

DECLARATION OF CONSERVATION EASEMENT

BK 34 79 PG 0091

DECLARATION OF CONSERVATION EASEMENT AND RESTRICTIVE COVENANTS

This Declaration of Conservation Easement and Restrictive Covenants (the "Declaration") is made this 30th day of September, 2000, by Donna Brace Ogilvie (hereinafter called the "Declarant"), having an address at 107 Meadow Road, Riverside, Connecticut 06878.

WITNESSETH

WHEREAS, Declarant is the owner of that certain real property located in the Town of Greenwich, County of Fairfield, and State of Connecticut, more particularly described in Schedule A annexed hereto and made a part hereof, consisting of approximately 3.2 acres (the "Property");

WHEREAS, Declarant recognizes the importance of preserving open space and the nature and character of the Property in order to maintain air quality, ecological balance and scenic values and avoid problems concerning water supply, sewage disposal and overtaxing the resources and facilities of the Town of Greenwich;

WHEREAS, Declarant desires to provide for the protection, preservation and conservation of the natural beauty and ecological value of the land, the open space and character of the Property and the surrounding area by restricting the potential development of the Property in accordance with this Declaration;

WHEREAS, The Greenwich Land Trust, Inc. (the "Trust") is a not for profit corporation organized and existing under the laws of the State of Connecticut, organized, among other things, for the following purpose:

"To engage in and otherwise promote for the benefit of the general public the preservation of natural resources of the Town of Greenwich...including water resources, swamps, woodland and open spaces..."; and

WHEREAS, Declarant intends that the Property shall henceforth be subject to the restrictive covenants hereinafter set forth, which restrictive covenants shall run with the land in perpetuity and shall be binding on Declarant, her heirs and assigns, and all future owners of all or any part(s) of the Property, and shall be for the benefit of, and enforceable by, the Trust and its successors and assigns.

NOW THEREFORE, in consideration of One (\$1.00) Dollar and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to ensure that the Property will remain in an undeveloped state, except as herein provided, and for the conservation and preservation of natural resources and for environmental and

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NY \$ [Signature] Chairman of Board of Selectmen Town of Greenwich

NO STATE \$ [Signature] Chairman of Board of Selectmen Town of Greenwich

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aesthetic purposes, the Declarant does hereby declare, covenant and grant to the Trust, a conservation easement and restrictive covenants, in, over and across the Property, and hereby declares and agrees that the Property (which, for all purposes, shall be considered to be one (1) tract of land, notwithstanding the fact that the Property is comprised of multiple tracts of land as indicated in Schedule A) is subject to and shall be held, transferred, sold, devised, conveyed and occupied subject to the conservation easement and restrictive covenants herein granted. The following conservation easement and restrictive covenants shall run with the land in perpetuity and shall be binding on Declarant, her heirs and assigns, and all future owners of all or any part(s) of the Property:

1. Restriction Limiting Development. Only the existing residential dwelling, for single family use and occupancy, with all improvements related thereto, shall be maintained upon the Property, but subject nevertheless to the following provisions:

a. The right to use, maintain, repair and replace the following improvements and facilities now located on the Property: the residence, garage, driveway, patios, tennis courts, pools and utility poles and wires; provided, however, subject to Section 1(d) hereof, this right shall not include increasing, decreasing or otherwise modifying the dimensions of the structures existing on the date hereof.

b. The right to replace trees and vegetation destroyed or damaged by natural causes, fire or other casualty and to remove limbs, which fall on maintained lawn areas or on driveways or which directly threaten to damage or block the residence, garage, driveway, patios, pools or utilities.

c. The right to plant shrubs and trees or use stone walls or fences to screen any portion of the Property without harm to the Property and with the prior written permission of the Trust, which shall not be unreasonably withheld, delayed or conditioned.

d. No remodeling, demolition, additions and/or improvements shall be made to the exterior of the residence, garage, driveway, patios or pools or the footprints of any of the foregoing as applicable, with the exception of the rights to (i) repair, maintain and preserve such facilities in their present condition, (ii) restore the residence in the event of damage or destruction, in the style and character, and to a size and dimension no larger than, the residence immediately preceding such damage or destruction, (iii) install, maintain, repair and replace underground utility lines and (iv) install, maintain, repair and replace facilities for the non-commercial playing of tennis.

