

## CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT, made and executed this \_\_\_\_ day of \_\_\_\_\_, 2022, by INDIAN RIVER LAND TRUST, INC., a Florida not-for-profit corporation, whose mailing address is 80 Royal Palm Pointe, Suite 301, Vero Beach, FL 32960, hereinafter called Grantor, to INDIAN RIVER COUNTY, a political subdivision of the State of Florida, whose mailing address is 1801 27th Street, Vero Beach, Florida 32960, hereinafter called Grantee,

### WITNESSETH:

**WHEREAS**, Grantor is the fee simple owner of certain real property situated in Indian River County, Florida described in Exhibit A and shown on Exhibit B attached hereto; and

**WHEREAS**, the establishment of a conservation easement is required by the Grantee as a condition of approval of the Liberty Park Planned Development Traditional Neighborhood Design (PDTND 2004110163-53297/PD-06-06-06).

**WHEREAS**, Grantor finds that it is appropriate to retain certain land or water areas on Grantor's property in their natural, scenic, open, wooded condition; retaining such areas as suitable for habitat for fish, plants, or wildlife;

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants, terms and conditions and restrictions contained herein, Grantor does grant a conservation easement, hereinafter called Conservation Easement, upon and across that real property, hereinafter called the Property, described in Exhibit "A" to Grantee which Conservation Easement shall run with the land and be binding upon the owner, its heirs, successors and assigns, and remain in full force and effect, enforceable by the Grantee either by injunction or proceeding in equity or at law.

1. Purpose. The purpose of this Conservation Easement is to conserve and protect the important conservation values of the Property including the wildlife habitat and ecological characteristics, as well as protecting the general natural character of the Property, open and scenic character as seen from Indian River Boulevard and the Indian River Lagoon, and fostering landscape-scale conservation, reducing land fragmentation, and establishing potential wildlife habitat corridors.

2. Reserved Rights of Grantor. Grantor reserves for its successors in interest with respect to the Property, all rights with respect to the Property except as provided herein, including, without limitation, the right of exclusive use, possession and enjoyment of the Property, and the right to sell, transfer, lease, mortgage or otherwise encumber the Property, subject to the restrictions and covenants set forth in this Conservation Easement. Nothing contained in this Conservation

Easement shall be construed as a grant to the general public or to any other person or entity, of any right to enter upon any part of the Property, except as necessary by Grantee to enforce this Conservation Easement.

3. Prohibited Uses of Property. The following uses and activities are prohibited on the Property.

- (a) development for residential, commercial or industrial purposes.
- (b) except as provided in Section 4 herein, constructing or placing of buildings, roads, signs, billboards or other advertising, and utilities, or other structures on or above the ground, including but not limited to boat docks, sheds, pavilions, playground and sports equipment, and restrooms.
- (c) dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials.
- (d) removal or destruction of trees, shrubs, or other vegetation except as provided in Section 4 herein.
- (e) excavation, dredging or removal of loam, peat, gravel, soil, rock or other material substance in such manner as to affect the surface except as provided in Section 4 herein.
- (f) activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.

4. Permitted Uses and Improvements of Property. Grantor reserves the right for certain passive recreational and educational uses not detrimental to the health of the ecological system, including but not limited to trails for walking and bicycling, fishing, educational tours and workshops paddle sports, and wildlife research and viewing. No permanent or temporary structures or other improvements shall hereafter be placed or maintained on the Property, except as specifically provided for below. All permitted structures and improvements must be located and constructed so as to minimize their potential negative impacts (including soil erosion) on the Property's conservation values and the purposes of this Conservation Easement.

- (a) Structures and Improvements. Recreational and educational structures and improvements, including a kayak launch, observation platforms, boardwalks, wildlife observation blinds, and research/education storage boxes are permitted, with approval of Grantee in accordance with Section 5 herein, subject to local and state permitting, provided each is limited to 400 square feet in foot print or less, and less than 25 feet in height. Boardwalks and trails are not subject to the 400 square foot size limitation. With approval of Grantee in accordance with Section 5 herein, new roads, including an ingress and egress road from Indian River Boulevard into the Property, may be built on the Property. Additionally, a road may be extended from the Property to Grantor's adjoining properties,

with approval of Grantee in accordance with Section 5 herein, to accommodate changes that may result from the reconfiguration of Indian River Boulevard and its intersection with 37<sup>th</sup> Street.

(b) Habitat Management Structures and Improvements. Habitat management structures and improvements are permitted, including but not limited to nesting platforms and boxes, mosquito control water pumps and associated security fencing, culverts and other water control structures may be erected with 30-days' notice to Grantee, subject to local and state permitting, but are limited to 400 square feet in foot print or less. Upland and wetland restoration and living shoreline projects may be implemented with approval of Grantee in accordance with Section 5 herein, subject to local and state permitting.

