

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (“**Settlement Agreement**”) is made between the City of Laramie, Wyoming, a municipal corporation located in Albany County, Wyoming with principal office located at 405 Ivinson Avenue, Laramie, Wyoming 82070 (“**City**”) and Bombay Land Company, Inc., a Wyoming corporation with principal office located at 2314 Bridgestone Street, Spearfish, South Dakota 57783 (“**Bombay**”) and B.F.R. Development, Inc., a Wyoming corporation with principal office located at 2726 Bunkhouse Place, Missoula, MT 59802 (“**BFR**”), including B.F.R. Partnership and Keith Burman, Gail Fluty, and Seymour Rosenblatt, as individuals, as part of BFR. Bombay and BFR may collectively be referred to herein as “**Defendants.**” The City and Defendants may be referred to individually as a “**Party**” or collectively as the “**Parties.**”

RECITALS

WHEREAS, City is a municipal corporation that approved a final plat of the Nye Addition on October 17, 1972, subject to terms and conditions that BFR build certain offsite public infrastructure improvements;

WHEREAS, City and BFR memorialized those terms in a Subdivision Agreement (“Subdivision Agreement”) that required BFR to build certain public infrastructure improvements immediately while others were delayed until the City requested.

WHEREAS, on December 26, 1985, BFR signed a Delayed Improvements Agreement (“1985 DIA”) with City to postpone the construction of certain of the required public infrastructure improvements.

WHEREAS, on September 24, 1990, BFR, BFR Partnership, and Keith Burman, Gail Fluty, and Seymour Rosenblatt, as individuals, signed a new Delayed Improvements Agreement (“1990 DIA”) with City;

WHEREAS, City filed Civil Action No. 35467 (“Litigation”) in Albany County District Court for declaratory judgment to determine the validity and enforceability of the 1985 DIA and the 1990 DIA with respect to the Nye Addition;

WHEREAS, City and Defendants desire to compromise any and all claims against one another arising out of the Subdivision Agreement, if any such claims exist, the 1985 DIA, if any such claims exist, and the 1990 DIA that are the subject of the Litigation; and

NOW THEREFORE, in consideration for the mutual promises and undertakings contained herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties agree to the terms of this agreement as follows:

TERMS

1. Mutual Releases and Discharges.

1.1 In exchange for the payment and other consideration set forth in Section 2, *infra*, the receipt and sufficiency of which is hereby acknowledged, the City does hereby voluntarily, knowingly and completely release, acquit and forever discharge the Defendants, those identified in Section 1.4, and the real property described in Exhibit A from any and all past, present or future liens, claims, demands, obligations, actions, causes of action, expenses and compensation which the City now has, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of, any and all known or unknown claims incurred, suffered or experienced by City, as a result of the allegations concerning the Defendants in the Litigation, whether arising out of the Subdivision Agreement, the 1985 DIA, or the 1990 DIA and in connection with the “Bombay Parcel,” the only remaining Nye Addition parcel in which BFR or Bombay retain any interest. This release shall include any future demand or obligation that Defendants could otherwise incur as a result of the implementation of a Local Improvement District (“LID”) encompassing the Bombay Parcel.

a. Defendants will NOT have any further or future obligation to contribute to or pay for any betterments, improvements, design or construction of Bill Nye Avenue to include but not limited to the bridge across Spring Creek, the road, the curb, the gutter, the sidewalks, the drainage, the water, the sewer, the utilities or the storm drainage in regard to Bill Nye Avenue or the 1990 DIA in connection with the planned or current construction of Bill Nye Avenue or the related improvements stated herein.

b. This release term does not include future obligations arising generally from a property owner’s general responsibilities, for example, to construct, reconstruct, or repair sidewalks and curbs along any such street, road, alley, or other public way adjoining to such land related to development on-site. *See, e.g.*, Laramie Mun. Code 12.32.010; 15.18.010.A.3, except as may be otherwise provided herein. Further, if Defendants undertake any activity that requires any modification of any of the aforementioned items or others, such modifications will be Defendants’ responsibility. Nothing in this agreement shall be construed to alter Defendants’ responsibilities as a property owner as provided for under City of Laramie Municipal Code, except in connection with planned or current construction of Bill Nye Avenue or related improvements.

c. This release term shall include any obligation to construct any surface drainage or detention facilities on the Bombay Parcel in connection with the planned or current construction of Bill Nye Avenue or related improvements that are the subject of the 1990 DIA. But if Defendants undertake any activity now or in the future on the Bombay Parcel that requires onsite surface drainage or detention, this Agreement does not affect any such future obligations under City of Laramie Municipal Code triggered by Defendants’ own activities. Nothing in this Agreement shall affect Defendants’ general obligations, as any such obligations may arise, under the City of Laramie Municipal Code.

