

Long Creek Watershed Management District Governing Board
Agenda – September 28, 2012 – 10:00 a.m. Meeting
Location: MTA Headquarters

1. **Call to order**
2. **Roll call**
3. **Minutes** 6-22-12 (*Attachment A*); **Minutes** 6-27-12 (*Attachment B*)
4. **Treasurer’s Report** (*Attachment C*)
5. **Technical Committee report**
 - a. Discussion of credits for sites where LCWMD retrofitted existing basins
6. **Executive Director’s report**
 - a. Noncompliant landowners
 - b. Chloride update/next steps
 - c. Blanchette Brook Retrofit project (Thomas Drive, Westbrook)
 - d. Fairchild/Texas Instruments Feasibility Study
 - Maine Mall retrofit project - EPIC system/urban trees study/UMO capstone project
7. **Motion to Accept Easements.** Normally, a deed is effective upon delivery to the party intended to whom the conveyance is directed. However, public bodies are required to “accept” interests in property (and to authorize their conveyance when transferring interests in property). Therefore, this motion is a catch-all for all easements obtained since the initial project easements for the Darling Avenue and 220 Maine Mall Road projects (which were accepted by Cumberland County Soil & Water Conservation District and then assigned to and accepted by the LCWMD Board). **Motion -- The Board of the Long Creek Watershed Management District hereby moves to accept the following easements:**
 - a. BEST MANAGEMENT PRACTICES EASEMENT dated November 8, 2011 by and between PORT RESOURCES and LONG CREEK WATERSHED MANAGEMENT DISTRICT over certain real property located at 280 Gannett Drive, South Portland, Maine.
 - b. Stormwater Management Facility Easement dated September 9, 2011 between Colonel Westbrook Associates and LONG CREEK WATERSHED MANAGEMENT DISTRICT over certain real property located at 1 Thomas Drive, Westbrook, Maine.
 - c. Best Management Practices Easement dated September 19, 2011 between 7 THOMAS DRIVE, LLC and LONG CREEK WATERSHED MANAGEMENT DISTRICT over certain real property located at 7 Thomas Drive, Westbrook, Maine.
 - d. Best Management Practices Easement dated July 9, 2012 between Colonel Westbrook Associates and LONG CREEK WATERSHED MANAGEMENT DISTRICT over certain real property located at 860 Spring Street, a/k/a 862-866 Spring Street, Westbrook, Maine.
 - e. Best Management Practices Easement dated July 9, 2012 by and between Colonel Westbrook Associates and LONG CREEK WATERSHED MANAGEMENT DISTRICT over certain real property located at 2 Thomas Drive, Westbrook, Maine.

Long Creek Watershed Management District
Balance Sheet
 As of August 31, 2012

	Aug 31, 12
ASSETS	
Current Assets	
Checking/Savings	
1000 · TD BANK	1,278,598.72
Total Checking/Savings	1,278,598.72
Accounts Receivable	
1200 · ACCOUNTS RECEIVABLE	189,938.37
Total Accounts Receivable	189,938.37
Total Current Assets	1,468,537.09
Fixed Assets	
1700 · FIXED ASSETS	
1730 · Monitoring Equipment	25,425.00
1740 · Infrastructure	2,428,428.17
1780 · Construction in Process	80,244.03
1790 · Accumulated Depreciation	-53,653.56
Total 1700 · FIXED ASSETS	2,480,443.64
Total Fixed Assets	2,480,443.64
Other Assets	
1850 · Deferred Charges	17,756.18
Total Other Assets	17,756.18
TOTAL ASSETS	3,966,736.91
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
2000 · ACCOUNTS PAYABLE	211,512.14
Total Accounts Payable	211,512.14
Other Current Liabilities	
2320 · Performance Bond	4,197.50
Total Other Current Liabilities	4,197.50
Total Current Liabilities	215,709.64
Long Term Liabilities	
2700 · MM BOND BANK	1,515,166.00
Total Long Term Liabilities	1,515,166.00
Total Liabilities	1,730,875.64
Equity	
3000 · NET ASSETS	1,816,432.53
Net Income	419,428.74
Total Equity	2,235,861.27
TOTAL LIABILITIES & EQUITY	3,966,736.91

