

Town Owned
GRANT OF DEVELOPMENT RIGHTS, CONSERVATION RESTRICTIONS,
and PUBLIC ACCESS EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS that the **TOWN OF MARLBORO**, a Vermont municipality located in Windham County, Vermont, on behalf of itself and its successors and assigns (hereinafter "Grantor"), 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 LAND TRUST, INC.**, a non-profit corporation organized under the laws of the State of Vermont, with its principal offices in Montpelier, Vermont, and the **VERMONT HOUSING AND CONSERVATION BOARD**, an independent board of the State of Vermont with its offices in Montpelier, Vermont, and their respective successors and assigns (hereinafter "Grantees") as tenants in common, forever, the development rights, perpetual conservation easement restrictions, and public access easement (all as more particularly set forth below) in a certain tract of land (hereinafter "Protected Property") situated in the Town of Marlboro, Windham County, State of Vermont, the Protected Property being more particularly described in Schedule A attached hereto and incorporated herein.

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

I. Purposes of this Grant and Management Plan.

A. Statement of Purposes.

Grantor and Grantees acknowledge that the purposes of this grant are as follows:

1. As primary purposes, to conserve forestry values, wildlife habitats, riparian buffers, aquatic habitats, wetlands, soil productivity, and water quality on the Protected Property, and the ecological processes that sustain these natural resource values as these values exist on the date of this instrument and as they may evolve in the future, non-motorized, non-commercial recreational opportunities, open space values, and scenic resources associated with the Protected Property for present and future generations.
2. As secondary purposes, to conserve biological diversity, natural communities, and native flora and fauna associated with the Protected Property for present and future generations.
3. These purposes will be advanced by conserving the Protected Property because it possesses the following attributes:
 - (a) is considered by town residents to be a defining cultural and historical landmark in Marlboro and the region;
 - (b) contains headwaters for two major watersheds in southeastern Vermont: Green River and Deerfield River;
 - (c) provides long-range 100-mile view, a rare and exceptional panoramic lookout in southern Vermont easily accessible to the public;
 - (d) contains habitat for a variety of wildlife including moose, bobcat, deer, black bear, fisher, and local and migratory bird species;
 - (e) provides for recreational, cultural and educational uses;
 - (f) 4,750 feet of frontage on State Highway Route 9, designated as the Molly Stark Scenic Byway and 3,800 feet of frontage on Town Highway #33, also known as Old Hogback Road;
 - (g) traversed by 1,600 feet of Beaver Brook;
 - (h) adjoins Molly Stark State Park; and
 - (i) is in the vicinity of other lands protected by Grantees.

Grantor and Grantees 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 which would conflict with the Purposes of this Grant. Grantees accept such conservation restrictions, development rights and public access easement in order to conserve these values for present and future generations. The purposes set forth above in this Section I are hereafter collectively referred to as the "Purposes of this Grant".

B. Management Plans.

Grantor will, from time-to-time develop comprehensive Management Plans, including updates, revisions and amendments, for the Protected Property (hereinafter "Management Plans"). The Management Plans shall:

1. Provide for the use and management of the Protected Property in a fashion which is consistent with and advances the Purposes of this Grant; and
2. At a minimum, the Management Plans shall identify actions necessary to accomplish the following and shall appropriately balance all the resource attributes of and human uses for the Protected Property:
 - a. identify and address the management needs of the public access and recreational uses that may need special or more intensive management focus;
 - b. provide for meaningful public access and recreational links to private and public lands;
 - c. details of sustainable forest management activities;
 - d. provide a plan for road, sign, trail and sanitary facility use that has minimal impact on water quality and plant, wildlife and aquatic habitat;
 - e. provide for the sustainable use of fish and wildlife resources;
 - f. provide for the identification and protection of natural communities, plant, wildlife and aquatic habitat and other ecologically sensitive or important areas.
3. Otherwise be consistent with this Grant.

Prior to the final adoption of each Management Plan, including updates, revisions and amendments, Grantor shall: (a) secure appropriate public input from the Town of Marlboro and from the general public, (b) develop the Management Plans in a timely and responsive manner, and (c) provide Grantees with a copy of each such Management Plan as well as a copy of each final adopted Management Plan.

