

**GRANT OF DEVELOPMENT RIGHTS, CONSERVATION RESTRICTIONS
and PUBLIC ACCESS EASEMENT**

WHEREAS, the Vermont Housing and Conservation Board (the "Board") is a public instrumentality of the State of Vermont existing by virtue of the Vermont Housing and Conservation Trust Fund Act, 10 V.S.A. § 311 (the "Act"), which assists municipalities to conserve and protect Vermont's agricultural land, historic properties, important natural areas and recreational lands;

WHEREAS, the **Town of Northfield** (hereinafter the "Town") owns certain tracts of land situated in the Town of Northfield, County of Washington, State of Vermont being more particularly described in **Schedule A** attached hereto and incorporated herein (hereinafter the "Protected Property").

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, ("The Stafford Act"), 42 U.S.C. § 5121 et seq., identifies the use of disaster relief funds under § 5170c, **Hazard Mitigation Grant Program**, including the acquisition and relocation of structures in the floodplain.

WHEREAS, the **Hazard Mitigation Grant Program** provides a process for a local government, through the State, to apply for federal funds for mitigation assistance to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the structures, and to maintain the use of the Property as open space in perpetuity.

WHEREAS, the State of Vermont has applied for and been awarded such funding from the Department of Homeland Security, Federal Emergency Management Agency ("FEMA") and has entered into a mitigation grant program Grant Agreement with FEMA making it a mitigation grant program grantee.

WHEREAS, the Protected Property is located in the Town of Northfield and the Town participates in the National Flood Insurance Program ("NFIP") and is in good standing with NFIP as of the date of this Grant.

WHEREAS, the terms of the **Hazard Mitigation Grant Program** and applicable federal law (including but not limited to 44 C.F.R. Part 80) require that the Town agree to conditions that restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values.

WHEREAS, when the Town acquired the Protected Property, the Town agreed to and recorded in the Town of Northfield Land Records certain deed restrictions which are perpetual in duration and meet the FEMA program requirements concerning the acquisition of property for open space ("FEMA Deed Restrictions").

WHEREAS, the FEMA Deed Restrictions require that the Town dedicate and maintain the Protected Property in perpetuity as open space for the conservation of natural floodplain functions. The FEMA Deed Restrictions allow the following uses: parks for outdoor recreational activities; wetlands management; nature reserves; cultivation; grazing; camping; unimproved, unpaved parking lots; buffer zones; and, other uses and structures consistent with

FEMA guidance for open space acquisition entitled “Hazard Mitigation Assistance, requirements for Property Acquisition and Relocation for Open Space”.

WHEREAS, the State of Vermont has decided to supplement the FEMA Deed Restrictions by this Grant of Development Rights, Conservation Restrictions and Public Access Easement (the “Grant”) which consists of covenants on the part of the Town to do or refrain from doing, severally and collectively, the various acts set forth below.

WHEREAS, if there is any conflict between this Grant and the FEMA Deed Restrictions, the FEMA Deed Restrictions shall control.

NOW THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, that the **Town of Northfield**, a Vermont municipality in the County of Washington and State of Vermont, on behalf of its successors and assigns, pursuant to Title 10 V.S.A. Chapters 34 and 155 and in consideration of the payment of Ten Dollars and other valuable consideration paid to its full satisfaction, does freely give, grant, sell, convey and confirm unto the **Vermont Housing and Conservation Board**, a public instrumentality of the State of Vermont existing by virtue of 10 V.S.A. § 311, with an address of 58 East State Street, Montpelier, Vermont, 05602, and its respective successors and assigns (hereinafter "VHCB") the development rights and a perpetual conservation easement and restrictions (all as more particularly set forth below) in seven (7) tracts of land (collectively known hereinafter as the "Protected Property") situated in the Town of Northfield, County of Washington, State of Vermont, said Protected Property being more particularly described in **Schedule A** attached hereto and incorporated herein.

