

CONSERVATION EASEMENT

This Conservation Easement is made this _____ day of _____, by 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, Maine (hereinafter “Grantee”).

WHEREAS, Grantor is the sole owner in fee simple of a certain parcel of real property (hereinafter the “Conservation Property”), situated in the Town of Winthrop, Kennebec County, Maine, which is described in **Exhibit A**, and shown on a **Plan on Exhibit B**, both exhibits attached hereto and made part hereof; and

WHEREAS, Grantee is qualified to hold conservation easements pursuant to 33 M.R.S.A. § 476(2)(B), as amended, and is a qualified organization under the Internal Revenue Code, 26 U.S.C.A. §§ 170(h)(3) and 501(c)(3), whose purpose it is to preserve and conserve natural areas for aesthetic, scientific, charitable and educational purposes; and

WHEREAS, the Conservation Property represents wooded open space having recreational, scenic, wildlife, natural, ecological, and aesthetic values in its present state, and particularly the views from an observation tower at the top of Mt. Pisgah which is of special scenic value to the surrounding community which is used by the public for outdoor recreation; and

WHEREAS, any significant change or development of the scenic, open space and natural conditions of the Conservation Property, except as expressly herein provided, would have an adverse effect on the recreational, scenic and natural resources of the nearby communities and environs; and

WHEREAS, Grantor and Grantee recognize the recreational, scenic and natural values of the Conservation Property and have the common purpose of conserving the same by the conveyance of this Conservation Easement, which shall prevent the use or development of the Conservation Property in any manner that would conflict with the maintenance of the Conservation Property in a natural, scenic, wooded and open condition for this generation and future generations, except as in this Conservation Easement expressly provided; and

WHEREAS, this Conservation Easement is created pursuant to the Uniform Conservation Easement Act, 33 M.R.S.A. § 476 et seq.

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

WHEREAS, Grantor and Grantee recognize the need to jointly and cooperatively assure the sound management of the property, consistent with the purposes of this easement, for the benefit of the public.

NOW, THEREFORE, in consideration of the above recited facts and of the covenants, terms, conditions and restrictions herein contained, and pursuant to the laws of the State of Maine, Grantor does hereby give, grant, bargain, and convey unto Grantee, its successors and assigns, as an absolute and unconditional gift, forever and in perpetuity, a Conservation Easement in gross over the Conservation Property.

1. Purpose. It is the purpose of this Conservation Easement to assure that the Conservation Property will be retained forever in its essentially undeveloped, open space, scenic, and natural condition for public recreational use, for education and for the protection of plants

and wildlife and to prevent any use of the Conservation Property that will significantly impair or interfere with this condition. It is the parties' intention to work together in a cooperative manner to manage the property for the benefit of the public. They intend to form a committee which will include representatives of Grantee to manage the Conservation Property. Grantor in its planning process will work with Grantee to develop plans to implement the objectives of this Conservation Easement and to assure consistent management of the lands around Mt. Pisgah. The parties intend to work together to implement the plans for stewardship of the Conservation Property and to regularly communicate regarding use and management issues.

2. Rights of Grantee. To accomplish the purpose of this Conservation Easement, the following affirmative rights are conveyed to Grantee, its successors and assigns:

- (a) The right to preserve and protect, in perpetuity, the recreational, natural, open space, wildlife and scenic values of the Conservation Property;
- (b) Upon reasonable notice to Grantor, the right to enter the Conservation Property for the purposes of inspecting the Conservation Property to determine if there is compliance with the terms and purpose of this Conservation Easement;
- (c) The right of access to the Conservation Property from abutting property of Grantee and Mt. Pisgah Road for purposes of exercising the rights of Grantee herein;
- (d) The right to enforce the terms of this Conservation Easement as provided in Section 6.

(e) The right of first refusal to purchase the Conservation Property fee interest. In the event that Grantor wishes to sell the property or any portion thereof, it shall first offer it to Grantee by written notice containing the proposed terms of sale. Grantee shall either accept or reject those terms within 60 days of notice. If accepted, an additional 60 days shall be permitted for closing and if not accepted, then Grantor may sell on the terms provided in the notice. Grantor may sell the Conservation Property to the Town of Winthrop subject to the terms of this Conservation Easement and this right of first refusal shall continue in effect.