Long Creek Watershed Management District
Profit & Loss
August 2012

	Aug 12	Jul - Aug 12
Ordinary Income/Expense		
Income		
4100 · ADMINISTRATION	-525.60	47,747.05
4200 · CONSTRUCTION AND MAINTENANCE		
4201 · Drainage Maintenance Agreement	0.00	316.00
4203 · In Lieu of Payment	-5,242.86	-16,108.58
4200 · CONSTRUCTION AND MAINTENANCE - Other	0.00	461,671.29
Total 4200 · CONSTRUCTION AND MAINTENANCE	-5,242.86	445,878.71
4500 · GOOD HOUSEKEEPING		
4504 · In Lieu of Payment	-1,927.20	-1,927.20
4500 · GOOD HOUSEKEEPING - Other	0.00	159,734.98
Total 4500 · GOOD HOUSEKEEPING	-1,927.20	157,807.78
4600 · MONITORING		
4603 · In Lieu of Payment	-788.40	-788.40
4600 · MONITORING - Other	0.00	73,472.04
Total 4600 · MONITORING	-788.40	72,683.64
4700 · STREAM RESTORATION	0.00	3,020.23
4810 · FINANCE CHARGES	0.00	130.21
4820 · INTEREST	109.52	205.58
Total Income	-8,374.54	727,473.20
Gross Profit	-8,374.54	727,473.20
Expense		
5040 · CONSTRUCTION		
5042 · Engineering	6,110.18	6,110.18
5046 · Structural	243,179.54	243,179.54
5047 · Maintenance	0.00	2,100.00
5040 · CONSTRUCTION - Other	0.00	37,879.15
Total 5040 · CONSTRUCTION	249,289.72	289,268.87
6180 · INSURANCE		
6181 · Liability Insurance	2,017.00	2,017.00
Total 6180 · INSURANCE	2,017.00	2,017.00
6270 · PROFESSIONAL FEES		
6272 · Legal Fees	1,681.70	6,266.70
6276 · Sweeping	0.00	415.00
6277 · WQ Monitoring	0.00	10,076.89
Total 6270 · PROFESSIONAL FEES	1,681.70	16,758.59
Total Expense	252,988.42	308,044.46
Net Ordinary Income	-261,362.96	419,428.74
Net Income	-261,362.96	419,428.74

Long Creek Watershed Management District

A/R Aging Summary

As of September 17, 2012

	Current	1 - 90	> 90	TOTAL
Bugaboo Creek Holdings, Inc 69-01	0.00	2,991.14	0.00	2,991.14
Total Bugaboo Creek Holdings, Inc	0.00	2,991.14	0.00	2,991.14
Cabot House of Portland Real Estate Trust 100-01	0.00	2,105.40	0.00	2,105.40
Total Cabot House of Portland Real Estate Trust	0.00	2,105.40	0.00	2,105.40
Christmas Tree Shop 132-02	8,008.81	0.00	0.00	8,008.81
Total Christmas Tree Shop	8,008.81	0.00	0.00	8,008.81
Individual Permit Holders Services Maine Turnpike Authority	0.00	585.65	0.00	585.65
Total Individual Permit Holders Services	0.00	585.65	0.00	585.65
Lanco Properties, LLC. 112-F-01	0.00	-1,842.47	0.00	-1,842.47
113-F-01	0.00	-3,461.70	0.00	-3,461.70
Total Lanco Properties, LLC.	0.00	-5,304.17	0.00	-5,304.17
Maine Dept. of Transportation 201-215 Designated Road Segments	0.00	95,645.45	0.00	95,645.45
Total Maine Dept. of Transportation	0.00	95,645.45	0.00	95,645.45
MAINE TURNPIKE AUTHORITY 301-01	0.00	3,727.12	0.00	3,727.12
303-01	0.00	28,918.97	0.00	28,918.97
304-01	0.00	10,613.75	0.00	10,613.75
Total MAINE TURNPIKE AUTHORITY	0.00	43,259.84	0.00	43,259.84
Port Resources 135-01	0.00	-4,242.03	0.00	-4,242.03
Total Port Resources	0.00	-4,242.03	0.00	-4,242.03
R.A. Cummings, Inc. 125-I-01	0.00	1,870.06	0.00	1,870.06
43-I-01	0.00	552.00	0.00	552.00
Total R.A. Cummings, Inc.	0.00	2,422.06	0.00	2,422.06
REJ I, LLC 80-01	0.00	1,932.76	0.00	1,932.76
Total REJ I, LLC	0.00	1,932.76	0.00	1,932.76
Storage Realty Corp 54-01	0.00	-0.02	0.00	-0.02
Total Storage Realty Corp	0.00	-0.02	0.00	-0.02
Texas Instruments 86-01	0.00	1,025.02	0.00	1,025.02
87-01	0.00	28,400.67	0.00	28,400.67
Total Texas Instruments	0.00	29,425.69	0.00	29,425.69
Westbrook, City of - LO 501-503 Designated Road Segments	0.00	9,049.50	0.00	9,049.50
Total Westbrook, City of - LO	0.00	9,049.50	0.00	9,049.50
TOTAL	8,008.81	177,871.27	0.00	185,880.08

1:00 PM

09/14/12

Long Creek Watershed Management District
A/P Aging Summary
As of September 14, 2012

