

GOLDEN BEACH, FLORIDA

RESOLUTION NO. 1985.09

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, ACCEPTING AS THE CITY'S STATEMENT UNDER SECTION 180.301, FLORIDA STATUTES, THE PUBLIC BRIEFING DOCUMENT; DETERMINING THAT THE SALE OF THE WATER SYSTEM IS IN THE PUBLIC INTEREST; AUTHORIZING AND APPROVING THE ASSET PURCHASE AGREEMENT BETWEEN THE TOWN OF GOLDEN BEACH AND THE CITY OF NORTH MIAMI BEACH; PROVIDING FOR IMPLEMENTATION; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the Town of Golden Beach, Florida (the "Town") desires to sell its water utility system to the City of North Miami Beach, Florida (the "City") pursuant to Chapter 180, Florida Statutes and other applicable law; and

**WHEREAS**, the Town Council has considered the feasibility of selling the water system. In so doing, the Town Council has retained consultants to advise and make recommendations, in the form of a Briefing Document (attached hereto as Exhibit "A") and other information, to the Town Council with respect to the sale of the water system; and

**WHEREAS**, the Town Council has held a public hearing and received public comment on the sale of the water system pursuant to Chapter 180.301, Florida Statutes and has determined that the sale of the water system is in the public interest.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That each of the above-stated recitals is hereby

adopted and confirmed.

**Section 2. Statement of Public Interest.** That the Briefing Document prepared by GAI Consultants, Inc., which includes a summary of the City's experience in providing water and a showing of the City's financial ability to provide such service, is acknowledged and accepted into the record as the City's statement, as required by Section 180.301, Florida Statutes.

**Section 3. Factors Considered In Determination.** That the sale of the water system is in the public interest and necessary and desirable to maintain and improve the quality of public water supply provided to the residents who live, work, or visit the Town and the businesses that operate within the Town. In determining that the sale of the water system is in the public interest, the Council considered information that included, but was not limited to, the following (if applicable):

- (1) The most recent available income and expense statement for the utility;
- (2) The most recent available balance sheet for the utility, listing assets and liabilities and clearly showing the amount of contributions-in-aid-of-construction and the accumulated depreciation thereon;
- (3) A statement of the existing rate base of the utility for regulatory purposes;
- (4) The physical condition of the utility facilities being sold;
- (5) The reasonableness of the sale price and terms;
- (6) The impacts of the sale on utility customers, both positive and negative;
- (7) Any additional investment required and the ability and willingness of the City to make that investment;
- (8) The alternatives to the sale and the potential impact on utility customers if the sale is not made; and

- (9) The ability of the City to provide and maintain high-quality and cost-effective utility service.

**Section 4. Agreement Approved.** That the Asset Purchase Agreement (the "Agreement") is hereby approved in substantially the form attached hereto as Exhibit "B," and the Mayor is authorized to execute the Agreement on behalf of the Town once approved as to form and legal sufficiency by the Town Attorney.

**Section 5. Implementation.** The Mayor and Town Manager are authorized to take any and all action which is necessary to implement this Resolution.

**Section 6. Effective Date.** That this resolution shall become effective immediately upon approval of the Town Council.

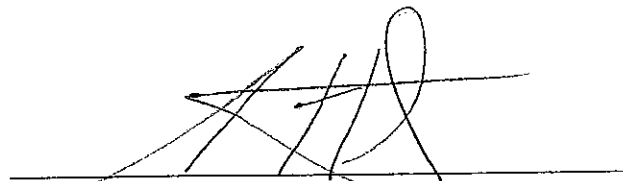
Sponsored by **Town Administration**

The Motion to adopt the foregoing Resolution was offered by Councilmember Rojas, seconded by Vice Mayor Lusskin and on roll call the following vote ensued:

Mayor Glenn Singer	<u>Aye</u>
Vice Mayor Judy Lusskin	<u>Aye</u>
Councilmember Ben Einstein	<u>Aye</u>
Councilmember Ken Bernstein	<u>Aye</u>
Councilmember Amy Rojas	<u>Aye</u>

PASSED AND ADOPTED by the Town Council of the Town of Golden Beach, Florida, this 25<sup>th</sup> day of February, 2009.

