

Rec. Fee 19.50

SEBASTIAN RIVER WATER CONTROL DISTRICT

**A RESOLUTION RELATING TO LEGAL ACCESS TO PRIVATE LANDS
OVER SEBASTIAN RIVER WATER CONTROL DISTRICT
"DISTRICT" RIGHTS-OF-WAY**

WHEREAS, the Board of Supervisors of the SEBASTIAN RIVER WATER CONTROL DISTRICT (the "District"), recites the following facts and determinations based thereon:

1. The District was created and organized in January 6, 1927(Chancery Order Book 2, page 401, Public Record Indian River County); amended to reduce boundaries to current boundary limits (Chancery Order Book 9, page 371, dated October 24, 1939)(order approving report of Commissioners, dated August 8, 1940). The District continues in existence pursuant to the General Drainage Laws of Florida, Chapter 298, Florida Statutes; its primary boundaries include a significant land mass within Indian River County, Florida (the "County"), and its works comprehend many miles of rights-of-way composed of excavated canals and adjoining maintenance berms, some of which lie adjacent to dedicated public roads, physically separating such roads from the private lands they serve.

2. The District was, and is, organized as a quasi-public, special benefit taxing district for the singular purpose of providing drainage, to lands within the District boundaries; it is not required by law to construct or maintain within its rights of way a system of roads and related facilities, including bridges or culvert crossings, for the purpose of providing access to the lands within its boundaries, but it may permit landowners and County to do so under circumstances assuring no prejudice will result to the District in meeting its singular purpose through full utilization and maintenance of its right-of-way assets and related facilities.

3. In keeping with policy consistently applied by the District since its creation which favors non-conflicting utilization of necessary portions of its rights-of-way by affected landowners and, where of general benefit, the public acting by and through the County, the District has extended over the years, permission to landowners and County for the maintenance of roads and bridge and culvert crossings over and upon portions of its rights-of-way in order to provide public and private access to lands within the District. This permission, where express, have been both revocable and irrevocable in form. Infrequently, legal easements have been granted by the District to the County, Utility Companies and others over portions of rights-of-way.

4. Pursuant to permits, both formal and informal, roads have been improved and maintained over the years within or upon District rights of way at both public and private expense. Likewise, bridges and culverts have been installed and maintained providing crossing access to lands separated by canal excavations from publicly dedicated roads or from so-called "berm" roads.

5. Over the past years, significant development and urbanization of lands within and adjacent to the boundaries of the District has occurred and are projected to continue into the future. Over the same period, land values within and adjacent to the District's boundaries have increased several fold. Both of these phenomena have resulted in the application to District lands of more

stringent standards of review by land title examiners and title insurance underwriters, many unfamiliar with local physical and historic conditions, which standards relate to the concept of availability of legal access to lands as a necessary incident to the marketability of their titles. With an increasing degree of frequency, the titles to lands within and adjacent to the District's boundaries are being found to have a greater potential to be unmarketable and rejected for sale or as mortgage security because they are served by roads and/or culvert or bridge crossings over or upon District rights-of-way for which there is no evidence appearing among the public records of the County granting irrevocable permission for the continued maintenance and use of such facilities providing access. This condition has been further aggravated by the State of Florida, Department of Insurance that has amended Florida Administrative Regulation 4-21.003, effective June 25, 1986, requiring all Florida land titles to be insured as "marketable", as opposed to the lesser standard of insurance formerly prevailing of "insurable".

6. The District has also benefitted from the development and enhancements to a Basin Model as initially developed by the St. Johns River Water Management District. The Basin Model provides the District with decision-making criteria to better assess and determine the overall District water management needs from a water quality, water quantity and flood control position. The basin model complements the District's permit process through the potential inclusion of provisions and stipulations to permit requirements, governing activities within the District's jurisdiction. The Basin Model also provides guidance, planning and needs analysis as to any applicable modifications, relative to the works of the District(to include but not be limited to the Laterals; Sub-Laterals; Rights-of-Way) with the goal to best serve the needs of the District, which shall remain paramount at all times.

7. The District, acting by and through its duly elected and authorized Supervisors, has determined that public good would be served by spreading upon the public records of County this Resolution granting, affirming and confirming, retroactively and irrevocably, permits for the continued use and maintenance of roads and other access facilities, including bridge and culvert crossings, located within District rights-of-way, subject, however, to the paramount rights of District as hereinafter delineated and described.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the SEBASTIAN RIVER WATER CONTROL DISTRICT, at its regular meeting as follows:

A. IRREVOCABLE GRANT. District hereby gives, grants, affirms or confirms, as may be most appropriate, to County or to affected and benefitted owners of lands within District boundaries, and as an appurtenance to such lands, an irrevocable permit (subject to the limitations hereinafter set forth), for the continues use and maintenance of installed facilities, whether roads or canal crossings (bridge or culvert), providing convenient ingress and egress, both pedestrian and vehicular, to such lands, which facilities are, or have been, heretofore located within or upon District rights-of-way with the knowledge of District as evidenced by express permits or as may be inferred from the continuous existence and use of such facilities, or any of them, for a period of seven years preceding the date of this Resolution.

