

**CONSERVATION DEED AND INDENTURE**  
**CITY OF AUBURN TO ANDROSCOGGIN LAND TRUST, INC.,**  
**WITH A RIGHT OF ENFORCEMENT TO DEPARTMENT OF ENVIRONMENTAL**  
**PROTECTION**

THIS CONSERVATION DEED AND INDENTURE is made this 11<sup>th</sup> day of February 2008 by the CITY OF AUBURN, a Maine municipality of Auburn, Androscoggin County, Maine (hereinafter "AUBURN") in favor of the ANDROSCOGGIN LAND TRUST, INC., a nonprofit corporation of Auburn, Androscoggin County, Maine (hereinafter the "TRUST") and the STATE OF MAINE BY AND THROUGH ITS DEPARTMENT OF ENVIRONMENTAL PROTECTION (hereinafter "DEP").

WHEREAS, this Conservation Deed and Indenture is being given to the TRUST as part of a mitigation plan required by a construction project at the Auburn-Lewiston Municipal Airport; and

WHEREAS, AUBURN holds title to approximately 25 acres of real property situated off Main Street in Auburn, Androscoggin County, Maine (the "Premises"), described in the legal description attached hereto and made a part hereof as EXHIBIT A, and as also depicted and described on the attached survey entitled "Boundary Survey of a Portion of Land of The City of Auburn to be conveyed to The Androscoggin Land Trust, Auburn Maine," prepared for the TRUST by CES, dated March 28, 2007 and to be recorded in the Androscoggin County Registry of Deeds; and

WHEREAS, in connection with the plan to construct taxiway and apron improvements at the Auburn-Lewiston Municipal Airport, the Airport needs to protect, in perpetuity, the natural, scenic, open space, recreational, wildlife and aesthetic values of the Premises as required by state and federal authorities pursuant to their respective laws and regulations; and

WHEREAS, AUBURN is willing to assist the Auburn-Lewiston Municipal Airport by conveying the Premises to the TRUST, subject to covenants and restrictions to perpetually protect the Premises, and by conveying a 50-foot wide easement over remaining land of AUBURN, for access only to the Premises, but not subject to covenants and restrictions to perpetually protect the easement; and

WHEREAS, this Conservation Deed and Indenture is created pursuant to the Uniform Conservation Easement Act at Title 33, M.R.S.A., Sections 476 through 479-B, inclusive, as amended; and the TRUST is qualified and willing to accept the grant of this Conservation Deed and Indenture pursuant to Title 33 M.R.S.A. Section 476(2)(B); and by execution and delivery of this deed, AUBURN agrees to accept the rights and obligations as Holder pursuant to Title 33 M.R.S.A. Section 476(2).; and

WHEREAS, DEP will receive and accept Third Party Rights of Enforcement under this Deed, pursuant to Title 33 M.R.S.A. Section 477(2); and

NO MAINE R.E.  
TRANSFER TAX PAID

WHEREAS, the Premises <sup>N O T</sup> remains in a substantially undisturbed <sup>N O T</sup> natural state and has significant aesthetic and ecological value; <sup>A N</sup> and

O F F I C I A L O F F I C I A L

WHEREAS, AUBURN and the TRUST, recognizing the value of the Premises as described above, have the common purpose of conserving the natural values of the Premises by the conveyance of this Conservation Deed and Indenture for the Premises, which shall benefit, protect and conserve the natural values of the Premises, conserve and protect the indigenous animal and plant populations, and prevent the use or development of the Premises for any purpose or in any manner that would conflict with its natural, scenic condition; P Y

NOW, THEREFORE, in consideration of the foregoing statement of the conservation attributes of the Premises and the public benefit of this grant, and the covenants, terms, conditions, and restrictions herein contained, AUBURN hereby GRANTS to the TRUST, its successors and assigns, forever and in perpetuity, with Quitclaim Covenants, the Premises; and to DEP, its successors and assigns, forever and in perpetuity, rights of enforcement hereunder.

