

**CONSERVATION EASEMENT    [#3]**

**Dated 9/2/94. Covers lands at the western end of the Borough which was recorded in Volume 320 at page 245 of the O.S. land records (Hudson & Kilby code is "Fen.ce3")**

KNOW ALL MEN BY THESE PRESENTS, that the BOROUGH OF FENWICK, a municipal corporation located in the Town of Old Saybrook, County of Middlesex, and State of Connecticut (hereinafter, the "Grantor"), for the consideration of One Dollar (\$1.00) and other valuable consideration received to its full satisfaction of the LYNDE POINT LAND TRUST, INC., a Connecticut corporation having its principal place of business in the Borough of Fenwick, Town of Old Saybrook, County of Middlesex, and State of Connecticut (hereinafter, the "Grantee"), does give, grant, and convey unto the said LYNDE POINT LAND TRUST, INC., its successors and assigns forever, the following:

**A conservation easement to have all the force and effect of a "conservation restriction" as defined by Section 47-42a of the Connecticut General Statutes for the purpose of retention of the hereinafter-described land predominantly in its present scenic and open condition and for parkland and open space use in perpetuity.**

The land subject to this conservation restriction consists of those pieces and parcels of land located in the Borough of Fenwick in the Town of Old Saybrook, County of Middlesex, and State of Connecticut, which are described as follows:

All those certain pieces or parcels of land, situated in the Borough of Fenwick in the Town of Old Saybrook, County of Middlesex, and State of Connecticut, as shown on a certain map or plan entitled: "Map of New Saybrook Scale, about 420 feet to one inch Wm. R. Clark, C.S." being the same plan sometimes referred to as "Map of New Saybrook No. 2," on file in the office of the Town Clerk of Old Saybrook, which are shown as follows:

Lots Nos. 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, and 281.

Such other areas shown on said map as follows:

(a) The undesignated tract located in the northwesterly portion of the Borough of Fenwick, generally bounded as follows:

Southerly: by Lots Nos. 274, 275, 273, 276 and the westerly half of Lot No. 277, and by the northerly end of undesignated roads running between Lots Nos. 274 and 275 and between Lots Nos. 276 and 277, as shown on said map;

Easterly: by another undesignated tract of land, as shown on said map;

Westerly and

Northerly: by other lands not in the Borough of Fenwick; and

Northeasterly: by a six (6) feet wide strip of land running along the South Cove.

The said tract includes that part of an undesignated street lying north of Lots Nos. 274, 275, 273, 276 and the westerly half of Lot No. 277.

(b) The undesignated tract located in the northwesterly part of the Borough of Fenwick, generally bounded as follows:

Southeasterly: by Maple Avenue;

Southwesterly: by another undesignated tract of land, as shown on said map;

Northeasterly: by a six (6) feet wide strip of land running along the South Cove; and

Northerly: by Lots Nos. 278, 279, 280, and 281.

(c) An undesignated street running between Lots Nos. 274 and 275, from the southerly line of such lots in a northerly direction to the end thereof.

(d) An undesignated street running between Lots Nos. 276 and 277, from the southerly line of Lot No. 276 in a northerly direction to the end thereof.

AND EXCEPTING THEREFROM the following parcel of land, which is hereinafter referred to as the "Excepted Area":

All that certain parcel of land, being the northerly portion of the undesignated tract described in (a) above, which is bounded as follows:

Northerly and

Northeasterly: by the said six (6) feet wide strip of land running along the South Cove;

Easterly and

Southerly: by a line which runs through a metal stake located on the westerly side of the access road leading to the former "dump" area and runs easterly from such stake to the said six feet wide strip running along the South Cove and runs westerly from such stake along the northern edge of a well defined trail to said other lands not in the Borough of Fenwick; and

Westerly: by the said other lands not in the Borough of Fenwick.

