

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is made as of November 29, 2022 (the “Effective Date”) by and between the Town of Wilton (the “Town”) and Isaac Frye Holdings, LLC (“IFH”), (all of the foregoing collectively referred to herein as the “Parties”).

### **Recitals**

WHEREAS, IFH owns real estate located on Isaac Frye Highway, which is depicted as Lot 3-2 on the Town’s Tax Map F (the “Property”);

WHEREAS, the Parties have initiated the following lawsuits that are pending in the Hillsborough County Superior Court—Southern District: (1) Town of Wilton v. Isaac Frye Holdings, LLC, Docket No. 226-2022-CV-00033 (the “Code Enforcement Action”) and (2) Isaac Frye Holdings, LLC v. Town of Wilton, Docket No. 226-2022-CV-00107 (the “Planning Board Appeal,” and collectively, with the Code Enforcement Action, the “Lawsuits”);

WHEREAS, IFH filed an administrative appeal that is pending before the Town’s Zoning Board of Adjustment (“ZBA”) (the “ZBA Appeal”);

WHEREAS, the Parties wish to resolve the foregoing actions, disputes, claims, and questions, as well as any other known or unknown claims, related in any way to the Lawsuit and/or ZBA Appeal (collectively, the “Litigation”);

WHEREAS, the foregoing recitals are an integral part of this Agreement.

NOW THEREFORE, in consideration of the mutual promises recited herein, the Parties, intending to be legally bound hereby, agree as follows:

1. Payment of Attorney’s Fees: Within 30 days of the execution of this Agreement, IFH shall pay the sum of \$9,769 in full settlement of the Town’s claim for attorney’s fees in the Code Enforcement Action.

2. Payment of Fines and Penalties: IFH stipulates to all accrued fines and penalties in the amount of \$36,225.00 arising pursuant to RSA 676:17 and RSA 676:17-a and which are sought to be recovered by the Town in the Code Enforcement Action. IFH shall pay \$13,000.00 of those accrued fines and penalties in accordance with the Compliance Schedule set forth in Paragraph 3. The remainder of such fines and penalties shall be held in abeyance pending IFH’s completion of the items identified in the Compliance Schedule set forth in Paragraph 3. Upon completion of such items identified in the Compliance Schedule, the \$23,225.00 in fines and penalties so held in abeyance shall be forgiven, and IFH shall be discharged of any obligation to pay the \$23,225.00 in fines and penalties. Except as otherwise expressly set forth herein, should IFH fail to complete the identified in the Compliance Schedule by the deadlines set forth in Paragraph 3, as those deadlines may be adjusted pursuant to Paragraph 3(d), IFH shall pay the Town such \$23,225.00 in fines and penalties within thirty (30) days of the Town’s demand for same.

3. Compliance Schedule: The Parties agree that IFH shall adhere to the following compliance schedule, which is intended to bring the Property into full compliance with the Town of Wilton Zoning Ordinance, Site Plan Review Regulations, Excavation Site Plan Review Regulations, and other applicable provisions of State law:

- a. IFH shall seek excavation site plan approval with the Planning Board to construct a single-family manufactured housing unit on the Property in accordance with the amended plan identified in Exhibit A. IFH shall file an application for excavation site plan approval application in accordance with Exhibit A and the Land Use Road Map set forth in Paragraph 4 within thirty (30) days of the execution of this Agreement.
- b. IFH shall submit an application for and shall diligently pursue a variance from Sections 9b.6.1, 6.2, and 6.4 of the Town of Wilton Zoning Ordinance from the Town of Wilton Zoning Board of Adjustment (“ZBA”) within 14 days receipt of conditional approval from the Planning Board.
- c. Upon receipt of final Planning Board and ZBA approval, IFH shall apply for a building permit within 60 days. Upon the submission of an application for a building permit for the Property and pursuant to Paragraph 2 of this Agreement, IFH shall pay \$13,000.00 in fines and penalties to the Town due and owed pursuant to RSA 676:17 and RSA 676:17-a.
- d. IFH shall complete construction of the manufactured housing unit within 6 months of obtaining a building permit. IFH shall be entitled to request additional 3 month extensions, which requests shall not be unreasonably withheld, if completion is delayed due to weather, construction delays, or unavailability of materials. Good cause shall also include if the manufactured housing unit has not been delivered notwithstanding IFH diligently ordering that manufactured housing unit. The Town may require IFH to provide evidence that it has exercised due diligence or that the reason for the extension is due to circumstances beyond IFH’s control.
- e. IFH can use the existing driveway on the Property when constructing engaging in site improvements and constructing the manufactured housing unit. However, IFH shall relocate the existing driveway as shown on the attached Exhibit A within 3 months of completion of construction of the manufactured housing unit.
- f. IFH shall not be entitled to a certificate of occupancy, nor shall it transfer the property, until all requirements of this Agreement have been fulfilled.

4. Land Use Roadmap: In an effort to limit further points of dispute and to allow IFH to expeditiously remediate non-compliant conditions on the Property, the Parties agree to the following:

- a. IFH shall submit an application for excavation site plan review consistent with the plan reflected in Exhibit A.