	<u>Current</u>	<u>1 - 30</u>	<u>31 - 60</u>	<u>61 - 90</u>	<u>> 90</u>	<u>TOTAL</u>
R.J. GRONDIN & SONS	0.00	24,317.95	0.00	0.00	0.00	24,317.95
SEABREEZE PROPERTY SERVICES	0.00	0.00	0.00	0.00	1,539.00	1,539.00
TOTAL	0.00	24,317.95	0.00	0.00	1,539.00	25,856.95

Long Creek Watershed Management District Governing Board
Minutes – June 27, 2012 – 9:30 a.m. Meeting
Location: Scarborough Town Office, Council Chamber A

1. Call to order – 9:30 a.m.

2. Roll call

Dan Bacon, David Russell, Curtis Bohlen (absent), David Thomes, John Branscom, Brian Goldberg, Craig Gorris (absent), Jim Hughes, Gerard Jalbert (absent), John O'Hara (absent), Ed Palmer, Adam Pitcher (absent), Tom Raymond, Doug Roncarati, Stephen Tibbetts (absent)

3. Request for LCWMD Board Approval of Revision to Best Management Practices Easement Form. Mr. Russell made the motion to adopt the easement language 6/26/12 draft as attached. Mr. Raymond seconded the motion. The motion was approved unanimously.

4. Adjourn. Mr. Palmer made the motion to adjourn the meeting at 9:59 a.m. Mr. Russell seconded the motion. The motion was approved unanimously.

BEST MANAGEMENT PRACTICES EASEMENT DEED

KNOW ALL PERSONS BY THESE PRESENTS, this Best Management Practices Easement (the “**Easement**”), made this _____ day of May, 2012, is by and between Colonel Westbrook Associates, a general partnership organized and existing under the laws of the State of Maine, whose mailing address is c/o Boulos Property Management, One Canal Plaza, Portland, Maine 04101, its successors and assigns (the “**Grantor**”) and **LONG CREEK WATERSHED MANAGEMENT DISTRICT**, a quasi-municipal, special purpose district established as a separate legal entity and instrumentality and as a body corporate and politic under the laws of the State of Maine whose mailing address is Long Creek Watershed Management District c/o Cumberland County Soil & Water Conservation District, 35 Main Street, Suite 3, Windham, Maine 04062, its successors and assigns (the “**District**”). The Grantor and the District are hereinafter referred to collectively as the “**Parties.**”

WHEREAS, the Grantor is the owner of certain real property located at 860 Spring Street, a/k/a 862-866 Spring Street, Westbrook, Cumberland County, Maine, shown on City of Westbrook Tax Map 3, Lot 101A and more particularly described in an instrument recorded in the Cumberland County Registry of Deeds in Book 6423, Page 265 (the “**Premises**”); and

WHEREAS, the Premises is located within the Long Creek Watershed; and

WHEREAS, Long Creek has been designated an “urban impaired stream” by the Maine Department of Environmental Protection (“**DEP**”) because it fails to meet certain State of Maine water quality standards (38 M.R.S.A. § 465(4) as amended from time-to-time, the “**Water Quality Standards**”) due to the effects of stormwater runoff from developed land, and therefore has been listed on Maine’s Section 303(d) list pursuant to Section 305(b) of the federal Clean Water Act (“**CWA**”); and

WHEREAS, the U.S. Environmental Protection Agency (“**EPA**”), under its Residual Designation Authority under the CWA, is requiring certain owners of parcels located within the Long Creek Watershed to address stormwater runoff into Long Creek; and

WHEREAS, EPA has delegated to DEP permitting authority under the CWA’s National Pollutant Discharge Elimination System permit system, and DEP has issued a “General Permit - Post Construction Discharge of Stormwater in the Long Creek Watershed” dated November 6, 2009, which may be renewed, reissued, replaced and/or modified from time-to-time (“**General Permit**”) regarding stormwater discharge in the Long Creek Watershed; and

WHEREAS, the General Permit requires the owners of Parcels from which there is a Designated Discharge (a post-construction stormwater direct discharge from a Parcel in the Long Creek Watershed on which there are Impervious Surfaces or Impervious Areas equal to or greater than one (1) acre) on or after the effective date of the General Permit to file a Notice of Intent to enter into the General Permit or to obtain individual permits, and requires that certain remediation work be done and improvements constructed, installed and/or implemented in and along Long Creek and within the Long Creek Watershed which are intended to cause Long Creek to comply with Water Quality Standards;

WHEREAS, the municipalities of South Portland, Portland, Westbrook and Scarborough, along with other entities, have jointly developed the Long Creek Watershed

Management Plan dated July, 2009 and approved by the DEP (the “**Plan**”) for the purpose of complying with the General Permit and restoring the water quality of Long Creek; and

WHEREAS, Grantor and the District are parties to a Participating Landowner Agreement dated May 20, 2010 (the “**Participating Landowner Agreement**”), pursuant to which the District has agreed to oversee and assist in the implementation of the state and federal remediation and improvement requirements to which the Premises is subject; and