The development rights hereby conveyed to the VHCB shall include all development rights except those specifically reserved by the Town herein and those reasonably required to carry out the permitted uses of the Protected Property as herein described. The conservation easement and restrictions hereby conveyed to the VHCB consists of covenants on the part of the Town to do or refrain from doing, severally and collectively, the various acts set forth below. It is hereby acknowledged that these covenants shall constitute a servitude upon the land and run with the land forever.

I. Purposes of the Grant; Management Plan

1. The Town and VHCB acknowledge that the Purposes of this Grant are as follows (hereafter "Purposes of this Grant"):

(a) As a primary purpose to conserve and protect the natural floodplain function of the Protected Property as an undeveloped area along with its natural value for horticultural, silvicultural, wildlife and open space purposes for present and future generations; and,

(b) As a secondary purpose to provide opportunities for appropriate recreational, educational, scientific and community activities on the Protected Property, provided that all activities and uses are consistent with the FEMA Deed Restrictions and the primary purpose of this Grant.

2. These purposes will be advanced by conserving the Protected Property because it possesses the following attributes:

- (a) 740 feet of frontage on the Dog River;
- (b) 710 feet of frontage on Water Street;
- (c) Is located in close proximity to the village center of Northfield;
- (d) Provides flood storage to protect downstream properties; and,
- (e) Has the potential for recreational, cultural, and educational uses by the Town.

The Town and VHCB recognize the Purposes of this Grant and share the common goal of conserving these values of the Protected Property by the conveyance of conservation restrictions, and development rights, to prevent the use or development of the Protected Property for any purpose or in any manner that would conflict with the Purposes of this Grant. VHCB accepts such conservation restrictions, development rights and public access easement in order to conserve these values for present and future generations.

3. The Town will develop a Management Plan for the Protected Property (hereafter “Management Plan”). The Management Plan shall provide for the use and management of the Protected Property in a manner which is consistent with applicable law and the Purposes of this Grant. Prior to the final adoption of each Management Plan and any amendments thereto, the Town shall: (a) secure appropriate public input from the Town residents; and, (b) provide VHCB with a copy of each such Management Plan (as well as, any subsequent revisions, amendments or updates) in a timely manner.

II. Restricted Uses of Protected Property.

The restrictions hereby imposed upon the Protected Property and the acts which the Town shall do or refrain from doing, are as follows:

1. The Town shall comply with the requirements, terms and conditions of Section 404(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288(1974) [codified as amended at 42 U.S.C. 5170c (b)], 44 CFR Part 80 and the FEMA Deed Restrictions.

2. The Protected Property shall, in addition to conservation of natural floodplain functions, be used for agricultural, educational, habitat conservation, horticultural, natural area, open space, non-motorized recreation and scientific purposes only. No residential, commercial, industrial, or mining activities, no driveways, roads, or utility lines shall be permitted, and no building, structure, or appurtenant facility or improvement shall be constructed, created, installed, erected or moved onto the Protected Property. Notwithstanding this section, structures permitted under the FEMA Deed Restrictions are allowed on the Protected Property.

3. No rights-of-way, easements of ingress or egress, driveways, roads, utility lines, other easements or use restrictions shall be constructed, developed, granted or maintained into, on, over, under, or across the Protected Property without the prior written permission of VHCB. VHCB may grant such permission if it determines, in its sole discretion, that the proposed right-of-way, easement of ingress or egress, driveway, road, utility line, other easement or use restriction is consistent with the Purposes of this Grant.

4. There shall be no signs, billboards, or outdoor advertising of any kind erected or displayed on the Protected Property; provided, however, the Town may erect and maintain reasonable signs including, but not limited to, signs indicating the name of the Protected Property and its ownership, boundary markers, directional signs, memorial plaques, informational and interpretive signs, and signs limiting access or use (subject to the limitations of Section IV, below). With prior written permission of the Town, VHCB may erect and maintain signs designating the Protected Property as land under easement protection by VHCB.

