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Rockingham Superior Court
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STATE OF NEW HAMPSHIRE
Superior Court
Rockingham, ss.
Case No. 215-2022-CV-00167

Steven Rand et al.

Plaintiffs,

v.

The State of New Hampshire,

Defendant.

PLAINTIFFS' RESPONSE TO THE STATE'S AND INTERVENOR'S OBJECTIONS AND INTERVENOR'S CROSS-MOTIONS FOR PARTIAL SUMMARY JUDGMENT REGARDING SWEPT

INTRODUCTION

For nearly thirty years, the State has shirked its duty under *Claremont* to constitutionally fund an adequate education. As it stands, RSA 76:3, the current tax scheme to fund the State's duty to provide an adequate education, presents the State's latest circumvention in its long history of avoiding the Supreme Court's rulings. The Court should consider this history when analyzing the latest arguments of the State and the Intervenor ("Excess Communities").

Plaintiffs moved for summary judgment asking the Court to determine the State's Education Tax, RSA 76:3,[1] unconstitutional because the effective rate of the statewide tax is not

[1] The State's Education Tax is codified at RSA 76:3. It is often called "the SWEPT." The Education Tax is not a generic tax for education. It is a specific state tax to pay for the State's

uniform as required by Part II, Article 5 of the New Hampshire Constitution. SWEPT as currently administered unconstitutionally reduces the tax burden on property owners in certain communities and, at times, eliminates their tax burden entirely. Unable to dispute this, the State and Excess Communities offer two arguments to circumvent the bedrock proposition that requiring communities to bear unequal tax burdens to support the State's responsibility to fund a constitutionally adequate education is unconstitutional.

First, the State and Excess Communities argue that allowing property-wealthy communities to keep excess SWEPT money to spend on education unsupervised and in the communities' sole discretion is a legislative spending decision under Part II, Article 6 of the New Hampshire Constitution and that this Court must be deferential to that decision. *See, e.g.*, State Opp. at 8-10. This novel re-characterization both ignores the foundational principles that a property tax-based education funding scheme which results in differing effective tax rates is unconstitutional regardless of the method used by the State and that turning the excess SWEPT monies into a discretionary block grant violates the specific spending limitations set out by the statute. *See* RSA 198:39, I.

Second, despite the long history of the Department of Revenue Administration ("DRA") including the value of property located in unincorporated areas in SWEPT calculations and issuing tax warrants to collect the SWEPT from those unincorporated places, the State now claims that these unincorporated areas are statutorily exempt from this state tax because they are not "municipalities."

These arguments fail as a matter of law. Further, if taken as true, they uncover further

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constitutional duty to fund adequacy. *See Claremont Sch. Dist. v. Governor* (*Claremont II*), 142 N.H. 462, 465 (1997).

constitutional violations.

BACKGROUND

In *Londonderry Sch. Dist. v. State*, 154 N.H. 153 (2006), the Supreme Court found that the State had failed to define and cost out a constitutionally adequate education as required by Part II, Article 83. *Id.* at 162. Because defining and costing out an adequate education are precursor duties to reviewing the mechanism to fund the State's responsibility, the Court declined to address any other issues including the excess SWEPT issue until the State met its initial duties. *Id.*

Responding to this ruling, the legislature passed S.B. 539. Report and Findings of the Joint Legislative Oversight Committee Pursuant to 2008 Laws Ch. 173 (Nov. 17, 2008), at 3 (available at https://gencourt.state.nh.us/BillHistory/SofS_Archives/2008/house/SB539H.pdf))("In response to the *Londonderry* decision, the legislature passed House Bill 917, 2007 Laws Chapter 270, defining the opportunity for an adequate education and Senate Bill 539, 2008, determining the cost of providing the opportunity for an adequate education . . ."). On top of defining and costing out an adequate education, the bill required all excess SWEPT funds be transferred to the State's Education Trust Fund. *See* 2008 New Hampshire Laws Ch. 173 (S.B. 539) ("RSA § 76:8 . . . if there is an excess education tax payment due pursuant to RSA 198:46, [the commissioner shall issue a warrant] directing [the locality] to assess the amount of the excess payment and pay it to the department of revenue administration for deposit in the education trust fund").[2]

