

## PURCHASE AND SALE AGREEMENT

**AGREEMENT** made this 22<sup>nd</sup> day of November, 2024 by and between the **Town of Rye**, a New Hampshire municipal corporation, with a principal address of 10 Central Road, Rye, New Hampshire 03870 (the "**Buyer**"), and **Mark Ciborowski**, an individual with an address of P.O. Box 433, Concord, New Hampshire 03302, **Gail C. Ferreira**, an individual with an address of 28 Monadnock Drive, Westford, MA 01886, and **Kim M. Ciborowski**, an individual with an address of P.O. Box 973, North Hampton, New Hampshire 03862 (collectively the "**Seller**").

### RECITALS:

- A. Seller owns one tract or parcel of land known as 0 Lafayette Road, Rye, New Hampshire Tax Map 10, Lot 5 (aka Former Rye Municipal Landfill) described as vacant land of approximately 7.87 acres, more or less, together with and including all appurtenant rights and easements and all of the right, title, and interest if any, of Seller in and to all lands lying in the streets and roads abutting the above-described tract (collectively the "Premises"), being more particularly described at Book 6279, Book 981, as recorded with the Rockingham County Registry of Deeds.
- B. Buyer leased the Premises from Seller under a commercial lease dated November 6, 1975 (the "Lease"). In Article 10 of the Lease, Buyer agreed to "...abide by all regulations of the State of New Hampshire concerning the use of said premises as a sanitary land-fill site." Buyer operated the sanitary land-fill on the Premises for approximately eleven years.
- C. Buyer wishes to purchase the Premises;
- D. Seller has agreed to sell and convey the Premises to Buyer for a negotiated price and subject to the below contingencies, releases, promises and covenants; and
- E. Buyer and Seller wish to reduce their understandings to a definitive written agreement.

### AGREEMENT:

NOW, THEREFORE, in consideration of the recitals herein above set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

#### 1. **SALES PRICE AND CLOSING DELIVERIES:**

- a. **SALES PRICE:** The Selling Price is **EIGHTY-FIVE THOUSAND and 00/100 DOLLARS (\$85,000.00)**. No deposit shall be required. In addition, Buyer shall, at Closing (as hereinafter defined), pay to the Escrow Agent by wire transfer any such additional sums as may be necessary to pay for usual and customary Buyer's closing costs, including, without limitation, real estate transfer tax (if applicable) and all costs necessary to record conveyancing documents at the Rockingham County Registry of Deeds. The Escrow Agent is Tarbell & Brodich, P.A.. Buyer

and Seller each agree to jointly and severally indemnify and hold harmless the Escrow Agent against any and all losses, liabilities, costs (including legal fees), and other expenses in any way incurred by the Escrow Agent in connection with or as a result of any disagreement between Purchaser and Seller under this Agreement or otherwise incurred by the Escrow Agent in any way on account of its role as Escrow Agent except to the extent arising from acts or omissions constituting gross negligence or willful misconduct.

- b. **MARKETABLE TITLE:** Marketable title shall be conveyed by a Deed without covenants and shall be free and clear of all encumbrances except those of record, including usual public utilities serving the Premises.
- c. **PRO RATA EXPENSES AND COSTS:** There shall be no prorations at closing. The Buyer has agreed to pay all closing costs associated with the conveyance including but not limited to, preparation of the deed, recording fees, settlement fees, etc. Seller shall be responsible for its own attorney's fees.
- d. **AFFIDAVIT:** The Seller agrees to execute at the time of the transfer of title an affidavit with respect to the nonexistence of mechanics' or materialmen's liens and tenants' rights.
- e. **FOREIGN PERSON AFFIDAVIT:** If requested by the Buyer, the Seller shall execute an affidavit stating that the Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended. In the event the Seller refuses to deliver such or if the Buyer has actual knowledge that the Seller is a foreign person, as defined, or receives notice that the affidavit is false as provided in Section 1445(B)(7) of said Code, then the Buyer may withhold an amount not to exceed ten percent (10%) of the purchase price, as provided by statute.
- f. **TRANSFER OF TITLE:** Transfer of title and payment of the Sales Price (the "Closing") shall take place no later than ninety (90) from the date the Town of Rye has obtained all necessary approvals for the acquisition (See Section 2(d) of this Agreement for further detail) at the offices of Tarbell & Brodich, P.A. located in Concord, New Hampshire, or at such other place and time as may be agreeable to the parties.
- g. **POSSESSION:** Full possession of the Premises shall be given upon the transfer of title subject, however, to the rights of OUTFRONT Media Inc. and/or OUTFRONT/U.S. Real Estate, for the placement of three billboard-style signs on the Premises. Seller represents that a written lease was executed in March 2007 between Seller and CBS Outdoor with a 5-year term, which lease has now expired. Seller further represents that no extension or modification of that lease has been executed, but that it has accepted an annual payment in the amount One Thousand Eight Hundred dollars (\$1,800.00) from OUTFRONT Media Inc. and/or OUTFRONT/U.S. Real Estate for each sign, currently paid through April 30, 2025.