5. The placement, collection or storage of trash, human waste, or any other unsightly or offensive material on the Protected Property shall not be permitted except at locations, if any, and in a manner that is consistent with this Grant and permitted by the Management Plan. The temporary storage of trash in receptacles for periodic off-site disposal shall be permitted.

6. There shall be no disturbance of the surface, including, but not limited to, filling, excavation, removal of topsoil, sand, gravel, rocks or minerals, or change of the topography of the land in any manner, unless necessary to conserve the natural floodplain functions of the Protected Property. In no case shall surface mining of subsurface oil, gas or other minerals be permitted. There shall be no manipulation or alteration of natural watercourses, lakeshores, wetlands, water levels and/or flow or other water bodies, unless necessary to conserve the natural floodplain functions of the Protected Property.

7. Except for snowmobiling, there shall be no operation of motorized vehicles for recreational purposes on the Protected Property. Motorized vehicles may be used by the Town for management of the Protected Property (including, but not limited to, the management of vegetation, woods, fields, riparian buffers, wildlife and recreational access) and emergencies. In addition to the foregoing, the Town may permit motorized personal assistive mobility devices for use by persons with mobility disabilities on the Protected Property if consistent with the Purposes of this Grant, and as may be required by the Americans with Disabilities Act regulations.

8. The Town shall not give, grant, sell, convey, subdivide, transfer, mortgage, pledge, lease or otherwise encumber the Protected Property without the prior written consent of VHCB, FEMA and the State of Vermont.

9. No use shall be made of the Protected Property, and no activity thereon shall be permitted which, in the reasonable opinion of VHCB, is not or is not likely to be consistent with the Purposes of this Grant. The Town and VHCB acknowledge that, in view of the perpetual nature of this Grant, they are unable to foresee all potential future land uses, future technologies, and future evolution of the land and other natural resources, and other future occurrences affecting the Purposes of this Grant. VHCB, therefore, in its sole discretion, may determine whether (a) proposed uses or proposed improvements not contemplated by or addressed in this Grant, or (b) alterations in existing uses or structures, are consistent with the Purposes of this Grant.

III. Permitted Uses of the Protected Property.

Notwithstanding the foregoing, the Town shall have the right to make the following uses of the Protected Property:

1. The right to use the Protected Property for non-motorized, pedestrian recreational purposes (including, but not limited to, bird watching, cross-country skiing, fishing, hiking, hunting, snowshoeing, walking and wildlife observation) consistent with the Purposes of this Grant and as permitted by the Management Plan. Notwithstanding this Section, snowmobiling may be permitted in the sole discretion of the Town.

2. The right to create and maintain footpaths for walking and other pedestrian recreational, educational, or scientific research activities within and across the Protected Property consistent with the Purposes of this Grant and as permitted by the Management Plan.

3. The right to conduct community, entertainment, educational, cultural or sporting events on the Protected Property together with the right to erect tents and other temporary structures for such events.

4. The right to construct, maintain, repair and use one (1) unpaved parking lot on the Protected Property, including associated access drives and utilities, together with the right to construct improvements normally associated with a parking lot. The Town shall first obtain the prior written approval of VHCB for the location of such unpaved parking lot on the Protected Property, which approval shall not be unreasonably withheld nor conditioned, provided that such locations and use shall be consistent with the Management Plan and the Purposes of this Grant.

5. The right to construct, maintain, repair, replace and use minor structures on the Protected Property, provided that such structures (a) are allowed by the FEMA Deed Restrictions; (b) shall not have any access roads or drives, utility services or facilities, waste disposal systems or plumbing; (c) do not obstruct the natural and beneficial functions of the floodplain; and, (d) are consistent with the Purposes of this Grant.

6. The right to use the Protected Property to conduct all activities permitted by the Management Plan (including, but not limited to, the management of vegetation, woods, fields, riparian buffers, wildlife, community gardens and recreational access), provided such activities are reasonably necessary to carry out the Purposes of this Grant.