WHEREAS, the District has agreed to oversee and assist in the implementation of the state and federal remediation and improvement requirements in and along Long Creek and within the Long Creek Watershed; and

WHEREAS, Grantor desires to grant to the District, and the District desires to accept, an easement to enable the District to perform such remediation and improvements on the Premises; and

WHEREAS, the Grantor has agreed to provide and the District has determined to accept, an easement in gross to the District over, through, and under the Premises to construct, reconstruct, install, operate, modify, alter, use, maintain, repair, replace, inspect and monitor Best Management Practices (“**BMPs**”) on the Premises subject to the provisions below; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

A. Grant of Easement. Grantor hereby grants, without covenant, to the District the following non-exclusive perpetual easement rights in gross through, under, across, over, and upon the Easement Area, as defined below, exclusively for the construction, reconstruction, installation, operation, modification, alteration, use, maintenance, repair, replacement, inspection and monitoring of the BMPs that are depicted in Exhibit B hereto (the “**Specified BMPs**”), in accordance with the terms of the General Permit, subject to the terms and conditions hereof and for the purposes stated below:

1. to construct, reconstruct, install, operate, modify, alter, use, maintain, repair, replace, remove, inspect and monitor Specified BMPs on the Premises;
2. to collect and control the flow of storm water with the purpose of remediation of existing contamination and prevention of additional contamination of the Long Creek due to storm water runoff;
3. to trim, cut down, and/or remove bushes, trees, grass, crops or any other vegetation to the extent deemed necessary by the District in its reasonable discretion to effectuate the purposes of this Easement;
4. to change the existing surface grade of the Easement Area as is deemed necessary by the District in its reasonable discretion to effectuate the purposes of this Easement; and
5. for ingress and egress, with people and machines, over the Premises to and from the Easement Area and over the Easement Area and the right to enter the Easement Area via any road or parking lot located within any common area owned by the Grantor to access the Easement Area for the purposes of this Easement.

The District’s use and exercise of the above rights granted by this Easement are limited to matters relating to the Specified BMPs on the Premises. This Easement shall be subject to all

existing easements, covenants, restrictions and encumbrances of record. To the extent this Easement is inconsistent with the obligations of Grantor under any current agreements as to any portions of the Premises affected hereby, this Easement shall be implemented and interpreted by the District so that Grantor's existing obligations shall be paramount and shall control its obligations hereunder and the District agrees that it shall not impair, restrict, or otherwise affect any commitments or obligations of Grantor under any existing agreement or easement, including but not limited to existing access, drainage, or parking agreements between Grantor and any third party (whether or not such third party is subject to regulation by the District).

B. The Easement Area. The easement area consists of the portions of the Premises more particularly described as "Easement #1" and "Easement #2" on Exhibit A attached hereto and made a part hereof (the "Easement Area").

1. Relocation of Easement/Specified BMPs. The Grantor reserves the right to relocate the Easement Area and the Specified BMPs constructed thereon by the District pursuant to this Easement provided that: the Board approves the relocated easement; DEP approves the same as a modification to the Plan; the Grantor grants to the District an easement substantially in the form of this Easement to the relocated easement area; the Grantor obtains all necessary consents, joinders and/or subordinations of such easement from all holders of prior interests in the Grantor's Premises (including but not limited to landlords, tenants and lenders), as required in the Participating Landowner Agreement for the original easement; the Grantor constructs at the Grantor's sole cost the replacement Specified BMPs in the relocated easement area; and the replacement Specified BMPs provide materially the same or better functionality and benefit as those replaced. The Grantor shall provide written notice to the District of its intent to exercise the reserved relocation right (subject to Board and DEP approval as stated above), which notice shall include detailed plans and specifications for the replacement Specified BMPs to be constructed in the relocated easement area. Upon completion of construction of the relocated Specified BMPs and the commencement of operation thereof and the grant of the new easement as provided above, this Easement automatically shall be deemed terminated, and the District shall execute and deliver in recordable form a release of this Easement to the Grantor to confirm the same.

2. Removal of Easement/ Specified BMPs. If Grantor wishes to remove a Specified BMP installed by the District on its Premises and to terminate this Easement given to the District relating thereto, Grantor shall have such rights upon paying to the District (in addition to any other amounts required) the full amount of the District's cost of replacement of such Specified BMP as determined by the Executive Director to provide materially the same or better functionality and benefit as that replaced, at which time the District shall execute and deliver in recordable form a release of this Easement to the Grantor. However, if the District is unable to identify an alternative location for the Specified BMP installed on Grantor's Premises that is materially the same or better functionality and benefit as that being removed, then such Specified BMP shall remain on Grantor's Premises and this Easement shall remain in full force and effect.