**Within the said areas of land subject to such conservation restriction, without prior express written consent from the Grantee:**

1. There shall be no construction or maintenance of buildings, camping accommodations, mobile homes, or other structures, and no installation of billboards, signs, or other advertising material, other than those structures and signs specifically permitted pursuant to subparagraphs (a) and (c) below;

2. There shall be no filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, nor any change in the topography of the land in any manner, except to the extent necessary to conduct any activities specifically permitted below;

3. There shall be no removal, destruction or cutting of trees or plants, spraying with biocides, herbicides, or other agents inimical to plant, animal or insect life, grazing of domestic or farm animals, or disturbance or change in the natural habitat in any manner, except to the extent necessary to conduct any activities specifically permitted below;

4. There shall be no dumping of ashes, trash, garbage, or other unsightly or offensive material;
5. There shall be no manipulation or alteration of natural water courses, shores, marshes or other water bodies or activities or uses detrimental to water purity, except to the extent necessary to conduct any activities specifically permitted below;
6. There shall be no operation of motorized vehicles, including snowmobiles, dunebuggies, and all-terrain vehicles, except to the extent necessary to conduct any activities specifically permitted below;
7. There shall be no hunting or trapping except to the extent necessary to keep the animal population within the numbers consistent with the ecological balance of the area or to promote or protect the public health or prevent the spread of disease;
8. There shall be no construction, improvement, or upgrading of roads, cartpaths, or footpaths except as necessary to maintain existing roads, cartpaths, and footpaths in their current condition or to conduct any activities specifically permitted below; and
9. Prior to undertaking any changes in the use of the property, the owners of the servient tenements shall consult with the Grantee regarding the proposed changes to determine the effect of such changes on the natural values being protected on the property. Grantee shall have the right to approve such changes in use, but such approval shall not be unreasonably withheld.

**The provisions of the preceding restrictions notwithstanding, the following uses and activities by the Grantor, and its successors and assigns, and any work or activity otherwise prohibited by the preceding restrictions which is reasonably necessary or appropriate in connection with such uses or activities, shall not be prohibited by this Conservation Easement or considered inconsistent with the intent of this grant and are specifically permitted:**

- (a) The construction, reconstruction, expansion, maintenance, use, and operation of a golf course, including any structures, paths, walks, roads, driveways, ponds and other water bodies, and other facilities appurtenant thereto, and including the use of biocides, herbicides, or other chemical treatments reasonably necessary or appropriate in connection with the use, maintenance, construction, or operation of such golf course;
- (b) The construction, maintenance and use of borough roads, public and private access roads, unsurfaced or unpaved pedestrian trails, and unpaved paths in a manner that does not interfere with the conservation purposes of this grant;
- (c) The placement of signs for purposes of public safety and/or traffic control, indicating the ownership of the premises, or indicating rules and restrictions relating to the use of the premises;
- (d) Mowing of grass, cutting or burning of vegetation, and spraying or treatment for the control of insects consistent with sound and established principals for the management of natural areas or necessary for preservation of public health and safety;
- (e) Installation, use, maintenance, repair, and replacement of utility lines and of wells and the construction, installation, use, maintenance, repair, and replacement of lines, pipes, and facilities, including pumping facilities, related thereto, provided, however, that such lines and pipes shall be located underground when this is reasonably possible and such lines, pipes, and facilities shall be located, designed, and constructed in a manner which is as consistent as possible with the purposes of this grant; and

(f) Use and operation of motor vehicles to access the Excepted Area.

Except for such restrictions, such parcels may be used without hindrance by the owners of the servient tenements. This grant of Conservation Easement is intended to encompass the powers and rights granted pursuant to Section 47-42a through 47-42c of the Connecticut General Statutes as they may be amended from time to time, and the Grantee is hereby granted the right to enforce by proceedings at law or in equity the covenants hereinabove set forth, including, but not limited to, the right to require restoration of the Conservation Easement area to its condition immediately prior to any violation of the restrictions herein contained. The failure of the Grantee to act in any one or more instances to enforce such rights shall not act as a waiver or forfeiture of its rights to take action as may be necessary to insure compliance with the covenants and purposes of this grant; provided, however, nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantor or the owners of the servient tenements for any changes to the Conservation Easement area due to causes beyond the Grantor's or such owner's control, such as changes caused by fire, flood, storm or the unauthorized wrongful acts of third parties. Notwithstanding the provisions of the immediately preceding sentence, the Grantor agrees to take reasonable steps to prevent wrongful acts by third parties.

In the event that the Grantee becomes aware of an event or circumstance of noncompliance within the terms and conditions herein set forth, the Grantee shall give notice of such event or circumstance of noncompliance by certified mail, return receipt requested, to the owner of the servient tenement of the property involved at its last known post office address, such notice to contain a request for corrective actions reasonably required to abate such event or circumstance of noncompliance and restore the Conservation Easement area to its previous condition.