IV. Public Access.

The Town covenants and agrees that the Protected Property shall be available to the general public for all types of non-commercial, non-motorized, dispersed recreational and educational purposes (including, but not limited to, birdwatching, cross-country skiing, fishing, hiking, hunting, snowshoeing, walking, and wildlife observation) consistent with the Purposes of this Grant. Notwithstanding the foregoing, the Town may limit or restrict public access to the Protected Property to assure compliance with the requirements of this Grant; to protect natural functions of the floodplain and natural habitats; and/or, to protect the public health or safety (including, but not limited to, the right to permit, regulate or prohibit hunting).

V. Riparian Buffer.

The Town of Northfield, on behalf of itself and its successors and assigns, does freely give, grant, sell, convey and confirm unto VHCB and its respective successors and assigns, a Riparian Buffer Easement as follows:

1. The Riparian Buffer Area consists of all lands and premises lying within fifty feet of the Dog River, as it may exist from time to time, measured from the top of the bank of the Dog River as it passes adjacent to the Protected Property, and including any land located between the top of said bank and the high water mark of the Dog River (the “Riparian Buffer Area”). The general location of the Riparian Buffer Area is depicted on the Town of Northfield FEMA Conservation Plan.

2. The management of the Riparian Buffer Area shall be included within the Management Plan and shall describe practices to be employed to preserve the natural values of the Riparian Buffer Area and to maintain and improve the natural functions of the Riparian Buffer Area. The Management Plan shall address the planting, maintenance and cutting of vegetation, and other activities related to maintaining and improving buffer functions. The Town shall consult with VHCB and with the Non-game and Natural Heritage Program, a division of the Vermont Department of Fish and Wildlife or such other fish and wildlife professionals as the Town may select in the preparation of the Management Plan. The Town shall conduct buffer management activities as approved in the Management Plan and shall have the right to conduct, or permit to be conducted, research and educational activities related to the Purposes of this Grant, including, but not limited to, water, wetlands, fish and wildlife, and associated ecology. This Section shall not be construed to impose any obligation on the Town to perform activities required in the Management Plan, but should the Town elect to perform said activities, they shall be performed in accordance with the Management Plan. The Town may amend or alter the Management Plan from time to time in response to changes in natural conditions within the Riparian Buffer Area, or in response to changes in the state of scientific knowledge. The Town shall consult with VHCB and with the Non-game and Natural Heritage Program, a division of the Vermont Department of Fish and Wildlife or such other fish and wildlife professionals as the Town may select in the preparation of any such amendment or alteration of the Management Plan.

The Town shall have the right to use the Riparian Buffer Area for all types of non-motorized dispersed recreational purposes not inconsistent with the Purposes of this Grant; however, no agricultural, forestry, residential, commercial, industrial, or mining activities shall be permitted, and no building, structure, or appurtenant facility or improvement shall be constructed, installed, erected or moved into the Riparian Buffer Area.

VI. Enforcement of the Restrictions.

VHCB shall make reasonable efforts from time to time to assure compliance by the Town with all of the covenants and restrictions herein. In connection with such efforts, VHCB may make periodic inspection of the Protected Property, and for such inspection and enforcement purposes, VHCB shall have the right of reasonable access to the Protected Property. In the event that VHCB becomes aware of an event or circumstance of non-compliance with the terms and conditions herein set forth, VHCB shall notify the Town of such event or circumstance of non-compliance and demand corrective action by the Town sufficient to abate such event or circumstance of non-compliance and restore the Protected Property to its previous condition.

Failure by the Town to cause discontinuance, abatement or such other corrective action as may be demanded by the VHCB within a reasonable time after receipt of notice and reasonable opportunity to take corrective action shall entitle the VHCB to bring an action in a court of competent jurisdiction to enforce the terms of this Grant. If the court determines that the Town has failed to comply with this Grant, the Town shall reimburse VHCB for any reasonable costs of enforcement, including court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court. In the event that VHCB initiates litigation and the court determines that the Town has not failed to comply with this Grant and that VHCB has initiated litigation without reasonable cause or in bad faith, then VHCB shall reimburse the Town for any reasonable costs of defending such action, including court costs and reasonable attorneys' fees.

