

AGREEMENT TO CONVEY INTERESTS IN REAL ESTATE

This Agreement is made and entered into by and between the Trustees of the Rye Public Library ("Trustees"), the Town of Rye by and through its Board of Selectmen ("Town"), the Rye Conservation Commission ("RCC"), and 500 Washington Road, LLC by and through its sole member Daniel Philbrick ("500 Washington"), collectively referred to hereinafter as the "Parties".

WHEREAS, with exception of the RCC, the other Parties to this Agreement (the "Litigation Parties") are engaged in pending litigation before the Rockingham Superior Court docketed as: David Choate et al. v. Town of Rye, et al., Docket # 218-2020-CV-01207 (the "Litigation"); and

WHEREAS, the Litigation pertains to a "Contract For Property Exchange/Swap" entered into by and between 500 Washington and the Town pursuant to Warrant Article 7 passed by the voters of the Town of Rye on March 12, 2020, which was amended by 500 Washington and the Town on November 10, 2020 ("Land Swap Agreement"); and

WHEREAS, per the terms of the Land Swap Agreement, the Town agreed to convey certain real property located at 575 Washington Road being a 0.407 acre parcel of land shown as "Proposed Lot 1" on the plan prepared by James Verra & Associates, Inc. entitled, "Minor Subdivision Tax Map 12 Lot 43 575 Washington Road, Rye NH", dated 11-23/-20, and recorded in the Rockingham County Registry of Deeds as Plan D-42497 (the "Parsonage Property") to 500 Washington in exchange for 500 Washington conveying certain real property located at 500 Washington Road ("TD Bank Property"), described in a deed from TD Bank North to 500 Washington Road, LLC, dated 05/07/2018, and recorded in the Rockingham County Registry of Deeds at Book 5913, Page 1009.

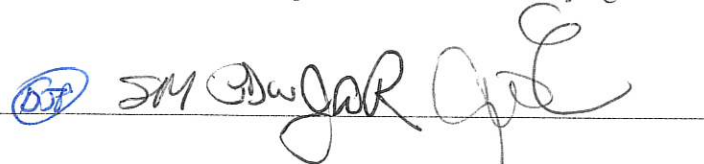
WHEREAS, pursuant to the Land Swap Agreement, on November 10, 2020, the Town of Rye Planning Board approved a subdivision plan creating the 0.4+/- acre Parsonage Property to be conveyed to 500 Washington; and

WHEREAS, the Parties desire to resolve the Litigation and enter into an agreement that will be beneficial to each Party and avoid the significant time, expense, and uncertainty associated with the Litigation; and

WHEREAS, the parties have prepared and will file a Settlement Stipulation in the Litigation in the Superior Court which is consistent with the terms of this Agreement; and

WHEREAS, the terms of this Agreement shall and are intended to replace and render null and void the Land Swap Agreement.

NOW, THEREFORE, in consideration for the mutual representations, promises, and covenants contained herein and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Handwritten initials and signatures. On the left, there are initials 'DJP' circled in blue. To the right, there are two signatures: 'SM' and 'Dwight'. The signatures are written in black ink over a horizontal line.

SECTION 1: CONVEYANCES OF PROPERTIES AND INTERESTS THEREIN.

A. 500 Washington shall convey the 3.7 acre TD Bank Property to RCC on behalf of the Town of Rye free and clear of all liens and encumbrances, except recorded easements, restrictions, and covenants of record. 500 Washington shall deliver exclusive possession of the TD Bank Property to RCC.

B. Upon obtaining title to the former TD Bank Property the Town shall record the following deed restriction on the 0.4 acre Parsonage Property:

- 1) The premises shall be used for purposes related to the Rye Public Library and shall be under the custody and management of the Trustees of the Rye Public Library (the "Trustees") so that public access and use shall be provided to any open space therein, subject to the Trustees right to reasonably regulate said public access and use.
- 2) The premises, or any portion thereof or interest therein, shall not be conveyed without a town meeting vote and the written consent of the library trustees. Said consent shall be recorded in the Rockingham County Registry of Deeds.

C. The closing(s) on the conveyance of the former TD Bank Property shall take place no later than noon, February 25, 2021. If the closing does not take place by then, this agreement is null and void.

SECTION 2: LOT LINE ADJUSTMENT AND CONSERVATION PURPOSES.

A. Within 90 days of acquiring the TD Bank Property RCC shall file a Lot Line Adjustment Subdivision Application with the Rye Planning Board which adjusts the boundary between the former TD Bank Property and the adjacent Town Forest so as to include the area depicted on Exhibit 1 hereto in the Town Forest (55 Recreation Road, also known as Parcel # 012-079-000). This area shall be no less than 2.3 acres in size and include no less than 60 feet of frontage on Washington Road.

B. Within ten (10) days of the recording of an approved Lot Line Adjustment Plan, RCC shall deed the remainder portion of the former TD Bank Property to the Town free and clear of all liens and encumbrances, except recorded easements, restrictions, and covenants of record that existed at the time RCC obtained title.

