

SETTLEMENT AGREEMENT MCLANE FINAL DRAFT
BANFIELD REALTY/GREEN VALLEY REALTY/CITY OF PORTSMOUTH
CONFIDENTIAL FOR SETTLEMENT PURPOSES ONLY
FRE 408

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is made as of the Effective Date between and among the City of Portsmouth, New Hampshire (the “City”); Banfield Realty, LLC (“Banfield Realty”); and Green Valley Realty, LLC (“Green Valley Realty”), each of which are referred to individually as a “Party” and collectively as the “Parties.” The “Effective Date” of this Agreement is the later of the date upon which the last Party signs this Agreement *or* the date upon which the City of Portsmouth City Council approves this Agreement.

WHEREAS, Banfield Realty filed an action in the United States District Court of the District of New Hampshire, Civil Action No. 1:22-cv-573-TSM, against the City and other defendants (the “Action”);

WHEREAS, Banfield Realty alleges in the Action the following claims against the City: recovery of costs under CERCLA § 107(a), declaratory relief as to future costs pursuant to CERCLA § 113(g)(2), contribution pursuant to RSA 147-B:10, declaratory relief as to future costs pursuant to RSA 147-B, and contribution pursuant to RSA 507:7-g;¹

WHEREAS, Banfield Realty’s claims against the City in the Action relate to the City’s alleged involvement in urban renewal in the City of Portsmouth during the approximate timeframe of 1950 to 1970 and the alleged environmental contamination of the property at 375 Banfield Road, Portsmouth, New Hampshire (the “Banfield Road Property”), currently comprised of Tax Map 266, Lot 7 (the “Upland Parcel”) and Tax Map 266, Lot 7-1 (the “Lowland Parcel”) with hazardous waste, substances, and/or materials due to waste building and demolition debris from said urban renewal being disposed of on the Banfield Road Property;

WHEREAS, the City alleges in the Action the following counterclaims against Banfield Realty: declaratory relief pursuant to CERCLA § 113(g)(2), contribution pursuant to CERCLA § 113(f), and contribution pursuant to RSA 507:7-g;

WHEREAS, the City’s counterclaims against Banfield Realty in the Action relate to Banfield Realty’s ownership of the Banfield Road Property, as well as Banfield Realty’s alleged failure to conduct due diligence prior to purchasing the Banfield Road Property;

WHEREAS, the City and Banfield Realty each deny the factual and legal basis for the claims and counterclaims brought against them in the Action and deny any wrongdoing, fault, liability, or damages whatsoever;

WHEREAS, Banfield Realty purchased the Banfield Road Property on February 5, 2020;

¹ Banfield Realty initially alleged additional claims of negligence and negligence *per se* against the City; however, those claims were dismissed by court order of October 13, 2023, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted. Action, Doc. 97.

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WHEREAS, Banfield Realty later subdivided the Banfield Road Property into two parcels, the Upland Parcel and the Lowland Parcel;

WHEREAS, Banfield Realty retained ownership and is the current owner of the Upland Parcel;

WHEREAS, Banfield Realty conveyed the Lowland Parcel to Green Valley Realty, which remains the current owner of the Lowland Parcel;

WHEREAS, the City currently owns 100 Campus Drive, Portsmouth, New Hampshire, Tax Map 266, Lot 4 (the "Campus Drive Property"), which abuts the Banfield Road Property;

WHEREAS, the Parties agree that it is in their mutual interests to avoid the uncertainty, burden, and expense of continued litigation by resolving the Action and all disputed claims and contentions between them, and memorializing such settlement and release in this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual releases, representation, covenants, and obligations herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Dismissal of Claims in the Action. Within 14 (fourteen) calendar days of the Effective Date of this Agreement, the City and Banfield Realty shall dismiss with prejudice all their pending claims and counterclaims against each other in the Action. The City will be solely responsible for resolving the crossclaims asserted by James Copeland and Roeseland Holdings 5, LLC, against it, as well as dismissing its crossclaims against other defendants in the Action. This Agreement in no way obligates Banfield Realty to pursue or enter into any specific resolution of its claims against any other defendant in the Action other than the City.

