

Rec'd 1477.00  
Stamps 24,916.80

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Instrument prepared by and  
Should be returned to the  
County Attorney's Office, 1801 27<sup>th</sup> Street, Vero Beach, FL

**DEED OF CONSERVATION EASEMENT**

**THIS GRANT OF CONSERVATION EASEMENT** is made December 17, 2007, by TRIPLE S LAND COMPANY, whose address is 1925 Lakeside Dr., Orlando, Florida 32803 ("Grantor"), in favor of INDIAN RIVER COUNTY, a political subdivision of the State of Florida, c/o Community Development Department, 1801 27<sup>th</sup> Street, Vero Beach, Florida 32960 ("Grantee").

*The terms "Grantor" and "Grantee" shall include the singular and the plural, and the heirs, successors and assigns of Grantor and Grantee, and the provisions of this easement shall be binding upon and inure to the benefit of Grantor, Grantee and their heirs, successors and assigns.*

**BACKGROUND RECITALS**

A. Grantor is the sole owner in fee simple of certain real property in Indian River County, Florida, more particularly described in Exhibit A attached hereto and incorporated by reference (hereinafter, the "Property").

B. Grantor and the Grantee mutually recognize the special character of the Property and have the common purpose of conserving certain values and character of the Property by conveyance to the Grantee of a perpetual conservation easement on, under, over, and across the Property, to conserve the character of the Property, continue certain farming, ranching and low density residential uses existing at the time of this conservation easement and identified in the baseline documentation or as reserved by Grantor herein that do not significantly impair the character of the Property, and prohibit certain further development activity on the Property.

C. The specific conservation values of the Property are documented in the "Baseline Inventory Report for the Triple S. Land Company Conservation Easement Tract in Indian River County, Florida", dated December 17, 2007 ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant, and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. The Baseline Documentation is maintained in the offices of the Indian River County Community Development Department and is incorporated by this reference. A copy of the Baseline Documentation will be provided to Grantor at closing and will be available from Grantee on request. A copy of a map of the Property as contained within the Baseline Documentation is attached hereto as Exhibit "B" and is incorporated by reference.

D. Grantee is a governmental body authorized under the provisions of section 704.06, Florida Statutes, to hold conservation easements for the preservation and protection of land in its natural, scenic, historical, agricultural, forested, or open space condition.

E. Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and the generations to come.

F. The fact that any use of the Property that is expressly prohibited by the terms of this Easement may become greatly more economically valuable than uses allowed by the terms of this Easement, or that neighboring properties may, in the future, be put entirely to uses that are not allowed by this Easement has been considered by Grantor in granting this Easement and by Grantee in accepting it.

NOW THEREFORE, to achieve the foregoing purposes, and in consideration of \$10.00 and other good and valuable consideration, including but not limited to the above and the mutual covenants, terms, conditions, and restrictions contained herein, the receipt and sufficiency of which is acknowledged, and pursuant to the laws of Florida, and in particular section 704.06, Florida Statutes, but without intending the validity of this Easement to be dependent on the continuing existence of such laws, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Easement" or "Conservation Easement").

**ARTICLE I. DURATION OF EASEMENT**

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land, and is enforceable by Grantee against Grantor, Grantor's personal representatives, heirs, successors and assigns, lessees, agents, and licensees.

**ARTICLE II. PURPOSE OF EASEMENT**

It is the purpose of this Easement to assure that the Property will be retained forever in its natural, scenic, wooded condition to provide a relatively natural habitat for fish, wildlife, plants or similar ecosystems, and to preserve portions of the Property as productive farmland and forest land that sustains for the long term both the economic and conservation values of the Property and its environs, through management guided by the following principles:

- Protection of scenic and other distinctive rural character of the landscape;
- Maintenance and enhancement of native wildlife and game habitat;
- Protection of unique and fragile natural areas and rare species habitats;
- Maintenance of the value of the resource in avoiding land fragmentation;
- Protection of surface water quality, the Floridan Aquifer, wetlands, and riparian areas.

The above purposes are hereinafter sometimes referred to as "the Conservation Purposes". Grantor intends that this Easement will confine the use of the Property to such activities as are consistent with the Conservation Purposes of this Easement and identified in Article V.

**ARTICLE III. RIGHTS GRANTED TO THE GRANTEE**

To accomplish the Conservation Purposes of this Easement the following rights are conveyed to Grantee by this Easement:

A. The right to enforce protection of the conservation values of the Property;

B. All future residential, commercial, industrial and incidental development rights that are now or hereafter allocated to, implied, reserved, or inherent in the Property except as may be specifically reserved to Grantor in this Easement. The parties agree that such rights are hereby terminated and extinguished and may not be used on or transferred to other property. Neither the Property nor any portion thereof may be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage, or open space requirements, under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise, nor shall any development rights or density credits be transferred onto the Property from other property.

C. The right to enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior 48 hours prior notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property. To effectuate the foregoing right, and the Limited Access right granted in Article VII for the benefit of Grantee and the public, as set forth therein, the Grantor has recorded in Official Records Book 2229, Page 650, Public Records of Indian River County, Florida, . that certain "First Amendment to Access Easement Agreement" to amend the "Access Easement Agreement" recorded in Indian River County in Official Records Book 1261, Page 1597

D. The right to prevent any activity on or use of the Property that is inconsistent with the Conservation Purposes or provisions of this Easement and to require the restoration of or to restore such areas or features of the Property that may be damaged by any inconsistent activity or use, at Grantor's cost.