The parties to this Grant specifically acknowledge that events and circumstances of non-compliance constitute immediate and irreparable injury, loss and damage to the Protected Property and accordingly entitle VHCB to seek equitable relief, including, but not limited to, injunctive relief, as the court deems just. The remedies described herein are in addition to, and not in limitation of, any other remedies available to the VHCB at law, in equity, or through administrative proceedings.

No delay or omission by VHCB in the exercise of any right or remedy upon any breach of the Town shall impair VHCB's rights or remedies or be construed as a waiver. Nothing in this enforcement section shall be construed as imposing a liability upon a prior owner of the Protected Property, where the event or circumstance of non-compliance shall have occurred after said prior owner's ownership or control of the Protected Property has terminated.

VII. Miscellaneous Provisions.

1. Applicable Law. It is hereby agreed that the construction of any structures or improvements or any use of the land otherwise permitted under this Grant, shall be in accordance with all applicable ordinances, statutes, and regulations of the Town of Northfield, as well as, the State of Vermont and the United States.

2. Baseline Documentation Report. It is further agreed that the Protected Property is accurately depicted and described in the Town of Northfield FEMA Baseline Documentation Report (“BDR”) signed by the Town on or about the date of this Grant and held by VHCB. VHCB may use the BDR in monitoring and enforcing this Grant, but is not limited to the use of the BDR to show a change of conditions.

3. Proceeds from Eminent Domain. In the event that legal rights in the Protected Property, or any part thereof, are extinguished or condemned by eminent domain or other legal proceedings, VHCB shall be entitled to twenty five percent (25%) of the proceeds. This percentage represents the relative contribution of VHCB to the State of Vermont FEMA Hazard Mitigation Program. VHCB shall use any such proceeds to preserve undeveloped and open space land in order to protect the agricultural, educational, scientific, forestry and natural resources of the state through non-regulatory means.

4. Hazardous Substances. The Town warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Protected Property.

5. Amendment. This Grant may be amended or modified only if such amendment or modification is consistent with the Purposes of this Grant and the FEMA Deed Restrictions. Any amendment or modification must be mutually agreed upon by the Town, VHCB, State of Vermont and FEMA; comply with all applicable laws and regulations; and, be signed and duly recorded.

6. Conveyance or Lease. In any deed or lease conveying an interest in all or part of the Protected Property, the Town shall make reference to and comply with the FEMA Deed Restrictions; 44 CFR Part 80; and, the conservation easement, restrictions and obligations described herein, and shall indicate that said easement and restrictions are binding upon all successors in interest in the Protected Property in perpetuity.

7. Reversionary Interest. If the Vermont Housing and Conservation Board ceases to exist, VHCB’s interest in this Grant shall revert to the State of Vermont.

8. This Grant shall be governed by and construed in accordance with the laws of the State of Vermont and the United States of America. In the event that any provision or clause in this Grant conflicts with applicable law, such conflict shall not affect other provisions hereof which can be given effect without the conflicting provision. To this end the provisions of this Grant are declared to be severable. Invalidity of any provision hereof shall not affect any other provision of this Grant.

TO HAVE AND TO HOLD said granted development rights and conservation easement and restrictions, with all the privileges and appurtenances thereof, to the said VERMONT HOUSING AND CONSERVATION BOARD, its respective successors and assigns, to its own use and behoof forever, and the said TOWN OF NORTHFIELD, for itself and its successors and assigns, does covenant with the said VERMONT HOUSING AND CONSERVATION BOARD, its successors and assigns, that until the ensealing of these presents, it is the sole owner of the premises, and has good right and title to convey the same in the manner aforesaid, that the premises are free from every encumbrance, except those of record, not intending hereby to reinstate any interest or right terminated or superseded by this Grant, operation of law, abandonment or 27 V.S.A. Ch. 5, Subch. 7; and it hereby engages to warrant and defend the same against all lawful claims whatever, except as aforesaid.