C. At no time before RCC makes the conveyance described in Section 2(B) above, shall any portion of the 3.7 acre former TD Bank Property have any new structure or improvement built upon or within it and the unimproved portions shall be used only for conservation purposes. After the conveyance described is Section 2 (B) above, the Town will have fee interest, free and clear, of the remainder portion and such portion shall no longer be subject to any restriction for conservation purposes. This shall not preclude the Town from making the renovations necessary to fit up the interior of the building for town office use or to place appropriate signage in the front yard.

D. At any time subsequent to the conveyance described in Section 2 (B) above and at the sole option of the RCC, the RCC (on behalf of the Town) may convey to a qualified holder a conservation easement burdening all or some of the RCC's portion on financial terms determined solely by the RCC. The Town shall not object to any such conveyance of a conservation easement and shall sign all documents reasonably necessary to carry it out.

SECTION 3: FINANCIAL AND REAL PROPERTY CONSIDERATION

A. Obligation of RCC.

The RCC agrees to pay the sum of three hundred thousand 00/100 dollars (\$300,000.00) to 500 Washington.

B. Obligation of Library Trustees.

The Trustees agree to pay the sum of four hundred thousand 00/100 dollars (\$400,000.00) to 500 Washington.

C. Plan for Library Parcel.

The parcel described in Section 1D will be planned with consideration of the Rye 2013 Master Plan Vision Statement. In preparing a plan for the premises, the Library Trustees shall consult with the Rye Historical District Commission, the Rye Town Center Committee and the Rye Planning Board.

SECTION 4: CLOSING AGENT

Bosen & Associates of Portsmouth, NH shall act as the Closing Agent to facilitate the closing of the conveyance contemplated in this Agreement.

SECTION 5: PRO-RATIONS & TRANSFER STAMPS

Taxes, utilities, fuel pro-rations and or other charges assessed to the properties shall be prorated as of the date of the Closing. 500 Washington agrees to pay its 50% share of the New Hampshire transfer tax relative to the \$700,000 conveyance set forth in Section 1A, if required. 500 shall be provided an IRS Form 1099S which indicates a \$700,000 sales price for the conveyance of the TD Bank Property.

SECTION 6: DELIVERY AND EXECUTION OF CLOSING-RELATED DOCUMENTS

By or before the Closing Date, the Parties shall deliver or cause to be delivered to the other(s) the following:

OSP MCDW GAR JGE

A. Resolutions / Certificates of Authority

Resolutions and/or certificates of authority and such other instruments as may be reasonably required by the Closing Agent and any title insurance company, evidencing the authority of such party to enter into and perform the obligations contemplated by this Agreement;

B. Settlement Statement

Settlement Statements evidencing the consideration, prorations, adjustments, costs, and expenses associated with each conveyance; and

C. 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 closing agent and necessary to consummate the Closing and to otherwise effectuate this Agreement.

SECTION 7: REPRESENTATIONS

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

SECTION 8: DISCLAIMER OF REPRESENTATIONS

Each Party hereby expressly acknowledges and agrees that except as and to the extent expressly provided to the contrary in this Agreement, no Party makes or has made any warranty or representation whatsoever as to the condition or suitability of any portion of the properties being conveyed or any personal property being conveyed therewith. EACH PARTY ACKNOWLEDGES THAT NO WARRANTY HAS BEEN MADE ABOUT THE CONDITION OF EACH PROPERTY; AND, EACH PROPERTY IS BEING CONVEYED IN ITS "AS IS" CONDITION.

SECTION 9: CASUALTY AND EMINENT DOMAIN

If any property interest is materially damaged by fire or other casualty prior to Closing, any Party to the conveyance shall have the right to terminate this Agreement by providing written notice to the other party to the conveyance within five (5) calendar days following the casualty event. Should either party to the conveyance fail to exercise their right to terminate this Agreement within said five (5) day period, such right to terminate shall be waived and the Parties shall proceed to Closing with no adjustment to the purchase price.

SECTION 10: OPERATION OF PROPERTIES

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

A. Maintenance of Properties

The Parties shall keep and maintain each property in its present condition (ordinary wear and tear excepted), shall not violate or breach any zoning ordinance, building ordinances, or law nor commit any waste or nuisance.

The Town agrees that 500 Washington 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.

B. Notice of Hearing/Proceeding

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.

C. No Permission to Convey

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

SECTION 11: COMPLIANCE WITH RSA CHAPTER 91-A

The Parties hereby acknowledge that this Agreement, once fully and duly executed by all Parties, is not exempt from the provisions of New Hampshire’s Right-to-Know Act set forth in RSA Chapter 91-A.

SECTION 12: REMEDIES FOR DEFAULT

The Parties agree that if one party shall default in its obligations pursuant to this Agreement the other parties shall have the right to petition the Rockingham County Superior Court to Order the parties to comply with this Agreement and obtain any other relief pertaining thereto.

SECTION 13: BIND & INURE

This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors, and assigns.

OSP MGS GAR GSE

SECTION 14: COUNTERPARTS

This Agreement may be executed in any number of counterparts which together shall constitute one instrument. Verifiable electronic signatures are an acceptable form of signature.