- b. In submitting the amended plan reflected in Exhibit A, IFH shall ensure that all information required by Section 5.0 of the Town's Excavation Site Plan Review Regulations is provided, or IFH shall seek a waiver from those Excavation Site Plan Review Regulations. IFH shall also be responsible for complying with the reclamation requirements set forth in Section 8.0 of the Town's Excavation Site Plan Review Regulations.
- c. IFH shall provide a landscaping plan to increase stabilization of the slope to the south of the building envelope shown on Exhibit A. This landscaping plan shall include, at a minimum, identification of vegetation suited for 2:1 slopes as well as the use of other stabilization measures such as geotextile designed for steep slopes.
- d. IFH shall submit to the Planning Board design details showing drainage and stabilization for this relocation. Such proposal shall include plans for proposed retaining walls. The plans shall reflect the materials used for that retaining wall, the type of retaining wall, the height and elevation of each wall, all structural elements of each wall (foundations, drains, etc.), the distance and slopes between retaining walls, and the type of soils to be used for any backfill.
- e. IFH shall submit such information as may be required by the Wilton, New Hampshire Stormwater Management and Erosion Control Regulations, Section H of the Wilton Land Use Laws and Regulations, including all runoff reports, stormwater management plans, and/or stormwater management features that may be necessary.
- f. IFH will seek a waiver from the requirements of RSA 155-E:4-a from the Planning Board in accordance with RSA 155-E:5-b.
- g. IFH can seek conditional approval from the Planning Board for its excavation site plan review application, conditioned upon IFH obtaining variances from the ZBA from Section 9b.6.1, 6.2, and 6.4 of the Zoning Ordinance. The parties agree that IFH does not require variances from sections 6 and 12 of the Zoning Ordinance in order to develop the property consistent with the plans previously presented to the ZBA and Planning Board.
- h. If during the course of the consideration of IFH's excavation site plan review application, the Planning Board receives new information which reflects that IFH may need additional variance or waiver relief, the Planning Board shall seasonably notify IFH of the same.
- i. The Planning Board will review the test pit data provided by IFH to determine if IFH's proposal complies with the requirements of Section 7.0(i) and 7.0(j) of the Town's Excavation Site Plan Review Regulations. The Planning Board may require IFH to dig additional test pits in making that determination. If test

pit data indicates that the Property is not in compliance with the requirements of Section 7.0(i) and/or (j), IFH shall seek a waiver from the requirement of this section from the Planning Board.

- j. Any application submitted by IFH shall be subject to the public hearing process pursuant to RSA chapter 676. The Planning Board shall issue a decision based on all evidence and materials submitted during that public hearing process. The Planning Board may schedule a site walk as part of that hearing process.
- k. The parties previous agreement regarding the payment and release of a \$90,000.00 restoration bond shall remain in full force and effect.

5. Litigation Stay: The parties agree to stay the existing Litigation pending the fulfillment of the obligations set forth in this Agreement. In the event of that IFH is unable to obtain the requisite excavation site plan approval and/or variances identified in the Land Use Roadmap set forth in Paragraph 4, the parties agree to submit the dispute to mediation prior to filing any additional actions and/or seeking to lift the stay on any aspect of the Litigation. In the event that the parties are unable to resolve such dispute, either party may proceed to lift the stay on any or all aspects of the Litigation.

6. Registry of Deeds: Upon execution, IFH authorizes the Town to record this Agreement or a Notice identifying the terms of this Agreement with the Hillsborough County Registry of Deeds.

7. Resolution of Litigation: The Litigation shall be resolved as follows and upon the occurrence of the following events:

- a. Within 10 days of IFH's complete satisfaction of all of the terms set forth in Paragraphs 1 through 4 above, the Town and IFH shall Neither Party Docket Markings with the Hillsborough County Superior Court – South, resolving the Code Enforcement Action as follows: “Judgment for neither party; no interest; no cost; no further action for the same cause of action.”
- b. Within 10 days of the issuance of excavation site plan approval, the variances identified in Paragraph 4(g) above, and the issuance of a building permit for the construction of the manufactured housing unit, IFH and the Town shall file Neither Party Docket Markings with the Hillsborough County Superior Court – South, resolving the Planning Board Appeal as follows: “Judgment for neither party; no interest; no cost; no further action for the same cause of action.” IFH shall further file a withdrawal of the ZBA Appeal on or before that same date.

8. Entire Agreement. This Agreement constitutes the entire agreement between the Parties, and there are no other understandings or representations, oral or written, related to the subject matter hereof. This Agreement may not be changed, modified, or amended, in whole or in part, except in writing signed by all Parties. No amendment of this Agreement shall be valid or

effective unless made in writing and executed by the Parties hereto subsequent to the date of this Agreement.

9. Binding Effect. This Agreement is binding upon and shall inure to the benefit of the Parties hereto and their respective employees, members, successors, assigns, representatives, agents, and business entities.

10. Interpretation of Agreement. The Parties to this Agreement acknowledge and agree that (a) this Agreement and its reduction to final written form are the result of good faith negotiations between the Parties; (b) the Parties have carefully reviewed and examined this Agreement before execution by said Parties, or any of them; and (c) any statute or rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

11. Severability. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid or to conflict with any federal, state or local law, such portion(s) of this Agreement are hereby declared to be of no force or effect in such jurisdiction and all remaining portions of this Agreement shall otherwise remain in full force and effect.

12. Governing Law. This Agreement is deemed made and entered into in the State of New Hampshire and in all respects shall be interpreted and construed under the laws of the State of New Hampshire. The Parties consent to personal jurisdiction in the state and federal courts of New Hampshire.

13. Headings. The headings herein are for convenience only and do not constitute a part of the Agreement, and shall not limit, be used to interpret or otherwise affect the provisions of the Agreement in any way.

14. Counterparts. This Agreement may be executed in multiple counterparts by facsimile or email signatures, each of which shall be deemed an original. A facsimile or email signature delivered by portable data format (.pdf) shall be deemed an original.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the dates set forth below.

**THE TOWN OF WILTON**

Date: 11/29/2022

  
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By: Nicholas P. Germano

Its: Town Administrator

**ISAAC FRYE HOLDINGS, LLC**

Date: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_