

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Carroll Superior Court
96 Water Village Rd., Box 3
Ossipee NH 03864

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

**H. Edward McBurney, JR
McBurney Law Offices PLLC
115 Kearsarge Street
PO Box 1039
North Conway NH 03860-1039**

COPY

Case Name: **Hale Estates Owners Association v Hugh Hastings, et al**
Case Number: **212-2012-CV-00158**

Enclosed please find a copy of the court's order of December 10, 2013 relative to:

Settlement Agreement

December 10, 2013

Abigail Albee
Clerk of Court

(406)

C: Edward D. Alkalay, ESQ; Robert William Upton, II

RECEIVED

McBurney Law Offices, PLLC

12/11/13

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NOTICE OF DECISION

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115 Kearsarge Street
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North Conway NH 03860-1039**

Case Name: **Hugh W Hastings, II, et al v Hale Estates Homeowners Association**
Case Number: **212-2013-CV-00086**

Enclosed please find a copy of the court's order of December 10, 2013 relative to:

Settlement Agreement

December 10, 2013

Abigail Albee
Clerk of Court

(406)

C: Edward D. Alkalay, ESQ

THE STATE OF NEW HAMPSHIRE

CARROLL, SS

SUPERIOR COURT

HALE ESTATES OWNERS ASSOCIATION

v.

HUGH W. HASTINGS, II AND HUGH W. HASTINGS, II REVOCABLE TRUST

Docket Nos. 212-2012-CV-158 and 212-2013-CV-00086

SETTLEMENT AGREEMENT

MEMORANDUM OF AGREEMENT made this ____ day of 12/4/13, 2013
by and between Hale Estates Owners Association (hereinafter "the Association"), PO Box 2587,
Conway, New Hampshire 03818 and Hugh W. Hastings, II and the Hugh W. Hastings II Revocable
Trust and its successors and assigns (hereinafter collectively "the Trust"), 24 Portland Street,
Fryeburg, ME 04037.

WITNESSETH:

WHEREAS, the Association has filed certain claims in Carroll County Superior Court
against the Trust under Docket No. 212-2012-CV-158;

WHEREAS, the Trust has filed counterclaims in Carroll County Superior Court against the
Association under Docket No. 212-2012-CV-158;

WHEREAS, the Trust has filed certain claims in Carroll County Superior Court against the
Association under Docket No. 212-2013-CV-00086;

NOW THEREFORE:

The Association and the Trust agree to globally resolve all present and past disputes
existing between them as of the date hereof, and in particular the claims set forth in the pleadings
filed in Docket Nos. 212-2012-CV-158 and 212-2013-CV-00086 as follows:

(1) The Trust agrees to pay the Association the sum of \$20,000.00 (Twenty Thousand
Dollars) to resolve any and all past claims for maintenance fees, dues/assessments and/or any and
all other amount(s) owed to the Association on or prior to July 1, 2013. The Trust shall pay
Association such amount within 10 days of court approval of the dismissal with prejudice of the
original suit brought by the Association against Hugh Hasting and the Trust, and the filing of a
release of the lien filed by the Association against Hugh Hastings and the Trust.

(2) The Trust shall pay \$20,250.00 (Twenty Thousand Two Hundred and Fifty Dollars) for the annual assessments for 54 lots for fiscal year 7/1/2013-6/30/2014 within 10 days of court approval of the dismissal with prejudice of the original suit brought by the Association against the Trust and the filing of a release of the lien filed by the Association against Hugh Hastings and the Trust. This amount is based on the negotiated amount of \$375 per unit per year for 54 Home Lots ($54 \times \$375 = \$20,250$). On 7/31/2014 the Trust shall pay the Association a maintenance assessment of \$375.00 for each Home Lot at Hale Estates Subdivision it owned on 7/1/2014, and likewise each year thereafter. The amount of \$375.00 per lot, per year is fixed forever at \$375/lot for the Trust during all years in which the Trust owns one or more lot(s). No special assessments or other assessments or any other charges imposed by the Association shall apply to the Trust excepting any costs arising due to the Trust's negligent work and/or failure to abide by this agreement. Provided only that the Trust abides by this agreement, the Trust's only obligation to the Association after 7/1/2013 shall be to pay \$375/lot/year assessment for each lot it owns on the first day of July of each year.