2. Release and Indemnification of the City by Banfield Realty and Green Valley Realty.

- a. Banfield Road Property. Except as otherwise provided in this Agreement, for good and valuable consideration, the sufficiency of which is hereby acknowledged, Banfield Realty and Green Valley Realty, together with all of their past and current representatives, businesses, parents, divisions, subsidiaries, successors, predecessors-in-interest, insurers (and their parents, divisions, subsidiaries, successors, and predecessors-in-interest), affiliates, assigns, and all of their past and current agents, officers, directors, attorneys, employees, shareholders, indemnitors, indemnitees, assigns, and all of their parents, subsidiaries, and affiliated entities, and their liability carriers solely in their capacity as liability carriers (collectively, the "Releasing Parties"), hereby release and forever discharge the City, together with all of its past and current representatives, businesses, parents, divisions, subsidiaries, successors, predecessors-in-interest, insurers (and their parents, divisions, subsidiaries, successors, and predecessors-in interest), affiliates, assigns, and all of their

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past and current agents, officers, directors, attorneys, employees, shareholders, indemnitors, indemnitees, assigns, and all of their parents, subsidiaries, and affiliated entities, and their liability carriers solely in their capacity as liability carriers (collectively, the "Released Party"), of and from any and all claims, demands, actions, causes of action, and damages, from the beginning of the universe to the Effective Date of this Agreement, of whatever name or nature, whether in law, equity or otherwise, that were brought or could have been brought in the Action (collectively, the "Banfield Road Property Released Claims"). It is expressly understood and agreed that this release covers not only all known claims, losses, and damages, but any future claims, losses and damages not known or anticipated, but which may later develop or be discovered, including all the effects and consequences thereof, arising out of the matters described in this paragraph. Provided, however, that nothing in this release shall release any claims arising out of or relating to the enforcement of the terms of this Agreement. Furthermore, the Releasing Parties shall jointly and severally indemnify, defend, and hold harmless the Released Party from and against any and all claims, demands, suits, actions, proceedings, losses, damages, liabilities, costs, expenses, and attorneys' fees (including reasonable attorneys' fees and costs at all levels of proceeding, including any appeal) arising out of or relating to any Banfield Road Property Released Claim.

- b. Campus Drive Property. Except as otherwise provided in this Agreement, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Releasing Parties, hereby release and forever discharge the Released Party, of and from any and all claims, demands, actions, causes of action, and damages, from the beginning of the universe to the Effective Date of this Agreement, of whatever name or nature, whether in law, equity or otherwise, arising out of or related to any existing environmental contamination or pollution which has migrated, is migrating, or may in the future migrate (provided that the City and its agents shall take no action to cause or contribute to cause an increase in the migration beyond that which would have occurred had the action not happened) from the Campus Drive Property, currently owned by the City, to the land, surface water, or groundwater on the Banfield Road Property (both the Upland Parcel and the Lowland Parcel), currently owned by Banfield Realty and Green Valley Realty, respectively (collectively, the "Campus Drive Property Released Claims"). It is expressly understood and agreed that this release covers not only all known claims, losses, and damages, but any future claims, losses and damages not known or anticipated, but which may later develop or be discovered, including all the effects and consequences thereof, arising out of the matters described in this paragraph. Provided, however, that nothing in this release shall release any claims arising out of or relating to the enforcement of the terms of this Agreement. Furthermore, the Releasing

