1. Call to order

2. Roll call

3. Minutes (Attachment A)

4. Treasurer’s report (Attachment B)

5. Executive Director’s report

6. Colonel Westbrook
   a. Easements. Accept easements from Colonel Westbrook Associates (Attachment C) and Seven Thomas Drive LLC (Attachment D) and authorize LCWMD Chair/President to execute documents necessary thereto.

   b. Contract Services. To award a contract for Long Creek Stream Corridor Enhancements, Thomas Drive, Westbrook, Maine for the LCWMD and to authorize the LCWMD Chair/President to execute documents necessary thereto. Recommendation for contract award will be provided at the board meeting. Bid opening is Monday, August 8, 2011 at 10:00 a.m.

   c. Competitive Bid Waiver Request. Per the existing LCWMD Procurement Policy, the Board must approve any waivers of the requirement for competitive bidding/proposals for all purchases of goods and services in excess of $10,000.00. It is the recommendation of the Executive Director that the Board waive the competitive bid requirements for the in-stream work on Thomas Drive and authorize the LCWMD Chair/President to execute documents necessary thereto. As required by Section C 5 of the Procurement Policy Rules, a “Requisition for Contract Authorization” completed by the Executive Director is attached (Attachment E).

7. Communication with Participating Landowners. Discuss desired reporting and outreach to landowners regarding progress on Plan implementation.

8. Public Comments.

1. **Call to order** – 8:37 a.m.

2. **Roll call**
Gerard Jalbert, Curtis Bohlen, Mary Costigan, David Thomes, Jim Hughes, John O’Hara (absent), David Russell, Dan Bacon, Ed Palmer (late), Craig Gorris (late), Brian Goldberg, Tom Raymond, John Branscom, Adam Pitcher (absent)

3. **Minutes** *(Attachment A)*
Mr. Raymond made the motion to accept the minutes as presented. Mr. Goldberg seconded the motion. The motion was approved unanimously.

4. **Treasurer’s report** *(Attachment B)*
Mr. Russell made the motion to accept the report as presented. Mr. Raymond seconded the motion. The motion was approved unanimously.

5. **Executive Director’s report**
   - 865 Spring Street will be resolved following the sale of the property that is anticipated to occur within the next two weeks.
   - Technical Committee reviewed stream restoration sites and the next step is to prioritized stream restoration along with retrofit sites to create a long term planning list.
   - We are applying for funding from YSI to purchase a monitoring sonde and cover labor to assist us with the identification of chloride issues from the Portland snow dump.
   - USM is applying for funding to do additional street dust and flood plain sediment monitoring to look at the effectiveness of our sweeping program.
   - Colonel Westbrook stream restoration will go out to bid within the next few weeks.

6. **Annual Meeting/Election of Officers.** Under Art. IV, Sec. 1., “The officers of the Corporation shall be a President/Chair, Vice-President/Vice-Chair, Treasurer, Secretary and Registered Agent.”
   - President – Mr. Jalbert made the motion to elect Mary Costigan to serve as President. Mr. Russell seconded the motion. The motion was approved unanimously.
   - Vice-president - Mr. Jalbert made the motion to elect Dan Bacon to serve as Vice-president. Mr. Hughes seconded the motion. The motion was approved unanimously.
   - Treasurer - Mr. Bacon made the motion to re-elect Curtis Bohlen to serve as Treasurer. Mr. Russell seconded the motion. The motion was approved unanimously.
   - Secretary - Mr. Jalbert made the motion to elect David Russell to serve as Secretary. Mr. Bacon seconded the motion. The motion was approved unanimously.
   - Registered Agent - Mr. Jalbert made the motion to elect Jim Katsiaficas to serve as registered agent. Mr. Hughes seconded the motion. The motion was approved unanimously.

7. **Competitive Bid Waiver Request.** Per the existing LCWMD Procurement Policy, the Board must approve any waivers for the requirement of competitive bidding/proposals for all purchases of goods and services in excess of $2,500.00. The 2010 RFP process for auditing services resulted in contracting with Berry Talbot and Royer for $9,700.00. It is expected that the 2011 audit will be less involved and thus,
less expensive and sole sourcing with Berry Talbot Royer for the coming year will be the most economical, effective and appropriate means of fulfilling the demonstrated need. They are familiar with both CCSWCD books and the establishment and structure of the LCWMD. The 2011 audit will include both LCWMD books and the review of the transfer of funds from CCSWCD to LCWMD. It is the recommendation of the Executive Director that the Board waive the competitive bid requirement for 2011 auditing services.