E. The right of ingress and egress to the Property.

F. The right to have the ad valorem taxes, assessments and any other charges on the Property paid by Grantor.

G. A right to notice of intent to sell. The terms of this right are such that if

Grantor intends to sell the Property, or any interest therein or portion thereof, Grantor shall deliver to Grantee notice of such intent, and shall, in good faith, afford Grantee an opportunity to negotiate the acquisition of the Property, or such portion thereof or interest therein that Grantor intends to sell (herein "Grantee's First Negotiation Rights"). If Grantee desires to negotiate the acquisition of the Property, or such portion thereof or interest therein, Grantee shall so notify Grantor within 30 days after receipt of Grantor's notice of intent. If Grantor and Grantee are unable, in good faith to agree to terms of an acquisition of the Property, or such interest therein or portion thereof as applicable, within 120 calendar days thereafter, Grantee shall send written notice thereof to Grantor ("Paragraph G Notice"). Thereafter, Grantor may sell the Property free of Grantee's First Negotiation Rights granted herein; provided, however, that closing on such sale shall occur within one year of the date of the Paragraph G Notice. If the Property, or such portion thereof or interest therein as is applicable, has not sold within one year after the Paragraph G Notice, then any intent to sell the Property thereafter shall require renewed notice to Grantee, and Grantee shall comply with the notice obligations imposed herein. This right of notice shall not be triggered by sales or transfers between Grantor and lineal descendants of Grantor or entities in which Grantor owns a majority of the controlling interests. The right of notice granted herein applies to the original Grantor and to said original Grantor's successors and assigns. Any purchaser or transferee takes title to the fee encumbered by this Conservation Easement.

G.1. Grantee acknowledges that there currently exists a Right of First Refusal dated March 1, 1999 between Triple "S" Cattle Company, a Florida corporation, predecessor in interest to Grantor hereunder and Padgett Creek LLC, evidenced by that certain Notice of Right of First Refusal, dated March 4, 1999, and recorded in Official Records Book 1261, Page 1607, Public Records of Indian River County, Florida (the "Right of First Refusal"). The Right of First Refusal remains in full force and effect as of the date of the execution of this Deed of Conservation Easement. Grantee further acknowledges that Grantee's First Negotiation Rights are subordinate to the Right of First Refusal. Grantor and Grantee acknowledge and agree that, solely for the purpose of granting this Conservation Easement, the Property shall be released and discharged from the Right of First Refusal as more specifically set forth in that certain "Partial Release Of Lands Subject To Notice Of Right Of First Refusal" executed in recordable form by and between Grantor hereunder and Padgett Creek LLC and recorded in Official Records Book 2229, Page 643, Public Records of Indian River County, Florida. Thereafter, any purchaser or transferee under the Right of First Refusal takes title to the fee encumbered by this Conservation Easement.

G.2. In the event Grantee acquires fee interest in the Property, this Conservation Easement shall not merge into the fee simple estate, and Indian River County as Grantee covenants to take all necessary steps to assure that the estates do not merge.

H. The right to be indemnified by Grantor for any and all liability, loss, damage,

expense, judgment or claim (including a claim for attorney fees) arising out of any negligent or willful action or activity resulting from the Grantor's use and ownership of or activities on the Property or the use of or activities of Grantor's agents, guests, lessees or invitees on the Property unless solely due to the negligence of Grantee or its agents, in which case liability shall be prorated accordingly. Pursuant to Florida Statutes section 704.06(10)(2006), the ownership or attempted enforcement of rights held by Grantee does not subject the Grantee to any liability for any damage or injury that may be suffered by any person on the Property or as a result of the condition of the Property encumbered by a Conservation Easement. Further, nothing in this Conservation Easement shall be deemed or construed as a waiver of the sovereign immunity of Indian River County as Grantee.

I. The right to be indemnified by Grantor for any liability for injury or property damage to persons on the Property arising out of any condition of the Property known to the Grantor to the best of Grantor's knowledge unless solely due to the negligence of Grantee or its agents, in which case liability shall be prorated accordingly. Pursuant to Florida Statutes section 704.06(10)(2006), the ownership or attempted enforcement of rights held by Grantee does not subject the Grantee to any liability for any damage or injury that may be suffered by any person on the Property or as a result of the condition of the Property encumbered by a Conservation Easement. Further, nothing in this Conservation Easement shall be deemed or construed as a waiver of the sovereign immunity of Indian River County as Grantee.

J. The right to have the Property maintained as reflected on the Baseline Documentation, as the Property may develop through the forces of nature hereafter, subject only to the exercise of Grantor's Reserved Rights, and the Rights Granted to the Grantee, as described in this Easement.

K. If Grantor fails to cut and remove timber damaged by natural disaster, fire, infestation or the like, then Grantee has the right, but not the duty,, in its sole discretion to cut and remove said timber. Any such cutting and removal by Grantee shall be at the expense of Grantee and all proceeds from the sale of any such timber shall inure to the benefit of Grantee.

#### **ARTICLE IV. PROHIBITED USES**

The Property shall be maintained to preserve the Conservation Purposes of this Easement. Without limiting the generality of the foregoing Grantor agrees that the following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are expressly prohibited or restricted:

A. No soil, trash, liquid or solid waste (including sludge), or unsightly, offensive, or hazardous materials, wastes or substances, toxic wastes or substances, pollutants or contaminants, including, but not limited to, those as now or hereafter defined by federal or Florida law defining hazardous materials, wastes or substances, toxic wastes or substances, pollutants or contaminants shall be dumped or placed on the Property.

This prohibition shall not be construed to include reasonable amounts of waste generated as a result of allowed activities.

B. The exploration for and extraction of oil, gas, minerals, dolostone, peat, muck, marl, limestone, limerock, kaolin, fuller's earth, phosphate, common clays, gravel, shell, sand and similar substances (all of the foregoing, collectively, "Minerals") either directly or indirectly by Grantor or on Grantor's behalf or with the joinder or consent of Grantor in any application for a permit so to do, under and by virtue of the authority of a grant or reservation or other form of ownership of or interest in or control over or right to such substances, except as reasonably necessary to combat erosion or flooding, or except as necessary and lawfully allowed for the conduct of allowed activities. As the holder of this Conservation Easement, Grantee acknowledges that it has no right to explore for or extract any Minerals from the Property..