Failure by the said owner of the servient tenement to whom notice has been given to cause discontinuance or abatement or to undertake such other action as may be reasonably requested by the Grantee within thirty (30) days after receipt of notice shall entitle the Grantee to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement to require the restoration of the property to its prior condition, to enjoin such noncompliance by ex parte temporary or permanent injunction in a court of competent jurisdiction, or to recover any damages arising from such noncompliance. Such damages, when and if recovered, may be applied by the Grantee in its discretion to corrective action on the Conservation Easement area, if necessary.

If a court of competent jurisdiction determines that an owner of the servient tenement has failed to comply with the terms and conditions of this Conservation Easement, the said owner shall reimburse the Grantee for any reasonable cost of enforcement, including court costs and reasonable attorneys' fees, in addition to other payments ordered by such court. If such court determines that the said owner was in compliance with the terms and conditions of this Conservation Easement, the Grantee shall reimburse such owner for court costs and reasonable attorneys' fees. The Grantor, for itself and all subsequent owners of the servient tenements, hereby waives any defense of laches with respect to any delay by the Grantee, its successors and assigns, in actions to enforce any restriction or exercise any rights under this grant.

The Grantor, and its successors in title as owners of the servient tenement of the property involved, shall indemnify and hold harmless the Grantee, and its successors and assigns, from and with respect to any causes of action, judgments, damages, claims, or demands made against the Grantee, or its successors and assigns, by virtue of or related to its capacity as grantee hereof or holder of any rights hereunder.

In the event of a condemnation or other taking of the property which is subject to this Conservation Easement, or any portion thereof or interest therein, whether the same results in a total or partial taking, it is agreed that a portion of any award or payment of damages shall be paid to the Grantee, its successors or assigns, in such proportionate share of the total award or payment for damages as may be determined to be appropriately allocable to the Grantee's interests in such property if such condemnation or taking is to result in or be followed by development (e.g. erection and/or use of structures or facilities) and/or

any other active use of the property in a manner inconsistent with the terms of this grant. If the condemnation or taking is to result in or be followed by a use which is consistent with the terms of this grant, then the Grantee shall not receive any share of the award or damages.

The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable, and the Grantee hereby covenants and agrees that, in the event the Grantee transfers or assigns the easement it holds hereunder, the organization or entity receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, which is organized and operated primarily for one of the conservation purposes defined in Section 170 (h)(4)(A) of the Internal Revenue Code, and further covenants and agrees that Grantee will undertake its best efforts to ensure that the terms of such transfer or assignment will require the transferee or assignee to continue to carry out in perpetuity the conservation purposes which the Conservation Easement was originally intended to advance. The parties agree that the terms "Grantor" and "Grantee", whenever used in this grant, refer to the parties and their respective successors and assigns.

This instrument shall be recorded on the land records of the Town of Old Saybrook and shall be governed by the laws of the State of Connecticut. In the event that any provision or clause of this instrument conflicts with any applicable law, such conflict shall not affect other provisions of this instrument which can be given effect without the conflicting provision, and, to this end, the provisions hereof are declared to be severable.

TO HAVE AND TO HOLD the above granted rights, privileges and authority unto the said Grantee, its successors and assigns, and to its and their own proper use and behoof.

IN WITNESS WHEREOF, the said BOROUGH OF FENWICK has hereunto caused these presents to be executed this 2nd day of September, 1994.

Witnessed by:

\_\_\_\_\_  
W. Campbell Hudson, III

BOROUGH OF FENWICK

By: \_\_\_\_\_

Peter Bulkeley  
Its Warden

\_\_\_\_\_  
David L. Silvian

STATE OF CONNECTICUT)  
 ) ss. Essex  
COUNTY OF MIDDLESEX )

This foregoing instrument was acknowledged before me this \_\_\_\_ day of September, 1994, by PETER BULKELEY, Warden of the BOROUGH OF FENWICK, a municipal corporation, on behalf of such municipal corporation.

\_\_\_\_\_  
W. Campbell Hudson, III  
Commissioner of the Superior Court

ACCEPTANCE BY GRANTEE

The foregoing Conservation Easement is accepted by the Lynde Point Land Trust, Inc.

Dated: September , 1994      LYNDE POINT LAND TRUST, INC.

By: \_\_\_\_\_

Sallie P. Boody

Its President