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*Howard Hill  
Conservation Easement*

This Conservation Easement is made this \_\_\_\_ day of \_\_\_\_\_ by the City of **Augusta**, a municipal corporation under the laws of the State of Maine (hereinafter "**Grantor**") to **The Kennebec Land Trust**, a Maine nonprofit corporation, duly organized and qualified to do business within the State of Maine, having an address at P.O. Box 261, Winthrop, ME 04364 (hereinafter "**Grantee**").

WHEREAS, Grantor is the sole owner in fee simple of certain parcels of real property, situated in the City of **Augusta**, Kennebec County, Maine, being the real property described in **Exhibit A** attached hereto and made a part hereof and as shown on a Plan described in **Exhibit B** attached hereto and made part hereof (hereinafter the "**Conservation Property**"); and

WHEREAS, the Conservation Property was used historically used for forestry and recreation and was approved for a residential subdivision; and

WHEREAS, the Conservation Property was in earlier years part of Ganneston Park, an expansive nature park formerly owned by the Gannett family, prominent local owners of the Kennebec Journal newspaper, one of the oldest papers in the country; and

WHEREAS, the Conservation Property provides the scenic backdrop for the nearby State Capitol Campus including the State Capitol building and the historic Augusta Mental Health Hospital grounds across the Kennebec River; and

WHEREAS, Grantee is qualified to hold conservation easements pursuant to Title 33, Maine Revised Statutes, Section 476(2)(B), as amended, and is a qualified donee under Internal Revenue Code (the "Code") Title 26 U.S.C. Section 170(h)(3), being a publicly supported, nonprofit organization under Title 26 U.S.C. Section 501(c)(3) with the authority to accept lands, easements, and buildings for the purpose of preserving and protecting natural, scenic, educational, recreational or open-space values of real property, and with the commitment to preserve the conservation values of the Conservation Property; and

WHEREAS, the grant of this Easement will serve "conservation purposes" as such term is defined in Section 170(h)(4)(A) of the Code and under Treasury Regulations at Title 26 CFR §1.170A-14 et seq., as amended; and

45 WHEREAS, the grant of this Easement will preserve scenic open space, wildlife habitat,  
46 woodlands, and recreational values of the Conservation Property in its present state, pursuant to  
47 the following clearly delineated governmental conservation policies:  
48

- 49 A. Maine Conservation Easement Act, Title 33, Maine Revised Statutes, Sections  
50 476 through 479-B, which provide for permanent protection for significant  
51 conservation lands; and  
52
- 53 B. Maine Farm and Open Space Tax Law, Title 36, Maine Revised Statutes, Section  
54 1101, et seq., which confers preferential property tax treatment for property that  
55 owners keep undeveloped or as important open space;  
56
- 57 C. The Maine Tree Growth Tax Law, Title 36, Maine Revised Statutes, Section 571,  
58 et seq., which confers preferential property tax treatment for managed forest land  
59 to protect “this unique economic and recreational resource”.  
60
- 61 D. The City of Augusta 2007 Comprehensive Plan which states: “Augusta, as the  
62 state capital, is the gateway and symbol of what the state as a whole is about. An  
63 attractive first impression of Maine is important for the state’s economic  
64 development and tourism efforts, as well as for the state government’s ability to  
65 recruit a talented workforce.”  
66
- 67 E. The City of Augusta 2007 Comprehensive Plan which further states: “The City  
68 should implement a comprehensive program of land conservation. The program  
69 may include the purchase of conservation land or easements.... Significant  
70 natural resources, agricultural land, forested land, and open space should be  
71 protected...”; and  
72

73 WHEREAS, the grant of this Easement will preserve open space and forest lands for the  
74 scenic enjoyment and recreational use of the general public; and  
75

76 WHEREAS, the Conservation Property was purchased, in part, with funds from the State of  
77 Maine Land for Maine’s Future Fund (“LMF”), established under Title 5 M.R.S., Chapter 353,  
78 Section 6200 et seq., as amended and augmented by P.L. 2009, c.645, Sec. J, and as such the  
79 Conservation Property is subject to a Project Agreement by and between Land for Maine Future, the  
80 State of Maine, through its Department of Inland Fisheries and Wildlife (DSA), and The Kennebec  
81 Land Trust dated \_\_\_\_\_, 2017 and recorded in the Kennebec County Registry of Deeds in Book  
82 \_\_\_\_\_, Page \_\_\_\_\_ (the “*Project Agreement*” or the “*PA*”). For the purposes of this easement the DSA is  
83 granted the authority to enforce this easement along with KLT.  
84

85 WHEREAS, the grant of this Easement will further the protection of Augusta’s open space  
86 and scenic resources and provide opportunity for demonstration forestry and public recreation; and  
87

88 WHEREAS, any significant change or development of the scenic, open space and natural  
89 conditions of the Conservation Property, except as expressly herein provided, would have an