C. Activities that will be detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and native wildlife habitat preservation unless otherwise provided in this Easement. There shall be no dredging of new canals, construction of new dikes, manipulation of natural water courses, or disruption, alteration, pollution, depletion, or extraction on the Property of existing surface or subsurface water flow or natural water sources, fresh water lakes, ponds and pond shores, marshes, creeks or any other water bodies, nor any activities or uses conducted on the Property that would be detrimental to water purity or that could alter natural water level or flow in or over the Property. Provided, however, Grantor may continue to operate, maintain, or replace existing ground water wells incident to allowed uses on the Property, subject to legally required permits and regulations.

D. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of any portions of the Property having historical or archaeological significance. Grantor shall notify the Florida Department of Historical Resources or its successor ("FDHR") if historical, archaeological or cultural sites are discovered on the Property, and any sited deemed to be of historical or archaeological significance shall be afforded the same protections as significant sites known to exist at the time of entering into this easement. Grantor will follow the Best Management Practices of the Division of Historic Resources, as amended from time to time.

E. The removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of trees, shrubs or other natural vegetation, including but not limited to cypress trees, except as otherwise specifically provided in this Easement. There shall be no planting of nuisance exotic or non-native plants as listed by the Exotic Pest Plant Council (EPPC) or its successor. The Grantor shall, to the extent practical, control and prevent the spread of nuisance exotics or non-native plants on the Property. Grantor hereby grants to Grantee the right, in Grantee's sole discretion and at Grantee's expense, to develop and implement an exotic plant removal plan for the eradication of exotics or non-native plants on the Property. Under no circumstances, shall this right conveyed to Grantee be construed to diminish Grantor's responsibilities under this paragraph or as an obligation of the Grantee.

F. Commercial or industrial activity, or ingress, egress or other passage across or upon the Property in conjunction with any commercial or industrial activity including but not limited to, swine, dairy and poultry operations and confined animal feed lot operations.

G. New construction or placing of temporary or permanent buildings, mobile homes or other structures in, on or above the ground of the Property except as may be necessary by Grantor for maintenance or normal operations of the Property or during emergency situations or as may otherwise be specifically provided for hereinafter. For purposes of this paragraph the term "emergency" shall mean those situations that will have an immediate and irreparable adverse impact on the Conservation Purposes.

H. The construction or creation of new roads or jeep trails except as reserved hereafter.

I. There shall be no operation of motorized vehicles except on established trails and roads unless necessary: (i) to protect or enhance the purposes of this Easement, (ii) for emergency purposes, (iii) for cattle ranching purposes, (iv) to retrieve game that has been hunted legally, and (v) for other uses reserved by Grantor in this agreement

J. Areas currently improved for agricultural activities as established by the Baseline Documentation may continue to be used for those activities. Areas that are currently in improved pasture as depicted in the Baseline Documentation shall not be converted to more intense agricultural use except as reserved hereafter. Lands that are depicted in the Baseline Documentation as being natural areas shall remain natural areas.

K. Actions or activities that may reasonably be expected to adversely affect threatened or endangered species.

L. Any subdivision of the land except as may otherwise be provided in this Easement.

M. There shall be no signs, billboards, or outdoor advertising of any kind erected or displayed on the Property, except that Grantee may erect and maintain signs designating the Property as land under the protection of Grantee, signs that identify the property, and signs relating to the uses on the Property.

N. There shall be no commercial water wells on the Property.

O. There shall be no commercial timber harvesting on the Property except as reserved hereafter.

P. There shall be no wireless telecommunication tower facilities on the Property.

## ARTICLE V. GRANTOR'S RESERVED RIGHTS

Grantor reserves to Grantor, and to Grantor's personal representatives, heirs, successors, and assigns, the following specified rights, which are deemed to be consistent with the purpose of the Easement. The exercise of the Reserved Rights shall be in full accordance with all applicable local, state and federal law, as amended from time to time, as well as in accordance with the purposes of this Easement.

A. The right to observe, maintain, photograph, introduce and stock native fish or native wildlife on the Property, to use the Property for non-commercial hiking, camping, and horseback riding and similar activities consistent with the Conservation Purposes of this Conservation Easement, so long as the same do not constitute a danger to Grantee's employees, agents, officers, and invitees, and so long as such activities do not violate any of the prohibitions applicable to the Property or Grantee's rights, as stated above. Without limiting the generality of the foregoing, Grantor has the specific reserved right to use the Property for native wildlife mitigation, provided, however, that any and all native wildlife mitigation is accomplished solely in accordance with all then-current best management practices of the Florida Fish and Wildlife Conservation Commission, or other successor agency. Grantor reserves, and shall continue to own, the hunting and fishing rights on, or related to, the Property and Grantor may lease and sell privileges of such rights.

B. The right to conduct controlled or prescribed burning on the Property; provided, however, that Grantor shall obtain and comply with a prescribed fire authorization from the local and state regulatory agencies having jurisdiction over controlled or prescribed burning.

C. The right to mortgage the Property; provided, however, that the mortgagee's lien shall be inferior to and lower in priority than this Easement; and further provided that Grantor shall obtain a written, recordable instrument from any such lender or mortgagee, that acknowledges that the Property is encumbered by this Conservation Easement and that any mortgage is subordinate to the Conservation Easement and any mortgagee in possession shall be bound by this Conservation Easement as a successor in interest to Grantor.