After only a few years, the State backtracked on its progress by eliminating the requirement that excess SWEPT revenue be paid to the State. *See* Intervenor Opp. at 6; *see also* 2011 House Committee Report (Intervenor Opp., Ex. 3); 2011 New Hampshire Laws Ch. 258 (HB 337). Under

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[2] At the time, the revenues held in the Education Trust Fund could be spent only to defray the State's duty to fund constitutional adequacy. RSA 198:39 (West 2007). The purposes for which Education Trust Fund revenues may be spent have now expanded somewhat, but remain limited to a few state purposes. *See* R.S.A. 198:39.

the current scheme, the State allows localities to retain State revenues when it exceeds the amount of that needed to fund adequacy. The current scheme follows the State's ABC Plan which was condemned in *Opinion of the Justices* (*School Financing*) ("*Sch. Financing*"), 142 N.H. 892 (1998), the Phase-In Plan which was condemned in *Claremont v. Governor* (*Statewide Prop. Tax Phase-In*) ("*Phase-In*"), 144 N.H. 210, and the Keep the Excess Plan that the trial court condemned in *Londonderry*, 154 N.H. 153. This history should be considered by the Court when deciphering the latest iterations of the State's efforts to avoid following the *Claremont* decisions.

ARGUMENT

I. THE STATE'S ADMINISTRATION OF NEGATIVE SWEPT TAX RATES IS UNCONSTITUTIONAL.

The State's policy of setting negative local tax rates to offset the SWEPT amount is unconstitutional.[3] *See Phase-In*, 144 N.H. at 217 (1999). The State argues that setting a negative tax rate in unincorporated places, such as Hale's Location, is constitutional because (1) the SWEPT does not apply to localities that do not have educational needs and (2) unincorporated places are not subject to the SWEPT because they are not "municipalities" within the meaning of RSA 76:8. Both these arguments fail.

First, while the State cites cases allowing it to lower a locality's tax burden for just reasons, the Supreme Court has made clear that a locality cannot avoid paying a statewide education funding tax on the basis that it has little to no educational needs.

> "Because the diffusion of knowledge and learning is regarded by the State Constitution as 'essential to the preservation of a free government,' N.H. Const. p. II, art. 83, it is only just that those who enjoy such government should equally assist in contributing to its preservation" . . . This obligation cannot be avoided or lessened by the mere circumstances of a town having few children . . . .

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[3] The State and the Excess Communities dispute that setting a negative tax-rate is an "off-set," however it is undisputed that in these communities the negative tax rate is equivalent or near-equivalent to the SWEPT rate. Plaintiffs' Opening Brief at 13 (citing Complaint, App. Table C.; Answer ¶ 37); *see also* Answer ¶ 35.

Sch. Financing, 142 N.H., at 901–02 (quoting *Claremont Sch. Dist. v. Governor* (*Claremont II*), 142 N.H. 462, 470 (1997).[4]

Second, the State's interpretation of the definition of "municipality" is belied by the facts and the law. The State asserts that the term "municipality" is ambiguous because it is not defined by RSA 76:8 and asks this court to look at extrinsic evidence. First, because exempting these unincorporated places from SWEPT would destroy the statewide nature of the tax and be unconstitutional, the State's interpretation of "municipality" is irrelevant. The SWEPT would be unconstitutional either on its face for exempting unincorporated places or in practice because the State chooses to exempt them. *See Claremont II*, 142 N.H. at 469–71 (the State must provide a constitutionally adequate education using funds raised "in a manner that is equal in valuation and uniform in rate *throughout the State*."). However, even the extrinsic evidence reveals that unincorporated places are within the definition of "municipality."