- Mr. Raymond made the motion to waive the competitive bid requirement for 2011 auditing services. Mr. Bacon seconded the motion. The motion was approved unanimously.

8. **Procurement Policy Amendment.** To adopt the attached *(Attachment C)* Draft Amendment to Long Creek Watershed Management District Rules and Regulations Procurement Policy. The intent is to clarify some of the procedures under the procurement policy and add a provision that allows for pre-certification of contractors for the procurement of services.

- Mr. Bohlen made the motion to approve the procurement policy as provided with the two recommended amendments. Mr. Raymond seconded the motion. The motion was approved unanimously.

9. **Financial Policy Amendment.** To adopt the attached *(Attachment D)* Draft Amendment to Long Creek Watershed Management District Rules and Regulations Financial Policy. The intent is to change the approval of journal entries so that the Treasurer, and not the Finance Manager, is approving the journal entries. This ensures better separation of duties so that the approval comes from someone who is not doing the entry.

- Mr. Goldberg made the motion to adopt the amendment to the LCWMD Rules & Regulations Financial Policy. Mr. Bacon seconded the motion. The motion was approved unanimously.

10. **Public Comments.**

- Mr. Hughes thanked the President and officers for their work during this first year of the LCWMD.

11. **Adjourn.**

- Mr. Russell made the motion to adjourn. Mr. Hughes seconded the motion. Meeting adjourned at 9:40 a.m.
# Balance Sheet

**Long Creek Watershed Management District**

**Balance Sheet**

**As of June 30, 2011**

**ASSETS**

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current Assets</strong></td>
<td>Checking/Savings - TD BANK</td>
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<tr>
<td></td>
<td>Accounts Receivable - ACCOUNTS RECEIVABLE</td>
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<tr>
<td></td>
<td>Total Checking/Savings</td>
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<td>Total Accounts Receivable</td>
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<tr>
<td><strong>Total Current Assets</strong></td>
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<td><strong>$394,715.81</strong></td>
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<td><strong>Fixed Assets</strong></td>
<td>Monitoring Equipment</td>
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<td></td>
<td>Construction in Process</td>
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<td></td>
<td>Total 1700 - FIXED ASSETS</td>
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<td><strong>Total Fixed Assets</strong></td>
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<tr>
<td><strong>TOTAL ASSETS</strong></td>
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<td><strong>$2,476,204.26</strong></td>
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**LIABILITIES & EQUITY**

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<tr>
<th>Category</th>
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<tr>
<td><strong>Liabilities</strong></td>
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<td>Total Accounts Payable</td>
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<td></td>
<td>Total Current Liabilities</td>
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<td>Total Long Term Liabilities</td>
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<td><strong>Total Liabilities</strong></td>
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<td><strong>TOTAL LIABILITIES &amp; EQUITY</strong></td>
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## Ordinary Income/Expense

### Income

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<tr>
<th>Description</th>
<th>Jun 11</th>
<th>Jul '10 - Jun 11</th>
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<tr>
<td>INCOME TRANSFER FROM CCSWCD</td>
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<td>4750 · CFUP INCOME</td>
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<td>4820 · INTEREST</td>
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### Expense

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<td>5040 · CONSTRUCTION</td>
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<td>5060 · MONITORING EXPENSE</td>
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<td>6000 · PROGRAM EXPENSE</td>
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<td>6001 · BMP Maintenance</td>
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<td>6277 · WQ Monitoring</td>
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<td>6279 · Database Management</td>
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<td>6270 · PROFESSIONAL FEES - Other</td>
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<td><strong>Total 6270 · PROFESSIONAL FEES</strong></td>
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<td>66900 · Reconciliation Discrepancies</td>
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<tr>
<td><strong>Net Income</strong></td>
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</table>
## Long Creek Watershed Management District
### A/R Aging Summary
#### As of June 30, 2011