90 adverse effect on the scenic, water quality, wildlife and natural resources of the community, its  
91 public values and those of the environment; and

92  
93 WHEREAS, Grantor and Grantee wish to preserve public access to the Conservation  
94 Property for outdoor recreation in accordance with the terms of this Conservation Easement; and

95  
96 WHEREAS, Grantor and Grantee recognize the above stated values of the Conservation  
97 Property and have the common purpose of conserving the same by the conveyance of this  
98 Conservation Easement, which shall prevent the use or development of the Conservation  
99 Property in any manner, except as expressly herein provided, that would conflict with the  
100 maintenance of the Conservation Property in an undeveloped, scenic, wooded and open  
101 condition for this generation and future generations; and

102  
103 WHEREAS, this Conservation Easement constitutes a charitable trust and is created  
104 pursuant to the Maine Conservation Easement Act, as amended, 33 M.R.S §476 et seq.; and

105  
106 WHEREAS, Grantee agrees, by accepting this grant, to honor the intentions of Grantor  
107 cited herein and to preserve and protect in perpetuity the scenic, natural, and ecological values of  
108 the Conservation Property as provided herein.

109  
110 NOW, THEREFORE, in consideration of the above recited facts and of the covenants,  
111 terms, conditions and restrictions herein contained, and pursuant to the laws of the State of  
112 Maine, Grantor does hereby convey unto Grantee, its successors and assigns, with Quitclaim  
113 Covenant, in consideration of the gift of the fee to the Conservation Property by Grantee to  
114 Grantor, forever and in perpetuity, a Conservation Easement in gross, exclusively for  
115 conservation purposes, over the Conservation Property.

116  
117 1. Purpose/Conservation Values.

118  
119 It is the intention of the parties to protect the Conservation Property from development  
120 with the goals of maintaining and enhancing wildlife habitat, scenic and recreational values,  
121 public viewsheds and open space and timber and non-timber resources and to achieve these goals  
122 through the establishment of a community forest.

123  
124 The open space, scenic, recreational, historic, ecological and natural habitat resources of the  
125 Conservation Property are collectively referred to in this document as the "*Conservation Values*" of  
126 the Conservation Property. Grantor intends and agrees that the Conservation Values of the  
127 Conservation Property shall be preserved and maintained by conveying to Grantee the right to  
128 preserve and protect the Conservation Values of the Conservation Property in perpetuity as set forth  
129 herein. It is further the purpose of this Conservation Easement to:

130  
131 A. assure that the Conservation Property will be retained forever in its essentially  
132 undeveloped condition;

133 B. protect plant and wildlife habitat and environmental quality;

- 134 C. permit limited, sustainable harvesting of timber and non-timber resources and public  
135 recreational use consistent with the terms of this Conservation Easement including its  
136 recitals; and
- 137 D. confine, in perpetuity, the uses of the Conservation Property to activities which are  
138 compatible with these purposes.

139  
140 2. Rights of Grantee.

141  
142 To accomplish the purpose of this Conservation Easement, the following affirmative  
143 rights are conveyed to Grantee, its successors and assigns:

- 144  
145  
146 A. The right to enter the Conservation Property at reasonable times, and without  
147 advance notice, for the purposes of:
- 148  
149 (1) inspecting and monitoring the Conservation Property to determine  
150 compliance with the terms and purposes of this Conservation Easement;  
151  
152 (2) enforcing the terms of this Conservation Easement;  
153  
154 (3) taking any and all lawful actions with respect to the Conservation Property  
155 as may be necessary or appropriate, with or without order of a court, to  
156 remedy or abate violations hereof.  
157
- 158 B. The right of access on foot and by vehicle to the Conservation Property, across  
159 other lands, roads or rights of way now or in the future held by Grantor, to and  
160 from any public roads now existing or hereinafter to be built, for purposes of  
161 exercising the rights herein;  
162
- 163 C. The right to enforce the terms of this Conservation Easement as provided in  
164 Section 6;  
165
- 166 D. Any other right expressly or by implication afforded to Grantee by this  
167 Conservation Easement.  
168

169 3. Prohibited Uses.

170  
171 Except as expressly provided below any activity upon or use of the Conservation  
172 Property inconsistent with the purposes of this Conservation Easement is prohibited. Without  
173 limiting the generality of the foregoing, the following activities and uses are expressly prohibited  
174 on the Conservation Property:

- 175  
176  
177 A. Division or subdivision of the Conservation Property, notwithstanding the provision  
178 of any federal or state statute, or municipal ordinances to the contrary. However,

179 Grantor may enter into boundary line agreements to resolve bona fide boundary  
180 line disputes with permission of the Grantee. In addition, any portion of the  
181 Conservation Property may be conveyed to Grantee, or another qualified  
182 conservation entity subject to the continuation of the terms of this Conservation  
183 Easement, subject to Grantee approval and in accordance with the PA.  
184