The State *itself* has always treated unincorporated areas as municipalities for SWEPT purposes. In calculating the SWEPT, the State sets the total amount to be collected and then divides that number by the eligible total statewide equalized property value to determine the SWEPT rate. *See, e.g.*, RSA 76:8; *see also* State Opp. at 7-8. The DRA Commissioner includes unincorporated areas in its calculation of SWEPT and has—every year—issued a warrant to *all* unincorporated areas, to collect the SWEPT at the same rate as every town and city throughout the State. *See* Affidavit of Bruce Kneuer, appended to the State's Objection, at 108, Tax Warrant to

[4] The Court also rejected the State's current argument in *Barksdale v. Town of Epsom*, 136 N.H. 511, 514 (1992) ("A citizen cannot claim tax aggrievement merely because he or she does not personally add to the public education expense."). The U.S. Supreme Court rejected the argument in *Union Refrigerator Transit Co. v. Kentucky*, 199 U.S. 194, 203 (1905) (noting taxpayers cannot refuse to pay simply because they do not receive equal share of benefits; childless citizens must pay share of school tax).

unincorporated Hales Location in the amount of $102,556 dated November 3, 2021 for Tax Year 2022.[5] Yet now, in the face of litigation, the State argues that unincorporated areas are not included in the term "municipality" in RSA 76:8.[6] The State fails to explain why the DRA has calculated SWEPT rates for unincorporated places year after year if those places are not subject to the tax.

Of course, the setting of local negative tax rates allows some homeowners to escape contributing to the State's duty to fund a constitutionally adequate education. For example, the home pictured below, located on a golf course in Hale's Location, sold for $995,000 on August 23, 2022. It pays an effective SWEPT tax rate of $0.00. See for more photographs, https://www.estately.com/listings/info/127-samuel-hale-hales-location-nh-03860 (last viewed February 27, 2023). *See* deed, attached as Exhibit 1.

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[5] *See, e.g.*, Kneuer Affidavit. Hale's Location is an unincorporated town that contributes $0. *See* Plaintiff's Mot. for Prelim. Injun., Aff. of Douglas Hall, Tables 1-4. This is because the DRA assesses Hale's Location and then gives the unincorporated town a negative local tax rate. *See* Hall Affidavit, Tables 1-4.

[6] The State's arguments related to the use of a dictionary and definitions in related statutes are unavailing. *See, e.g.*, *Farrelly v. City of Concord*, 168 N.H. 430, 444–45 (2015) (declining to adopt Black's Law Dictionary when context clues revealed the dictionary was not in accord with the legislature's use of the word). Statutes not passed around the same time and for the same purpose are not *in pari materia*, and are thus not interpretively helpful. Appeal of Spaulding, 52 N.H. 336, 337 (1870) ("In order to ascertain what the law upon any subject is, we are not to look at any particular act touching that subject, but at all acts *in pari materia*.").

Moreover, considering the SWEPT fulfills the State's duty to deploy State taxes to fund its obligation to provide an adequate education, it is no surprise that RSA 76:8 includes unincorporated areas within the term "municipality." If the State's argument—that unincorporated areas are *not* within the State's definition of "municipality"—were accepted, then the SWEPT would *not* be a State tax. It would be a series of local taxes where localities are contributing only to their local need—the same assumption that *Claremont II* determined was unconstitutional. *See Claremont II*, 142 N.H. at 469–71 (the State must provide a constitutionally adequate education using funds raised "in a manner that is equal in valuation and uniform in rate *throughout the*

State").[7] The "mischief" of communities bearing dramatically different tax burdens to pay for the State's duty to fund adequacy was condemned in *Claremont II* and presents just as much of a constitutional problem if property owners in formal municipalities bear a dramatically different burden than taxpayers who own property in unincorporated areas.

Were the State's argument accepted—that unincorporated areas were never intended to be subject to SWEPT assessment—then the SWEPT would not be a valid State tax. This reading offered by the State must be rejected.