D. The right to contest tax appraisals, assessments, taxes and other charges on the Property.

E. The right to continue to use, maintain, repair, reconstruct, or relocate existing buildings, barns, dog pens, outbuildings, fences, roads, ponds, drainage ditches and such other facilities on the Property as depicted in the Baseline Documentation subject to all then applicable development, building, and zoning requirements and restrictions of Indian River County; provided that the right to relocate is limited to areas identified as improved pasture in the Baseline Documentation. In the event of the relocation of buildings, barns, dog pens, outbuildings, fences, roads, ponds, drainage ditches and

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such other facilities, the original site of these facilities shall be returned to pasture or native vegetation by Grantor at Grantor's sole cost and expense. Grantor may construct new fences and facilities related to the grazing of livestock in the improved pasture identified in the Baseline Documentation. Grantor may construct a siloh with a maximum height of 35 (thirty-five) feet on the Property provided it is located in the improved pasture identified in the Baseline Documentation and its location is approved by Grantee, such approval may not be unreasonably withheld. Grantor may enlarge existing buildings, barns, dog pens and outbuildings up to one hundred twenty (120) percent of the footprint as of the date of this Conservation Easement.

F. The right to exclusive use of the improvements depicted in the Baseline Documentation.

G. The right to continue existing agricultural practices as depicted in the Baseline Documentation. It is understood that grazing has occurred throughout the Property and the grazing of cattle, sheep, horses, and other livestock is a reserved right of the Grantor; haying has occurred in the areas identified as Improved pasture in the Baseline Documentation, sod farming has occurred on a limited area of the improved pasture as identified in the Baseline Documentation; and the planting of trees for silviculture purposes has occurred in the improved pasture. Grantor may use commonly accepted fertilizers, pesticides and herbicides only in the improved pasture areas, so long as Grantor uses the foregoing in accordance with agricultural best management practices as may be adopted from time to time by the Florida Department of Agriculture and Consumer Services ("FDACS") or its successor. The planting of trees in the improved pasture for silviculture purposes is reserved by Grantor. Grantor may not cut down trees in the improved pasture unless such trees were specifically planted for silviculture purposes.

H.1. The right to construct two new residences in the area identified as improved pasture in the Baseline Documentation, at least one of which shall be located north of Padgett Creek, and the right to subdivide these two residential parcels into two new tax parcels of twenty (20) acres each subject to approval by Indian River County in accordance with all then applicable subdivision requirements for parcels of twenty (20) acres. Each residence shall be subject to all then applicable development, building, and zoning requirements and restrictions of Indian River County. In such event, Grantor shall prepare and provide to the Grantee a revised legal description of the Property and legal descriptions for the new tax parcels (Revised Exhibit "A") and the revised exhibit shall be recorded as an allowed amendment to this Conservation Easement.

H.2. Each parcel created and each residence shall be subject to all then applicable development, building, and zoning requirements and restrictions. Uses related and accessory to any residence may be established, provided such uses comply with all then applicable development, building, and zoning requirements and restrictions. Upon the Grantor notifying the Grantee of the decision to build a residence, Grantee shall release two (2) acres of the applicable residential parcel from this Conservation Easement encumbrance without additional charges or compensation. The remaining 18

acres shall remain subject to this Conservation Easement. Grantor shall provide a sketch and legal description of the applicable released two (2) acres.

H.3. If the Property is divided into new tax parcels and transferred, as provided herein, and events occur with respect to a transferred portion of the Property that cause Grantee to invoke its rights or remedies, Grantee's rights and remedies shall be limited to the transferred portion of the Property and the owner of such transferred portion. Similarly, if events occur with respect to the retained portion of the Property that cause Grantee to invoke its rights or remedies, Grantee's rights and remedies shall be limited to the retained portion of the Property and the owner of such retained portion.

H.4. New wires, lines, pipes, cables or other linear facilities providing electrical, gas, water, sewer, communications or other utility services to the allowed new or relocated residences may be installed, maintained, repaired, removed, relocated and replaced and Grantor may grant easements over and under the Property for such purposes subject to all then applicable development, building, and zoning requirements and restrictions of Indian River County. Septic or other underground sanitary systems serving the residences permitted herein may be installed, maintained, repaired, or improved in accordance with applicable laws, regulations, and ordinances subject to all then applicable development, building, and zoning requirements and restrictions of Indian River County. For each new or relocated residence Grantor may construct and maintain a permeable road as a driveway if one does not already exist subject to all then applicable development, building, and zoning requirements and restrictions of Indian River County.

#### ARTICLE VI. GRANTEE'S REMEDIES

A. Remedies. If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a 30-day period, fails to begin curing such violation within the 30-day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee, in its sole discretion, determines that circumstances require

immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

**B. Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

**C. Waiver of Certain Defenses.** Grantor hereby waives any defense of estoppel, adverse possession, or prescription.

**D. Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, 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.

**E. Hold Harmless.** Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the obligations specified in paragraph VIII.A. and VIII.B.; and (3) the existence or administration of this Easement.

**F. Grantor's Environmental Warranty.**

F.1. Nothing in this Conservation Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or management control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") or any corresponding state and local statute or ordinance.

F.2. Grantor warrants, at the time this Conservation Easement is executed, that it has no actual knowledge of a release or threatened release of any material, substance or waste now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, (all of the foregoing, collectively, "Hazardous Materials") on the Property, other than those Hazardous Materials now or hereafter lawfully used by Grantor in connection with Grantor's current and future operation and use of the Property as such use and operation are permitted hereunder. Grantor hereby covenants to indemnify and hold Grantee harmless from any and all losses, costs, claims (without regard to its merit), liabilities or expenses (including reasonable attorneys' fees) (all of the foregoing, collectively, "Damages") arising from or with respect to any release of Hazardous Materials or violation of environmental laws.

F.3. Except as permitted to be used or released by Grantor pursuant to Subsection F.2. above, at any time after the effective date of this Conservation Easement there occurs a release in, on, or about the Property of any Hazardous Materials, Grantor agrees to take all steps that may be required under federal, state, or local law necessary to assure its containment and remediation, including any cleanup.