II. Restricted Uses of Protected Property.

1. The Protected Property shall be used for educational, forestry, non-motorized, non-commercial recreation, habitat conservation, natural area and open space purposes only, except as otherwise specifically permitted under this Grant. No residential, commercial, industrial or mining activities shall be permitted. No building or structures shall be constructed, created, erected or moved onto the Protected Property, including but not limited to, telecommunication towers, except as specifically permitted in both Section III below and the Management Plans.
2. No rights-of-way, easements of ingress or egress, driveways, roads, or utility lines or easements shall be constructed, developed or maintained into, on, over, under, or across the Protected Property without the prior written permission of Grantees, except as otherwise specifically permitted under this Grant. Grantees may grant such permission if they reasonably determine that any such improvement is consistent with the Purposes of this Grant.
3. There shall be no signs, billboards, or outdoor advertising of any kind erected or displayed on the Protected Property; provided, however, that Grantor may erect and maintain reasonable signs including but not limited to signs indicating the name of the Protected Property and its ownership by Grantor, boundary markers, directional signs, memorial plaques, informational and interpretive signs, and signs limiting access or use (subject to the limitations of Section IV, below). Grantees may erect and maintain signs designating the Protected Property as land under the protection of Grantees, with the prior written permission of Grantor.
4. The placement, collection or storage of trash, human waste, or any other unsightly, harmful or offensive material on the Protected Property shall not be permitted except at such locations, if any, and in such a manner as shall be approved in advance in writing by Grantees and shall be consistent with the Grant and the Management Plans. The temporary storage of trash generated on the Protected Property in receptacles for periodic off-site disposal, shall be permitted without such prior written approval.
5. 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, except as may be reasonably necessary to carry out the uses permitted on the Protected Property under this Grant. In no case shall surface mining of subsurface oil, gas, or other

minerals be permitted.

6. Grantor shall not give, grant, sell, convey, subdivide, convey in separate parcels, transfer, mortgage, pledge, lease or otherwise encumber the Protected Property without the prior written approval of Grantees which approval may be granted, denied or conditioned in the Grantees' sole discretion.

7. There shall be no operation of motor vehicles on the Protected Property except for uses specifically reserved in Section III below, such as wildlife and forest management, trail grooming, maintenance, handicap access, and for safety or emergency purposes. Snowmobiling may be permitted at the discretion of Grantor.

8. There shall be no manipulation of natural watercourses, marshes, wetlands or other water bodies, nor shall there be activities conducted on the Protected Property which would be detrimental to water purity, or which could alter natural water level or flow, except as reasonably necessary to carry out the uses permitted on the Protected Property under this Grant.

9. No use shall be made of the Protected Property, and no activity thereon shall be permitted which, in the reasonable opinion of Grantees, is not or is not likely to be consistent with the Purposes of this Grant. Grantor and Grantees 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. Grantees, therefore, in their 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, Grantor shall have the right to make the following uses of the Protected Property:

1. The right to use the Protected Property for all types of non-motorized, non-commercial recreational purposes including, but not limited to, bird-watching, cross-country skiing, fishing, hiking, hunting, snowshoeing, swimming, trapping, walking and wildlife observation consistent with the Purposes of this Grant. Use of the Protected Property for snowmobiling, and for non-motorized, mechanized recreation such as mountain biking and by animals capable of transporting humans (including, but not limited to, horses) may be permitted in the discretion of Grantor if such uses are regulated in the Management Plans and are consistent with the Purposes of this Grant.

2. The right to use the Protected Property to conduct all activities allowed by the Management Plans, provided that such activities are reasonably necessary to carry out the Purposes of this Grant and are consistent with the Purposes of this Grant, and provided further that such activities are provided for in the Management Plans. Such activities may include, but shall not be limited to, the management of vegetation and wildlife, and the use and management of the Protected Property for non-motorized, non-commercial recreation. This Section III(2) shall not be construed to authorize the construction of new structures not otherwise specifically permitted by this Grant.

3. The right to conduct maple sugaring operations. Further, the right to harvest timber and other forest products, together with the right to construct and maintain roads necessary for such activities, installing all erosion control devices and employing all applicable recommended practices described in the publication "Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont," a Vermont Department of Forests, Parks and Recreation publication dated August 15, 1987 (or such successor standard approved by Grantees) and in accordance with a forest management plan which has been developed in consultation with the Vermont Department of Forests, Parks and Recreation and the Vermont Department of Fish and Wildlife and which forest management plan shall be a component of the Management Plans (see Section I(B)).

4. The right to maintain, repair, improve and replace existing recreational trails, together with the right to clear, construct, repair, improve, maintain and replace new trails, provided that the location, use and construction of such new trails are consistent with the Purposes of this Grant, and are provided for in the Management Plans.