II. SWEPT RESULTS IN CERTAIN TAXPAYERS PAYING A HIGHER EFFECTIVE TAX RATE TO FUND ADEQUACY AND IS THEREFORE UNCONSTITUTIONAL.

Both the State and the Excess Communities argue that allowing localities to retain excess SWEPT revenues is a "spending" or "distribution" decision, and is thus not subject to Part II, Article 5 of the New Hampshire Constitution, but Part I, Article 12 and Part II, Article 6. *See* State Opp. at 9-14; *see also* Intervenor Opp. at 3-11.[8] Accordingly, they argue that because the tax rates are assessed uniformly, there is no violation. *See id*. *Claremont* makes clear that the State bears the burden of funding constitutional adequacy, so to the extent that the State chooses to meet this funding responsibility with a property tax, the tax must result in taxpayers in the various communities bearing an equal burden so as to avoid violating Part II, Article 5. *See Claremont II*, 142 N.H. at 471–72; *see also Sch. Financing*, 142 N.H. at 901; *Phase-In*, 144 N.H. 210. The Court

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[7] The same logic applies for retaining the excess. By setting negative tax rates or permitting localities to retain excess funds, the State has found itself in the same situation as *Claremont II*, where a heavy reliance on local property taxes determines the quality of education.

[8] Specifically, the Excess Communities argues that SWEPT is not challengeable as a tax because it is a "funding and educational policy decision." Intervenor Opp. at 4. As explained below, the New Hampshire Supreme Court has already rejected this kind of form-over-substance argument. Like the previous attempts to evade the Claremont rulings about uniform tax rates, the current scheme is unconstitutional under Part II, Article 5.

has not hesitated to strike down insincere efforts at reform that maintain the unequal burden-sharing condemned since *Claremont II*.[9] *See* 142 N.H. at 465 ("To hold otherwise would be to effectively conclude that it is reasonable, in discharging a State obligation, to tax property owners in one town or city as much as four times the amount taxed to others similarly situated in other towns or cities.").

The Supreme Court has made clear that, when determining whether a property tax scheme used to fund adequacy is constitutional, the operative factor is whether the scheme results in a *differing effect* on taxpayers in one community versus another. *See, e.g.*, *Claremont II*, 142 N.H. at 470 ("The residents of one municipality should not be compelled to bear greater burdens than are borne by others."); *see also Sch. Financing*, 142 N.H. 892, 901; *Phase-In*, 144 N.H. 210. In determining whether there is a "differing impact" on certain taxpayers, courts look not at the rate assessed, but at the "effective tax rate," meaning the burden actually borne by taxpayers. *See Sch. Financing*, 142 N.H. at 899–900. This remains true even if the nominal rates are unequal or the State employs a nominally equal tax rate with a rebate scheme. *Id.* at 899. The current property tax scheme to fund adequacy which results in a differing effective tax rate is unconstitutional, even if that action occurs *after* assessing a nominally uniform rate. *Id.* To hold otherwise is to elevate form over substance.

The objections to summary judgment ignore the "practical effect" of the State's funding scheme. The Supreme Court's jurisprudence has not been so cavalier. *Phase-In*, 144 N.H. at 213 ("The practical effect of this phase-in is that in fifty 'property rich' towns across the State, the full rate of $6.60 per thousand is imposed gradually over five years, while taxpayers in the remaining

[9] *See Sch. Financing*, 142 N.H. 892 (condemning the State's ABC Plan); *Phase-In*, 144 N.H. 210 (condemning the State's Phase-In Plan); *Londonderry*, 154 N.H. 153 (condemning the State's Keep the Excess Plan).

towns pay the full rate immediately."); *Sch. Financing*, 142 N.H. at 899 ("We note that even if the bill provided for the actual collection of revenue raised through the uniform State education tax, and thereafter reimbursed certain qualifying taxpayers pursuant to the special abatement, our conclusions herein would remain unchanged."). Not only are both cases controlling here,[10] the *Londonderry* court applied both of them in determining an even narrower retainer scheme to be unconstitutional. *Londonderry Sch. District v. State*, No. 05-E-0406, 2006 N.H. Super. LEXIS 4, at *41 (Mar. 8, 2006) ("The 'special abatement' and phase-in provisions of earlier proposed legislation were determined to be unconstitutional because they permitted the municipality to avoid payment of that amount of the statewide education property tax which exceeded the amount necessary to provide an 'adequate education.'").[11]