2. Additional Covenants Regarding Preservation of the Property. With the exception of the residence, garage, driveway, patios, pools and any and all other existing

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structures and improvements on the Property, as provided for in Section 1 above, the following provisions shall apply to the Property:

a. Except as otherwise permitted in this Declaration, the Property shall be kept in its current state as a single-family residence restricted from any development beyond or demolition of structures and improvements existing on the date hereof.

b. Except as otherwise permitted in this Declaration, no building or other structure or improvement shall be erected or caused to be placed on the Property and, unless damaged by natural causes, fire or other casualty, the residence existing on the date hereof shall not be demolished, in whole or in part.

c. Except as herein specifically provided, there shall be no structure building, advertising, filling, excavating, road building, removal or destruction of vegetation, dumping of trash, use of chemical pesticides (except for shrub and lawn care and other residential uses), hunting or trapping, operation of off road terrain vehicles or of high decibel machines (except in connection with lawn care and snow removal), soil, water or air polluting practices, without the prior written permission of the Trust, which shall not be unreasonably withheld, delayed or conditioned.

3. Indemnification. Declarant, her heirs and assigns, shall hold harmless, defend and indemnify the Trust against any and all liabilities, including but not limited to injury, losses, damages, judgements, costs, expenses and fees which the Trust may suffer or incur as a result of or arising out of any activities conducted upon the Property. In addition, Declarant, her heirs and assigns, shall name the Trust as an insured party under Declarant's or their general public liability insurance coverage and shall, upon request, provide the Trust with a certificate evidencing such coverage.

4. Parties Bond. The provisions of this Declaration shall bind the Property and shall run with the land forever, and shall inure to the benefit of and be enforceable by the Trust. The parties hereto recognize and agree that the benefits of this covenant and easement are assignable provided the Trust hereby covenants and agrees that it may only transfer or assign its rights hereunder to a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code 1986 (or any successor section) and the regulations promulgated thereunder, which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code, and the Trust further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the contribution was originally intended to advance.

If the Trust is dissolved or its corporate existence terminated, the conservation easement and the benefits of the covenants and restrictions set forth in this Declaration shall vest, without the necessity of an entry, reentry or other act on its part, in The

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National Audubon Society, Inc., 950 Third Avenue New York, New York, and if The National Audubon Society, Inc., shall then be dissolved or its corporate existence terminated, or if it should manifest its unwillingness to accept the rights granted in this Declaration then such rights shall vest in The Nature Conservancy, Inc., 1800 North Kent Street, Arlington, Virginia, or its corporate successor. If The Nature Conservancy, Inc., shall then be dissolved or its corporate existence terminated, or if it should manifest its unwillingness to accept the rights granted in this Declaration, by means of an instrument so declaring, recorded in the Greenwich Land Records, then such rights shall vest in such entity as may be specified by a court of competent jurisdiction, provided such entity shall have similar purposes as the Trust and be a tax exempt organization.

5. Remedies. In the event of a violation or breach by Declarant, or her heirs or assigns, of any of the restrictions contained herein, the Trust shall have the right to proceed at law or in equity to compel compliance with the terms hereof to prevent violation or breach. In such event the Trust shall have the right to recover its costs, including reasonable legal fees, incurred in connection with the enforcement of its rights hereunder through litigation, subject, nevertheless, to a judicial determination that the Trust acted reasonably and in good faith in prosecuting such litigation.