3. Prohibited Uses. Except as expressly provided in section 4 hereof, any activity upon or use of the Conservation Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(a) Construction or installation of buildings or structures, except as necessary for the uses expressly authorized under section 4 of this Conservation Easement;

(b) Cutting of any trees of 6 inches or more in diameter breast height, except as expressly authorized under section 4 of this Conservation Easement or by mutual, written agreement of Grantor and Grantee;

(c) Any division or subdivision of the ownership, or interests therein, of the Conservation Property, except by mutual, written agreement of Grantor or Grantee; which agreement of Grantee will not be unreasonably withheld provided

it will further the conservation purposes and will not unduly burden Grantees monitoring duties.

- (d) Use of motorized vehicles except as expressly authorized by section 4 of this Conservation Easement or construction of new roads on the Conservation Property;
- (e) Ditching, draining, diking, filling, excavation, dredging, mining, drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, or other changes in the topography of the land in any manner, except as necessary for the uses expressly authorized by section 4 of this Conservation Easement;
- (f) Disturbance or change in natural habitat on the Conservation Property, except as necessary for the uses expressly authorized by section 4 of this Conservation Easement;
- (g) Dumping of ashes, trash, garbage, solid or hazardous waste, landfill or dredging spoils, or other foreign materials on the Conservation Property, except that environmentally sound materials may be used as necessary for the uses authorized by section 4 of this Conservation Easement;
- (h) Activities on the Conservation Property which result in erosion or siltation thereon or onto lands or waters nearby;
- (i) Manipulation or alteration of natural water courses, water table or water bodies, except as necessary for the uses expressly authorized by section 4 of this Conservation Easement;

(j) Activities which could be detrimental to water quality or purity, or which could result in alteration of natural water levels and/or flows;

(k) Commercial, residential or industrial uses.

4. Reserved Rights. Subject to the conditions and limitations hereof, Grantors, for themselves and their heirs, successors and assigns, reserve the following rights and uses of the Conservation Property, including the right to engage in or permit or invite others to engage in such uses of the Conservation Property, provided that all such rights and uses are carried out in a manner consistent with the purpose of this Conservation Easement and in compliance with applicable state, municipal and other governmental requirements and in conjunction with a stewardship plan to be developed cooperatively by the parties:

- (a) Low-impact outdoor recreation, nature observation and study including trails, structures such as lean-tos, and signs incidental to such use. “Low-impact outdoor recreation, nature observation and study” is dispersed, traditional non-commercial outdoor activities that do not generally rely on buildings or spectator facilities, and may include hunting, fishing and trapping, hiking, bird watching, picnicking, cross country skiing and running, snow-shoeing, bicycling, horseback riding, primitive non-commercial camping, and outdoor education, including scientific and archaeological research and observation.
- (b) Installation, maintenance and repair of trails for non-motorized use in locations and in a manner consistent with the purpose of this

Conservation Easement; and signs and other structures incidental to such trails all in conjunction with the stewardship plan.

(c) Installation, maintenance and repair of trails for motorized use and signs and other structures incidental to such use in a manner consistent with the purpose of this Conservation Easement and in accordance with a written plan so as to minimize erosion and to assure the safety of non-motorized recreational users, and to minimize impacts on and buffer adjoining lands.

(d) The cutting and removal of trees and other silvicultural practices to i) maintain the view from the observation tower; and ii) for other purposes which are in accordance with the goals, purposes and management techniques established in a forest management plan prepared and/or approved by a Licensed Professional Forester which provides wildlife habitat, maintains water quality, provides recreational opportunities and environmental education and generally maintains the natural undeveloped character of the Conservation Property.

(e) Maintenance and repair of the existing road extending from the Mt. Pisgah Road, including the rights of other owners who have legal rights to such road.

(f) Maintenance, repair and replacement of the existing utility line extending from the Mt. Pisgah Road, including the rights of other owners who have legal rights to such utility line.

(g) Maintenance, repair and replacement of the observation tower (formerly a fire tower) on the Property, including a reserved right to use such tower for wildfire detection purposes as needed.

5. Public Uses. The public shall have the right of access to and use of the Conservation Property for purposes of low-impact outdoor recreation, nature observation and study. Grantor shall have the right to provide reasonable rules regarding public use of the Conservation Property; provided such rules shall not result in the exclusion of the public or discriminate against public use in favor of use by Grantor or private parties. Such rules may include reasonable restrictions as to times and locations for public access and use in order to provide for public safety and protect the conservation values and permitted uses of the Conservation Property. Grantee shall not be responsible for enforcement of such rules.