**ARTICLE VII. NO PUBLIC ACCESS**

The granting of this Easement does not convey to the public the right to enter the Property for any purpose whatsoever, and Grantee will cooperate with Grantor in the enforcement of this prohibition. Notwithstanding the foregoing, Grantor will allow bird watching, cultural, and educational outings sponsored by non-profit organizations and schools that are able to provide appropriate supervision, and liability insurance in amounts and coverage sufficient to protect Grantor's interests, in Grantor's discretion (which liability insurance will either insure Grantor directly or will name Grantor as an additional insured) in the maximum number of four (4) outings each year by members of the public (herein "Limited Access") under such conditions, and at such times, that are solely as determined by the Grantor. Grantor and Grantee specifically acknowledge and agree that: (i) multiple temporally-related Limited Access outings occurring within a four (4) consecutive day period shall be aggregated within a specific Limited Access category such that, for example, if all the 5<sup>th</sup> graders in Indian River County schools visit the Property in multiple outings over four (4) consecutive days, all such outings shall be considered as one (1) outing of the four (4) outings allowed per year hereunder; and (ii) the Grantee's Conservation Lands Manager must receive written prior or contemporaneous notice from Grantor of any and all planned or

scheduled Limited Access outings for County tracking purposes; and (iii) the Limited Access outings contemplated in clause (i) may be shared between the Property and the contiguous land known as "Padgett Creek" upon which Grantee also has a conservation easement, and, in such event, the aggregated one (1) Limited Access outing shall be deemed to be one (1) of the allowed four (4) Limited Access outings for both the Property and the Padgett Creek Land.

#### ARTICLE VIII. MISCELLANEOUS

**A. Costs and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate comprehensive general liability coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

**B. Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes") and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized but in no event obligated to make or advance any payment of taxes, upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the maximum rate allowed by law.

**C. Extinguishment.** If circumstances arise in the future such as render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Florida law at the time, in accordance with paragraph VIII.D. Grantee shall use all such proceeds in a manner consistent with the Conservation Purposes of this grant or the purposes of the tax exempt general obligation bond proceeds issued by Indian River County as contemplated by Resolution No. 2005-059 adopted May 17, 2005; Resolution 2004-062 adopted June 22, 2004; and the "2004 Referendum" (as that term is used in the foregoing resolutions 2004 Indian River County referendum), and any other bond or statutory program under which Grantee obtained the purchase money for this Easement. Grantor believes that any changes in the use of neighboring properties will increase the benefit to the public of the continuation of this Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement. In addition, the inability of Grantor to conduct or implement any or all of the uses allowed under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

**D. Proceeds.** This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of paragraph VIII.C., the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

**E. Condemnation.** If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.

**F. Assignment.** This Easement is transferable to the State of Florida or the Indian River Land Trust without consent of Grantor. Grantee may assign its rights and obligations under this Easement to any other governmental entity or nonprofit organization whose purposes include the conservation of land or water areas or the preservation of sites or properties with consent of Grantor. As a condition of such transfer, Grantee shall require that the Conservation Purposes that this grant is intended to advance continue to be carried out.

**G. Subsequent Transfers.** Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which Grantor divests any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity or priority of this Easement or limit its enforceability in any way.

**H. Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed to the parties as set forth above, or to such other addresses such party may establish in writing to the other.

**I. Recordation.** Grantee shall record this instrument and any amendments in timely fashion in the official records of Indian River County, Florida, and may re-record it at any time as may be required to preserve its rights in this Easement.

**J. Non-Homestead Certification.** Grantor hereby certifies that if a Grantor who is married signs this Easement without the joinder of his or her spouse, the Property is neither the homestead of Grantor nor the primary physical residence of Grantor, nor is the Property contiguous to the homestead or primary physical residence of Grantor.

**K. Amendments.** The terms and provisions of this Easement may be amended by the mutual consent of the parties hereto. No amendment shall be effective until executed with the formality of a deed and recorded in the public records.

**L. Controlling Law.** The laws of the State of Florida shall govern the interpretation and performance of this Easement.

**M. Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of section 704.06, Florida Statutes. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

**N. Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

**O. No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

**P. Joint Obligation.** The obligations imposed by this Easement upon Grantor shall be joint and several.

**Q. Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

**R. Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

**S. Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

**T. Recitals** The background recitals are true and correct in form and material part of this Conservation Easement.

**TO HAVE AND TO HOLD** unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the day and year first above written.

Witnesses:  
(sign) [Signature]  
SUSAN P. BARCH

GRANTOR:  
TRIPLE S LAND COMPANY  
By: [Signature]  
H. Varley Grantham, President

Printed name: \_\_\_\_\_

(sign) [Signature]  
Printed name: George P. Graham

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of December, 2007, by H. VARLEY GRANTHAM, President of TRIPLE S LAND COMPANY, a Florida corporation, on behalf of same. He is personally known to me or who has produced FL D.I. as identification.

NOTARY PUBLIC  
Sign: [Signature]  
Printed name: SUSAN P. BARCH  
Commission No.:  
Commission Expiration:  
SEAL:



**GRANTEE'S ACCEPTANCE of DEED OF CONSERVATION EASEMENT**

Indian River County, a political subdivision of the State of Florida, hereby approves the foregoing Conservation Easement and agrees to the terms and provisions thereof.