185 B. Disturbance or change in natural habitat on the Conservation Property, except as  
186 necessary for the uses expressly authorized by Sections 3 and 4 of this  
187 Conservation Easement.  
188

189 C. No trash, refuse, vehicle bodies or parts, rubbish, debris, junk, waste, sludge, or  
190 radioactive or hazardous waste, shall be placed, stored, dumped, buried or  
191 permitted to remain on the Conservation Property.  
192

193 D. Activities on the Conservation Property which result in erosion or siltation  
194 thereon or onto lands or waters nearby, except as necessary for the uses expressly  
195 authorized by Sections 3 and 4 of this Conservation Easement;  
196

197 E. Activities which could be detrimental to water quality or purity, or which could  
198 result in alteration of natural water levels and/or flows, except as necessary for the  
199 uses expressly authorized by Sections 3 and 4 of this Conservation Easement;  
200

201 F. Construction or installation of buildings, towers or structures except as expressly  
202 provided in Section 4 hereof. Structures are anything built for the support, shelter  
203 or enclosure of persons, animals or goods of any kind, as well as anything  
204 constructed or erected with a fixed location on or in the ground. The term includes  
205 structures whether temporarily or permanently located, such as towers, decks,  
206 satellite dishes, energy generation facilities, turbines, drilling and pumping  
207 equipment;  
208

209 G. Ditching, draining, diking, filling, excavation, dredging, mining, drilling,  
210 hydraulic fracturing, removal of topsoil, sand, gravel, rock, minerals or other  
211 materials, including subsurface removal or changes in the topography of the land  
212 in any manner, except as necessary for the uses expressly authorized by Section 4  
213 of this Conservation Easement. All surface alterations shall be designed and  
214 located so as to have minimal impact on the Conservation Values of the  
215 Conservation Property. Stripping of topsoil anywhere on the Conservation  
216 Property is expressly prohibited.  
217

218 H. Commercial, residential or industrial uses of any kind, except as expressly  
219 provided in Section 4 of this Conservation Easement.  
220

221 I. Cutting of any trees or other vegetation, except as expressly provided in Section 4  
222 of this Conservation Easement;  
223

- 224 J. Use of motorized vehicles, except as expressly provided in Section 4 of this  
225 Conservation Easement;  
226  
227 K. Construction of new roads on the Conservation Property, except as expressly  
228 provided in Section 4 and only for the purposes of this Easement and not for the  
229 benefit of third parties or lands not covered by this Easement.  
230

231  
232  
233 4. Reserved Rights.  
234

235 Subject to the conditions and limitations hereof, Grantor reserves the following rights and  
236 uses of the Conservation Property, provided that all such rights and any activities are carried  
237 out in a manner consistent with the purpose and terms of this Conservation Easement, the  
238 Project Agreement and the Management Plan, all in compliance with applicable federal,  
239 state, municipal and other governmental requirements:  
240

- 241 A. The right to permit low-impact, non-motorized, outdoor recreation, nature  
242 observation and study by the public, including installation of non-motorized trails,  
243 parking areas, and signs for such use. "**Low-impact outdoor recreation, nature**  
244 **observation and study**" is dispersed, non-commercial outdoor activities that  
245 support the purpose of this conservation easement that do not adversely impact  
246 the environmental quality, habitat and biodiversity associated with the  
247 Conservation Property. Examples of such activities include hunting, fishing,  
248 trapping, hiking, bird watching, picnicking, cross country skiing, snow-shoeing,  
249 bicycling, horseback riding, primitive camping, and outdoor education, including  
250 scientific and archaeological research and observation. Such activities do not  
251 include motorized or vehicular use except with the Grantee's prior written  
252 consent. Use of the Conservation Property for commercially guided educational  
253 or recreational trips may be permitted by Grantor, subject to the terms and  
254 conditions of the Project Agreement.  
255  
256 B. The right to construct and maintain unpaved recreational trails to be located so as  
257 to have minimal impact on the Conservation Values of the Conservation Property.  
258 Paved handicapped accessible trails are permitted only with the prior written  
259 consent of Grantee. Grantee shall require any approved trails to be located so as to  
260 have minimal impact on the Conservation Values of the Conservation Property.  
261  
262 C. The right to install and maintain, anywhere on the Conservation Property  
263 structures designed to enhance the opportunity for low-impact outdoor recreation,  
264 nature observation and study and enhance wildlife habitat, such as but not limited  
265 to boundary markers; small unlighted informational and interpretive signs;  
266 commemorative plaques and monuments; registration boxes; unlighted kiosks for  
267 displaying signs, notices, and educational information; temporary tents for events;  
268 temporary portable toilets; seats, benches, and picnic tables; hunting blinds and  
269 tree stands; trail improvements such as handicapped access trails, markers, steps,

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foot bridges, wetland crossings, water bars, and railings; wildlife habitat structures such as hacking boxes, bird houses, observation platforms and blinds; sight-pervious low fences and rock walls, gates, and other minor barriers to block or discourage unauthorized access by motorized vehicles; and other structures necessary for safety, erosion control or protection of fragile resources. Such structures shall be constructed of dark-colored or natural-appearing materials that blend with the natural surroundings and complement the natural and scenic features of the landscape, as documented in the baseline documentation, and not degrade or damage the conservation values of the Conservation Property. Such structures shall create no material change in the wooded sky line of Howard Hill as seen from State Street in Augusta.