At Closing, the Seller shall notify OUTFRONT Media Inc. in writing that title to the Premises transferred to Buyer and annual rental payments shall be made to Buyer. Furthermore, while this Purchase and Sale Agreement is in effect, any future lease agreements, extensions, or modifications regarding the Premises shall be negotiated directly with the Buyer, and not with the Seller. Seller shall refrain from entering into, extending, or modifying any lease agreements or encumbrances affecting the Premises, including but not limited to the existing agreement with OUTFRONT Media Inc. and/or OUTFRONT/U.S. Real Estate, without the prior written consent of the Buyer, while this Purchase and Sale Agreement is in effect.

- h. **FIXTURES AND APPLIANCES:** The Premises contains ongoing environmental monitoring systems and structures, including but not limited to, monitoring wells, gas vents, and other infrastructure required for compliance with state and federal environmental regulations. The Seller shall not remove, alter, or modify any of these items prior to the transfer of title, and any future modifications shall be made only in accordance with applicable environmental laws and with the express written consent of the relevant authorities.
  - i. **CONDITION OF PREMISES AT CLOSING:** N/A Land only, except without limitation, Seller accepts any hidden defects or environmental conditions affecting the Premises whether known or unknown, whether such defects or conditions were discoverable through inspection or not.
  - j. **PERSONAL PROPERTY:** N/A Land only.
2. **CONTINGENCIES:**
- a. **TITLE:** Buyer shall pay the cost of an examination of title. If upon examination of title it is found that the title is not marketable, Seller shall have a reasonable time, not to exceed sixty (60) days from the date of notification of defect (unless otherwise agreed to in writing) to remedy such defect. Should Seller be unable to provide marketable title within said sixty (60) days, Buyer may rescind this Agreement at Buyer's sole option, with all parties being released from any further obligations hereunder. Seller hereby agrees to make a good faith effort to correct the title defect within the sixty (60) day period above prescribed once notification of such defect is received.
  - b. **FINANCING** This agreement is not contingent upon the Buyer obtaining financing.
  - c. **INSPECTIONS:** N/A Land only
  - d. **TOWN APPROVALS:** Buyer's obligation to purchase the Premises is expressly contingent upon Buyer obtaining all necessary approvals from the Town of Rye, including an affirmative vote at the Town Meeting in March 2025. The Buyer does not have the authority to purchase the Premises without said approvals. If Buyer is unable to obtain approval at the Town Meeting, or unable to obtain any other

necessary approvals, Buyer shall notify Seller within a reasonable time (not to exceed thirty days) and this Agreement shall be considered null and void.

- e. **ASSUMPTION OF LIABILITY:** The parties recognize and acknowledge that the Premises is the location of a former municipal landfill operated by Buyer under the Lease with Seller. In assuming ownership of the Premises, the Buyer also assumes and fully accepts the liability of Seller as a potentially responsible party under any applicable Environmental Laws arising out of Seller's status as owner of the Premises ; provided, however, the Seller shall remain liable as a potentially responsible party, and Buyer shall not relinquish, waive, or modify any of Buyer's rights to contribution related to Seller's designation of same, to the extent that any contamination of the Premises or contamination emanating from the Property was caused, in whole or in part, by the actions of the Seller. Buyer shall further assume all liability related to any claims that may be asserted by any third party related to any environmental contamination on or emanating from the Property related to the operation of the former municipal landfill, except to the extent that any such contamination or migration of the such contamination was the result of the negligent, reckless, or intentional acts or omissions of the Seller or the Seller's trustees, beneficiaries, employees, contractors, subcontractors, or agents.