Finally, the parties all agree that the Excess Communities keep excess funds and spend it at their discretion on education. *See* Intervenor Opp. at 13-14. The excess funds partially supplant

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[10] The State argues that *Sch. Financing* is not binding precedent. State Opp. at 11 n.3. The State ignores that the Court in *Phase-In* adopted *Sch. Financing*. 144 N.H. 210. The State cites to other *Opinion of the Justices* several times throughout its own opposition brief. The State also argues this point is merely dicta. However, the Court applied the same "practical effect" analysis in *Phase-In* and in *Londonderry*. *Phase-In*, 144 N.H. at 213, 218; *Londonderry*, 2006 N.H. Super. LEXIS 4, at *37-38. The judges in *Sch. Financing* included this in their opinion to ensure the legislature did not simply revise the bill to serve as a back-end abatement.

[11] Excess Communities' reliance on legislative history about elimination of donor communities destroys their defense. *Londonderry* addressed this exact issue: "petitioners argue[d] that HB 616 violates Part II, Article 5 of the New Hampshire Constitution by essentially eliminating 'donor communities' which results in some 'property poor' communities bearing a disproportional share of educational expenses through local taxes." 2006 N.H. Super. LEXIS 4, at *35. The court determined that "the real effect of having the 'property-rich' municipalities retain excess [SWEPT] proceeds is to permit these municipalities to avoid payment of that amount of the statewide education property tax which exceeds the amount necessary to provide an adequate education for their children. At the same time, 'property-poor' municipalities will be required to use the full amount of the statewide enhanced education tax assessment revenues collected to support the cost of an adequate education." *Id.* at *41. The court declared HB 616 unconstitutional. *Id.* at *42.

the need to raise local funds. The amount supplanted is always equal to the amount of the excess. Given the State's repeated attempts over two decades to circumvent courts' rulings that the retainer of excess is unconstitutional, it can be no mere coincidence that the amount "distributed" is equal to the excess generated.

III. SWEPT EXCESS SPENDING CANNOT BE JUSTIFIED AS A LEGISLATIVE DISTRUBTION OR DECISION BECAUSE THE EDUCATION TRUST FUND DOES NOT ALLOW FOR DISCRETIONARY BLOCK GRANTS BUT INSTEAD LIMITS DISTRIBUTIONS TO ADEQUACY GRANTS AND CERTAIN OTHER SPECIFIC EXPENDITURES.

If accepted as true, the State and the Excess Communities argument that retaining excess funds is a "distribution" or "spending decision" results in a new violation. Both the State and Excess Communities admit that these State funds are provided for use of the school districts but do not point to any limitations placed on local spending decisions. State Opp. at 10-12; *see also* Intervenor Opp. at 7-8. Yet revenues generated by RSA 76:3 may not be used for merely *any* education purpose, because the Education Tax is not a generic tax for education. It is instead a state tax designed to pay for the State's cost of funding a constitutionally adequate education and a few other carefully delineated purposes. *See* RSA 198:39, I. It is not a block grant to be discretionarily spent by school districts.

There can be no dispute that the excess is "distributed" from the Education Trust Fund. The State accounts for the revenue generated by the Education Tax as flowing in to and out from the Education Trust Fund. The State lists the SWEPT as income to the Education Trust Fund in many places. *See, e.g.*, State's FY2022 Annual Comprehensive Financial Report, p.150 ("Schedule of Statutory Fund Balance, Education Trust Fund For the Last Ten Years") (https://www.das.nh.gov/accounting/FY%2022/FY_2022_Annual_Comprehensive_Financial_Report.pdf (last viewed February 22, 2023)). The amount of the Statewide Property Tax is listed as

both an addition to the Education Trust Fund when collected and as a deduction from the Education Trust Fund when distributed.