Notwithstanding the foregoing, high-impact outdoor recreational structures are prohibited, including but not limited to boardwalks other than bog bridging, tent platforms, lean-tos, outhouses, golf courses, golf ranges, swimming pools, campgrounds, mud runs, tennis and other recreational courts, paintball and other adventure courses, stadiums, performance stages, dressage fields, equestrian rings, polo fields, all terrain vehicle or off road vehicle race tracks or courses, communication towers, playgrounds, athletic courts or fields, airstrips, and aircraft pads.

- D. The right to construct large recreational structures, including, but not limited to a viewing platform and open sided pavilion and structures for the use of caretakers only in accordance with the PA and with prior review and written approval by the Grantee and the Designated State Agency (hereinafter "**DSA**") of plans detailing site and construction plans, and maintenance of proposed improvements, and prior receipt of all state and local permits. Grantee shall require any approved structures to be sited to have minimal impact on the Conservation Values of the Conservation Property. No improvements shall be allowed that do not enhance the permitted uses of the Conservation Property.
- E. . Grantor may alter the natural flow of water over the Conservation Property to improve drainage, reduce soil erosion, or improve the forest management potential of the Conservation Property, provided such alterations do not significantly diminish or impair the Conservation Values of the Conservation Property. Grantor shall obtain Grantee's written approval prior to undertaking any construction, reconstruction or other improvements on the Conservation Property as permitted under this subsection.
- F. The right to conduct sustainable forest management on the Conservation Property pursuant to a forest management plan prepared by a licensed forester and submitted for review to Grantee prior to implementation. "**Forest management**" means all activities for the management of the forest including the harvesting of forest products. In addition, the right to remove vegetation related to permitted uses including construction of trails and recreational structures, as well as clearing of

316 views from trails and recreational areas provided that such clearing is conducted in a  
317 manner to have minimal impact on the Conservation Values of the Conservation  
318 Property.  
319

320 G. The right to remove invasive plant species using manual, mechanical, and chemical  
321 control according to Best Management Practices.  
322

323  
324 H. The right to use motorized vehicles, including snowmobiles, in the following  
325 circumstances:

- 326 i. for transportation of building materials for approved structures and uses;
- 327 ii. for permitted property management activities such as forest management  
328 activities;
- 329 iii. for short term use as needed in an emergency;
- 330 iv. for motorized wheelchairs or similar devices for the disabled; and
- 331 v. for access to and in parking areas located on the periphery of the  
332 Conservation Property.  
333

#### 334 5. Public Access and Management Plan. 335

336 Grantor agrees to take no action to prohibit, or discourage, public access to the Conservation  
337 Property but may enact such rules and restrictions as it deems advisable, with prior written  
338 approval of the Grantee and DSA.  
339

340 In accordance with Title 5, Maine Revised Statutes, Section 6200 et seq., as amended and  
341 augmented by P.L. 2009, c.645, Sec. J (the Land for Maine's Future Statute and Bond Statutes),  
342 the Conservation Property shall be open for use by the general public and Grantor shall not  
343 prohibit hunting, fishing or trapping on the Protected Property except to the extent of applicable  
344 state, local and federal laws and regulations.  
345

346 Grantor agrees that any fees or charges imposed for public access or use shall be reasonable and  
347 comparable to those charged in Maine for similar facilities and any such fees must be approved  
348 in advance and in writing by Grantee and the DSA.  
349

350 Management Plan. The Conservation Property will be managed consistent with the terms of  
351 this Easement under a written Management Plan to be prepared by Grantor and submitted to  
352 Grantee and DSA within one year of closing, and shall be updated by the Grantor and submitted  
353 for review and comment at least every ten years to ensure that the Management Plan is and  
354 remains consistent with the terms of this Easement. The Plan shall include, at a minimum, plans  
355 for recreational management, to include trail design and construction as well as plans for timber  
356 management and wildlife management. The Management Plan may be subsequently amended  
357 from time to time following submission and review of the same by the Grantee and DSA.  
358 Grantor will maintain a copy of the Management Plan at the City Hall and will forward a copy of  
359 the approved Management Plan to the Land for Maine's Future Board and the DSA. Grantor  
360 shall use the same process of review and approval at any time that the Management Plan is  
361 amended or altered.

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6. Remedies.