6. Reservations. Declarant expressly reserves for herself, her heirs and assigns, every use and enjoyment of the Property, in any manner not inconsistent with the provisions of this Declaration. The rights granted hereunder shall be subject to all agreements, easements, covenants, restrictions, liens and encumbrances presently of record. In no event shall any person or entity other than the Trust (or successor to the Trust in accordance with the terms of this Declaration) be deemed to have acquired any rights with respect to the Property by virtue of this Declaration nor is it intended hereby that any member of the public shall acquire or exercise any rights with respect to the Property, including without limitation, any rights of enforcement, access or entry.

7. Miscellaneous Provisions.

a. Captions. The captions appearing in this Declaration are inserted only as a matter of convenience and as a reference and in no way define, limit or describe the scope or intent of this Declaration or any provisions hereof.

b. Governing Law. This Declaration shall be governed by and enforced in accordance with the internal laws of the State of Connecticut.

c. Waiver, Discharge, Etc. The failure to enforce or waiver by the Trust of a breach hereunder shall not be deemed a waiver of any current or any subsequent breach hereunder nor in any way affect the validity of this Declaration or any part thereof.

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d. Gaps. In the event this Declaration does not in fact include all the terms and conditions necessary or appropriate for the implementation and continued integrity and vitality of easements and covenants included herein, the Connecticut law regarding "gapfillers" shall apply. Therefore, in the event a party becomes aware of a missing or incomplete term or condition, that party shall then promptly give proper written notice to the other party and work with the other party in accordance with the principle of mutual covenants to resolve the "gap."

e. Taxes. Declarant, her heirs and assigns, agree to pay any real estate taxes or assessments levied by competent authorities on the Property, and to relieve the Trust from responsibility of maintaining the Property.

f. Notices. Any notices to be given under this Declaration shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, or by overnight courier service requiring a receipt for delivery, addressed to the party to whom intended at such party's address as set forth herein. Each notice shall be deemed given one (1) day after mailing. Any party may change its address for purpose of notice by giving notice in accordance with the provision of this subsection.

g. Entire Declaration and Amendments. This Declaration contains the entire understanding of the parties hereto with respect to the subject matter contained herein and may not be released, discharged, abandoned, changed or modified in any manner, except by an instrument in writing signed by or on behalf of each of the parties hereto or by its duly authorized officers or representatives.

h. Partial Invalidity. Should any covenant or restriction herein contained be judicially declared to be void, invalid or unenforceable for any reason, such adjudication shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

i. Declaration Bindee on Grantee. Each deed or other instrument conveying any interest in the Property or any portion thereof shall specifically make reference to this Declaration; provided nevertheless that each recipient of any such interest in the Property, whether or not the deed or other instrument of conveyance shall so refer to this Declaration, shall be deemed to covenant on behalf of such recipient, and such recipient's heirs, or successors, and assigns, to be bound by this Declaration and to refer to the same in any deed or other conveyance of such recipient's interest in the Property.

8. Right of Entry. The Trust shall have the right to enter the Property at times reasonably convenient to the owner thereof and with reasonable prior notice, for the purposes of: (a) inspecting the Property to determine if the Declarant, or her heirs or assigns, is complying with the covenants and purposes of this Declaration, and (b) enforcing the terms of this Declaration.

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9. Prohibited Uses. There shall be no construction or placing of (a) any aircraft landing strip, helipad or comparable improvement for aircraft purposes, or (b) any telecommunications tower(s), satellite dish(es) for commercial use or other similar devices on the Property.

10. Counterparts. This Declaration may be executed in counterpart copies which shall, taken together, comprise an original executed document.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first above set forth.

Signed, sealed and delivered
in the presence of:

Robert A. Boon

Paul F. Boon

DECLARANT:

Donna Brace Gilvie (L.S.)
DONNA BRACE GILVIE

Above Declaration Hereby Accepted:

THE GREENWICH LAND TRUST, INC.