1. PURPOSE. It is the purpose of this Conservation Deed and Indenture to ensure that the Premises will be retained forever in its natural undeveloped condition and to prevent any use of the Premises that will significantly impair or interfere with the conservation values of the Premises. The Easement Area shall be maintained in perpetuity as open space without there being conducted thereon any industrial, commercial, agricultural or forestry activities. Agricultural and forestry activities shall include animal husbandry; floricultural and horticultural activities; the production of plant and animal products for domestic or commercial purposes; the growing, stocking, cutting and sale of forest trees of any size capable of producing timber or other forest products; and the processing and sale of products produced on the property (e.g., maple syrup). AUBURN intends that this Conservation Deed and Indenture will confine the use of the Premises to conservation and low-impact outdoor recreation.

2. COVENANTS AND RESTRICTIONS.

A. USE OF THE PREMISES: The Premises shall be used for low-impact outdoor recreational and conservation purposes only. No commercial, industrial, quarrying or mining activities shall be permitted on the Premises; provided, however, that the incidental sale of interpretive literature and use of the Premises for charitable fundraising, educational activities, community events, and tours shall not be deemed commercial uses. No removal, filling, or other disturbances of soil, nor any changes in the topography, surface or subsurface water systems, wetlands or natural habitats shall be permitted on the Premises. No structures or facilities of any kind whatsoever shall be constructed on the Premises, except that the TRUST reserves the right to install and maintain, anywhere on the Protected Property, minor, unroofed, and unenclosed structures designed to enhance the opportunity for low-impact outdoor recreation, nature observation and study, such as but not limited to boundary markers; small unlighted informational and interpretive signs; commemorative plaques and monuments; registration boxes; unlighted kiosks for displaying signs, notices, and educational information; tents for noncommercial camping and events; seats, benches, and picnic tables; hunting blinds; trail improvements such as handicapped access trails, boardwalks, markers, steps, 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 minor 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, and not degrade or damage the wetlands on the Premises. Notwithstanding the foregoing, high-impact outdoor recreational structures and facilities are prohibited including but not limited to paved trails, docks, piers, tent platforms, lean-tos, outhouses, portable toilets, gazebos, 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, ATV or race tracks or courses, towers, playgrounds, athletic courts or fields, airstrips, and permanent aircraft pads. No motor vehicles of any kind, including recreational vehicles, all-terrain vehicles motorcycles, and dirt bikes, but with the exception of snowmobiles only on frozen ground and at the TRUST's discretion, shall be permitted on the Premises. No filling, paving, dumping, excavation or other alteration shall be made to the surface of the Premises other than that caused by the forces of nature or incidental to other rights reserved by the TRUST in this Paragraph 2. Any activity on or use of the Premises inconsistent with the purposes of this Conservation Deed and Indenture is prohibited.

**B. CUTTING OF TIMBER AND VEGETATION:** The material destruction or removal of standing timber, plants, shrubs or other dead or living vegetation shall not be permitted, except reserving to the TRUST:

- i. the right to alter vegetation to establish and maintain pedestrian footpaths designed to complement the natural and scenic features of the landscape, and not to degrade or damage the wetlands on the Premises;
- ii. the right to remove and restore existing vegetation that has been damaged or destroyed by the forces of nature, such as fire or disease and, with the prior written approval of AUBURN, when necessary to prevent the spread of disease;
- iii. the right to clear and restore forest cover and other vegetation, in the event of an emergency, when necessary to prevent the spread of fire; and
- iv. for the purpose of promoting human safety along trails only, the right to restore forest cover and other vegetation and to remove debris, dead trees or brush.

**3. RESERVED RIGHTS.** To accomplish the purpose of this Conservation Deed and Indenture, the following rights are reserved by AUBURN:

- A. The right to preserve and protect the conservation values of the Premises;

B. The right to enter and inspect the Premises at any reasonable time and in any reasonable manner, provided that the time and manner of such entry does not unreasonably interfere with the uses of the Premises permitted hereunder, and to enforce by proceedings at law or in equity the covenants hereinafter set forth, including the right to require restoration of the Premises to its condition prior to any breach hereof; and

C. The right to prevent any activity on or use of the Premises that is inconsistent with the purpose of this Conservation Deed and Indenture and to require the restoration of such areas or features of the Premises that may be damaged by any inconsistent activity or use; and

4. **RELEASED RIGHTS.** AUBURN hereby forever releases its right to construct within the Premises Black Cherry Drive, Red Maple Drive and the Recreation Areas, all as shown on the Plan.