(3) The benefits and burdens of this agreement shall not be transferable to anyone except as follows:

- a. Any transfers of all the Trust's interests/remaining lots to a Developer;
- b. Any transfer of the Trust's interests to one or more members of the Hugh Hastings family, which shall consist of Hugh Hastings, his spouse, his children and their spouses, his grandchildren, and any entity controlled by any of the above-mentioned Hastings family;
- c. Any successor to Hugh W. Hastings II Revocable Trust so long as successor is controlled by a member of the Hugh Hastings family as defined above.
- d. Any transfer as security for a mortgage of all the Trust's interests/remaining lots.

In the event of any transfer, the lots shall be considered cumulatively for purposes of this agreement. For example, if the Trust transfers its current interests/lots evenly amongst Hugh Hastings' children, the transferees collectively shall continue to be responsible for maintaining Phase II common property until 27 Phase II lots have been sold cumulatively by them but shall only be obligated to pay maintenance fees of \$375 per lot during the period of their ownership as detailed herein. The Trust shall provide the Association Secretary with any purchaser contact information and lot # during closing process.

In the event of a transfer of the Trust's rights and lots under this agreement, the new owner(s) shall step into the shoes of the Trust with the same benefits, rights and obligations contained herein, including but not limited to the obligation to pay assessments at the above rate and to maintain Phase II common property until 27 lots in Phase II have been sold.

In the event of a transfer to more than one family member as defined above, one person shall be designated in writing as the point of contact with the Association for purposes of this agreement.

(4) The Association shall maintain and pay all the expenses for all elements of Phase I of the subdivision including plowing, mowing, water system, septic systems, and the like. The Association shall pay taxes on the Phase I common land once the Trust conveys ownership to the Association by warranty deed. The Trust shall maintain Phase II of the subdivision, including

plowing, mowing, taxes and the like and shall have the absolute and unqualified right to tie into and use the common water and septic systems and any other common systems of the subdivision located on Phase I until 27 Phase II lots have been sold. Upon the sale of the 27th Phase II lot, the Association shall take over the maintenance of Phase II. In the event of a transfer discussed in the paragraph 3, the new owner(s) shall continue to maintain Phase II common property until 27 Phase II lots have been sold. When any of the first 27 Phase II lots are sold, the new owner shall be given written notice that the Trust is responsible for maintenance of Phase II common property. It is understood between the parties that the Phase II common area shall be maintained at or above the current level of maintenance within Phase I, including but not limited to plowing and landscaping. If there is any dispute between the Trust and the Association as to whether Phase II is being maintained sufficiently, the parties agree that they shall hire a binding arbitrator or mediator who is agreeable to both parties who shall have full authority to make this determination.

(5) The Trust shall be entitled to 54 (Fifty Four) votes within the Association for only those matters which directly impact the Trust's expenses for maintenance of the Phase II common property and/or for any matter which may directly impact the Trust's ability to sell Phase II lots. These voting rights shall generally not include such things as the election of board members and budgetary issues not directly impacting the Trust's expenses for the Phase II common property. The Trust's voting rights shall not be affected by the 2012 Amendments to the Declaration and By-Laws, and any future amendments to any subdivision documents which may seek to limit, hinder or otherwise demean the Trust's right to vote, or have that result, whatever the intent.

The Trust's votes under the strict parameters of this paragraph shall be one vote per each lot owned in Phase II at the time of such vote. The Trust's voting rights under the strict parameters of this paragraph shall continue for as long as the Trust owns lots in Phase II or holds title to Phase II Common Property. Any new owner shall have voting rights in accordance with the Articles of Association and Declaration of Covenants as amended and filed at the Carroll County Registry of Deeds.

(6) Notwithstanding the foregoing paragraph, the Trust shall also be entitled to two votes on all Association matters, including but not limited to election of board members, budgetary issues not directly impacting the Trust's expenses for the maintenance in Phase II common property and/or any other issues for which other members have voting rights.

(7) The Trust shall agree to community mail delivery with placement of a cluster box and shelter on common land located outside the lower pump house gate and upon location approval of the United States Post Office.

(8) The Trust shall provide copies of all "as-built" plans it has in its possession or that it has ever had for the water and other common distribution system(s) serving the subdivision.

(9) The Trust agrees to convey the Phase I common property to the Association as soon as reasonably prudent. Upon transfer, the Association shall own, maintain and be responsible for all Phase I common expenses and taxes. Upon transfer, the Trust shall continue to own, maintain and be responsible for all Phase II common expenses and taxes until the sale of 27 Phase II lots as detailed in paragraph 4.