For the purposes of this paragraph, 'environmental law' shall include, but shall not be limited to, all, federal, state and local statutes, regulations, ordinances and any judicial and/or administrative decrees or decisions, whether now existing or hereinafter enacted, promulgated or issued, with respect to any hazardous or toxic materials, waste, or substances, affecting or impacting the environment, including without limitation, those concerning drinking water, groundwater, air within buildings or structures, wetlands, landfills, dumps, storage tanks, solid waste, waste water, storm water run-off, waste emissions, wells or toxic pollutants. Without limiting the generality of the foregoing, the term 'environmental law' shall encompass each of the following statutes, and regulations promulgated thereunder, and amendments and successors to such statutes and regulations, as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified in scattered sections of 26 U.S.C.; 33 U.S.C.; 42 U.S.C. and 42 U.S.C. s. 9601 et seq.); (ii) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. s. 6901 et seq.); (iii) the Hazardous Substances Transportation Act (49 U.S.C. s. 1801 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. s. 2061 et seq.); (v) the Clean Water Act (33 U.S.C. s. 1251 et seq.); (vi) the Clean Air Act (42 U.S.C. s. 7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. s. 349; 42 U.S.C. s. 201 and s. 300f et seq.); (viii) The National Environmental Policy Act of 1969 (42 U.S.C. s. 4321); (ix) the Superfund Amendment and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. s. 1101 et seq.); the New Hampshire RSA 125-A, 125-C, RSA 125-I, 146-A, 146-C, 147-A, 147-B, 141-E, 149-I, 149-M, RSA 482-A, RSA 483, RSA 483-B, RSA 485-A, RSA 485-C, and N.H. Code of Administrative Rules Chapter Env-Or 600 and the Department of Environmental Services Vapor Intrusion Guidance (July 2006), as amended in July 2011, February 2013 and thereafter.

This paragraph shall survive delivery of the Deed.

3. **DISCLOSURES:** New Hampshire law requires that the Seller provides certain disclosures and notifications prior to or contemporaneous with the sale of real property. The required disclosures are as follows:
  - a. **RSA 477:4-a Radon Gas and Lead Paint Notification:**
    - i. **Radon Gas:** Radon gas, the product of decay of radioactive materials in rock may be found in some areas of New Hampshire. This gas may pass into a structure through the ground or through water from a deep well. Testing can establish its presence and equipment is available to remove it from the air or water.
    - ii. **Lead Paint:** N/A land only.
  - b. **RSA 477:4-c and RSA 477:4-d Private Water Supply System, Private Sewage Disposal System, and Insulation Notification:**
    - i. **Public Water:** N/A
    - ii. **Public Sewage:** N/A
    - iii. **Insulation:** N/A
  - c. **RSA 477:4-e History of Premises:** N/A
  - d. **RSA 477:4-f Condominium Sale Notification:** N/A
  - e. **RSA 477:4-g Methamphetamine Notification:** N/A
  - f. **RSA 485-A:39 Waterfront Property Sale Site Assessment Study:** N/A
4. **WARRANTIES AND REPRESENTATIONS:**
  - a. **REALTOR:** The parties represent to one another that no real estate agent provided representation in connection with the sale of the Premises.
  - b. **VIOLATIONS OF GOVERNMENTAL RULE AND RESTRICTIONS:** The Seller represents that, to Seller's actual knowledge, at the time of the transfer of title there shall exist no violations of governmental (including zoning and planning) rules, regulations, or limitations and no violations of any restrictive covenant, agreement, or condition to which the title, as conveyed by the Deed given in accordance with the terms hereof, shall be made subject.
  - c. **ACTIONS:** The Seller represents that, to Seller's actual knowledge, there is no pending or, , threatened action or proceeding (including, but not limited to, any

condemnation or eminent domain action or proceeding) before any court, governmental agency, or arbitrator relating to or arising out of the ownership of the Premises or any portion thereof, or which may adversely affect Seller's ability to perform this Agreement or which may affect the Premises or any portion thereof.

- d. **WASTE DISPOSAL:** The Seller represents, and Buyer acknowledges accepts and assumes all liability that the Premises was formerly used as a landfill.