1.2 In exchange for the payment and other consideration set forth in Section 2, *infra*,

the receipt and sufficiency of which is hereby acknowledged, the Defendants do hereby voluntarily, knowingly and completely release, acquit and forever discharge the City from any and all past, present or future liens, claims, demands, obligations, actions, causes of action, expenses and compensation which the Defendants now have, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of, any and all known or unknown claims incurred, suffered or experienced by Defendants, as a result of the facts giving rise to the Litigation, whether arising out of the Subdivision Agreement, the 1985 DIA, or the 1990 DIA and in connection with the “Bombay Parcel,” the only remaining Nye Addition parcel in which Defendants retain any interest. This release shall include any future claim, demand, or obligation that City could otherwise incur, including but not limited to, condemnation-related claims in regard to the approximately but not more than .21 acre parcel, “Property Payment”, breach of contract claims, or any other claims for damages or equitable relief by Defendants arising out of the planned or current construction of Bill Nye Avenue or Bill Nye Avenue’s realignment.

1.3 It is the intent and purpose of this Settlement Agreement to fully and completely discharge the Defendants and those identified in Section 1.4 and City from any claims or damages which have been or could be asserted on behalf of the Defendants or City, or by any person or persons having a legal interest therein, arising out of the factual basis of the Litigation.

1.4 This release and discharge contained herein shall apply to the Defendants and their officers, employees, agents, and shareholders, BFR Partnership, Keith Burman, Gail Fluty and Seymour Rosenblatt and all partners, assigns, successors, heirs and estates, and Defendants’ assigns and successors and City and its officers, employees, agents, assigns, and elected officials.

1.5 This release and discharge on the parts of the City and Defendants shall be a fully binding and complete settlement among the City and the Defendants. City acknowledges that given the facts and circumstances surrounding entry into this Settlement Agreement, it is reasonably necessary and of a definable advantage to the City and its Governing Body.

1.6 The City and Defendants expressly agree this Settlement Agreement may be treated as a defense to any action or proceeding which may be brought, instituted, or taken by City or Defendants, their successors, assigns, subrogees, successors, or by any person or entity on behalf of the City against the Defendants, or vice versa, or any of them, and shall be a complete bar to the commencement or prosecution of any action or proceeding of whatever kind against the Defendants or City, if such action arises out of the factual basis of the Litigation.

1.7 City shall record a release document within seven (7) days of receipt of the SEVENTY THOUSAND DOLLARS AND ZERO CENTS (\$70,000.00) (“Cash Payment”), defined *infra*, such release document substantially in the form attached hereto as Exhibit A, with the Albany County Real Estate Department such that it shall be clear in the chain of title for the Bombay Parcel that any burdens on the Parcel arising out of the Subdivision Agreement, the 1985 DIA, and the 1990 DIA are extinguished as a result of the Parties entering this Settlement Agreement.

2. Payment and other Consideration.

2.1 In consideration of the releases set forth above, and of City's guarantee to dedicate one thirty-eight feet (38') wide unrestricted full access to Bill Nye Avenue for ingress and egress to the Bombay Parcel with left and right turns in and out to be located generally on the "easterly side" of the Bombay Parcel, and subject to the execution of this Settlement Agreement, Defendants shall pay to City the sum of SEVENTY THOUSAND DOLLARS AND ZERO CENTS (\$70,000.00) ("Cash Payment") on the Effective Date of this Agreement.

2.2 In further consideration of the release set forth above, and of City's determination that another access thirty-eight feet (38') wide unrestricted full access to Bill Nye Avenue for ingress and egress to the Bombay Parcel with left and right turns in and out may be constructed for the Bombay Parcel, such second access to be located generally on the "northerly side" of the Bombay Parcel, as distinct from the "easterly side" of the Bombay Parcel, and subject to the execution of this Settlement Agreement, Bombay shall pay to City the sum of TEN THOUSAND DOLLARS AND ZERO CENTS (\$10,000.00) ("Additional Cash Payment"). This Additional Cash Payment is payable upon the earliest date on which City confirms, in its sole discretion, that a second access may be constructed for the Bombay Parcel, such second access to be located generally on the "northerly side" of the Bombay Parcel, as distinct from the "easterly side" of the Bombay Parcel.