INDIAN RIVER COUNTY  
BOARD OF COUNTY COMMISSIONERS

By: [Signature]  
SANDRA L. BOYD, CHAIRMAN

Attest: J.K. Barton, Clerk

By:   
Deputy Clerk

Approved as to form and legal sufficiency:

By:   
Marian E. Fell, Assistant County Attorney

**SCHEDULE OF EXHIBITS**

- A. Legal Description of Property Subject to Easement
- B. Map from Baseline Documentation

**EXHIBIT "A"**

**Legal Description of Property**

DECEMBER 6, 2007

**TRIPLE S RANCH DESCRIPTION PREPARED BY THE PROFESSIONAL SURVEYOR AND MAPPER**

"LANDS LYING AND BEING IN SECTION 22, 27 AND 34, TOWNSHIP 32 SOUTH, RANGE 35 EAST OF INDIAN RIVER COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE SOUTHEAST CORNER OF SECTION 22, TOWNSHIP 32 SOUTH, RANGE 35 EAST,

THENCE, RUN NORTH 00°23'02" WEST 82.62 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF STATE ROAD 60;

THENCE, RUN NORTH 51°11'04" WEST, 893.72 FEET ALONG SAID RIGHT OF WAY LINE TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1870.38 FEET;

THENCE, THROUGH A CENTRAL ANGLE OF 13°57'03" ALONG AN ARC DISTANCE OF 455.41 FEET TO THE POINT OF TANGENCY;

THENCE, NORTH 65°08'06" WEST 2,243.06 FEET ALONG SAID RIGHT OF WAY LINE TO A POINT OF INTERSECTION WITH THE CENTER LINE OF A 60 FOOT WIDE INGRESS/EGRESS EASEMENT, AND SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE, ALONG SAID CENTER LINE RUN SOUTH 32°05'21" WEST, 1,208.11 FEET;

THENCE, SOUTH 01°43'40" WEST, 1,091.19 FEET;

THENCE, SOUTH 01°00'40" EAST, 437.17 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 480.09 FEET;

THENCE, THROUGH A CENTRAL ANGLE OF 14°10'28", WITH A CHORD BEARING OF SOUTH 08°05'54" EAST, AN ARC DISTANCE OF 118.77 FEET TO A POINT ON A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 770.69 FEET;

THENCE, THROUGH A CENTRAL ANGLE OF 08°51'30", WITH A CHORD BEARING OF SOUTH 10°45'33" EAST, AN ARC DISTANCE OF 119.14 FEET;

THENCE, SOUTH 06°19'58" EAST, 160.04 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 350.94 FEET;

THENCE, THROUGH A CENTRAL ANGLE OF 19°24'14", WITH A CHORD BEARING OF SOUTH 03°22'06" WEST, AN ARC DISTANCE OF 118.85 FEET;

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THENCE, SOUTH 13°04'10" WEST, 581.91 FEET;

THENCE, SOUTH 24°07'55" EAST, 95.58 FEET;

THENCE, SOUTH 61°19'59" EAST, 1,028.91 FEET;

THENCE, SOUTH 33°00'24" EAST, 105.63 FEET;

THENCE, SOUTH 04°40'49" EAST, 1056.19 FEET;

THENCE, SOUTH 16°41'15" EAST, 451.25 FEET;

THENCE SOUTH 00°21'26" WEST, 1,376.05 FEET;

THENCE, SOUTH 00°44'31" EAST, 5,295.56 FEET TO THE POINT OF TERMINUS OF SAID EASTMENT AND SAID POINT BEING THE 1/4 CORNER OF THE SOUTH LINE OF SECTION 34;

THENCE, SOUTH 89°18'13" WEST, 2,709.86 FEET ALONG THE SOUTH LINE OF SECTION 34 TO THE SOUTHWEST CORNER OF SECTION 34;

THENCE, NORTH 00°46'09" WEST, 5,288.32 FEET ALONG THE WEST LINE OF SECTION 34 TO THE SOUTHWEST CORNER OF SECTION 27;

THENCE, NORTH 00°29'56" WEST, 5,312.61 FEET ALONG THE WEST LINE OF SECTION 27, TO THE SOUTHWEST CORNER OF SECTION 22;

THENCE, NORTH 00°40'09" WEST, 2,764.05 FEET ALONG THE WEST LINE OF SECTION 22 TO A POINT LYING ON THE SOUTH RIGHT OF WAY LINE OF STATE ROAD 60;

THENCE, ALONG SAID RIGHT OF WAY LINE SOUTH 74°59'04" EAST, 852.91 FEET TO A POINT ON A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 2,719.14 FEET;

THENCE, ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09°50'57", WITH A CHORD BEARING OF SOUTH 70°03'15" EAST, AN ARC DISTANCE OF 467.42 FEET;

THENCE, CONTINUE ALONG SAID RIGHT OF WAY LINE SOUTH 65°08'06" EAST, 1,179.67 FEET TO THE TRUE POINT OF BEGINNING.

AND LESS AND EXCEPTING A PORTION OF LAND FOR A SCHOOL SITE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHWEST 1/4; THENCE SOUTHERLY 204 FEET TO A POINT; THENCE EASTERLY 300 FEET TO A POINT; THENCE NORTHERLY 249.60 FEET TO THE SOUTH RIGHT OF WAY OF STATE ROAD 60; THENCE NORTHWESTERLY ALONG SAID RIGHT OF WAY, 311 FEET TO A POINT; THENCE SOUTHERLY 107.90 FEET MORE OR LESS TO A POINT OF

BEGINNING. BEING PART OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 AND A PART OF THE SOUTHWEST 1/4 OF THE NORTHWEST ¼ OF SECTION 22, TOWNSHIP 32 SOUTH, RANGE 35 EAST.