Grantee shall have the right to enforce the terms of this Conservation Easement by proceedings at law or in equity, including but not limited to the right to require the restoration of the Conservation Property to the condition required by the terms hereof. The following rights shall be cumulative and are not by way of limitation of other legal rights Grantee may have to remedy a violation.

A. If Grantee determines that there is a violation of the terms of this Conservation Easement, or that such violation is threatened, Grantee shall give notice thereof to Grantor. Said notice shall specify any corrective action which Grantee determines will cure the violation and/or restore the Conservation Property to bring it into full compliance with this Conservation Easement.

B. Grantee may bring an action at law and/or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement. Without limitation, such action may require the restoration of the Conservation Property to the condition required by this Conservation Easement, to enjoin any noncompliance by temporary or permanent injunction or by order of specific performance of the terms of this Conservation Easement, and to recover any costs or damages arising from such noncompliance. Except where emergency circumstances require more immediate enforcement action, Grantee agrees to provide the Grantor with written notice at least thirty (30) days prior to filing of any court enforcement action hereunder, and to provide the Grantor with a reasonable opportunity to cure any breach not to exceed ninety (90) days unless extended by Grantee.

C. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in preventing, stopping and correcting the violation, including, but not limited to, reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from doing so at a later time. In any case where a court finds no violation has occurred, each party shall bear its own costs.

D. Grantee also has the right to establish a local liaison for communications and monitoring, and to contract with a qualified third party to carry out its monitoring and inspection obligations, provided that (1) the local liaison shall have no authority or power to grant or withhold any approvals, or initiate any enforcement action, which rights shall be exclusive to Grantee; and (2) Grantee shall provide the Grantor with written notice of the contact information for a liaison prior to the authorization of the same.

7. Grantee's Discretion.

Except as otherwise provided by law, enforcement of the terms of this Conservation Easement shall be at the sole discretion of Grantee, and only Grantee, the DSA and the Maine

408 Attorney General shall have standing to bring an action affecting this Conservation Easement.  
409 Any forbearance by Grantee or any other party to exercise its rights under this Conservation  
410 Easement in the event of any breach or threatened breach of its terms shall not be deemed or  
411 construed to be a waiver of any such term or of that or any subsequent breach of the same or any  
412 other terms of this Conservation Easement. No delay or forbearance by Grantee or any other  
413 party in the exercise of any right or remedy upon any breach shall impair such right or remedy or  
414 be construed as a waiver. Grantor hereby waives any defense of laches, estoppel or prescription.

415  
416 8. Acts of God.

417  
418 Nothing contained in this Conservation Easement shall be construed to entitle Grantee or  
419 any other party to bring an action against Grantor for injury or change to the Conservation  
420 Property resulting solely from causes completely beyond Grantor's control, such as acts of God  
421 and natural causes beyond Grantor's control, nor shall any action ensue against Grantor for  
422 taking any prudent action under emergency conditions to prevent, abate or mitigate significant  
423 injury to human life or to the Conservation Property.

424  
425 9. Grantor's Responsibilities as Landowner.

426  
427 Grantor acknowledge that Grantee has neither possessory rights in the Conservation  
428 Property, nor any responsibility or right to control, maintain, or keep up the Conservation  
429 Property. Grantor retain all responsibilities of ownership of the Conservation Property and, as  
430 such, shall bear all costs of every kind relating to the ownership, operation, improvement,  
431 maintenance, use, taxation or otherwise with respect to the Conservation Property. Without  
432 limiting the generality of the foregoing obligations:

433  
434 A. Grantor shall keep the Conservation Property free of any liens or encumbrances  
435 arising out of any work performed for, materials furnished to, or other obligations  
436 incurred by, Grantor or otherwise that might impair, encumber or subordinate  
437 Grantee's rights in this Conservation Easement. Grantor shall pay when due, and  
438 before they mature as liens, all taxes, assessments, fees and charges of whatever  
439 description levied on or assessed against the Conservation Property, and Grantor  
440 shall furnish Grantee with satisfactory evidence of such payment upon request.  
441 Grantee may, at its discretion, pay any outstanding taxes, assessments, liens or  
442 encumbrances that Grantor is required to pay hereunder, and shall then be entitled  
443 to reimbursement by Grantor.

444  
445 B. Grantor represents that as of the date of this grant there are no liens or other  
446 encumbrances against the Conservation Property except for the PA. Grantor has  
447 no right to use the Conservation Property as collateral to secure the repayment of  
448 any debt or lien Under no circumstances may Grantee's rights be extinguished or  
449 otherwise affected by the recording, foreclosure or any other action taken  
450 concerning any lien or other interest in the Conservation Property.