The TOWN OF NORTHFIELD has caused this Grant to be executed by its duly authorized agent on this ____ day of _____, 2017.

Town of Northfield

Its Duly Authorized Agent

**STATE OF VERMONT
COUNTY OF WASHINGTON, SS.**

At Northfield, Vermont, on this ____ day of _____, 2017, personally appeared _____ and duly authorized agent of the Town of Northfield, and he/she acknowledged this instrument, by him/her sealed and subscribed, to be his/her free act and deed and the free act and deed of the Town of Northfield.

Before me, _____
Notary Public
My Commission Expires: _____

Approved by the VERMONT HOUSING AND CONSERVATION BOARD:

Date By: _____
Its Duly Authorized Agent

SCHEDULE A
PROTECTED PROPERTY

PARCEL 1 (355 Water Street):

Being all and the same lands and premises conveyed to the Town of Northfield by Warranty Deed of Lourena Trombley dated September 9, 2013 and recorded on September 9, 2013 in Book 200 at Pages 73-78 of the Town of Northfield Land Records.

Reference is hereby made to the above-mentioned deed and the records thereof, and the references therein made all in further aid of this description.

PARCEL 2 (389 Water Street):

Being all and the same lands and premises conveyed to the Town of Northfield by Warranty Deed of Daniel H. Guyette and Paulette M. Guyette and Sandra Badger dated August 9, 2013 and recorded on August 9, 2013 in Book 199 at Pages 752-758 of the Town of Northfield Land Records.

Reference is hereby made to the above-mentioned deed and the records thereof, and the references therein made all in further aid of this description.

PARCEL 3 (405 Water Street):

Being all and the same lands and premises conveyed to the Town of Northfield by Warranty Deed of Daniel H. Guyette and Paulette M. Guyette dated June 14, 2013 and recorded on June 14, 2013 in Book 198 at Pages 976-982 of the Town of Northfield Land Records.

Reference is hereby made to the above-mentioned deed and the records thereof, and the references therein made all in further aid of this description.

PARCEL 4 (435 Water Street):

Being all and the same lands and premises conveyed to the Town of Northfield by Warranty Deed of Philo J. Hardie and Esther A. Hardie dated December 3, 2013 and recorded on December 3, 2013 in Book 201 at Pages 128-133 of the Town of Northfield Land Records.

Reference is hereby made to the above-mentioned deed and the records thereof, and the references therein made all in further aid of this description.

PARCEL 5 (449 Water Street):

Being all and the same lands and premises conveyed to the Town of Northfield by Warranty Deed of Rebecca A. Trower dated March 26, 2015 and recorded on March 30, 2015 in Book 205 at Pages 447-452 of the Town of Northfield Land Records.

Reference is hereby made to the above-mentioned deed and the records thereof, and the references therein made all in further aid of this description.

PARCEL 6 (465 Water Street):

Being all and the same lands and premises conveyed to the Town of Northfield by Warranty Deed of Michael S. Pemberton and Bonnie Pemberton dated May 17, 2013 and recorded on May 17, 2013 in Book 198 at Pages 715-721 of the Town of Northfield Land Records.

Reference is hereby made to the above-mentioned deed and the records thereof, and the references therein made all in further aid of this description.

PARCEL 7 (483 Water Street):

Being all and the same lands and premises conveyed to the Town of Northfield by Limited Warranty Deed of Vermont Housing Finance Agency dated December 16, 2013 and recorded on December 23, 2013 in Book 201 at Pages 299-304 of the Town of Northfield Land Records.

Reference is hereby made to the above-mentioned deed and the records thereof, and the references therein made all in further aid of this description.