As with all money flowing from the Education Trust Fund, disbursements are subject to many limitations. By statute, money distributed from the Education Trust Fund is not available for just any education purpose, but only to be used on (1) adequacy grants (to which the excess localities are not entitled to as they generate excess SWEPT) and (2) limited education purposes. Specifically:

> **Moneys in such fund shall not be used for any purpose other than to distribute adequate education grants to municipalities' school districts** and to approved charter schools pursuant to RSA 198:42, to provide low and moderate income homeowners property tax relief under RSA 198:56-198:61, to distribute school building aid to school districts and approved chartered public schools pursuant to RSA 198:15-b, to distribute tuition and transportation funds to school districts for students attending career and technical education programs pursuant to RSA 188-E:9, to distribute special education aid to school districts pursuant to RSA 186-C:18, to fund department of education operating costs for a state student data collection and reporting system, and to fund kindergarten programs as may be determined by the general court.

RSA 198:39, I (emphasis added).

The parties' admission that the funds are not deployed in a fashion that is limited to just allowable uses and the absence of any oversight by the State for the spending of Education Tax excess revenues makes these arguments doubtful and requires the Court to find the practice unconstitutional.

IV. REMEDY

Finally, the State argues that even if the SWEPT as currently administered is unconstitutional, this Court should not issue a remedy effective this budget cycle because it would be too disruptive. State Opp. at 18-20. The State and the Excess Communities have both made this argument before. State Opp. to Prelim. Injun. at 22-26. As this Court recognized at the hearing

on Plaintiffs' motion for a preliminary injunction, from the State's perspective, there is no good time to address the unconstitutionality of the SWEPT.

Plaintiffs filed for a preliminary injunction regarding SWEPT on October 5, 2022. Since then, both the State and the Excess Communities have been on notice that SWEPT could be determined as unconstitutional. Indeed, the State and the Excess Communities relied on this "timing" argument in objecting to a preliminary injunction.[12]

Respectful of this Court's decision that a preliminary injunction would potentially be disruptive[13], and the Court's commentary at the hearing that this issue seems resolvable on summary judgment as an issue of statutory interpretation, Plaintiffs filed for summary judgment before the State's next property tax year, which begins on April 1, 2023. *See* RSA 76:2. Despite the filing of a preliminary injunction, a summary judgment motion, and this Court's comments that this issue is ripe to resolve, the State and the Excess Communities have chosen to take no precautionary actions. Instead, the State continues its pattern of finding new methods of

[12] In fact, at the preliminary injunction hearing, the State alerted the court that this could be resolved as part of the summary judgment motions scheduled for February under the scheduling order to persuade the Court that there will be sufficient time to protect taxpayers' interests in the upcoming year.

[13] *See Steven Rand v. New Hampshire*, No. 215-2022-CV-00167, Order Denying P.I., at 12 (N.H. Super. Dec. 5, 2022) ("Under the circumstances presented here, the Court cannot conclude that in the interim, equity favors disrupting the Coalition members' fiscal operations in such a substantial way . . . For these reasons, the Court concludes that even assuming (without deciding) that the plaintiffs have demonstrated a likelihood of success on the merits and that the other requirements for obtaining injunctive relief are met, the balance of the equities favors the State and the Coalition, and thus, no preliminary injunction should issue.") (internal citations omitted)).

circumventing its constitutional duty, assuming that if it fails it will be provided with sufficient time to devise a new scheme.[14]

Finally, the State requests that, if this Court issues a remedy after finding that the SWEPT, as administered, is unconstitutional, excess SWEPT revenues be held in escrow rather than entering the Education Trust Fund to provide the legislature with reasonable opportunity to respond. Yet as explained above, SWEPT provides funding for an adequate education and the State continues to account for this money (including all excess) as part of the fund. Accordingly, under the State's own accounting system, if money were returned to the Education Trust Fund, it should be accounted for in the fund—not by any contention of the Plaintiffs or a ruling by this Court.