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Parties shall jointly and severally indemnify, defend, and hold harmless the Released Party from and against any and all claims, demands, suits, actions, proceedings, losses, damages, liabilities, costs, expenses, and attorneys' fees (including reasonable attorneys' fees and costs at all levels of proceeding, including any appeal) arising out of or relating to any Campus Drive Property Released Claim. The release and indemnity obligation described in this paragraph is intended to apply to any heirs, successors, and assigns of Banfield Realty and Green Valley Realty and to run with the land. Within 30 (thirty) days of the Effective Date of this Agreement, the Releasing Parties shall deliver to the City an executed notice of release and indemnification, recordable properly within the chain of title for both the Upland Parcel and the Lowland Parcel at the Rockingham County Registry of Deeds, sufficient to satisfy the release and indemnity obligations described in this paragraph with respect to the Banfield Road Property (both the Upland Parcel and the Lowland Parcel). Notwithstanding the foregoing, the Parties agree that the indemnity obligation described herein shall be limited to the land, surface water, and groundwater on the Banfield Road Property (both the Upland Parcel and the Lowland Parcel) and shall not apply to unintended third parties. Upon written request by the City, the Releasing Parties shall promptly execute, acknowledge, and deliver, in recordable form, any corrected or revised instrument reasonably necessary to cure any scrivener's error, defect, or other deficiency that prevents or impairs the recordation of the release, at no cost to the City.

3. Costs and Fees. Except to the extent otherwise provided herein, the Parties shall each be responsible for their own costs, fees, and expenses incurred in connection with the Action and the negotiation and implementation of this Agreement, including but not limited to those incurred in connection with fulfilling the obligations of each Party under the terms of this Agreement.

4. Good Faith Efforts. Each Party shall use good faith efforts to fulfill its obligations under this Agreement. Each Party agrees to sign any documents or paperwork as needed to effectuate this Agreement and otherwise cooperate with each other and their respective agents to accomplish the Agreement's purposes.

5. Successors and Assigns. This Agreement shall be binding upon the Parties and their heirs, successors, assigns, and beneficiaries, and shall inure to the benefit of the Parties.

6. Entire and Voluntary Agreement. This Agreement represents the entire agreement and understanding between the Parties. The Parties acknowledge that the execution of this Agreement is a voluntary, knowing act, free of undue influence, performed after having the opportunity to seek review by, and consultation with, independent counsel of their choosing.

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7. Authorization. The persons signing this Agreement on behalf of the Parties hereto represent that they are duly authorized to sign and have taken all necessary corporate or governmental steps to obtain such authorization.

8. Amendments. This Agreement may only be amended or modified by agreement, in writing and signed by all of the Parties.

9. Interpretation. The Parties acknowledge that this Agreement is the result of arm's length negotiations between the Parties, and that no part of this Agreement shall be construed against any Party on the grounds that the Party was the putative drafter of this Agreement.

10. Severability. If any of the provisions of this Agreement are found null, void, or inoperative, for any reason, the remaining provisions will remain in full force and effect.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire.

12. Forum Selection. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, shall be held in the exclusive jurisdiction of the United States District Court for the District of New Hampshire. The Parties irrevocably submit to the United States District Court for the District of New Hampshire only for matters relating to this Agreement or its enforcement.

13. Counterparts. This Agreement may be signed electronically and/or in counterparts, and a facsimile or emailed copy of the same shall be deemed the same as an original.

14. Settlement. This Agreement is entered into for the purposes of settling the existing claims and counterclaims between the Parties, as well as any claims that could have been brought, arising out of or relating to the contamination of the Banfield Road Property, addressed in this Agreement. Nothing contained herein shall be construed as an admission by any Party of any liability of any kind to any other Party, which such liability the Parties expressly deny. This Agreement is intended to bring an end to litigation and buy peace, in accordance with the terms set forth above.

[ALL SIGNATURES ON THE FOLLOWING PAGE]

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BANFIELD REALTY, LLC



Michael Grondahl
Member and Manager, Duly Authorized

6/23/2026

Date

GREEN VALLEY REALTY, LLC



Michael Grondahl
Member and Manager, Duly Authorized

6/23/2026

Date

CITY OF PORTSMOUTH



~~Karen S. Conard~~ Karen S. Conard
City Manager, Duly Authorized

6/23/2026

Date