451  
452 C. In order to establish the present condition of the Conservation Property so as to be  
453 able to properly monitor future uses and assure compliance with the terms hereof,

454 Grantor prepared and delivered as of closing a baseline documentation report,  
455 acceptable in form and content to Grantee, that describes in maps, pictures and  
456 narratives the condition of the Conservation Property as known on or before the  
457 date of this grant; Such documentation shall be prima facie evidence of the  
458 condition of the Conservation Property as of the date of the grant. It is the  
459 intention of the parties that such baseline documentation shall be in form and  
460 content no less than as is required under Treasury Regulations §1.170A-14 for tax  
461 deductible conservation easement gifts.

462  
463 D. Grantor shall be responsible for any hazardous or other waste or illegal condition  
464 on the Conservation Property, regardless of whether the same occurred before or  
465 after the grant of this Easement and regardless of whether such condition was  
466 caused by the action of the Grantor.

467  
468 E. It shall be Grantor's obligation at its cost to keep the boundaries of the  
469 Conservation Property clearly and accurately marked. In the event boundaries are  
470 not adequately clear or marked and Grantor fails to accurately mark within a  
471 reasonable time after notice by Grantee, Grantee shall have the right to engage a  
472 professional surveyor or other contractor to establish and mark boundaries of the  
473 Conservation Property or any part thereof. The costs associated with such work  
474 shall be paid by Grantor.

475  
476 10. Amendment.

477  
478 Subject to applicable laws, Grantor and Grantee may agree to amendments to this  
479 Conservation Easement with prior notice to and approval of the DSA and the Maine Attorney  
480 General, and subject to the terms and conditions of this Section 10, provided that any such  
481 amendment is not inconsistent with the purposes of this Conservation Easement and will not  
482 materially detract from the conservation and public values of the Conservation Property sought  
483 to be protected by this Easement. Such amendments shall be in writing signed by Grantors,  
484 Grantee and DSA, and shall become effective upon recordation at the Kennebec County Registry  
485 of Deeds. Further, any amendment that materially detracts from the conservation values on the  
486 Conservation Property protected under this Conservation Easement shall require Court approval  
487 in an action in which the Attorney General is made a party. Nothing in this subsection shall  
488 require the Grantor or the Grantee to agree to any amendment or to negotiate regarding any  
489 amendment. Any legally permissible amendment hereto may be granted only if, in the sole and  
490 exclusive judgment of the Grantee, with concurrence of the DSA and the Maine Attorney  
491 General, that such amendment furthers or is not inconsistent with the purposes of this  
492 Conservation Easement, and complies with all applicable laws and regulations. Grantee has no  
493 right or power to consent to any use that would result in building development on the Protected  
494 Property other than that which is expressly allowed herein, or that would reduce the acreage of  
495 the Conservation Property, or that would be inconsistent with the Purposes of this Conservation  
496 Easement or limit the term or terminate this Conservation Easement, or that would impair the  
497 qualification of this Conservation Easement or the status of the Grantee under any applicable  
498 laws, including Title 33 M.R.S. Section 476 et seq., and/or Section 170(h) or 501(c)(3) of the  
499 Internal Revenue Code, or successor provisions thereof.

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11. Assignment by Grantee.

This Conservation Easement is assignable by Grantee, but only to an entity:

- A. that satisfies the requirements of Section 170(h)(3) of the Internal Revenue Code (or successor provisions thereof) and the requirements of Section 476(2) of Title 33 of the Maine Revised Statutes, as amended (or successor provisions thereof), and
- B. that as a condition of transfer agrees to uphold the conservation purposes of this grant.

12. Transfers by Grantor.

In the event that Grantor transfers ownership of the fee in the Conservation Property, Grantor shall incorporate the terms of this Conservation Easement, or sufficient reference thereto, in any deed or other legal instrument creating such transfer of interest. Such reference shall be sufficient only if it puts the transferee on notice that its interest in the Conservation Property shall be subject to all of the terms of this Conservation Easement and the Project Agreement. In the event of any such transfer, the transferee has the joint and several obligations of Grantor hereunder. Grantor shall give Grantee at least three months' prior notice of intention to transfer any interest in the Conservation Property and, immediately following such transfer, shall provide a copy of the deed or instrument of conveyance to Grantee. The failure of Grantor to perform any act required by this section shall not impair the validity of this Easement or limit its enforceability in any way and no transfer shall have any legal effect. Any transfer of ownership of the fee property must be completed in compliance with the terms of the Project Agreement.