ALSO LESS THE FOLLOWING DESCRIBED PARCEL CONVEYED TO THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION BY THAT CERTAIN WARRANTY DEED RECORDED AUGUST 29, 2000, IN OFFICIAL RECORDS BOOK 1350, PAGE 2577, OF THE PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

PARCEL NO. 102

A PORTION OF LAND LYING IN SECTION 22, TOWNSHIP 32 SOUTH, RANGE 35 EAST, INDIAN RIVER COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A FOUND 4"x 4" CONCRETE MONUMENT WITH A DISC MARKING THE NORTHWEST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 22; THENCE SOUTH 00°31'43" EAST ALONG THE WEST LINE OF THE NORTHWEST 1/4 OF SAID SECTION 22, A DISTANCE OF 758.638 METERS (2,488.96 FEET) TO A POINT ON THE BASELINE OF SURVEY FOR STATE ROAD 60 AS SHOWN ON THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP FOR SECTION 88060-2529; THENCE SOUTH 74°51'20" EAST ALONG SAID BASELINE OF SURVEY, A DISTANCE OF 99.082 METERS (325.07 FEET); THENCE SOUTH 15°05'40" WEST ALONG A LINE AT A RIGHT ANGLE TO THE LAST DESCRIBED COURSE, A DISTANCE OF 15.204 METERS (50.00 FEET) TO A POINT ON THE SOUTHWESTERLY EXISTING RIGHT OF WAY LINE FOR SAID STATE ROAD 60 AND THE POINT OF BEGINNING; THENCE SOUTH 74°51'20" EAST ALONG SAID SOUTHWESTERLY EXISTING RIGHT OF WAY LINE AND A LINE 15.240 METERS (50.00 FEET) SOUTHWESTERLY OF AND PARALLEL WITH SAID BASELINE OF SURVEY, A DISTANCE OF 26.742 METERS (87.74 FEET) TO A POINT ON THE SOUTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 22; THENCE CONTINUE SOUTH 74°51'20" EAST ALONG SAID SOUTHWESTERLY EXISTING RIGHT OF WAY LINE AND SAID PARALLEL LINE, A DISTANCE OF 138.682 METERS 454.99 FEET; TO A POINT ON A CURVE CONCAVE SOUTHWESTERLY HAVING A CHORD BEARING OF SOUTH 69°55'52" EAST; THENCE SOUTHEASTERLY HAVING SAID PARALLEL LINE AND THE ARC OF SAID CURVE, HAVING A RADIUS OF 828.796 METERS (2,719.14 FEET), THROUGH A CENTRAL ANGLE OF 09°50'57", AN ARC DISTANCE OF 142.470 METERS (467.42 FEET) TO THE END OF SAID CURVE; THENCE SOUTH 65°00'23" EAST ALONG SAID SOUTHWESTERLY EXISTING RIGHT OF WAY LINE AND SAID PARALLEL LINE, A DISTANCE OF 359.564 METERS (1,179.67 FEET); THENCE SOUTH 32°13'04" WEST, A DISTANCE OF 10.994 METERS (36.07 FEET) TO A POINT ON A CURVE CONCAVE SOUTHWESTERLY, HAVING A CHORD BEARING OF NORTH 69°41'15" WEST; THENCE CONTINUE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 4,841.800 METERS (15,885.14 FEET), THROUGH A CENTRAL ANGLE OF 07°44'30", AN ARC DISTANCE OF 654.211 METERS (2,146.36 FEET) TO THE END OF SAID CURVE; THENCE NORTH 00°39'47" WEST, A DISTANCE 26.340 METERS (86.41 FEET) TO THE POINT OF BEGINNING."

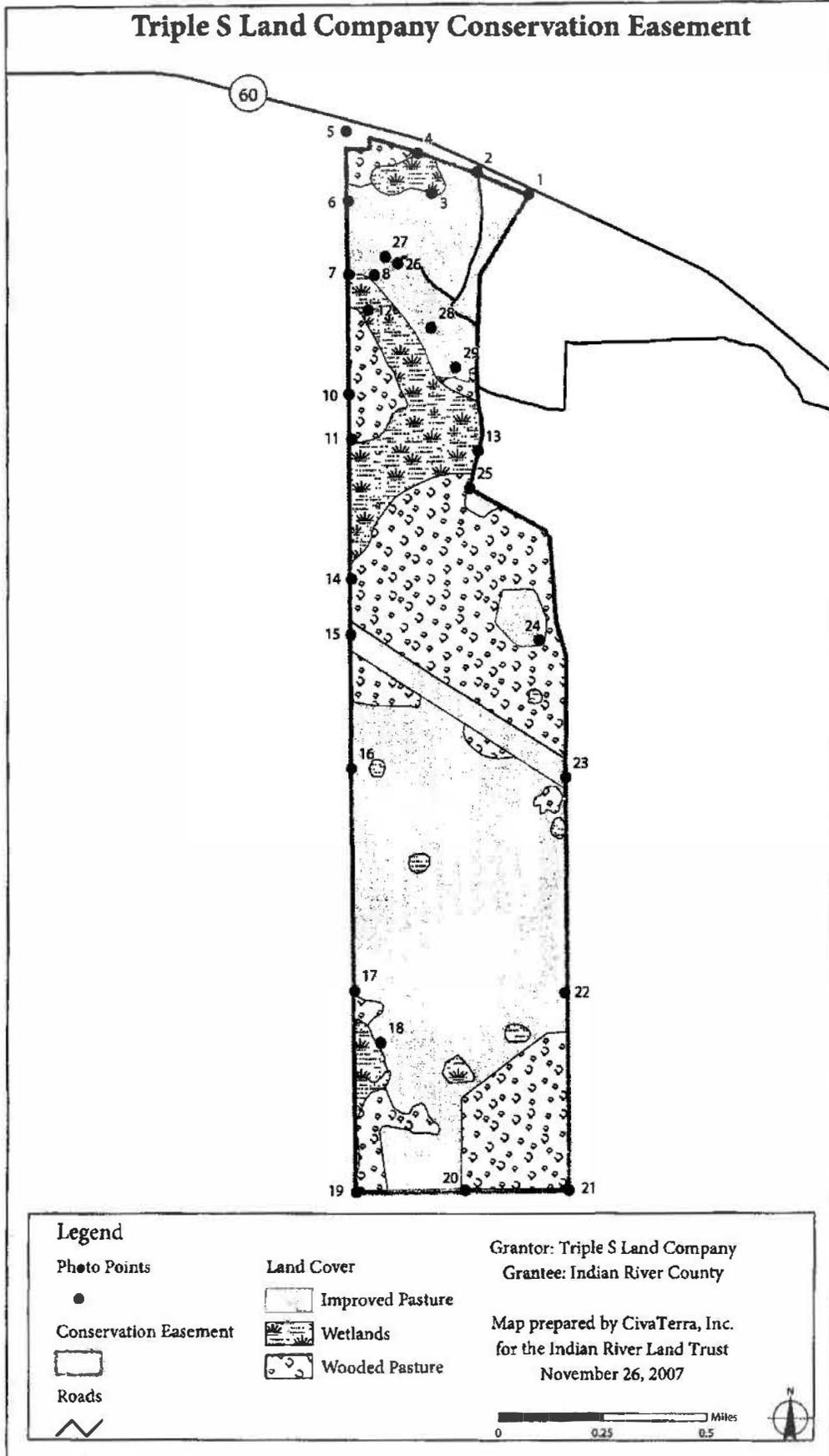
CONTAINING IN ALL 701.77 ACRES, MORE OR LESS.