2.3 If in City's determination, another access may not be constructed to the Bombay Parcel generally on the "northerly side" of the Bombay Parcel, as distinct from the "easterly side" of the Bombay Parcel, pursuant to Section 2.2, City shall pay to Bombay TEN THOUSAND DOLLARS AND ZERO CENTS (\$10,000.00) ("Liquidated Damages"). This Liquidated Damages payment is payable upon the earliest date on which City confirms, in its sole discretion, that a second access may not be constructed on the Bombay Parcel.

2.4 In further consideration of the releases set forth above, and subject to the execution of this Settlement Agreement, Bombay shall convey via quitclaim deed to City title to the portion of the Bombay Parcel ("Property Payment" and in combination with "Cash Payment," "Total Payment.") depicted in the attached Exhibit B ("Bombay Parcel Portion") as soon as is reasonably practicable after the Effective Date of this Agreement and upon City completing the platting. The Parties agree that this Bombay Parcel Portion is approximately but not more than 0.21 acres with unappraised fair market value of approximately \$182,000.00. City shall expeditiously pursue and perform any necessary survey, platting and administrative approvals required to accomplish the conveyance. Such conveyance shall be accomplished using the deed substantially in the form attached hereto as Exhibit C.

a. Prior to delivery of the deed, Defendants shall pay all property taxes and assessments asserted against the Bombay Parcel Portion for the current year and for all prior years, if any such outstanding tax liabilities or assessments exist. All such taxes for the current year shall be apportioned between the Parties on a *pro rata* basis as of the Effective Date of this Settlement Agreement, defined *infra* at Section 15.

b. Defendants represent that the Bombay Parcel Portion is not subject to any liens, encumbrances, outstanding taxes, or assessments, excluding consideration of

encumbrances associated with the 1985 DIA or the 1990 DIA that are the subject of the Litigation for which this Settlement Agreement resolves all claims. If any such liens or encumbrances exist, Defendants shall extinguish the same prior to the transfer of title to the Bombay Parcel Portion to City.

2.5 Each Party shall bear its own attorneys' fees and costs arising and stemming from the Litigation and those arising in connection with the settlement and compromise embodied in this Settlement Agreement. Each Party shall also be responsible for any additional fees, costs or taxes incurred as a result of any transaction effectuated pursuant to this Settlement Agreement.

3. Dismissal with Prejudice.

Within seven (7) days of receipt of above SEVENTY THOUSAND DOLLARS AND ZERO CENTS (\$70,000.00) Cash Payment pursuant to Section 2.1, the Parties hereby agree to file a Joint Motion and Stipulation for Court Approval of this Settlement Agreement and for Dismissal of the Litigation ("Joint Motion"), WITH PREJUDICE, as to all claims in the Litigation, and agree to direct its attorneys to execute all necessary documents to accomplish Court approval of this Settlement Agreement and dismissal of all claims in the Litigation. The Parties agree that the Court shall retain jurisdiction in this matter for the purpose of enforcing the terms and conditions of this Settlement Agreement and Release and that the Parties shall include their request for continuing jurisdiction in their Joint Motion to the Court.

4. No Admission of Liability.

The Parties agree that nothing contained herein, and no action taken by any Party hereto with regard to this Settlement Agreement, shall be construed as an admission by any Party of liability or of any fact that might give rise to liability for any purpose whatsoever.

5. Warranties and Representation.

8.1. The City and Defendants warrant and represent as follows:

- a. That they have read this Settlement Agreement and agree to the conditions and obligation set forth in it.
- b. City and Defendants voluntarily execute this Settlement Agreement and represent that they have relied upon legal advice of their attorneys, who are the attorneys of their own choice and that the terms of this Settlement Agreement have been completely read and explained to them by their attorneys, and that those terms are fully understood and voluntarily accepted by the City and Defendants.
- c. City and Defendants and their representatives with authority to execute this Settlement Agreement have full and complete legal capacity to enter into this Settlement Agreement.

6. Severability.

If any provision of this Settlement Agreement is held illegal, invalid, or unenforceable, such holdings shall not affect any other provision hereof. In the event any provision is held illegal, invalid, or unenforceable, such provision shall be limited so as to effect the intent of the Parties to the fullest extent permitted by applicable law.

7. Enforcement.

The releases contained herein do not release any claims for enforcement of the terms, conditions, covenants or warranties contained in this Settlement Agreement. The Parties shall be free to pursue remedies available to them to enforce this agreement.