5. The right to conduct periodic, temporary community and public entertainment events on the Protected Property, including concerts, fairs and celebrations, together with the right

to erect tents and other temporary structures for such events.

6. The right to charge members of the public reasonable fees for admission to and use of the Protected Property, provided that such fees are collected only for community and public recreation, education or entertainment events on the Protected Property (including, but not limited to, children's activities, concerts, fairs and celebrations) or such fees are reasonably necessary to support Grantor's management of the Protected Property. The right to charge organizations reasonable fees for recreational use of a portion of the Protected Property provided that such use does not unreasonably interfere with the access of the general public to the Protected Property. Fees shall not be based on place of residency. All fees charged for admission to or use of the Protected Property shall be consistent with the Purposes of this Grant, especially that of public access, and shall be provided for in the Management Plans.

7. The right to issue temporary special use permits or licenses authorizing the commercial or non-commercial use of the Protected Property for recreational, community entertainment, educational, agricultural, forestry, or research purposes, provided that any such permit or license (i) does not unreasonably interfere with the access of the general public to the Protected Property, (ii) is for uses consistent with the Purposes of this Grant, and (iii) authorizes only uses of or actions on the Protected Property consistent of this Grant.

8. The right to construct, maintain, repair, replace and use permanent or temporary minor structures of a rustic design reasonably necessary to support the public outdoor non-commercial, non-motorized recreational and educational uses permitted by this Grant (including such structures and facilities as deer stands, gazebos, hunting blinds, lean-tos, Adirondack shelters, tent platforms, tree houses, children's play houses, privies, kiosks, outdoor fireplaces) on the Protected Property, provided that such structures shall not have any access roads or drives, utility services or facilities, waste disposal systems, or plumbing, and shall not be used for year-round, continuous residential occupancy or for any commercial activity of any nature. Grantor shall secure the written approval of Grantees prior to the construction of any such minor structures, which approval shall not be unreasonably withheld or conditioned, provided that the structure complies with the requirements of this Section III(8) and the number and location of such structures are consistent with the Purposes of this Grant and the Management Plans.

9. The right to maintain, repair, renovate, replace, enlarge, rebuild and occupy the existing "Benedict Cottage" and its associated utilities and improvements, which may be used in support of all uses permitted under and contemplated by this Grant and as provided in the Management Plans; also, the right to maintain, repair and use the existing access drive and parking area, all within the so-called "Benedict Cottage Complex." The Benedict Cottage Complex is an area consisting of one (1) acre, more or less, and is more particularly described in Schedule B attached hereto and incorporated herein, and is depicted on the Hogback Conservation Plan described in Schedule A attached hereto and incorporated herein. Said parking area shall be used only in connection with uses permitted under this Grant.

10. The right to construct, maintain, repair and replace a permeable surfaced parking area, said parking area not to exceed one (1) acre, at a location to be mutually agreed upon in writing by Grantor and Grantees. Said parking area shall be used only in connection with uses permitted under this Grant. Prior to the commencement of construction on such parking area, Grantor shall secure the prior written approval of Grantees, which approval shall not be unreasonably withheld or conditioned, provided the parking area is of a size, location and configuration which are consistent with the Purposes of this Grant, and this Section III(10).

IV. Public Access.

Grantor 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, bird-watching, cross-country skiing, fishing, hiking, hunting, snowshoeing, swimming, trapping, walking and wildlife observation) consistent with the Purposes of this Grant. Notwithstanding the foregoing, Grantor may limit or restrict public access to the Protected Property to assure compliance with the requirements of this Grant, to protect natural habitats, or to protect the public health or safety (including, but not limited to, the right to permit, regulate or prohibit fishing, hunting and trapping). If Grantees approve a conveyance of the Protected Property, then Grantees may also require that a separate Grant of Public Access Easement also be conveyed to Grantees in a form approved by Grantees.

V. Enforcement of the Restrictions.

Grantees shall make reasonable efforts from time to time to assure compliance by Grantor with all of the covenants and restrictions herein. In connection with such efforts, Grantees may make periodic inspection of all or any portion of the Protected Property and for such inspection and enforcement purposes, Grantees shall have the right of reasonable access to the Protected Property. In the event that Grantees becomes aware of an event or circumstance of non-compliance with the terms and conditions herein set forth, Grantees shall give notice to Grantor of such event or circumstance of non-compliance by hand or by certified mail, return receipt requested, and demand corrective action by Grantor sufficient to abate such event or circumstance of non-compliance and restore the Protected Property to its previous condition. In the event there has been an event or circumstance of non-compliance which is corrected through negotiation and voluntary compliance but which has caused Grantees to incur extraordinary costs, including staff time, in investigating the non-compliance and securing its correction, Grantor shall at Grantees' request reimburse Grantees all such costs incurred in investigating the non-compliance and in securing its correction.

