive closing is amended as follows. (New listings ***emboldened and italicized***. Deleted listings struck through).

Section 6. Subdivision. (As amended).

Section 7. Effluent Disposal Easement. (As amended)

Section 11 Use of Property. (As amended).

~~Section 12 Investment by 500~~

Section 13 Permits Required by Town of Rye (As amended).

Section 21 Default

Section 22 Choice of Law

November 6, 2020

Section 24 Interpretation.

PART II: SECTIONS OF SWAP CONTRACT NOT CHANGED.

All provisions of the Swap Contract remain in effect between 500 and Rye unless expressly amended by this Agreement. The sections of the Swap Contract which remain applicable to the Swap Contract as amended are:

- § 2 Consideration.
- § 3 Title Matters.
- § 4 Conditions Precedent.
- § 8 Closing Expenses.
- § 9 Taxes, Assessments and Expenses.
- § 10 Closing Deliveries.
- § 14 Further Agreement by Rye as Conditions of the Contract.
- § 15 Possession.
- § 16 Representations.
- § 17 Disclaimers of Representations.
- § 18 Casualty and Eminent Domain.
- § 19 Parties Operation of Properties.
- § 20 Compliance with Right-To-Know.
- § 21 Remedies.
- § 22 Choice of Law/Venue.
- § 23 Notices.
- § 24 Interpretation.
- § 25 Assignment.
- § 27 Brokers.
- § 28 Relationship.
- § 29 Advice of Counsel.
- § 30 Copies.
- § 21 Effective Date [incorrectly numbered in Swap Contract].

PART III: OTHER PROVISIONS OF AMENDMENT.

A. Waiver by 500.

500 withdraws the June 1, 2020 letter from Daniel J. Philbrick to the Select Board which exercised 500's right to void the Swap Contract. By signing this Amendment 500 hereby waives any and all rights it may have had to void the Swap Contract because subdivision approval was not obtained before May 31, 2020.

B. Successors and Assigns.

The terms of this Amendment are binding on the successors and assigns of the parties.

November 6, 2020

C. Advice of Counsel.

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

D. Copies.

Two (2) copies of this Amendment 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 Amendment based on the form of signature.

E. Effective Date.

The Effective Date of this Amendment is the date that the last signatory for either party executes this Amendment.

IN WITNESS WHEREOF, parties have executed this AMENDMENT TO CONTRACT FOR PROPERTY EXCHANGE/SWAP on the date(s) set forth below.

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

500:

500 WASHINGTON ROAD, LLC

Donlynn L. Ray
Witness
Print Name: DONLYNN L. RAY

By: [Signature]
Title: Sole Manager
Date: 11/10/2020

RYE SELECT BOARD

Rebecca Bergeron
Witness
Print Name: Rebecca Bergeron

By: [Signature]
Name: Phil Winslow
Chair, Rye Select Board
Date: November 10, 2020

November 6, 2020

Rebecca Bergeron
Witness
Print Name: Rebecca Bergeron

By: [Signature]
Name: William Epperson
Vice-Chair, Rye Select Board
Date: 11-10-20

Rebecca Bergeron
Witness
Print Name: Rebecca Bergeron

By: [Signature]
Name: Mae Bradshaw
Select Board Member
Date: 11-10-20