Nancy Pierson
Nancy Pierson
Debbie Young
Debbie Young

By: David A. Kelly (L.S.)
Name: DAVID A. KELLY
Title: RECTOR
Address: P.O. Box 1152
Greenwich, CT 06836

DECLARATION OF CONSERVATION EASEMENT (Continued)

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STATE OF Connecticut)
COUNTY OF Fairfield) ss. Quesside

On this the 23rd day of September, 2000, before me the undersigned officer, personally appeared Donna Brace Ogilvie, known to be (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledge that she executed the same for the purposes therein contained, by signing her name as her free act and deed.

In Witness Whereof I hereunto set my hand.

Ann V. Krupnik
Notary Public/Commissioner of the Superior Court

STATE OF Connecticut)
COUNTY OF Fairfield) ss. ANN V. KRUPNIK
Notary Public, State of Connecticut
My Commission Expires March 31, 2001

On this the 7th day of October ~~September~~, 2000, before the undersigned officer, personally appeared David A Kelly, who acknowledged himself to be the Treasurer of The Greenwich Land Trust, Inc., a Connecticut corporation, and that, as such Treasurer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Treasurer as his and its free act and deed.

In Witness Whereof I hereunto set my hand.

John J. Waldron
Notary Public/Commissioner of the Superior Court

JOHN J. WALDRON
NOTARY PUBLIC OF CONNECTICUT
My Commission Expires 7/31/2004



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SCHEDULE A

Legal Description

FIRST TRACT: All those certain tracts of land, with the buildings and improvements thereon, situate at Riverside in the said Town of Greenwich, and being know and designated as Lots Nos. 25, 27, 29, 31, 32 and 33 on a certain map entitled "Willowmere, Map of Property owned by Geo. E. & Wm. L. Marks, Riverside, Sound Beach, Conn.", numbered 648, on file in the Town Clerk's office in said Town of Greenwich.

SECOND TRACT: All that certain piece, parcel or tract of land, with any buildings and improvements thereon, lying in the Town of Greenwich and State of Connecticut, in Willowmere, so-called, and bounded and described as follows:

Beginning at a point formed by the intersection of the easterly and northerly boundary lines of Lot No. 25 as shown and designated on a certain map on file in the office of the Town Clerk of said Greenwich as map number 648 and entitled "Willowmere Map of property owned by Geo. E. & Wm. L. Marks", thence easterly through West Lake Avenue, as designated on said map number 648, south 63° 53', east 50.15 feet to an iron pipe at or near the western edge of Willowmere Lake, as designated on said map number 648; thence southerly along the western edge of said Lake south 24° 55' 30" west 217.89 feet to another iron pipe at or near edge of said lake; thence south-westerly through said West Lake Avenue and/or Rocky Point Avenue as designated on said map number 648, south 50° 38' West 77.75 feet to the extension eastward of the southerly boundary line of lot No. 29 as designated on said map number 648; thence westerly along said extension eastward of said southerly boundary line of lot No. 29 23.05 feet along a curve bearing to the right with a radius of 694.1 feet to the intersection of the southerly and easterly boundary lines of said lot number 29; thence along the easterly boundary lines of lots number 29, 27 and 25, respectively, as designated on said map number 648, north 26° 07' east 294.01 feet to said point or place of beginning. Said tract is bounded Northerly by West Lake Avenue, Easterly by the waters of Willowmere Lake, Southeasterly in part by West Lake Avenue and/or Rocky Point Avenue and in part by the waters of Long Island Sound, Southerly by the waters of Long Island Sound and Westerly by said lots number 29, 27 and 25 respectively, now or formerly owned by Donald C. Brace. Said tract comprises in area 0.323 acres and is more particularly shown on a certain map to be filed in the office of the Town Clerk of said Greenwich entitled "Property to be conveyed to Donald C. Brace, Riverside, Greenwich, Conn.", certified substantially correct by J. W. Cono for S. E. Minor & Co., Inc., Civil Engineers, Greenwich, Conn.

Received for Record OCT 13 2000 at 1 h 59 m P

M. and recorded by

Thomas J. Sullivan
Town Clerk