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MEMORANDUM OF UNDERSTANDING

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Between the
TRUSTEES OF THE SWASEY PARKWAY
and the
BOARD OF SELECTMEN, EXETER, NH

This Memorandum of Understanding is between the Trustees of the Swasey Parkway (hereinafter "Swasey Trustees") and the Board of Selectmen of the Town of Exeter (hereinafter, the "Selectmen") concerning the Swasey Parkway in recognition of the need to confirm their respective roles and responsibilities as to the Swasey Parkway (hereinafter, the "Parkway").

It is the understanding of the Trustees and the Selectmen:

1. That by Trust Agreement dated August 9, 1929, Ambrose Swasey executed a Trust Agreement offering to the Selectmen "financial assistance toward defraying the expense of acquiring a right of way and of constructing a Parkway along the river front at Exeter, New Hampshire, to be used solely for park purposes, and the roadway thereon open only to pleasure vehicles".
2. That under the terms of said Trust Agreement, the Cleveland Trust Company was named as Trustee and was transferred certain non-real property assets as an endowment fund, the income from which is to be used "for the care, maintenance and improvements of said river Parkway."
3. That the current trustee of said endowment fund is the Key Trust Company of Ohio, N.A.
4. That under the terms of said Trust Agreement (page 3), the trust company is to pay to the Selectmen for the care, maintenance, and improvement of the Exeter River Parkway, only the net income derived from investment of the principal, although the trust company has "full authority to determine whether any property coming into its possession shall be treated as principal or income." (Page 2, Trust Agreement).
5. That after August 9, 1979, the Selectmen have had the continuous right under the Trust Agreement to terminate the trust but thereafter only to invest and reinvest the principal of the trust, utilizing only the income therefrom for the care, maintenance and improvement of the Parkway.

6. That in 1929 when the Trust Agreement was executed, Towns were authorized by State law to take and hold in trust gifts, legacies and devises made to them for the establishment, maintenance and care of parks and for any other public purpose within the objects of their organization.
7. That all such trusts authorized by State law were to be administered by a Board of Trustees.
8. That at the 1929 Town Meeting, the Townspeople of Exeter elected a 3 person Board of Trustees with staggered term "for the Exeter Shore Parkway" and have been electing their successors ever since.
9. That title to a number of parcels of land and easements and rights of way was transferred to the Town of Exeter in 1928 and 1929 consistent with the purpose of acquiring the land for the Parkway and for a highway for public travel over same.
10. That under N.H. RSA 231:33, highway agents or other duly authorized officials under the direction of the Selectmen are to have charge of all further repair and maintenance of highways, streets, roads and traveled ways.
11. That the roadway through the Parkway is in fact a Town road by virtue of its having been constructed for public travel over land conveyed to the Town by deed of a fee or easement interest under the second part of N.H. RSA 229:1.
12. That given these understandings, the Swasey Parkway Trustees shall:
 - a. Be responsible for seeing to the "care, maintenance and improvement" of the Parkway (excluding the public roadway through same and appurtenances thereto) utilizing funds generated by the endowment fund under the aforesaid "Trust Agreement" as paid to the Selectmen by the Trust Company.
 - b. Recognize that as between them the Selectmen are the body exclusively responsible for the repair and maintenance of the aforementioned public roadway and any appurtenances thereto.
 - c. Prepare a report annually for inclusion in the Town Report.
 - d. As a courtesy, provide a copy of the minutes of their meetings to the Board of Selectmen.

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13. That given the above understandings, the Selectmen will:

- a. Apply to the Trust Company designated under the Trust Agreement for the funds deemed by the Swasey Trustees to be needed for the care, maintenance and improvement of the Parkway, and recognize the Swasey Trustees' authority over those functions, excluding the aforementioned public roadway and its appurtenance.
- b. Exercise all authority or discretion vested in them by the State law as to the care and maintenance of the aforementioned public roadway and any appurtenances thereto.
- c. Ensure that the Parkway and the Swasey Trustees are named insureds under the Town's policy of comprehensive general liability insurance.
- d. Ensure that the Parkway is periodically patrolled by the Exeter Police Department for security purposes.

15. That this Memorandum of Understanding is governed by the laws of the State of New Hampshire.

TOWN OF EXETER
BY ITS SELECTMEN

Dated: 9/8/97

Barbara A. [Signature]
(Witness)

to all
(Witness)

[Signature]
(Witness)

[Signature]
(Witness)

[Signature]
(Witness)

Paul G. [Signature]

Paul a. Buntin

[Signature]

Wendy Stanley Jones

Robert H. Power

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THE SWASEY PARKWAY TRUSTEES

Dated:

Barbara S. McEvoy
(Witness)

Wayne C. Raymond

Barbara S. McEvoy
(Witness)

George Sturgis

Barbara S. McEvoy
(Witness)

Wayne C. Raymond