Notwithstanding any public use of the Conservation Property and any insurance coverage relating thereto, neither Grantor nor Grantee assumes any obligations to the public to maintain any portion of the Conservation Property for public use. Nothing in this Conservation Easement, nor any acquiescence or provision for the public to enter the Conservation Property, shall be construed as an invitation or license, and neither Grantor nor Grantee assumes any liability to the public for accidents, injuries, acts or omissions beyond the standard of care, if any, and the limitations of liability provided by law.

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.

(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 the condition required by this Conservation Easement. The parties agree to work cooperatively and in good faith to resolve any violation prior to taking court action.

(b) Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement. Without limitation, such action may seek to 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. In any such litigation the party which substantially prevails shall also be entitled to recover from the other party all reasonable costs of enforcement, including without limitation, costs to reasonably remedy any violation hereof, court costs and reasonable attorneys' fees, in addition to any other damages determined by the court.

(c) Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate, and that Grantee shall be entitled to injunctive and equitable relief, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including damages and specific performance of the terms of this Conservation Easement, all without posting of any bond or other security and without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

7. Grantee's Discretion. Enforcement of the terms of this Conservation Easement shall be at the sole discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach or threatened breach of its terms shall not be deemed or construed to be a waiver of any such term or of any subsequent breach of the same or any other terms of this Conservation Easement. No delay or forbearance by Grantee in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver

8. Acts of God; Unauthorized Acts. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring an action against Grantor for injury or change in the Conservation Property resulting solely from causes completely beyond Grantor's control, including acts of God and natural causes beyond Grantor's control, nor shall any action ensue against Grantor for taking any prudent action under emergency conditions to prevent, abate or mitigate significant injury to human life or to the Conservation Property.

9. Costs and Liabilities. Grantor retains all responsibilities of ownership of the Conservation Property and, as such, shall bear all costs of every kind relating to the ownership, operation, maintenance, use, taxation or otherwise with respect to the Conservation Property. Since Grantor retains ownership, Grantor shall indemnify, defend and hold Grantee, its officers, directors, agents and employees harmless from and against any and all costs, liabilities, obligations, damages, penalties, claims, injuries, charges and expenses, including attorneys' fees incurred, which may be imposed upon or incurred in connection with the Conservation Property or this Conservation Easement. Since Grantees only right to access the property is for purposes of inspection, this indemnification shall not extend to any injury or damage to Grantee or its agents in connection with such inspections. Grantee shall indemnify,

defend and hold Grantor harmless from and against any and all costs, liabilities, obligations, damages, penalties, claims, injuries, charges and expenses, including attorneys' fees incurred, arising from such inspections.

10. Extinguishment. The inability to carry on any or all of the uses permitted on the Conservation Property, or the unprofitability of doing so, 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 permitting extinguishment or alteration of this Conservation Easement.

11. Amendment. Grantor and Grantee shall have the right to agree to amendments to this Conservation Easement without prior notice to any other party, provided that any such amendment, in the sole discretion of Grantee is not inconsistent with the purpose of this Conservation Easement. Such amendments shall be in writing signed by Grantor and Grantee, and shall become effective upon recordation at the Kennebec County Registry of Deeds. Notwithstanding the foregoing, the parties shall have no right or power to agree to any amendment that would result in termination of this Conservation Easement or that would cause it to fail to qualify as a valid easement under 33 M.R.S.A. § 476 et seq., as amended.

12. Severability. If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Easement and the application of such provisions to persons or circumstances other than those to which it is found to be invalid shall not be affected thereby.

13. Construction. If uncertainty should arise in the interpretation of this Conservation Easement, judgment should be liberally made in favor of conserving and protecting the Conservation Property and carrying out its purpose.

14. Assignment. This Conservation Easement is transferable, but only if Grantee assigns its rights and obligations under this Conservation Easement to an organization of a kind that is qualified to be a holder of conservation easements as provided by 33 M.R.S.A. § 476 et seq. as amended. Grantee shall give Grantor at least sixty (60) days written notice of its intention to transfer or assign its rights under this Conservation Easement. Grantor may object to the proposed assignee by giving written notice of objection, stating the reasons therefor, to Grantee within thirty (30) days of receipt of Grantee's notice of intention to assign. In the event of such a notice objection, Grantor shall propose an entity which is duly qualified and capable of receiving the assignment of the Conservation Easement and of carrying out the duties of Grantee hereunder.