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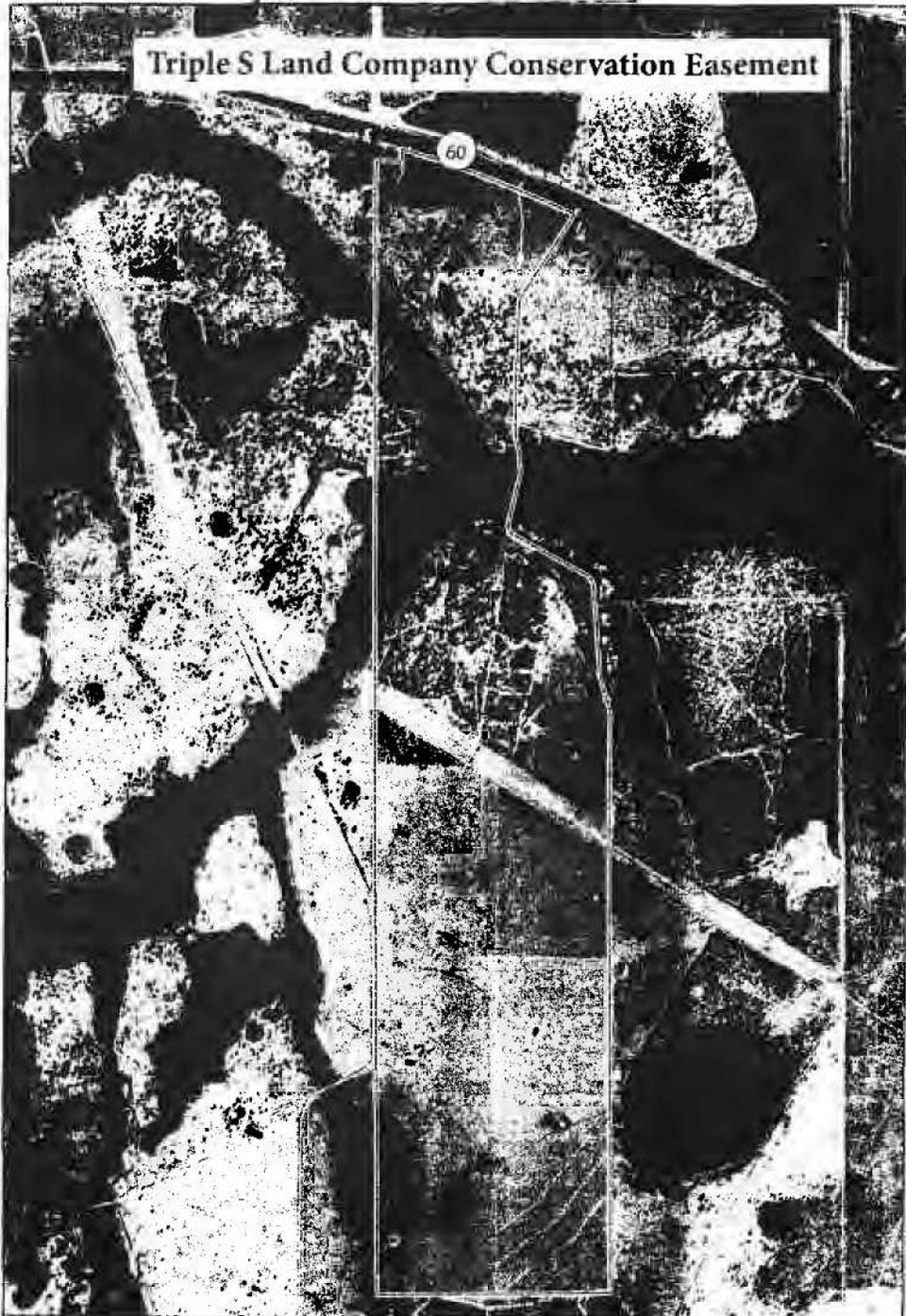
**EXHIBIT "B"**  
**MAP FROM BASELINE DOCUMENTATION**

# EXHIBIT "D"

## Triple S Land Company Conservation Easement



# EXHIBIT "B"



## Triple S Land Company Conservation Easement

Grantor: Triple S Land Company  
Grantee: Indian River County

### Legend

Conservation Easement



Map prepared by CivaTerra, Inc.  
for the Indian River Land Trust  
November 26, 2007