8. No Third Party Beneficiaries.

This Settlement Agreement is for the sole benefit of the Parties and those identified in paragraph 1.4 hereto and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Settlement Agreement.

11. Entire Agreement.

This Settlement Agreement is the entire agreement between the Parties. This agreement supersedes any and all prior agreements and cannot be modified except in writing signed by all Parties.

12. Additional Documents.

All of the Parties agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

13. Governing Law.

This Settlement Agreement is to be construed and interpreted in accordance with the laws of the state of Wyoming. The state courts located in Albany County, Wyoming or federal courts of Wyoming shall be the exclusive forums for litigation concerning this Settlement Agreement. All Parties to this Settlement Agreement consent to personal jurisdiction in such courts. The Parties irrevocably waive the right to argue for the forum of any other jurisdiction.

14. Interpretation.

The headings within this Settlement Agreement are purely for convenience and are not to be used as an aid in interpretation. Moreover, this Agreement shall not be construed against either Party as the author or drafter of the Agreement.

15. Effectiveness.

The "Effective Date" of this Settlement Agreement is the date of execution by the last Party hereto. This Settlement Agreement and Release may be executed in three counterparts, all of which taken together shall constitute one and the same instrument, and any party hereto may execute this Settlement Agreement and Release by signing any such counterpart. Facsimile and electronic versions of signatures shall be treated as originals.

BOMBAY LAND COMPANY, INC.

APPROVED AS TO FORM:

By:

Title:

Date:

By:

Title:

Date:

B.F.R. DEVELOPMENT, INC.

APPROVED AS TO FORM:

By:

Title:

Date:

By:

Title:

Date:

CITY OF LARAMIE, WYOMING

APPROVED AS TO FORM:

By: Janine Jordan

Title: City Manager

Date:

By:

Title:

Date:

SEAL

Attest:

By: Nancy Bartholomew

Title: City Clerk

Date:

EXHIBIT A

Release Form

DISCHARGE AND RELEASE OF LANDS FROM DELAYED IMPROVEMENT AGREEMENTS

KNOW ALL MEN BY THESE PRESENTS that the City of Laramie, a municipal corporation, with principal office located at 405 Iverson Avenue, Laramie, Wyoming 82070 (“**City**”), in consideration of a settlement agreement reached between the City and B.F.R. Development, Inc. (“**BFR**”) and Bombay Land Company, Inc. (“**Bombay**”) in Civil Action No. 35467, releases any and all covenants, obligations, or burdens established by the 1972 Subdivision Agreement, the Agreement for Delayed Improvements, recorded in Book 412 Page 540 in the Albany County Records, Laramie, Wyoming, dated September 24, 1990 and recorded on February 27, 1991 (“**1990 DIA**”), and the Agreement for Delayed Improvements, recorded in Book 358 Page 300 in the Albany County Records, Laramie, Wyoming, dated December 26, 1985 and recorded on April 11, 1986 (“**1985 DIA**”) (“**Discharge and Release**”). This Discharge and Release shall only apply to the following real property, owned at the time of this recording by BFR and Bombay, subject to contract for deed sale from BFR to Bombay, and situate in the County of Albany, in the State of Wyoming, more particularly described as follows:

“The Bombay Parcel”:

All of Lot 1, Block 1, Nye Addition to the City of Laramie, Albany County, Wyoming, EXCEPTING THEREFROM the following two (2) tracts of land:

Tract I: Beginning at a point on the North line of Boswell Drive, which is the westernmost point of curve number one, as shown on the Plat of Lot 1, Block 1 and Lot 1, Block 2, Nye Addition to the City of Laramie, as platted January 9, 1973, as Instrument No. 593115; and proceeding thence around a circular curve to the left of radius 100 feet through an arc of 59.56 feet, the chord of which bears North 72°51'14" East, 58.69 feet; thence North 55°47'26" East, 50.11 feet; thence around a circular curve to the left of radius 10 feet through an arc of 15.71 feet; thence North 34°12'34" West, 172.78 feet; thence South 55°47'26" West, 4.01 feet; thence South 00°05' East, 200 feet, along the Easterly boundary of that tract of land conveyed in Warranty Deed recorded September 20, 1973 in Book 229 of Photo Records at page 187, to the point of beginning.