CONCLUSION

The State's Education Tax, RSA 76:3, is a constitutionally flawed revenue-raising scheme. The arguments presented by the State and the Excess Communities are flawed, post-hoc characterizations that do not align with the State's historical administration of SWEPT. This Court should declare the tax unconstitutional and order its sunsetting. The State may then choose to reform the tax by adding excess funds to the Education Trust Fund and no longer setting negative local tax education rates, or it may end the tax altogether.

[14] The State's opposition also ignores the anomalous one-year reduction of SWEPT revenues to $263 million instead of $363 million, which reduces excess swept to $16 million instead of $25 million and removed certain communities (e.g., Portsmouth) from the category of excess generators. Thus, now is the appropriate time to make the change to minimize any alleged harm rather than after SWEPT returns to $363 million. The mandated constitutional change also comes at a time when the State enjoys significant surplus in the Education Trust Fund, the Rainy Day Fund and in unallocated dollars.

Dated: Concord, New Hampshire
February 27, 2023

Respectfully submitted,

/s/ *Natalie Laflamme*

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**pro hac vice pending*

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Response has been served via the court's electronic filing system to all parties of record on this 27th day of February, 2023.

/s/ Natalie Laflamme
Natalie Laflamme

Exhibit 1

Attached is the deed for the property depicted on the Estately website. The deed indicates the property is located in Hales Location, was sold on August 23, 2022, and the tax stamps indicate the sales price was $995,000 (T/S $14,925 divided by $15 x 1000 = $995,000).

Alpine Title Services
6 Pleasant Street
Conway, NH 03818

Carroll County NH ROD TID: 4242002 Bk:3685 Pg:0856
08/23/2022 12:27 PM Pg 1/3 Doc # 202200097950
Transfer Tax: 14,925.00 CA929848 LCHIP: 25.00 CAA148113
eRecorded

T/S $14,925

The space above this line is reserved for recording information

WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS that We, **Richard F. Hickey** and **Helen T. Hickey as Trustees of Hickey Family Trust,** u/d/t dated June 14, 2002, with a mailing address of 127 Samuel Hale Drive, Hales Location, New Hampshire, 03860, for consideration paid, grant to **Robert E. Carmody, as Trustee of the Cross Bow Trust,** u/d/t dated March 21, 2002, with a mailing address of 3 Patrick's Way, Hingham, Massachusetts, 02043, with WARRANTY COVENANTS, the following:

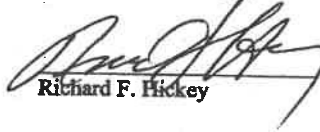
A certain lot or parcel of land located in Hales Location in the County of Carroll and State of new Hampshire, and being **Lot No. 85** as shown on certain plans entitled "Revised Subdivision Plan Hale's Location Country Club made for Hale's Location Realty Trust Mirror Lake, New Hampshire", prepared by Sawyer Engineering & Surveying Inc., 2 Elm Street, Bridgton, Maine and approved by the Carroll County Commissioners on July 3, 1996 heretofore recorded in the Carroll County Registry of Deeds at Plan Book 156, Pages 69-76. See also Corporate Vote of Hales Location Owners Association dated July 5, 1996 and recorded at Book 1664, Page 062 of the Carroll County Registry of Deeds.

TOGETHER WITH the right to pass and repass over the access road situated on the aforesaid tract as shown on the above-mentioned plan, for all purposes for which roads are commonly used, in common with all others lawfully entitled thereto. The same is subject to a reservation of a right to pass and repass over for similar purposes benefitting other land grantor may acquire abutting the subdivision. There is also granted, specifically, a right to pass and repass over the road leading from West Side Road to property of Hale's Location Realty Trust over land of the State of New Hampshire. The same shall be appurtenant to this lot only.