C. Grantor's Obligations. The Grantor reserves the use and enjoyment of the Premises for any purpose that does not materially frustrate or interfere with the use of the Easement Area by the District for the purposes of this Easement, provided that:

1. the Grantor will not obstruct or permit anyone else to obstruct the Easement Area during the term of this Easement;

2. the Grantor will not construct any building or structure of any kind in the Easement Area, nor permit the construction of any building or structure in the Easement Area; and

3. the Grantor will not perform or permit any fill or excavation activities or any change to the surface grade of the Easement Area, nor plant any plants or trees within the Easement Area, without the District's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. If the District grants permission for any such work by the Grantor, then the Grantor shall defend, indemnify and hold the District and its directors, officers, agents and employees harmless from any and all claims against the District or expenses of the District resulting from such work. Grantor expressly reserves (without limitation) the right to construct parking areas, roadways, or driveways and to pave over any subsurface BMPs to the extent such pavement and/or other improvements will not materially interfere with the function and effectiveness of the BMP.

D. District's Obligations. The District covenants and agrees by acceptance of this Easement:

1. to comply with any and all applicable laws, ordinances, and regulations in connection with the exercise of its rights hereunder;

2. to, except in the event of emergency, provide Grantor with at least ten (10) business days' notice prior to entering the Premises and Easement Area, which notice shall include copies of any plans, specifications and other descriptions of the work to be performed;

3. to promptly restore, at its sole expense, any damage to the Premises and Easement Area caused by its exercise of its rights under this Easement and to restore the Easement Area to its original condition to the extent reasonably possible while allowing any Specified BMPs constructed or installed in the Easement Area to function as designed and intended; and

4. to use its best efforts to minimize the disruption to the operation of the Premises and the businesses of the Grantor and/or tenants and occupants of the Premises; and

5. to promptly execute and record a Termination and Release of this Easement upon its expiration or termination; and

6. to reasonably maintain the Easement Area (to include but not be limited to trimming, pruning, and or removal and/or replacement of damaged or diseased vegetation), from time-to-time, in a manner consistent with other first-class commercial properties in the vicinity of the Premises. In the event that the District shall fail adequately and timely to maintain the Easement Area consistent with the foregoing obligation, after reasonable notice and demand by Grantor specifying the nature of the maintenance default and a reasonable cure period for the District to perform the maintenance, the Grantor shall have the right to perform such maintenance as is necessary to maintain the Easement Area consistent with the foregoing obligation on the account of the District and to charge the reasonable costs of maintenance through to the District.

D-1. Temporary Construction Easement.

1. Grantor also hereby grants to the District a Temporary Construction Easement, the approximate location of which is depicted on Exhibit B hereto (the "Temporary Construction Easement Area"), for the purpose of accessing the Easement Area and constructing the Specified BMPs, including:

a. the right to enter upon said Temporary Construction Easement Area, with people and machines, for the construction, reconstruction, installation, operation, modification, alteration, use, maintenance, repair, replacement, inspection and monitoring of the Specified BMPs that are described in Exhibit B hereto; and

b. the right to perform or have performed any necessary clearing, excavating, repaving, placing of fill material, loaming, seeding and any other incidental work.

2. The Temporary Construction Easement hereby conveyed shall terminate on November 1, 2012. The Temporary Construction Easement hereby granted does not convey any right or interest in the Premises except as herein stated, nor does it prevent Grantor from the use of said Premises, provided, however, that such use does not materially interfere with the rights herein granted.

3. Upon termination of the Temporary Construction Easement, the District and its agents, contractors and employees shall restore the Temporary Construction Easement Area to its original condition to the extent reasonably possible.

E. District Liability, Indemnification. The District agrees to defend, indemnify and hold harmless the Grantor for and against any and all claims, loss, cost, damage, or expense, including reasonable attorney's fees that may arise from a breach of the District's covenants herein or from the exercise by the District of its easement rights under this Easement, provided however that the District does not herein waive the immunities, defenses and limitations on liability for itself and its officers, directors and employees provided to it and to them under Maine law, including but not limited to the Maine Tort Claims Act, 14 M.R.S.A. § 8101 *et seq.*

Further, the District shall contractually require any third-party contractor, except for a governmental entity as defined by 14 M.R.S.A. § 8102(2), with whom the District may contract to carry out the purposes of this Easement to: (a) to the fullest extent allowed by law, defend, indemnify and hold Grantor and the District and their respective directors, officers, managers, members, agents and employees harmless from any claim(s), cause(s) of action, liability or expense, including, without limitation, costs and reasonable attorney's fees, for personal injury (including death) and/or property damage caused by, related to, arising out of or resulting from the error, act or omission of the contractor's performance of work and/or services under that contract and/or the contractor's and its subcontractors' and each of their agents' and employees' presence on the Premises; and (b) procure and maintain during the term of such contract commercial general liability and automobile liability insurance coverages, each in an amount of not less than \$2,000,000.00 (Two Million Dollars), combined single limit, with deductibles in amounts typically carried by prudent contractors engaged in the performance of similar work and/or services, to insure this obligation, and the Grantor and the District and their respective directors, officers, managers, members, agents and employees shall be additional named insureds under that coverage, and workers' compensation insurance coverage as required by State law. The foregoing indemnity expressly extends to claims of injury, death, or damage to employees of the Contractor or a Subcontractor. In claims against any person or entity indemnified under this Section by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers'

compensation acts, disability benefit acts or other employee benefit acts. The Contractor expressly waives immunity under workers' compensation laws for the purposes of this indemnity provision.