5. **RIGHTS OF DEP.** AUBURN hereby grants to DEP inspection and enforcement rights as are reserved by AUBURN in paragraph 3 above. However, the Parties hereto intend that AUBURN shall be primarily responsible for the enforcement of this Conservation Deed and Indenture, and that DEP will assume such responsibility only if AUBURN shall fail to enforce it. If DEP shall determine that AUBURN is failing in such enforcement, DEP may give notice of such failure to AUBURN, and if such failure is not corrected within a reasonable time thereafter, DEP may exercise, in its own name and for its own account, all the rights of enforcement retained by AUBURN under this Conservation Deed and Indenture. DEP shall also have reasonable access to any and all records of the TRUST relevant to the Premises.

6. **CONSTRUCTION.** If uncertainty should arise in the interpretation of this Conservation Deed and Indenture, judgment should be made in favor of conserving the Premises in its natural, open, and scenic condition. Any proposed termination or proposed amendment that materially detracts from the conservation values intended for protection in this Conservation Deed and Indenture must be processed in accordance with 33 M.R.S.A. §§ 476 *et seq*, as amended.

The TRUST agrees to bear all costs and responsibility of operation, upkeep, and maintenance of the Premises and to pay any and all legally assessed real property taxes and assessments levied by competent authority on the Premises. Notwithstanding the foregoing, the TRUST and AUBURN agree that the Premises currently qualify for property tax exemption based on the TRUST'S current charitable purposes, on the covenants and restrictions contained herein, and on current Maine statutory and case law.

AUBURN has provided the TRUST with sufficient information to determine the condition of the Premises as of the effective date hereof and has certified that such information is an accurate representation of the same.

7. **SUCCESSORS:** The covenants, terms, conditions, and restrictions of this Conservation Deed and Indenture 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 Premises.

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8. TERMINATION OF RIGHTS AND OBLIGATIONS: A party's rights and obligations under this Conservation Deed and Indenture terminate upon transfer of the party's interest in the Premises, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

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9. TRUST EXPENSES: As part of the consideration for this conveyance, AUBURN will pay to the TRUST, solely from monies provided to AUBURN by the Auburn-Bewiston Municipal Airport, a sum not to exceed \$4,300.00 for the TRUST's legal, title and environmental costs in performing its due diligence to accept this conveyance.

TO HAVE AND TO HOLD the said Conservation Deed and Indenture unto the said TRUST and its successors and assigns forever and the said Third Party Rights unto the said DEP and its successors and assigns forever.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date first written above.

CITY OF AUBURN

By: Laurie Smith  
Laurie Smith, Its Acting City Manager

STATE OF MAINE  
County of Androscoggin, ss.

Feb. 11, 2008

Personally appeared before me the above-named Laurie Smith in her capacity as Acting City Manager of the City of Auburn, Maine and acknowledged the foregoing instrument to be her free act and deed and the free act and deed of the City of Auburn.

Mary Lou Magno  
Notary Public  
MARY LOU MAGNO  
Print name  
12-10-2010  
Date commission expires

**SEAL**

**TRUST'S ACCEPTANCE** N O T  
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The above and foregoing Conservation Deed and Indenture was Authorized to be accepted by the Androscoggin Land Trust, and the said Trust does hereby accept the foregoing by and through its President, Jonathan P. LaBonte, thereunto duly authorized.

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ANDROSCOGGIN LAND TRUST  
C O P Y

By: *Jonathan P. LaBonte*  
Jonathan P. LaBonte, Its President

STATE OF MAINE  
County of Androscoggin, ss.

2-14, 2008

Personally appeared before me the above-named Jonathan P. LaBonte, in his capacity as President of the Androscoggin Land Trust and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the Androscoggin Land Trust.