Failure by Grantor to cause discontinuance, abatement or such other corrective action as may be demanded by Grantees within a reasonable time after receipt of notice and reasonable opportunity to take corrective action shall entitle Grantees to bring an action in a court of competent jurisdiction to enforce this Grant and to recover any damages arising from such non-compliance. Such damages, when recovered, may be applied by Grantees to corrective action on the Protected Property, if necessary. If the court determines that Grantor has failed to comply with this Grant, Grantor shall reimburse Grantees 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 Grantees initiates litigation and the court determines that Grantor has not failed to comply with this Grant and that Grantees have initiated litigation without reasonable cause or in bad faith, then Grantees shall reimburse Grantor 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 Grantees to such equitable relief, including but not limited to injunctive relief and ex parte relief, as the Court deems just.

The remedies described herein are in addition to, and not in limitation of, any other remedies available to Grantees at law, in equity, or through administrative proceedings. No delay or omission by Grantees in the exercise of any right or remedy upon any breach of Grantor shall impair Grantees' 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, when the event or circumstance of non-compliance occurred after said prior owner's ownership or control of the Protected Property has terminated.

VI. Miscellaneous Provisions.

1. Where Grantor is required, as a result of this Grant, to obtain the prior written approval of Grantees before commencing an activity or act, and where Grantees have designated in writing one of the other Grantees herein or another organization or entity which shall have the authority to grant such approval, the approval of said designee shall be deemed to be the approval of Grantees. Grantor shall reimburse Grantees or Grantees' designee for all extraordinary costs, including staff time, incurred in reviewing the proposed action requiring Grantees' approval; but not to include those costs which are expected and routine in scope. When Grantees have authorized a proposed action requiring approval under this Grant, Grantees shall, upon request, provide Grantor with a written certification in recordable form memorializing said approval.

2. While title is herein conveyed to Grantees as tenants in common, the rights and interests described in this Grant, including enforcement of the conservation easement and restrictions, may be exercised by Grantees collectively, or by any single Grantee individually, provided that court enforcement action by a single Grantee shall foreclose action on the same issue(s) by the other Grantees who shall be bound by the final determination.

3. It is hereby agreed that the construction of any buildings, 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 Marlboro and the State of Vermont.

4. Grantees shall transfer the development rights, public access easement, and conservation easement and restrictions conveyed by Grantor herein only to a State agency, municipality, or qualified organization, as defined in Chapter 34 or Chapter 155 Title 10 V.S.A., in accordance with the laws of the State of Vermont and the regulations established by the Internal Revenue Service governing such transfers.

5. In the event the development rights or conservation restrictions conveyed to Grantees herein are extinguished by eminent domain or other legal proceedings, Grantees shall be entitled to any proceeds which pertain to the extinguishment of Grantees' rights and interests. Any proceeds from extinguishment shall be allocated between Grantor and Grantees using a ratio based upon the relative value of the development rights and conservation restrictions, and the value of the fee interest in the Protected Property, as determined by a qualified appraisal performed at the direction of either Grantor or Grantees at the time of extinguishment. Grantees shall use any such proceeds to preserve undeveloped and open space land in order to protect the aesthetic, cultural, educational, scientific, and natural resources of the state through non-regulatory means.

6. In any deed or lease conveying an interest in all or part of the Protected Property, Grantor shall make reference to the conservation easement, restrictions, and obligations described herein and shall indicate that this easement and restrictions are binding upon all successors in interest in the Protected Property in perpetuity. Grantor shall also notify Grantees of the name(s) and address(es) of Grantor's successor(s) in interest.

7. Grantees shall be entitled to rerecord this Grant, or to record a notice making reference to the existence of this Grant, in the Town of Marlboro Land Records as may be necessary to satisfy the requirements of the Record Marketable Title Act, 27 V.S.A., Chapter 5, Subchapter 7, including 27 V.S.A. §§603 and 605.

8. The term "Grantor" shall include the successors and assigns of the original Grantor, the Town of Marlboro. The term "Grantees" shall include the respective successors and assigns of the original Grantees, Vermont Land Trust, Inc. and Vermont Housing and Conservation Board.