The liabilities and immunities of a governmental entity as defined by 14 M.R.S.A. § 8102(2) with whom the District may contract to carry out the purposes of this Easement shall be subject to the monetary limits, limitations, defenses, immunities, and liabilities established by the Maine Tort Claims Act, 14 M.R.S.A. § 8101 *et seq.*, and such governmental entity contractor shall procure and maintain during the term of such contract insurance coverage in the minimum amount of Four Hundred Thousand Dollars (\$400,000) or such other amount as may be required under that Act for those areas in which it is liable under that Act, or as the District may determine.

F. Permits. The District shall obtain and comply with all permits necessary in connection with each Specified BMP.

G. Run With the Land. Except as otherwise provided, all of the covenants, agreements, and conditions contained in this Easement shall run with the land in perpetuity and shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns, provided, however, that this Easement shall be terminable under the following conditions:

1. In the event the Grantor reasonably believes that the Easement is no longer necessary for the District to achieve and maintain federal, state, and local water quality standards for the Long Creek Watershed (evidenced, for example, by DEP revocation of the General Permit or by the absence of a regulatory structure requiring the Easement), then Grantor may seek termination of this Easement through the following process:

a. Grantor shall send a written request for termination of this Easement to the District (or its successors or assigns) at its last known address as that address is ascertained by Grantor through good faith efforts and reasonably diligent inquiry. Following receipt of such a termination request, the District's Board of Directors ("Board") (or the governing body of its legal successor or assign) shall, within ninety (90) days of receipt of said termination request, determine whether the Easement is no longer necessary for the District (or its successor or assign) to achieve and maintain federal, state, and local water quality standards for the Long Creek Watershed, and if the Board so determines, the Board shall promptly furnish a notice of termination under Section D(5) above, and this Easement shall be automatically terminated and released to Grantor upon recording of such notice. Upon such termination, Grantor shall have the right to remove the BMP from the Premises at its own cost and expense, provided however that the Board (or its legal successor or assign) may determine that the Grantor must pay the District or its successor or assign the reasonable value of said BMP.

b. If the District (or its successor or assign) does not reply to Grantor's written termination request under Section G(1) above within ninety (90) days from the date of mailing of that written request, then Grantor shall mail a second written termination request to the District (or its successor or assign) and also shall send a copy of that second written termination request to the City of Portland, the City of South Portland, the City of Westbrook, the Town of Scarborough and to any other municipal sovereign authority succeeding to their interests at their last known addresses as those addresses are ascertained by Grantor through good faith efforts and reasonably diligent inquiry,. If Grantor also does not receive timely replies within ninety (90) days after the mailing of the second written termination requests, and Grantor further

determines in the absence of any reply that this Easement is no longer necessary for the District (or any successor or assign) to achieve and maintain federal, state, and local water quality standards for the Long Creek Watershed, then Grantor may record an affidavit of termination stating such facts under oath and this Easement shall be terminated upon recording thereof. Upon such termination, Grantor shall have the right to remove the BMP from the Premises at its own cost and expense.

H. Assignment by the District. This Easement shall be assignable by the District to another governmental entity for the purpose of implementing the Plan without any consent of the Grantor being required.

I. Miscellaneous.

1. Grantor agrees to execute, acknowledge, and deliver to or for the District such further instruments and take such further actions as may be reasonably required to carry out and effectuate the intent and purpose of this Easement, or to confirm or perfect any right created hereunder.

2. This Easement together with the Participating Landowner Agreement constitute the entire agreement between the Parties and may not be modified, amended, or terminated except by an instrument in writing signed by both Parties.

3. Capitalized terms used in this Easement shall have the meaning given them in the Participating Landowner Agreement unless otherwise defined in this Easement.

4. This Easement shall be recorded in the Cumberland County Registry of Deeds.

5. This Easement shall be governed by and construed in accordance with the laws of the State of Maine.

6. Invalidation of any one of these terms or provisions by any court shall in no way affect any other terms or provisions, which shall remain in full force and effect.

7. Execution of this Easement by the District evidences the District's acceptance of this Easement.

IN WITNESS WHEREOF, Grantor has executed this Easement on the date first set forth above.

WITNESS:

GRANTOR: COLONEL WESTBROOK
ASSOCIATES

By: _____

(Printed Name)

Its General Partner

ACKNOWLEDGEMENT

STATE OF MAINE
CUMBERLAND, ss.