<table>
<thead>
<tr>
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<th>1 - 90</th>
<th>&gt; 90</th>
<th>TOTAL</th>
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<td>Total 865 Spring Street, Inc.</td>
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<tr>
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<td>0.00</td>
<td>0.02</td>
<td>0.02</td>
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</tbody>
</table>
**Long Creek Watershed Management District**  
**A/P Aging Summary**  
As of June 30, 2011

<table>
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<tr>
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<th>1 - 90</th>
<th>&gt; 90</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>CUMBERLAND COUNTY SWCD</td>
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<td>TERRANCE J. DEWAN &amp; ASSOCIATES</td>
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<tr>
<td>THE PRINT HOUSE</td>
<td>38.00</td>
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<td>0.00</td>
<td>38.00</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>37,577.01</strong></td>
<td><strong>0.00</strong></td>
<td><strong>4,960.00</strong></td>
<td><strong>42,537.01</strong></td>
</tr>
</tbody>
</table>
STORM WATER MANAGEMENT FACILITY EASEMENT

THIS STORMWATER MANAGEMENT FACILITY EASEMENT (the “Easement”), made this _____ day of ______________, 20___, is by and between Colonel Westbrook Associates, a general partnership duly 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 1 Thomas Drive, Westbrook, Cumberland County, Maine, shown on City of Westbrook Tax Map 3, Lot 125 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 (“RDA”) 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 (“NPDES”) 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 (“NOI”) 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, 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 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; and

WHEREAS, the District has determined to accept the grant of the Easement subject to the provisions stated below;

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, as of the date of execution of this Easement, are both (i) identified in the Plan or approved modification thereto and (ii) specified in the Plan or approved modification thereto as being located within the Easement Area (as defined below) (the “Specified BMPs” as described in Exhibit B hereto), in accordance with the terms of the General Permit, subject to the terms and conditions hereof and for the purposes stated below:

1. the right to construct, reconstruct, install, operate, modify, alter, use, maintain, repair, replace, inspect and monitor Specified BMPs on the Premises;

2. the right 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. the right 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. the right 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;

5. rights of 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;
6. 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; and

7. 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 portion of the Premises more particularly described in Exhibit A attached hereto and made a part hereof (the “Easement Area”).

1. Relocation of Easement/BMPs. The Grantor reserves the right to relocate the Easement Area and the BMPs constructed thereon by the District pursuant to the 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 BMPs in the relocated easement area; and the replacement 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 BMPs to be constructed in the relocated easement area. Upon completion of construction of the relocated 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/BMPs. If Grantor wishes to remove a 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 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 BMP installed on Grantor's Premises that is materially the same or better functionality and benefit as that being removed, then such 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 Easement Area 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.

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 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.

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 the Stormwater Management Facility.

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.

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, the Parties have executed this Easement on the date first set forth above.

WITNESS: GRANTOR: COLONEL WESTBROOK ASSOCIATES

______________________________ By: ______________________________
Printed name: Joseph E. Boulos
Its: Partner

LONG CREEK WATERSHED MANAGEMENT DISTRICT

______________________________ By: ______________________________
Printed name: Mary E. Costigan
Its: President/Chair

ACKNOWLEDGEMENT

STATE OF MAINE
CUMBERLAND, ss. ______________, 2011

Personally appeared the above-named Joseph E. Boulos in his capacity as 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/Attorney-at-Law

STATE OF MAINE
CUMBERLAND, ss. ______________, 2011
Personally appeared the above-named Mary E. Costigan in her capacity as President/Chair of Long Creek Watershed Management District and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said Long Creek Watershed Management District.

Before me,

________________________________________

Notary Public/Attorney-at-Law
EXHIBIT A
Lots 25, 26 & 27

A certain set of easement rights as set forth herein before, within a portion of that land conveyed to Colonel Westbrook Associates as described in the deed recorded in the Cumberland County Registry of Deeds in book 6423 page 265 and surrounding a section of Blanchette Brook, so called, said portion or parcel being situated on the south side of Thomas Drive in the City of Westbrook, Cumberland County and State of Maine, and occupying parts of Lot 25, Lot 26 and Lot 27 which lots are depicted on the plan entitled, "Plan of Property made for the Greater Portland Building Fund Colonel Westbrook Industrial Park" recorded in said registry in Plan Book 135 page 48, the parcel and easement boundaries hereby described being more particularly bounded and described as follows, to wit:

BEGINNING at the common corner of Lot 27 and 26 on the southerly side of Thomas Drive aforesaid, and proceeding around the parcel hereby described in a clockwise fashion:

Thence S 83°-08'-21" E along the southerly side of Thomas Drive for a distance of 210.91 feet to a Point of Curvature;

Thence along a curve to the right with a radius of 730.94 feet for a distance of 90.61 feet as measured along said arc to the northeast corner of Lot 26 and the northwest corner of Lot 25 as shown on the aforesaid plan;

Thence continuing along the southerly side of Thomas Drive along the same curve to the right for an additional distance of 85.62 feet as measured along said arc to a Point of Tangency;

Thence S 69°-19'-32" E along the south side of Thomas Drive for a distance of 237.53 feet to a Point of Curvature;

Thence along a curve to the left with a radius of 605.96 feet for a distance of 21.06 feet as measured along said arc to the northeast corner land now or formerly of 7 Thomas Drive LLC as described in the deed recorded in book 23642 page 273 and 276, said corner situated at the northerly terminus of a line 20 feet westerly of and parallel with the common boundary between Lot 25 and Lot 24 as shown on said plan;

Thence S 03°-50'-20" E along the land of said 7 Thomas Drive LLC for a distance of 83.60 feet to a point;

Thence S 89°-03'-19" W through Lot 25 for a distance of 97.57 feet to a point;

Thence N 57°-16'-57" W through Lot 25 for a distance of 271.12 feet to the east boundary of Lot 26, said point situated 55.03 feet from the southerly sideline of Thomas Drive as measured along the common boundary of Lot 25 and Lot 26;

Thence continuing on same course N 57°-16'-57" W into Lot 26 for a distance of 30.74 feet to a point;

Thence N 80°-23'-03" W through Lot 26 for a distance of 59.15 feet to a point;
Thence S 82°-20'-47" W through Lot 26 for a distance of 213.25 feet to the east boundary of Lot 27, said point situated 98.59 feet from the south sideline of Thomas Drive as measured along the common boundary of Lot 26 and Lot 27;

Thence continuing on same course S 82°-20'-47" W into Lot 27 for a distance of 22.90 feet to a point;

Thence N 71°-57'-32" W through Lot 27 for a distance of 50.37 feet to a point;

Thence S 59°-48'-03" W through Lot 27 for a distance of 152.38 feet to a point;

Thence S 84°-41'-27" W to the easterly sideline of Spring Street, so called, for a distance of 89.90 feet to a point;

Thence N 03°-20' W along the east side of Spring Street for a distance of 121.24 feet to a point;

Thence N 67°-44'-04" E into Lot 27 aforesaid for a distance of 144.86 feet to a point;

Thence S 89°-26' E through Lot 27 for a distance of 28.81 feet to a point;

Thence N 89°-01'-01" E for a distance of 78.23 feet to the southerly sideline of Thomas Drive aforesaid;

Thence S 83°-08'-21" E along the southerly sideline of Thomas Drive for a distance of 51.70 feet to the northeast corner of Lot 27 and the northwest corner of Lot 26 and POINT OF BEGINNING herein, encompassing an area of 1.95 acres, more or less.

The above described parcel is subject to a certain rights of NET&T within a 25 foot wide strip as set forth in book 1646 page 87 and depicted on the aforesaid recorded plan.

The area is also subject to those conditions set forth in Maine Department of Environmental Protection Orders recorded in book 4905 page 144 and book 4960 page 258.

Such matters as are shown on the aforesaid recorded plan, including a 25 foot wide storm water drainage easement between Thomas Drive and Blanchette Brook along the common boundary of Lots 25 and 26.

The above description was prepared by benefit of a certain survey plan entitled "Plan of Proposed Easements Colonel Westbrook Industrial Park" dated July 11, 2011 compiled by Royal River Survey Company.
July 16, 2011

Management District Project
A Long Creek Watershed

Enhancements, Westbrooke, Maine
Long Creek Stream Corridor
BEST MANAGEMENT PRACTICES EASEMENT DEED