9. Any signs erected on the Protected Property which mention funding sources shall include the Vermont Housing and Conservation Board and the Vermont Land Trust, Inc.

INVALIDATION of any provision hereof shall not affect any other provision of this Grant.

TO HAVE AND TO HOLD said granted development rights, conservation easement and restrictions, and public access easement, with all the privileges and appurtenances thereof, to the said Grantees, VERMONT HOUSING AND CONSERVATION BOARD, and VERMONT LAND TRUST, INC., their respective successors and assigns, to their own use and behoof forever, and the said Grantor, the TOWN OF MARLBORO, on behalf of itself and its successors and assigns, does covenant with the said Grantees, their 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 of 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.

IN WITNESS WHEREOF, _____, duly authorized agent of the Town of Marlboro, has executed this Grant on this 31st day of March, 2010.

IN THE PRESENCE OF:

GRANTOR
Town of Marlboro

Witness to Town

By: _____
Its Duly Authorized Agent

STATE OF VERMONT
COUNTY OF WINDHAM, SS.

At Marlboro, Vermont, on this 31st day of March, 2010, personally appeared _____, duly authorized agent of the Town of Marlboro, 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 Marlboro, before me.

Notary Public
My Commission Expires: 02/10/2011

Approved by the VERMONT HOUSING AND CONSERVATION BOARD:

By: _____

Date

Its Duly Authorized Agent

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SCHEDULE A
PROTECTED PROPERTY

Being all and the same lands and premises conveyed to Grantor by Warranty Deed of Long View Mountain Group, LLC, of near or even date and to be recorded herewith in the Marlboro Land Records.

Meaning and intending to include in this description of the Protected Property all of the land with the buildings and improvements thereon commonly known as Hogback Mountain and generally described as containing 591 acres, more or less, lying on both sides of Vermont Route 9 in the Town of Marlboro, Vermont.

NOTICE: Unless otherwise expressly indicated, the descriptions in this Schedule A and in any subsequent Schedules are not based on a survey or subdivision plat. The Grantor and Grantees have used their best efforts to depict the approximate boundaries of the Protected Property and any excluded parcels, complexes or special treatment areas on a plan entitled "Vermont Land Trust – Hogback Mountain, Town of Marlboro, Windham Co., VT, March 2010" signed by the Grantor and VLT (referred to throughout this Grant and its Schedules as "Hogback Conservation Plan"). The Hogback Conservation Plan is based upon Vermont Base Map digital orthophotos and other information available to VLT at the time of the Plan's preparation. Any metes and bounds descriptions included in the Schedules herein are approximate only. They are computer generated and are not the result of field measurements or extensive title research. The Hogback Conservation Plan and any metes and bounds descriptions herein are intended solely for the use of the Grantor and Grantees in establishing the approximate location of the areas described and for administering and interpreting the terms and conditions of this Grant. No monuments have been placed on the ground. The Hogback Conservation Plan is kept by VLT in its Stewardship Office. **The Hogback Conservation Plan is not a survey and must not be used as a survey or for any conveyance or subdivision of the land depicted thereon.**

Grantor and Grantees do not intend to imply any limitation on the area of land included in this description, should a survey determine that additional land is also encumbered by the Grant. If, in the future, the Grantor or Grantees shall prepare a survey of the Protected Property, of any portion thereof, or of any excluded lands, and that survey is accepted by the other party or confirmed by a court, the descriptions in the survey shall control.

Reference may be made to the above described deed and record, and to the deeds and records referred to therein, in further aid of this description.

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SCHEDULE B
BENEDICT COTTAGE COMPLEX

The "Benedict Cottage Complex" referred to in Section III(9) of this Grant contains one (1) acre, more or less, located on the northerly side of Vermont Route 9, and is more particularly described as follows:

Beginning at the point where the Marlboro/Wilmington town line intersects the northerly edge of the Vermont Route 9 right of way (assumed 4 rods wide); thence proceeding Northerly a distance of 115 feet, more or less, along the Marlboro/Wilmington town line; thence turning and proceeding Southeasterly a distance of 440 feet, more or less, across the Protected Property along a line running parallel to and 110 feet northerly of the northerly edge of the Vermont Route 9 right of way; thence turning and proceeding Southwesterly a distance of 110 feet, more or less, across the Protected Property to a point on the northerly edge of the Vermont Route 9 right of way; thence turning and proceeding Northwesterly a distance of 355 feet, more or less, along the northerly edge of the Vermont Route 9 right of way to the point of beginning.