_____, 2012

Personally appeared the above-named _____ in his capacity as General Partner of Colonel Westbrook Associates and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Colonel Westbrook Associates.

Before me,

Notary Public/Maine Attorney-at-Law

Exhibit A

Certain tracts or parcels of land located on the northerly side of, but not adjacent to, Thomas Drive and the easterly side of Spring Street in the City of Westbrook, County of Cumberland, State of Maine being more particularly bounded and described as follows:

EASEMENT #1

Beginning at the southwest corner of Lot #1A as shown on plan entitled Revised Definitive Subdivision Plan Colonel Westbrook Industrial Park Thomas Drive Westbrook, Maine, dated January 1, 1985. Prepared by Sebago Technics and recorded in Plan Book 149, Page 15 in the Cumberland County Registry of Deeds (CCRD).

Thence N03°20'00"W along the westerly line of said Lot #1A and the assumed easterly line of Spring Street a distance of 21.21';

Thence N86°40'00"E a distance of 9.67';

Thence N06°35'56"E a distance of 47.70';

Thence S83°24'04"E a distance of 10.00';

Thence S06°35'56"W a distance of 45.95';

Thence N86°40'00"E a distance of 48.96';

Thence S03°20'00"E a distance of 30.00' to the northerly line of Lot #1 as shown on aforementioned plan;

Thence N86°03'04"W along the northerly line of Lot #1 a distance of 69.35' to the point of beginning.

The above described parcel contains 2,229 square feet, more or less, and is shown as Easement #1 on plan entitled Sketch Plan of Easements at 860 Spring Street in Westbrook, Cumberland County, Maine, dated May 3, 2012, prepared by Boundary Engineering Survey Technology, Inc.

EASEMENT #2

Beginning at the northeasterly corner of Lot #1 as shown on plan entitled Revised Definitive Subdivision Plan Colonel Westbrook Industrial Park Thomas Drive Westbrook, Maine, dated January 1, 1985. Prepared by Sebago Technics and recorded in Plan Book 149, Page 15 in the Cumberland County Registry of Deeds, said point being N86°03'04"W a distance of 35.46' from the south easterly corner of Lot #1A as shown on said plan.

Thence N86°03'04"W along the northerly line of Lot #1 a distance of 61.80";

Thence N03°49'28"E a distance of 14.96';

Thence N74°03'48"W a distance of 41.44';

Thence S04°19'55"W a distance of 11.17';

Thence N83°56'14"W a distance of 10.48';

Thence N04°19'55"E a distance of 23.21';

Thence S74°03'48"E a distance of 52.04';

Thence N03°49'28"E a distance of 11.78';

Thence S86°10'32"E a distance of 82.00';

Thence S03°49'28"W a distance of 37.15' and the southerly line of Lot #1A as shown on said plan;

Thence N86°03'04"W along the southerly line of Lot #1A a distance of 20.20' to point of beginning.

The above described parcel contains 3,686 square feet, more or less, and is shown as Easement #2 on plan entitled Sketch Plan of Easements at 860 Spring Street in Westbrook, Cumberland County, Maine, dated May 3, 2012, prepared by Boundary Engineering Survey Technology, Inc.

TEMPORARY CONSTRUCTION EASEMENT

Temporary easement for the purpose of access and construction on that portion of land as shown as on said Sketch Plan as being "Temporary Construction Easement."

Meaning and intending to describe portions of the land conveyed to Colonel Westbrook Associates by deed of Greater Portland Building Fund dated April 9, 1984 and recorded in Book 6423, Page 265 in the Cumberland County Registry of Deeds.

Exhibit B

[Plan is on Next Page]

Long Creek Watershed Management District Governing Board
Minutes – June 22, 2012 – 9:30 a.m. Meeting
Location: Westbrook Public Safety Building

1. Call to order – 9:31 a.m.

2. Roll call

Dan Bacon, David Russell, Curtis Bohlen, David Thomes, John Branscom, Brian Goldberg (absent), Craig Gorris (absent), Jim Hughes (absent), Gerard Jalbert (absent), John O'Hara (absent), Ed Palmer, Adam Pitcher (absent), Tom Raymond, Doug Roncarati, Stephen Tibbetts (absent)

3. Minutes

Mr. Raymond made the motion to accept the minutes as presented. Mr. Palmer seconded the motion. The motion was approved unanimously.

4. Treasurer's Report

5. Technical Committee report

A meeting has been set with DEP Commissioner, Pattie Aho, for July 2nd at 10:0 a.m. to discuss chloride and the possibility of working collectively with the State.