Tract II: Beginning at a point on the Northerly line of Boswell Drive from which point the Southwest corner of Lot 1, Block 1, Nye Addition to the City of Laramie, as platted January 9, 1973 as Instrument No. 593115 bears South 89°55' West, 235.65 feet; and proceeding thence, at right angles to the Northerly line of Boswell Drive, North 00°05' West, 200.00 feet; thence North 89°55' East, 200.00 feet; thence South 00°05' East, 200.00 feet to a point on the Northerly line of Boswell Drive; thence South 89°55' West, along

the Northerly line of Boswell Drive, 200.00 feet, to the point of beginning.

The purpose of this Discharge and Release is to release any and all claims by the City in regard to the above-described real property, arising out of burdens identified in the 1972 Development Agreement, the 1985 DIA and the 1990 DIA pursuant to the terms of the parties' above-referenced settlement of all claims between and among each other in Civil Action No. 35467.

The 1972 Subdivision Agreement, the 1985 DIA and the 1990 DIA are terminated, discharged, null and void, and unenforceable for all purposes whatsoever, with prejudice.

IN WITNESS WHEREOF, the City has caused its corporate seal to be hereunto affixed, and these presents to be signed by its duly authorized officer, on the day and year

CITY OF LARAMIE, WYOMING

By: Janine Jordan

Title: City Manager

Date: _____

SEAL

Attest:

By: Nancy Bartholomew

Title: City Clerk

Date: _____

[ACKNOWLEDGEMENT PAGE FOLLOWS]

ACKNOWLEDGEMENT

STATE OF WYOMING)
) SS
COUNTY OF ALBANY)

The foregoing instrument was acknowledged before me by Janine Jordan, City Manager of the City of Laramie, a Wyoming municipal corporation this _____ day of _____, 2022.

Witness my hand and official seal.

Notary Public

My Commission expires _____.

EXHIBIT B

The Bombay Parcel Approximate Depiction

Approximately but not more than .21 Acre Bombay Parcel Portion Approximate Depiction



EXHIBIT C

Quitclaim Deed Form

Quitclaim Deed

Bombay Land Company, Inc., GRANTOR, whose address is 2314 Bridgestone Street, Spearfish, South Dakota 57783, and B.F.R. Development, Inc., GRANTOR, whose address is 2726 Bunkhouse Place, Missoula, MT 59802, (collectively, "GRANTORS") for and in consideration of ten (\$10.00) dollars and other good and valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged, hereby convey and quitclaim to the City of Laramie, Wyoming, a municipal corporation, whose address is P.O. Box C, Laramie, Wyoming 82073, GRANTEE, the following described real property situated in Albany County, Wyoming:

[INSERT SURVEYED LEGAL DESCRIPTION];

TOGETHER with the improvements thereon and appurtenances thereto.

SUBJECT TO easements, rights-of-ways, agreements, covenants, restrictions, and reservations filed of record;

Said area contains 0.21 acres or 9,147.6 square feet, more or less.

PROVIDED, HOWEVER, that the aforementioned tract shall revert to Grantor: (1) if Grantee ever attempts to enforce the terms of a certain Agreement for Delayed Improvements dated December 26, 1985, recorded on April 11, 1986 as Doc. #769749 of the Albany County Wyoming Land Records ("1985 DIA") against Grantor or B.F.R. Development, Inc; (2) if Grantee ever attempts to enforce the terms of a certain Agreement for Delayed Improvements dated September 24, 1990, recorded on February 27, 1991 as Doc. #839431 ("1990 DIA") against Grantor or B.F.R. Development, Inc.; or (3) if Grantee ever attempts to assess or enforce a local improvement district for the construction of those public infrastructure improvements identified in the 1985 DIA and 1990 DIA against property owned by Grantor or B.F.R. Development, Inc. located in Lot 1, Block 1, Nye Addition to the City of Laramie.

GRANTORS release and waive all rights in and to said property under and by virtue of the homestead exemption laws of the State of Wyoming.

[SIGNATURE PAGES FOLLOW]

QUITCLAIM DEED

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**** WHEN RECORDED RETURN TO: City of Laramie City Clerk; P.O. Box C; Laramie, WY 82073 ****

GRANTOR

NAME, TITLE

B.F.R. Development, Inc.

ACKNOWLEDGEMENT

STATE OF WYOMING)
) SS
COUNTY OF ALBANY)

The foregoing instrument was acknowledged before me by [NAME], [TITLE] of B.F.R. Development, Inc. a Wyoming corporation this ____ day of _____, 2022.

Witness my hand and official seal.

Notary Public

My Commission expires _____.

QUITCLAIM DEED

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**** WHEN RECORDED RETURN TO: City of Laramie City Clerk; P.O. Box C; Laramie, WY 82073 ****