13. Termination; Extinguishment.

- A. The unprofitability of carrying out its terms and purposes shall not impair the validity of this Conservation Easement or be considered grounds to terminate it or alter its terms. The fact that any of the uses prohibited herein, or other uses not mentioned, may become greatly more economically valuable than uses which are permitted herein, or that neighboring properties may in the future be put to uses incompatible with those permitted herein, has been considered by Grantor in granting this perpetual Conservation Easement. It is Grantor's and Grantee's belief that any such changes will increase the benefit to the public of the continuation of this Conservation Easement, and it is the intent of both Grantor and Grantee that any such changes should not be deemed to be changed conditions or circumstances justifying or permitting extinguishment, termination or alteration of this Conservation Easement.
- B. This Conservation Easement may only be extinguished or terminated by judicial order in a court of competent jurisdiction. It is the intention of the parties that an

546 extinguishment or termination be approved by a court only if all of the  
547 conservation purposes of this Conservation Easement are impossible to  
548 accomplish and if Grantor, Grantee, the DSA and the Maine Attorney General  
549 agree.  
550

551 Grantor and Grantee agree that the donation of this Conservation Easement gives  
552 rise to a property right that vests immediately in Grantee. Grantor and Grantee  
553 further agree that Grantee and the State of Maine Land for Maine's Future  
554 program have paid for the acquisition of the Conservation Property. Subject to  
555 Treasury Regulation 1.170A-14(g)(6)(ii) and 33 M.R.S. Section 477-A(2)(B),  
556 both as amended, should this Conservation Easement be terminated, in whole or  
557 in part, Grantor shall be entitled to retain the cost of any improvements it has  
558 made to the Conservation Property. Of the remaining fair market value, Grantor  
559 must pay to the Land for Maine's Future Fund, or to another fund designated by  
560 the Land for Maine's Future Board pursuant to the PA, fifteen (15) percent and to  
561 Grantee, eighty-five (85) percent, reflecting the percentage contributions to the  
562 acquisition costs.

563 Grantee or its successor shall use any proceeds or other moneys received under  
564 this paragraph in a manner consistent, as nearly as possible, with the stated,  
565 publicly beneficial purposes of this Conservation Easement. Grantee has the right  
566 to record a lien on the Conservation Property to secure its rights under this  
567 section.  
568

- 569 C. Whenever all or part of the Conservation Property is taken in the exercise of  
570 eminent domain so as to abrogate the restrictions imposed by this Conservation  
571 Easement, Grantor and Grantee shall join in appropriate actions in connection  
572 with such taking to recover the full value of the taking and all incidental or direct  
573 damages resulting from the taking, which proceeds shall be divided in accordance  
574 with the proportionate value of Grantor's and Grantee's interests as specified  
575 above. All expenses incurred by Grantor and Grantee in such action shall be paid  
576 out of the recovered proceeds.  
577

578 14. Notices and Requests for Consent.  
579

- 580 A. In addition to any notice requirement otherwise specified under this Easement,  
581 Grantor agree to notify Grantee prior to undertaking any activity or exercising any  
582 reserved right that may have a material adverse effect on the conservation  
583 purposes of this grant.  
584

- 585 B. Grantor's notices and requests for consent given pursuant to this Conservation  
586 Easement must include sufficient information to enable Grantee to determine  
587 whether Grantor's plans are consistent with the terms of this Easement and the  
588 conservation purposes hereof. Grantee shall not give its consent unless Grantor  
589 demonstrate that the proposed use or facilities are consistent with the terms,  
590 conditions, and purposes of this Easement and will not diminish or impair the  
591 conservation values of the Conservation Property.

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C. Any notices or requests for consent required by this Easement shall be in writing and shall be personally delivered or sent certified mail, return receipt requested, or by such commercial delivery service as provides proof of delivery, to Grantor or Grantee, as the case may be, at the following addresses, unless one party has been notified by the other of a change of address or change of ownership:

To Grantor: City of Augusta  
Attn: City Manager  
16 Cony Street  
Augusta ME 04330

To Grantee: The Kennebec Land Trust  
P.O. Box 261  
331 Main Street  
Winthrop, ME 04364

If the notice is returned as undeliverable, the sending party shall provide notice by regular mail to, as the case may be, Grantor at its last known address on file with the municipal tax records covering the Conservation Property; or Grantee at its address on file with the Secretary of State, State of Maine; and the mailing of such notice shall be deemed compliance with the notice provisions of this Easement.

D. When Grantor are required to provide notice to Grantee pursuant to this Easement, such notice as described hereinabove shall be given in writing within such time period as prescribed in this Easement or, in the event no time period is prescribed, at least 30 days prior to the event giving rise to the need to give notice.

E. When Grantor are required to obtain Grantee's prior written consent, following its review Grantee shall grant, grant with conditions, or withhold its consent. The proposed activity may not proceed without Grantee's written consent and compliance with the conditions thereof.

15. Severability.

If any provision of this Conservation Easement or the application of any provision to a particular person or circumstance is found to be invalid, the remainder of this Conservation Easement, and the application of such provision to any other person or any other circumstance, shall remain valid and shall not be affected thereby.

16. Construction.

If uncertainty should arise in the interpretation of this Conservation Easement, judgment should be exercised liberally in favor of conserving and protecting the Conservation Property

638 and carrying out this Easement's purpose. Nothing in this Conservation Easement shall be  
639 construed to permit any activity otherwise prohibited by applicable laws and regulations of any  
640 federal, state or local government.

641  
642 17. Recordation.