15. Transfers by Grantor. It is the understanding of the parties that Grantor intends to transfer the Conservation Property to the Town of Winthrop. Upon transfer by Grantor of ownership of the fee in the Conservation Property, or any other interest in such property including without limitation a leasehold interest, 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 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. In the event of any such transfer, the transferee(s) shall have the obligations and rights of Grantor hereunder, and the transferor(s) shall be thereupon released of any obligations and rights hereunder except those that have already then accrued. Grantor shall give Grantee at least fourteen (14) days prior notice of intention to transfer any interest in the Conservation Property and shall provide a copy of the deed or instrument of conveyance to Grantee.

16. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other pursuant to this Conservation Easement shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: State of Maine
Dept of Conservation
Maine Forest Service
22 State House Station
Augusta, ME 04333-0022

To Grantee: Kennebec Land Trust
P.O. Box 261
Winthrop, ME 04364

or such other address as either party from time to time shall designate by written notice to the other. In the event that Grantor transfers or assigns the Conservation Property or any portion thereof to more than one person, firm or corporation holding such interest in common or joint ownership, Grantor shall immediately provide to Grantee a notice designating the particular person and address to which all notices may be sent on behalf of all owners and from which Grantor's notices shall be authorized on behalf of all owners. In the event that the Conservation

Property is owned by persons in common or joint ownership, agreement or approval of a majority interest of such owners shall be deemed to be the agreement or approval of all of the owners of the Conservation Property.

17. Valuation. Grantor and Grantee agree that the donation of this Conservation Easement gives rise to a property right which vests immediately in Grantee and which, for purposes of this section, has a value equal to the amount by which the fair market value of the unrestricted Conservation Property, on the date of the execution of this Conservation Easement, is reduced by the restrictions imposed by this Conservation Easement. Should this Conservation Easement be extinguished by judicial decree, the power of eminent domain or other legal authority and Grantor sells exchanges or receives payment for any part or the whole of the then unrestricted Conservation Property, Grantee shall be entitled to 50% of the proceeds of such sale, exchange or conversion. Such percentage reflects that the acquisition cost of the Conservation Property was equally shared by Grantor and Grantee. Whenever all or part of the Conservation Property is taken in the exercise of eminent domain so as to abrogate the restrictions imposed by this Conservation Easement, Grantor and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of Grantor's and Grantee's interests as specified above. All expenses incurred by Grantor and Grantee in such action shall be paid out of the recovered proceeds.

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

19. General Provisions.

(a) Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Maine.

(b) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement, all of which are merged herein. Amendments to this Conservation Easement may be made only by agreement of both Grantee and Grantor, subject to all of the other terms of this Conservation Easement.

(c) Successors and Assigns. All of the covenants, terms, conditions, restrictions and agreements set forth in this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Conservation Property.

(d) Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement shall terminate upon transfer of the entirety of that party's interest in the Conservation Easement or Conservation Property, provided that such transfer is in accordance with the terms hereof, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(e) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

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

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

AND GRANTOR DOES COVENANT with Grantee and its successors and assigns that is lawfully seized in fee of the Conservation Property; that the Conservation Property is free of all liens and encumbrances; that it has good right to convey the same to Grantee to hold as aforesaid; and that it and its successors and assigns shall and will WARRANT AND DEFEND the same to Grantee and its successors and assigns forever, against the lawful claims and demands of all persons claiming by, through or under it.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed the day and year first above written.

State of Maine

By: _____

Witness

GRANTOR'S ACKNOWLEDGMENT

STATE OF MAINE
COUNTY OF KENNEBEC

Personally appeared before me the above-named _____ and acknowledged the foregoing instrument to be _____ free act and deed in said capacity and the free act and deed of the State of Maine.

Notary Public/Attorney-at-Law

Printed Name

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 Andrew Fisk, its President, hereunto duly authorized, this _____ day of _____, .

By: _____
Andrew Fisk, President

GRANTEE'S ACKNOWLEDGMENT

STATE OF MAINE
KENNEBEC, ss.

_____.

Personally appeared the above-named Andrew Fisk, the authorized representative of The Kennebec Land Trust, who acknowledged the foregoing instrument to be his free act and deed in said capacity, and the free act and deed of The Kennebec Land Trust. .

Notary Public/Attorney-at-Law

Printed Name