(10) The representatives of and attorney for the Association have advised that they need to obtain consent to from the owners of the Phase I lots to enter into this Agreement. In the event the Association membership declines to enter into and ratify this agreement, then this agreement

shall be null and void, and of no force and effect, and the parties may continue to prosecute their claims, each against each other, in the Superior Court. If the Association membership agrees to enter into and ratify this Agreement, the Association itself and the present and all future Boards of Directors hereby agree to and shall defend, indemnify and hold the Trust and its successors and assigns harmless, and pay all costs incurred by the, the Trust, its successors and assigns including reasonable legal fees, in the event any future owner or Board or the Association itself shall at any time make the any claim, the essence of which shall be that the present Board, its officers and/or owners and/or members or the Association lacked the authority or capacity to enter into this agreement, or were operating "ultra vires" or obtained any authority or consent by any improper, illegal or unlawful means or in violation of any provision of any Declaration, By-Law, rule, regulation or any other manner whatsoever which in any way relates to the subdivision and purports to control or does control the actions or authority of the Association and/or its Board or the officers.

(11) The Trust advises that the sand/gravel pit off Heather Hill Road, adjacent to the railroad tracks, has been "closed out", graded and grassed over, in full compliance with all state laws, rules and regulations concerning the "closing out" of the sand/gravel pit on the common area(s) of the subdivision. The Trust shall remove box trailer in the "pit area" within 60 days. The Trust shall provide to the Association the NHDES release/approval verifying the "close out."

(12) The Association agrees and shall allow the Trust full and complete access to and connection with all of the systems serving the subdivision. This includes, but is not limited to, wells, water distribution systems, common septic systems, telephone, electrical, internet, cable, common structures and facilities serving same, and the like. The Association understands and agrees that the Trust will need to "tie in" to these common systems of the subdivision to serve the Phase II lots, and Trust shall be entitled to do so at any time(s) it decides and at no additional cost to the Trust except connection costs and costs of running said system(s) to various lots or points of distribution for the Trust's lots in Phase II. In accessing the systems listed in this paragraph, the Trust shall not damage any of said systems and will be liable for the repair of same if it does so. In the event the Trust's "tie in" to any system requires an upgrade or increase in capacity, the Trust shall be responsible for the costs.

(13) The Trust, at its own expense, shall pave the roadways in Phase II in accordance with its agreement(s) with the Town of Conway and the conditions of its subdivision approval(s).

(14) The parties shall cooperate with the correction of the drainage problems with the retention pond near Upper Grandview Avenue.

(15) The parties understand that the Conway Scenic Railroad has recently claimed that repairs need to be done at the railroad crossing(s) affecting the subdivision. The Conway Scenic Railroad has recently sent a bill for repairs allegedly based on an agreement signed in June 1990 with Hale Highlands Development Corporation. Neither the Association nor the Trust believes that this agreement binds them. However, both the Association and the Trust recognize that they may have to negotiate and/or dispute this with the Conway Scenic Railroad. The parties shall cooperate with respect to any issues involving the railroad crossing(s) which may affect the subdivision.

(16) Each party agrees to release the other parties to the fullest extent possible, as follows:

(A). RELEASE OF THE TRUST: For the consideration and covenants set forth herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged in accordance with the above clauses, the Association does hereby remise, release and forever discharge the Trust from any and all manner of action, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or admiralty, or in equity, which against the Trust the Association ever had, may have had, could have had, now has or could have with respect to any matter including any matter in any way involved or in connection with any claims the Association may have raised or could have raised in the action presently pending in Carroll County Superior Court against the Trust as of the date of this Agreement.

(B) RELEASE OF THE ASSOCIATION: For the consideration and covenants set forth herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged in accordance with the above clauses, the Trust does hereby remise, release and forever discharge the Association from any and all manner of action, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or admiralty, or in equity, which against the Association the Trust ever had, in connection with the Trust's allegations pending presently in Carroll County Superior Court under two separate docket numbers against the Association as of the date of this Agreement.

(C) NO ADMISSIONS. This Agreement shall not be construed as an admission by either party that he/they, his/their company or any of its employees or agents have acted wrongfully or improperly with respect to any party, or that either party has any rights against one another. The parties specifically disclaim any wrongful acts and/or liability to or for wrongful acts against one another or any other persons on the part of themselves, their agents, representatives, parent, subsidiaries, affiliates, officers, directors or employees. The parties agree and acknowledge that the terms specified in respect to this settlement agreement are in compromise and satisfaction of matters involving disputed issues and are entered into solely to end the uncertainty and expense which is attendant to litigation; that neither the negotiations nor this document shall be considered an admission, and no past or present wrongdoing by or on behalf of any party or their company or their agents or employees shall be implied by such negotiations or payment.