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644 Grantee shall record this instrument in timely fashion in the Kennebec County Registry  
645 of Deeds and may re-record it at any time or place as it may determine useful to preserve its  
646 rights in this Conservation Easement.

647  
648 18. Estoppel Certificates.

649  
650 Upon written request by Grantor, Grantee will provide a certificate to Grantor or third  
651 parties, indicating the extent to which, to Grantee's knowledge after reasonable inquiry, the  
652 Conservation Property is in compliance with the terms of this grant. Any inspection of the  
653 Conservation Property undertaken by or for Grantee for this purpose will be at Grantor's cost.

654  
655 19. General Provisions.

656  
657 A. Controlling Law. The interpretation and performance of this Conservation Easement shall  
658 be governed by the laws of the State of Maine.

659  
660 B. Entire Agreement. This instrument sets forth the entire agreement of the parties with  
661 respect to this Conservation Easement and supersedes all prior discussions, negotiations,  
662 understandings or agreements relating to this Conservation Easement, all of which are  
663 merged herein. Amendments to this Conservation Easement may be made only by written  
664 agreement of both Grantee and Grantor and subject to all of the terms of this  
665 Conservation Easement and other applicable provisions of law. Nothing contained herein  
666 will result in a forfeiture of this Conservation Easement or reversion to Grantor of any  
667 rights extinguished or conveyed hereby.

668  
669 C. Successors and Assigns. All of the covenants, terms, conditions, restrictions and  
670 agreements set forth in this Conservation Easement shall be binding upon, and inure to  
671 the benefit of, the parties hereto and their respective personal representatives, heirs,  
672 successors and assigns and shall continue as a servitude running in perpetuity with the  
673 Conservation Property. The term "Grantor" or "Grantor" as used in this easement shall  
674 include, unless the context clearly indicates otherwise, the within-named Grantor, jointly  
675 and severally, their personal representatives, heirs, successors and assigns and any  
676 successors in interest to the Conservation Property. The term "Grantee" as used in this  
677 easement shall, unless the context clearly indicates otherwise, include the Grantee's  
678 successors and assigns.

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680  
681 D. **Rights and Immunities.** Grantor and Grantee claim all of the rights and immunities  
682 against liability to the fullest extent of the law under Title 14 M.R.S., Section 159-A, et  
683 seq. as amended and any successor provisions thereof (Maine Recreational Use Statute),

684 and Title 14 M.R.S., Section 8101, et seq. as amended and any successor provisions  
685 thereof, (Maine Tort Claims Act), and under any other applicable provision of law.  
686

687 E. Captions. The captions in this instrument have been inserted solely for convenience of  
688 reference and are not a part of this instrument and shall have no effect upon construction  
689 or interpretation.  
690

691 F. Counterparts. The parties may execute this instrument in two or more counterparts, which  
692 shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an  
693 original instrument as against any party who signed it. In the event of any disparity  
694 between the counterparts produced, the recorded counterpart(s) shall be controlling.  
695

696 TO HAVE AND TO HOLD this Conservation Easement unto the Grantee, its successors  
697 and assigns forever.  
698

699  
700 IN WITNESS WHEREOF, the parties have caused this instrument to be executed in their  
701 names and on their behalf by their duly authorized agents this \_\_ day of \_\_, 2017.  
702

703  
704 Signed, sealed and delivered  
705 in the presence of:  
706

707 **City of Augusta, Maine**

708  
709 By: \_\_\_\_\_  
710 **Ralph St. Pierre**, its Assistant City  
711 Manager and Director of Finance and  
712 Administration  
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**Witness**

**GRANTOR'S ACKNOWLEDGMENT**

STATE OF MAINE  
COUNTY OF KENNEBEC

Then personally appeared the above-named **Ralph St. Pierre**, Assistant City Manager and  
Director of Finance and Administration and acknowledged the foregoing instrument to be his  
free act and deed and the free act and deed of the City of Augusta.

Before me,

\_\_\_\_\_  
Notary Public

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GRANTEE'S ACCEPTANCE

The above and foregoing Conservation Easement was authorized to be accepted by The Kennebec Land Trust, Grantee as aforesaid, and Grantee does hereby accept the foregoing Conservation Easement by and through Theresa Kerchner, its Executive Director, hereunto duly authorized, this day of , 2017.

**The Kennebec Land Trust**

By: \_\_\_\_\_  
**Theresa Kerchner, Executive Director**

\_\_\_\_\_  
**Witness**

GRANTEE'S ACKNOWLEDGMENT

STATE OF MAINE  
COUNTY OF KENNEBEC

Personally appeared the above-named Theresa Kerchner, the Executive Director and authorized representative of The Kennebec Land Trust, who acknowledged the foregoing instrument to be her free act and deed in said capacity, and the free act and deed of The Kennebec Land Trust.

Before me,

\_\_\_\_\_  
Notary Public