SECTION 15: CHOICE OF LAW/VENUE

This Agreement 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 Agreement, or the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover from the party not prevailing its reasonable costs, including legal and consultants' fees, in connection with all proceedings and all levels of proceedings. Venue for any litigation arising out of this Agreement shall lie only in the Rockingham County Superior Court of the State of New Hampshire.

SECTION 16: NOTICES

Any notice, request, demand, instruction, or other communication to be given to any Party, except where required by the terms of this Agreement to be delivered by or before the Closing, shall be in writing and shall be sent by registered or certified mail, return receipt requested; express overnight courier; or electronic mail, delivery receipt requested, to the addresses set forth herein, as follows:

As to Trustees: Jeffrey Ross
333 West Road
Rye, NH 03870
Email: jro1954@outlook.com
Email: derek@durbinlawoffices.com

As to RCC: Suzanne McFarland
10 Central Road
Rye, NH 03870
Email: suzanne.ryeconservation@gmail.com
Email: manzelli@nhlandlaw.com

As to 500 Washington: 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

 DJP SM DJW JAR AJE

mdonovanlaw62@gmail.com
jireland2@town.ry.nh.us

**SECTION 17: ENTIRE AGREEMENT; AMENDMENT; HEADINGS;
INTERPRETATION**

This Agreement 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 Agreement. The provisions of this Agreement may be amended only by written instrument executed by the Parties. The section headings herein contained are for the purposes of identification only and shall not be considered in construing this Agreement. All of the Parties to this Agreement have participated freely in the negotiation and preparation of this Agreement and this Agreement shall not be more strictly construed against any one of the Parties hereto.

SECTION 18: SEVERABILITY

If any provision in this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provisions or application, and to this end all provisions of this Agreement are declared to be severable.

SECTION 19: TIME OF THE ESSENCE

Time of the essence with respect to each provision of this Agreement 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.

SECTION 20: ASSIGNMENT

This Agreement may not be assigned unless written consent is provided by all Parties hereto.

SECTION 21: BROKERS

Parties represent and warrant to the other that no broker, realtor, or finder has been engaged by it in connection with this Agreement, but it is known by all parties that Daniel J. Philbrick is a licensed New Hampshire Real Estate Broker. The Parties agree to hold harmless and indemnify one another against any claim of compensation or monetary entitlement brought by any real estate licensee or business broker.

 DSJ SM OSW JAR AJE

SECTION 22: RELATIONSHIP

Nothing contained in this Agreement 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 Agreement.

SECTION 23: ADVICE OF COUNSEL

EACH PARTY ACKNOWLEDGES THAT IT HAS BEEN ADVISED BY ITS OWN COUNSEL WITH RESPECT TO THIS AGREEMENT.

SECTION 24: COPIES

Copies of this Agreement 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 Agreement based on the form of signature.

SECTION 25: EFFECTIVE DATE

“Effective Date” means the last date that the last signatory for any party executes this Agreement.

SECTION 26: COURT APPROVAL OF SETTLEMENT STIPULATION

This agreement is subject to the Superior Court’s approval of a Settlement Stipulation to be filed by the parties. If the court does not approve the Settlement Stipulation, this Agreement is null and void.

SECTION 27: OTHER OBLIGATIONS OF SOME PARTIES

A. Obligations of the Town

i. The Town shall reimburse RCC the TEN THOUSAND 00/100 DOLLARS (\$10,000.00) transaction fee for RCC to access bond funds and the Town shall make such reimbursement within seven (7) calendar days of the RCC providing the Town with proof of payment of said fee.

ii. The Town shall pay all costs and fees associated with this Agreement, including costs and fees associated with adjusting lot lines, recording documents, surveying field work, preparation of survey plans, permanent monumentation of all property lines by a surveyor subsequent to Closing, except that each Party shall pay its own legal fees and costs, except as noted in Section 30(C).

iii. The Town shall make diligent efforts to retain James Verra & Associates, Inc. to complete all survey-related work.

Initials DSJ JMW GAR ACE

500 WASHINGTON:

500 WASHINGTON ROAD, LLC

By: Daniel Philbrick, Sole member

Name: Daniel Philbrick

Title: Sole Member, Duly Authorized

Date: 2/12/21

TOWN:

By: Phil Winslow

Name: Phil Winslow

Title: Chair, Rye Select Board

Date: 2/12/21

By: William Epperson

Name: William Epperson

Title: Vice-Chair, Rye Select Board

Date: 2/12/21

By: Mae C. Bradshaw

Name: Mae Bradshaw

Title: Rye Select Board Member

Date: _____

TRUSTEES:

By: Jeffrey Ross

Name: Jeffrey Ross

Title: Chairman of Rye Public Library Board of Trustees, Duly Authorized

Date: 2/12/21

DSP JM OS JAR GE

RCC:

By: Suzanne McFarland
Name: Suzanne McFarland
Title: Chairwoman of Rye Conservation
Commission, Duly Authorized

Date: 2/12/2021

DSP DWJ/R