(D) BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the respective parties hereto and their executors, administrators, heirs, personal representatives, successors and assigns specifically including any and all successors of the Trust who purchase or otherwise obtain all Developer's the Trust's remaining lots.

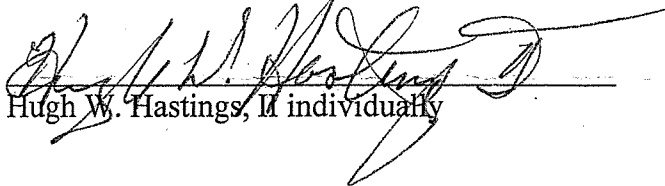
(17) ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties and neither they nor their agents shall be bound by any statements, terms, conditions, provisions or representations not herein written. All prior understandings, whether oral or written, are merged herein. All amendments must be in writing and executed by the parties with the same formality as set forth herein.

(18) GOVERNING LAW. This Agreement shall be construed in accordance with and governed by the laws of the State of New Hampshire.

(19) PARAGRAPH HEADINGS. The paragraph headings throughout this Agreement are for convenience and reference only, and the words contained herein shall in no way be held to explain, modify and amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

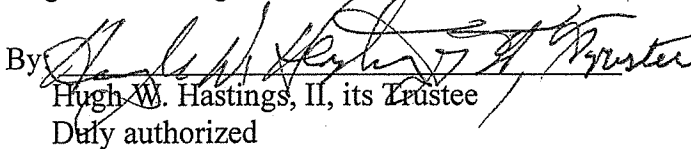
(20) SEVERABILITY. Any determination that any provision of this Agreement or any application thereof is invalid, illegal or unenforceable in any respect in any instance shall not affect the validity, legality and enforceability of such provision in any other instance, or the validity, legality or enforceability of any other provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hand in execution of this Agreement on the date(s) indicated below.


Hugh W. Hastings, II individually

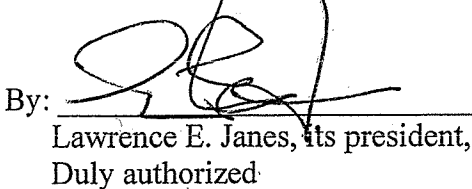
10/23/13
Dated:

Hugh W. Hastings II Revocable Trust

By: 
Hugh W. Hastings, II, its Trustee
Duly authorized

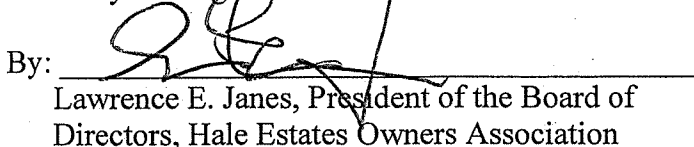
10/23/13
Dated:

Hale Estates Owners' Association

By: 
Lawrence E. Janes, its president,
Duly authorized

10/21/2013
Dated:

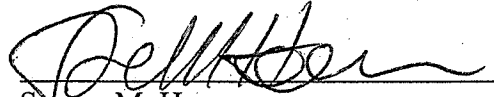
CERTIFICATION: The undersigned, Lawrence E. Janes, the president of Hale Estates Owners Association, hereby certifies that in accordance with Paragraph (10) hereof, the Board of Directors has presented this Agreement to the entire membership of the Hale Estates Owners Association and has obtained from said membership, by the requisite majority, the necessary and appropriate consent, and the ratification necessary by such majority, for the Association to enter into and be bound by this Agreement.

By: 
Lawrence E. Janes, President of the Board of
Directors, Hale Estates Owners Association

12/04/2013
Dated:

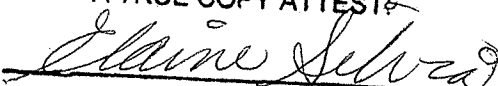
SO ORDERED

Dated: *December 10, 2013*



Steven M. Houran
Presiding Justice

THE STATE OF NEW HAMPSHIRE
CARROLL COUNTY SUPERIOR COURT
A TRUE COPY ATTEST:



Court Assistant