KNOW ALL PERSONS BY THESE PRESENTS, this Best Management Practices Easement (the “Easement”), made this ______ day of ______________, 20___, is by and between 7 THOMAS DRIVE, LLC, a Maine Limited Liability Company, with a mailing address of 7 Thomas Drive, Westbrook, Maine 04092, 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 7 Thomas Drive, Westbrook, Cumberland County, Maine, shown on City of Westbrook Tax Map 3, Lot 124 and more particularly described in instruments recorded in the Cumberland County Registry of Deeds in Book 23642, Pages 273 and 276 (the “Servient Property”); and

WHEREAS, the Servient Property 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, 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 Servient Property; 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 Servient Property to construct, reconstruct, install, operate, modify, alter, use, maintain, repair, replace, inspect and monitor Best Management Practices (“BMPs”) on the Servient Property 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 described 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 Servient Property;

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;

5. for ingress and egress, with people and machines, over the Servient Property 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 Servient Property.
B. The Easement Area. The easement area consists of the portion of the Servient Property more particularly described in Exhibit C attached hereto and made a part hereof (the “Easement Area”).

C. Grantor’s Obligations. The Grantor reserves the use and enjoyment of the Servient Property 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.

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 Servient Property 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 Servient Property 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 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 Servient Property and the businesses of the Grantor and/or tenants and occupants of the Servient Property.

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 Servient Property; 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. 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.

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 may not be modified, amended, or terminated except by an instrument in writing signed by both Parties.

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

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

5. 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.

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

WITNESS: ________________________________

GRANTOR: 7 Thomas Drive, LLC
By: ________________________________

Bruce V. Avery
Its Manager

ACKNOWLEDGEMENT

STATE OF MAINE
CUMBERLAND, ss. ____________, 2011

Personally appeared the above-named Bruce V. Avery in his capacity as Manager of 7 Thomas Drive, LLC and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said 7 Thomas Drive, LLC.

Before me,

__________________________

Notary Public/Attorney-at-Law
[Property Description]
**REQUISITION FOR CONTRACT AUTHORIZATION**

**Contractor:** Caribou Springs, LLC  
**Contract Contact:** 207-215-3119  
**Contract Amount:** $30,000  
**Telephone:**  
**Contract Start Date:**  
**Contract End Date:**  

**Services:** In-stream restoration at Thomas Drive, Westbrook  

NOTE: Respond to all questions below applicable to this contract. Additional pages may be attached as necessary.

**SUBSTANTIATION OF NEED:** (Include statutory cite, cost savings, if any, and history of the contracting relationship)

In-stream restoration work is identified in the Long Creek Management Plan for the stream segment on Thomas Drive in Westbrook. This is in addition to the Stream Corridor Enhancements (riparian planting) that went out to bid. The in-stream work involves delicate, in-stream excavation and installation of boulders and root wads (tree stumps with roots attached that are driven into the stream bed). This work needs to occur prior to the installation of the riparian plantings (see attached plan) and it is imperative that the contractor who does the work has experience with in-stream work to restore streams.

A bid process would cost money to administer and the results would be the same since there is only one contractor who has the necessary experience to do the work.

**RELATIONSHIP BETWEEN PURCHASING AGENT AND CONTRACTOR:**

Long Creek Watershed Management District has never contracted with Caribou Springs, LLC. Tamara Lee Pinard, LCWMD Executive Director, works for Cumberland County Soil and Water Conservation District who hired Caribou Springs, LLC to do an in-stream restoration project on Mill Brook in Westbrook in 2007.

**JUSTIFICATION FOR SOLE SOURCE PROCUREMENT:** (If applicable)

Caribou Springs, LLC is the only contractor in the State of Maine who has experience with in-stream restoration work. There are many contractors that have experience with culvert replacements that require in-stream excavation, but the installation of boulders and root wads require a significant understanding of fluvial geomorphology and the goals of stream restoration. Caribou Springs, LLC is the only contractor that has extensive experience restoring streams utilizing the techniques that need to be employed for the section of Long Creek.

**EVIDENCE OF PRIOR/SCHEDULED RFP, OR OTHER COMPETITIVE PROCESS:**
Treatment Type A: Channel Step

Logs driven into channel bed at an angle to function similarly to sod steps currently present

Treatment Type B: Bank Protection / Cover

Log driven vertically into channel bed along one bank to increase bank stability, encourage channel narrowing and provide cover

Treatment Type C: Boulder Pool Carver

Boulder keyed into channel bank and bed to encourage and sustain pool formation