(c) Fences and Signs. New fences, gates, and signs as are normal and customary for the uses permitted in this Conservation Easement may be erected anywhere on the Property, with approval by Grantee in accordance with Section 5 herein, subject to local and state permitting, provided that any fences are constructed, insofar as practicable, to (1) blend with the natural landscape and do not impinge materially on views of the Property from public roads and waterways, and allow for wildlife to readily pass over, under or through, unless said fences are part of an overall management plan for the Property which is consistent with the purposes and intent of this Conservation Easement. A stone wall of historic nature, made with local natural material, may be built along the Property frontage on Indian River Boulevard as an extension to a stone wall from the Grantee's property adjoining the south side of the Conservation Easement Property, with approval of Grantee in accordance with Section 5 herein. Existing fences and walls may be repaired, and replaced anywhere on the Property without notice to Grantee.

(d) Cutting and Clearing of Trees. There shall be no removal, destruction or cutting of non-invasive, native live trees on the Property, except as follows:

(i) without prior notice to Grantee, trees may be removed anywhere on the Property that are non-native and invasive, endanger public safety, are diseased, damaged or fallen, or need to be removed to ensure the health or productivity of other native trees or ecologically important attributes of the Property.

(ii). With approval by Grantee in accordance with Section 5, native trees and vegetation may be removed in connection with a habitat restoration project or the construction of permitted structures or improvements.

(iii) With 30-days' notice to Grantee, Trees may be thinned or trimmed to maintain existing waterways, utility lines, roads, trails, driveways, water exchange culverts, gates, walls or fences and to maintain the overall health of said trees.

5. Notice and Approval. Pursuant to certain actions or activities identified as requiring approval in this Conservation Easement, Grantor shall submit to Grantee sufficient written information, including the proposed location of said action or activity, to allow for a determination by Grantee that such action or activity is in compliance with the Purpose and terms of this Conservation Easement. Grantee may review the proposed location on the Property to confirm that the proposed action or activity is in compliance with this Conservation Easement, and shall notify Grantor as to whether or not the proposal is in compliance with the terms of this Conservation Easement, not more than thirty (30) days from receipt of the notice. If Grantee fails to respond within thirty (30) days, the proposal shall be deemed approved. In approving an action or activity, Grantee may attach such conditions as are reasonably necessary to comply with the Purpose, terms and intent of this Conservation Easement. Any written notice or approval request required or desired to be given under this Conservation Easement by Grantor, and any subsequent response from Grantee, shall be in writing and shall be deemed given when properly addressed and received, or three (3) days after mailing by first class certified mail, or by FedEx or a similar public or private courier service which provides receipt of delivery.

6. Maintenance. This Conservation Easement shall be the perpetual maintenance obligation of the Grantor, and all subsequent owners of the servient estate. The above-stated Conservation Easement shall not transfer to Grantee any of the normal duties and obligations of the Grantor to maintain the fee simple property.

7. Mosquito Management. Notwithstanding any provision to the contrary herein contained, this Conservation Easement shall not preclude the Indian River Mosquito Control District from obtaining year-round access to the property for the purpose of mosquito inspection, treatment, and management.

8. Acts Beyond Grantor's Control. This Conservation Easement shall not be construed to entitle Grantee to bring any legal action against the Grantor for any injury to or change in the Property resulting from natural events beyond the control of the Grantor. Such natural events include fire, flood, storm, earthquake, tornado, landslide or Acts of God, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. This paragraph shall not be construed to relieve the Grantor of the obligation to clean-up garbage or materials dumped on the Property by third parties or to otherwise maintain the Property in a condition consistent with the purposes of this Conservation Easement.

9. Amendment. This Conservation Easement may be amended only upon the written consent of Grantee and the then current Grantor (owner) of the Property.

10. Authority to Convey. Grantor hereby covenants that it is lawfully seized of said servient land in fee simple, and that it has good right and lawful authority to convey the Conservation Easement hereby established, and will defend the same against the lawful claims of all persons whomsoever.

11. Recording. This Conservation Easement shall be recorded and indexed in the same manner as any other instrument affecting the title to real property.

**IN WITNESS WHEREOF**, the Grantor has caused these presents to be executed this \_\_\_\_ day of \_\_\_\_\_, 2022.

Signed in the presence of:

GRANTOR:

sign: \_\_\_\_\_

print name: \_\_\_\_\_

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

title: \_\_\_\_\_

print name: \_\_\_\_\_

sign: \_\_\_\_\_

print name: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me by means of \_\_\_\_\_ online or \_\_\_\_\_ in person notarization this \_\_\_\_ day of \_\_\_\_\_, 2022 by \_\_\_\_\_, the Board Chairman of Indian River Land Trust, Inc., a not-for-profit corporation, on behalf of and as the act and deed of said corporation. He/she is personally known to me or has produced \_\_\_\_\_ (passport/driver's license) as identification.

NOTARY PUBLIC:

\_\_\_\_\_  
printed name: \_\_\_\_\_

Commission No.: \_\_\_\_\_

Commission Expiration: \_\_\_\_\_