*Lynn Berube*  
Notary Public  
LYNN BERUBE  
Print name  
4-18-2014  
Date commission expires

**SEAL**

**DEP ACCEPTANCE**

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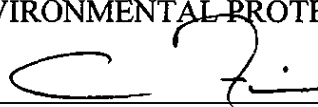
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The third party rights of enforcement granted under the above and foregoing Conservation Deed and Indenture were authorized to be accepted by the State of Maine Department of Environmental Protection by ANDREW FISK, its Director of the Bureau of Land & Water Quality, hereunto duly authorized, and the said ANDREW FISK does hereby accept the foregoing Conservation Deed and Indenture.

O F F I C I A L  
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STATE OF MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

By:   
ANDREW FISK, Its Director  
Bureau of Land & Water Quality

STATE OF MAINE  
County of Kennebec, ss.

April 7, 2008

Personally appeared before me the above-named Andrew Fisk in his/her capacity as Director of the Bureau of Land & Water Quality of the Maine Department of Environmental Protection and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of the Maine Department of Environmental Protection.

  
Notary Public  
Lynn Boutilier  
Print name  
4/10/11  
Date commission expires



**SEAL**





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**THENCE**, South 50° 42' 24" West, along the southeasterly line of said land of Labonte and the southeasterly line of lands of the City of Auburn, Diana Gagnon (Book 991, Page 635) Donald J. Poisson, Sr. (Book 6808, Page 1) and Dawn Marie Lehnus (Book 2203, Page 83), a total distance of 865.84 feet to a ½" capped (PLS #1152) iron rod found in the northerly line of land of Dany R. Loudermilk and Ann M. Loudermilk as described in a deed from Paul M. Pelletier dated August 12, 1998, recorded in Book 4041, Page 343;

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**THENCE**, South 78° 14' 52" East, along the northerly line of said land of Loudermilk, a distance of 4.30 feet to a ½" capped (PLS #1152) iron rod found at the northeasterly corner thereof;

**THENCE**, South 36° 19' 58" East, a distance of 1265.39 feet to a point in the northwesterly line of land of Donald H. Tyler and Sonia F. Tyler as described in a deed from Federal Deposit Insurance Corporation dated February 9, 1993, recorded In Book 2994, Page 35;

**THENCE**, North 49° 53' 46" East, along the northwesterly line of said land of Tyler, a distance of 384.28 feet to a ¾" iron found at the southerly corner of land of Delekto Farm, Inc. as described in a deed from Anthony Delekto dated May 22, 1978, recorded in Book 1339, Page 181;

**THENCE**, continuing North 49° 53' 46" East, along the northwesterly line of said land of Delekto Farm, Inc., a distance of 268.13 feet to a ¾" iron rod found;

**THENCE**, North 01° 40' 50" West, along the westerly line of said land of Delekto Farm, Inc., a distance of 285.16 feet to a granite monument found at the southwest corner of said land of Pollard;

**THENCE**, North 04° 51' 11" West, along the westerly line of said land of Pollard, a distance of 399.36 feet to the **POINT OF BEGINNING**.

The parcel herein described, containing 25.0 acres, more or less, is a portion of the premises conveyed to the City of Auburn by release deed from David H. Skillings and Sandra K. Skillings dated December 31, 2001, recorded in Book 4875, Page 34.

**TOGETHER WITH** a 50 foot wide access easement leading from South Main Street to the herein above described premises over White Pine Avenue and a portion of Red Maple Drive as shown on said "plan", the bounds of said access easement being more particularly described as follows:

**BEGINNING** at a ¾" capped (PLS #1152) iron rod in the easterly sideline of South Main



**THENCE**, southwesterly, along the northerly line of Lot 8 of said "plan", being a tangent curve to the left having a radius of 20.00 feet, an arc distance of 31.42 feet to a point in the easterly sideline of South Main Street;

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**THENCE**, North 13° 31' 43" East, along the easterly sideline of South Main Street, a distance of 70.02 feet to the **POINT OF BEGINNING**.

O F F I C I A L O F F I C I A L

Reference is made to a plan entitled "Boundary Survey of a portion of land of The City of Auburn to be conveyed to The Androscoggin Land Trust, South Main Street, Auburn, Androscoggin County, Maine", dated March 28, 2007, prepared by CES, Inc. of Brewer, ME

ANDROSCOGGIN COUNTY  
*Una K. Charnock*  
REGISTER OF DEEDS