6. Executive Director's report

Noncompliant landowners. Down to four outstanding landowners who are not in compliance. Two from the original DEP designation - one that has paid but hasn't submitted paperwork – DEP is pursuing; and one that had a court date with DEP on 6/26 with a follow up court date scheduled for 9/26 where next steps will be determined (i.e., either the landowner will provide documentation of compliance or court proceedings will be pursued). Two are from the second round of DEP designations, but they are well beyond their 180 days. They have followed through with Perkins Thompson to get their PLAs; we anticipate that they will be signed and returned with payment soon.

7. Request for LCWMD Board Approval of Revision to Best Management Practices Easement

Form. Request attached to these minutes with notes. It was determined that an emergency meeting of the board would be held on June 27th at 9:30 a.m. in Scarborough.

8. Public Comments.

9. Adjourn. Mr. Russell made the motion to adjourn the meeting. Mr. Bacon seconded the motion. The motion was approved unanimously.

G. Run With the Land. All of the covenants, agreements, and conditions contained in this Easement shall run with the land in perpetuity and shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns, provided, however, that this Easement shall be terminable under the following conditions:

1) in the event the General Permit shall expire, or if MDEP shall revoke ~~or fail to re-issue~~ the General Permit, or if the General Permit shall be terminated and the Premises are no longer subject to the General Permit (as the same may be renewed, replaced, or amended from time to time) for a period of twelve consecutive months ~~(such event being a "General Permit Termination")~~, then Grantor may request and the District (or its successors and/or assigns) shall, following such a request and upon a further finding by the Board (or its legal successor) that the BMP Easement is no longer necessary for the District to achieve and maintain federal, state, and local water quality standards for the Long Creek Watershed, promptly furnish a notice of termination under Section D(5) above, and this Easement shall be automatically terminated and released to Grantor upon recording of such notice. ~~Notwithstanding the foregoing or anything else herein to the contrary, it shall not be a General Permit Termination in the event that the Grantor shall voluntarily withdraw from the Participating Landowner Agreement, or shall fail to submit an NOI (as that term is defined in the Participating Landowner Agreement), or shall relocate the BMP pursuant to the rights described in Section B(1) above, in any of which cases the provisions and obligations set forth elsewhere herein and in the Participating Landowner Agreement as to such events shall control.~~

Comment [A1]: Paragraph one with minimal reference to regulatory language (i.e., lose the General Permit focus). Insert broad general language to denote trigger for pursuing easement termination with a "such as:" clause that does not need to be comprehensive, but merely suggestive.

2) If the District and/or the Board (or its legal successor) does not timely reply within sixty (60) days after each of two (2) separate termination requests sent to the last known address of the Board and/or the District (or any legal successor thereof), as that address is ascertained by Grantor through good faith efforts and reasonably diligent inquiry, each request being separated by at least one calendar month, and Grantor further determines in the absence of any reply that there has been a General Permit Termination and that the BMP Easement is no longer necessary for the District (or any successor thereto) to achieve and maintain federal, state, and local water quality standards for the Long Creek Watershed, then Grantor may record an affidavit of termination stating such facts under oath and this Easement shall be terminated upon recording thereof.

Comment [A2]: Paragraph two with the inclusion of a backstop of municipalities or other sovereign entity for notice and discovery

In the event that this Easement is so terminated, the Grantor shall have the option to require the District no later than three (3) months from the date of recording of the notice of termination, to promptly remove the BMP and restore the affected portions of the Premises. In the event that the District shall fail timely or fully to remove the BMP, then it shall become the property of the Grantor and may be removed at the Grantor's option and Grantor shall thereafter have no further obligations of any kind or nature to the District under the Easement.

Comment [A3]: Change paragraph three to "grantor shall have the right to remove the BMP from the premises at its own cost and expense upon automatic termination or with the board's approval otherwise."

- f. Best Management Practices Easement dated July 9, 2012 by and between Millennium Development, LLC and LONG CREEK WATERSHED MANAGEMENT DISTRICT over certain real property located at 4 Thomas Drive, Westbrook, Maine.
- g. Best Management Practices Easement dated July 9, 2012 by and between Westport Realty, LLC and LONG CREEK WATERSHED MANAGEMENT DISTRICT over certain real property located at 8 Thomas Drive, Westbrook, Maine.
- h. Best Management Practices Easement dated June 1, 2012 by and between Peter F. Holmes and LONG CREEK WATERSHED MANAGEMENT DISTRICT over certain real property located at 10 Thomas Drive, Westbrook, Maine.
- i. Best Management Practices Easement dated July 10, 2012, by and between Lanco Properties, LLC, and LONG CREEK WATERSHED MANAGEMENT DISTRICT over certain real property located at 14 Thomas Drive, Westbrook, Maine.
- j. Best Management Practices Easement made July 10, 2012 by and between Lanco Properties, LLC, and LONG CREEK WATERSHED MANAGEMENT DISTRICT over certain real property located at 20 Thomas Drive, Westbrook, Maine.

8. **Public Comments.**

9. **Adjourn.**