B. ABANDONMENT, ETC., OF FACILITY. The irrevocable nature of any grant or affirmation of permit evidenced by this Resolution shall terminate as to any abandoned, destroyed, or substantially damaged facility, provided, however, that District agrees irrevocably to issue a replacement permit in recordable form to those served by any destroyed or substantially damaged facility allowing its replacement or restoration, at no expense to District, at the same location or at a new location as designated by District, provided such new location furnishes like utility to the benefitted lands, and provided, further, that the restoration shall be accomplished pursuant to plans and specifications approved by District as evidenced by its recordable permit.

C. LIMITATIONS UPON IRREVOCABLE GRANT. The grant by District embodied in Item A. Above shall be limited by, and subject to, the following:

(1) The primary and paramount right of District to conduct its operations and maintenance related to surface water management within and upon its rights-of-way to include the depositing thereon of spoil material and other debris excavated from canals as a part of routine maintenance within rights-of-way. The paramount right to deposit material and debris upon rights-of-way likewise extends to those rights-of-way upon, or within, which there is a maintained by County or by affected owners a roadway. In the event canal cleaning is calculated to result in temporary interruption or destruction of road utility. District will endeavor to give advance notice of its maintenance schedule to those maintaining and/or using such roads to permit them, at their expense, to have equipment and contractors immediately available to restore the road to its former utility following canal cleaning.

(2) The District reserves the right to direct replacement of crossing facilities and to establish and specify criteria for such replacement or for maintenance of roads or crossing facilities in order to prevent the same from interfering with the surface water management responsibilities of District or from impairing the hydraulic and hydrologic capacity of existing or planned canal excavations. Failure of required replacement or maintenance of a facility may result in suspension or cancellation of the permit evidenced by this Resolution for such facility, such right of suspension or cancellation being expressly reserved to District hereby.

(3) The rights reserved to District by this Item C, sub-parts (1) and (2) above, are solely for the protection of District in fulfilling its singular purpose as herein described, and, in any exercise thereof, no responsibility is assumed by District for the functional utility, safety or soundness of any permitted facility.

D. APPLICATION. The grants or confirmations of permits evidenced by this Resolution shall have no prospective application. All access facilities, whether roads, canal crossings, or other, hereafter to be constructed or located upon District rights-of-way must be approved by District and constructed to its approved plans and specifications, all as will be more fully evidenced by an irrevocable permit in recordable form, executed in the name of District by the President of its Board of Supervisors or by its designated Administer. The form of permit shall delineate and describe the parcel or parcels of land within District boundaries

intended to be benefitted or served by the facility and to which such facility shall be deemed appurtenant. The Irrevocable Permit shall be in form and content established by District from time to time.

This Resolution and the permits granted and confirmed hereby pertain exclusively to facilities providing access to lands and are intended to support findings in appropriate cases that legal access is afforded lands within, or adjacent to, District boundaries. The benefits hereof shall not be deemed to extend to any facilities intended solely for water control, transport or use.

E. RELEASE, INDEMNITY AND HOLD HARMLESS. Acceptance of benefits accorded by the permits granted or confirmed hereby, which acceptance shall be evidenced by the continued use of the subject facilities providing access to lands by County or by private owners, their guests or invitees, shall evidence the agreement County (subject, however, to the limitations upon the waiver of sovereign immunity in tort actions provided by Section 768.28, Florida Statutes (2003) or by such owners, as their interests may appear, that District is released by them, or that they will indemnify and hold harmless District from, any and all claims related to such facilities or their use for personal injury or property damage, including cost of litigation, counsel fees attendant thereon, and damage to facilities caused by District as a result of its paramount maintenance activities.

F. EFFECTIVE DATE. This Resolution, and the benefits granted or confirmed by same, shall have retroactive application from March 3, 2004.

PASSED AND DULY ADOPTED this 3rd day of March, 2004.

SEBASTIAN RIVER WATER CONTROL DISTRICT

BY: Shawn Sexton Chairman
Chairman, Board of Supervisors

ATTEST: Samuel A. Block
Secretary

Approved as to Form:

Samuel A. Block
District Counsel