5. **LIMITATIONS ON REPRESENTATIONS AND WARRANTIES:** Terms such as "to Seller's knowledge," "to the best of Seller's knowledge" or like phrases mean the actual present and conscious awareness or knowledge of Seller; provided that so qualifying Seller's knowledge shall in no event give rise to any personal liability on the part of Mark Ciborowski, on account of any breach of any representation or warranty made by Seller herein. Said terms do not include constructive knowledge, imputed knowledge, or knowledge Seller or such persons do not have but could have obtained through further investigation or inquiry. No broker, agent, or party other than Seller is authorized to make any representation or warranty for or on behalf of Seller. To the extent that before the Closing, Buyer obtains knowledge that Seller's representations and warranties are inaccurate, untrue or incorrect in any way (from estoppels, Buyer's due diligence or any other source), such representations and warranties shall be deemed modified to reflect such knowledge as of the Closing. Notwithstanding anything herein to the contrary, representations and warranties shall not be deemed to survive the Closing.

6. **SALE "AS IS, WHERE IS":** Except as expressly set forth in this Agreement, Buyer has not relied and will not rely on, and Seller has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information of any kind or character pertaining to the Premises or relating thereto made or furnished by Seller, or any agent or third party representing or purporting to represent Seller. Buyer acknowledges and agrees that upon Closing, Seller shall sell and convey to Buyer and Buyer shall accept the Premises "AS IS, WHERE IS, WITH ALL FAULTS" except to the extent expressly provided otherwise in this Agreement. Buyer represents that, except as expressly set forth in this Agreement, it is relying solely on its own expertise and inspections of the Premises, and that of Buyer's consultants in purchasing the Premises. Upon Closing, Buyer shall assume the risk that adverse matters, including adverse physical or construction defects, adverse environmental conditions, health or safety conditions exist and may not have been revealed by Buyer's inspections and investigations. The terms and conditions of this Section shall expressly survive the Closing.

7. **MISCELLANEOUS:**

- a. **DAMAGES:** Neither party shall be entitled to damages under any circumstance. Termination shall be the sole remedy for Buyer and Seller.
- b. **PRIOR STATEMENTS:** Any verbal representation, statements, and agreements are not valid unless contained herein. This Agreement completely expresses the obligations of the parties.

- c. **INSURANCE:** N/A Land only. To the extent the Seller has a current insurance policy, said policy shall remain in place up and until Closing.
- d. **EFFECTIVE DATE:** This is a binding contract, and the effective date is when signed and dated, whether by electronic transfer or original, and all changes initialed and dated by Seller and Buyer.
- e. **INVALIDITY AND WAIVER.** Any provision in this Agreement that is held to be illegal or unenforceable shall be ineffective to the extent of such illegality or unenforceability without invalidating the remaining provisions and any such illegal or unenforceable provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party by the same or any other such term or provision in the future.
- f. **GOVERNING LAW.** This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the law of the state in which the Premises are located, without regard to its choice of law provisions.
- g. **TIME.** Time is of the essence with respect to all dates and time periods set forth in this Agreement.
- h. **NOTICES.** All notices required or permitted hereunder shall be in writing and shall be served on the parties at the address set forth above. Any such notices shall, unless otherwise provided herein, be given or served (i) by overnight delivery using a nationally recognized overnight courier, (ii) by personal delivery, (iii) by facsimile, evidenced by confirmed receipt, or (vi) by email, with confirmation and duplicate copy sent to the party notified via United States mail, postage prepaid. Notice shall be effective on the date received or if delivery is refused or undeliverable on the date delivery was first attempted, only if and when delivered to or first refused by or undeliverable to the party to be notified between the hours of 8:00 a.m. and 5:30 p.m. of any business day with delivery made after such hours to be deemed received the following business day. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Notices given by counsel to Buyer shall be deemed given by Purchaser and notices given by counsel to Seller shall be deemed given by Seller.

Each party is to receive a fully executed duplicate original of this Agreement. This Agreement shall be binding upon the heirs, executors, administrators, and assigns of both parties.

*Signatures on next page*

**SELLER:**

*Mark Ciborowski*

Mark Ciborowski

*Gail C. Ferreira*

Gail C. Ferreira

*Kim M. Ciborowski*

Kim M. Ciborowski

**BUYER:**

The TOWN OF RYE

By: *William Epperson*

William Epperson, Chairman

And By: *Bob McGrath*

Bob McGrath, Vice Chair

And By: *Robert S. Wright*

Robert S. Wright, Selectman