THIS CONVEYANCE IS SUBJECT TO easements, restrictions, payment of charges, reservations for utilities, and all other covenants, conditions, agreements and provisions as contained in a certain Declaration of Covenants, Restrictions and Easements of Hales Location estates and recorded in Carroll County Registry of Deeds, Book 1387, Page 953, which may be amended from time to time.

Being the same premises conveyed to the Grantors by deed of Robert H. Carleton, Trustee of Hale's Location Realty Trust, dated September 9, 1997, recorded with Carroll County Registry of Deeds in Book 1715, Page 750.

Executed as a sealed instrument as of June 14, 2002.



Richard F. Hickey

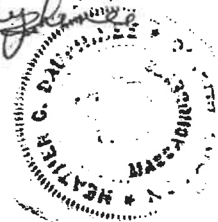
Helen T. Hickey

COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss June 14, 2002

Then personally appeared the above-named Richard F. Hickey and acknowledged the foregoing instrument to be his free act and deed, before me,

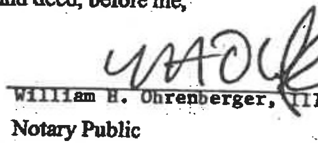
Heather C. Dauphinee
Notary Public
My commission expires: 7/25/08



COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss June 14, 2002

Then personally appeared the above-named Helen T. Hickey and acknowledged the foregoing instrument to be her free act and deed, before me,



William H. Ohrenberger, III
Notary Public
My commission expires: November 20, 2003

BK 2042 PG 036

PROPERTY ADDRESS: 127 SAMUEL HALE DRIVE, HALES LOCATION, NH

STATE OF NEW HAMPSHIRE
DEPARTMENT OF REVENUE ADMINISTRATION
REAL ESTATE TRANSFER TAX
THOUSAND # HUNDRED AND 40 DOLLARS
07/16/2002 538385 $ #####40.00
VOID IF ALTERED

I\Business\Hickey\deed

This conveyance is specifically made subject to rights reserved by Robert H. Carleton, Trustee of Hales Location Realty Trust in the said Declaration of Covenants, Restrictions and Easements to operate the golf course as provided for therein.

The above Grantees, their heirs, successors, or assigns, are automatically a member of the Hales Location Owners Association, a New Hampshire Non-Profit Corporation, and there shall be one vote for the lot.

The Covenants, Restrictions and Easements of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration or any declaration supplemental hereto, their respective legal representatives, heirs, successors and assigns.

Meaning and intending to describe and convey those premises conveyed by Warranty Deed of Richard F. Hickey and Helen T. Hickey to the Grantors herein dated June 14, 2002 and recorded at Carroll County Registry of Deeds at Book 2042 Page 35.

The above described is not homestead property of the grantors.

The undersigned Trustees of the **Hickey Family Trust** created by Richard F. Hickey and Helen T. Hickey as grantor under a Trust Indenture dated June 14, 2002 hereby states pursuant to RSA 564-A:7, that said trustees have full and absolute power in said Trust Agreement to purchase, mortgage and/or convey any interest in real estate and improvements thereon held in said Trust, and no purchaser or third party shall be bound to inquire whether the Trustees have said power or are properly exercising said power or to see to the application of any trust asset paid to the Trustees for a conveyance thereof. The Trustee's authority to convey said real estate held in said Trust is still in effect and has not been revoked or amended.

EXECUTED, this 12 day of August, 2022.

HICKEY FAMILY TRUST

Richard F. Hickey, Trustee

Helen T. Hickey, Trustee

STATE OF New Hampshire COUNTY OF Carroll

The foregoing instrument was acknowledged before me this 12 day of August, 2022 by Richard F. Hickey and Helen T. Hickey, as Trustees of the Hickey Family Trust known to me or satisfactorily proven by photo identification to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they executed the same for the purposes therein contained.

Notary Public/Justice of the Peace/ Comm. Of Deeds

Printed Name: Vicki L Weegar

My Commission Expires: 2/3/26