ATTEST:

  
MAYOR GLENN SINGER

  
ELIZABETH SEWELL  
TOWN CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:



STEPHEN J. HELFMAN  
TOWN ATTORNEY

EXHIBIT "C"

ASSET PURCHASE AGREEMENT BETWEEN  
THE TOWN OF GOLDEN BEACH, FLORIDA  
AND THE CITY OF NORTH MIAMI BEACH, FLORIDA

This "Agreement" is entered into on this \_\_\_\_ day of November 2008, by and between the Town of Golden Beach, a Florida municipal corporation, (hereinafter referred to as "Seller") and the City of North Miami Beach, Florida, a Florida municipal corporation (hereinafter referred to as "Purchaser").

WITNESSETH

WHEREAS, the Seller is the owner of a water distribution system in Miami-Dade County, Florida, and serving the residential community more fully described on Attachments A and B, attached, (hereinafter referred to as the "Town's Utility Area");

WHEREAS, Seller is currently in the process of constructing a portion of its water distribution system, which construction is expected to be complete within approximately 120 days of the execution of this Agreement; and

WHEREAS, Purchaser is engaged in potable water service to this area and is authorized to be in the business of furnishing water service to the various communities in the Purchaser's Service Area<sup>1</sup>. Purchaser desires to acquire, and Seller desires to sell the water distribution facilities, (collectively the "Facilities") installed to provide water service to the property of the Town's customers, subject to the terms and conditions of this Agreement, as such Facilities may be modified prior to Closing with the consent of the City of North Miami Beach.

NOW, THEREFORE, in consideration of the mutual covenants as hereinafter set forth, the parties hereto agree as follows:

ARTICLE I  
REPRESENTATIONS BY SELLER

Seller represents and warrants that, to Seller's actual knowledge:

- 1) Seller is a municipal corporation duly incorporated, validly existing and in good standing under the laws of the State of Florida authorizing it to construct, operate and maintain a public water distribution system.

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<sup>1</sup> Area in which the purchaser has the exclusive right to provide water and wastewater service.

- 2) Seller is, and at the Closing (the “**Closing**” as hereinafter defined) will be, the owner of the Facilities with good and marketable title, free and clear of all liens and encumbrances.
- 3) Purchaser is exempt from the Florida Public Service Commission regulation (hereinafter referred to as the “**Commission**”).
- 4) Seller will cooperate fully with Purchaser in any and all applications or petitions to public authorities deemed necessary or desirable by Purchaser in connection with the purchase of the Facilities from Seller as contemplated herein.
- 5) Attached hereto as **Attachments A and B** are detailed maps of the Facilities of Seller to be acquired by Purchaser, pursuant to this Agreement, showing both their respective installation location and description. Said Facilities include all water utility assets and equipment owned by the Seller within the Property<sup>2</sup>, including but not limited to a complete water distribution system as shown in **Attachment 1**. The engineering plans and specifications for the Facilities have been organized and will be transferred to Purchaser with all other records. Said Facilities expressly include customer deposits and accounts receivable, if any, both of which shall be transferred to the Purchaser at Closing. The Facilities are constructed within publicly dedicated lands or are otherwise accessible to Seller and Purchaser. To the extent Purchaser reasonably requires any rights of non-exclusive access to the Facilities, Seller agrees to grant those rights.
- 6) Attached hereto as **Attachment 2** is a list, signed by the Seller, and briefly describing, as of the date of this Agreement, the following:
  - (a) All pending or threatened action at law, suits in equity or administrative proceedings relating to the Facilities;
  - (b) All contracts or obligations of any nature between Seller and any other party, including all developer agreements relating to the utility.
  - (c) All real estate, easements and rights and/or privileges associated with the utility owned by Seller to be transferred hereunder.
- 7) Except as indicated in item #6 above, there are no pending or threatened actions at law or suits in equity relating to the Facilities, or any pending or threatened proceedings before any other governmental agency.
- 8) Except as indicated in item #6 above, there are no contracts or obligations of any nature between Seller and any other party relating to the Facilities or service or promised service.

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<sup>2</sup> Any external thing over which the rights of possession, use, and enjoyment are exercised.

- 9) Neither Seller nor any entity or individual affiliated with Seller has executed any agreement with purchasers of lots within the Service Area, or any other parties, whereunder such purchases or other parties have acquired any interest in the Facilities used or to be used in rendering service to them.
- 10) Facilities are capable of rendering water utility service in the ordinary course of business in compliance with all federal, state and local rules and regulations including but not limited to all rules and regulations related to environmental protection and drinking water.
- 11) Prior to the Closing, the consummation of the transactions contemplated herein will have been duly authorized by all necessary action, corporate or otherwise, on behalf of Seller.
- 12) Seller has filed all tax returns which are required to be filed, and each return which has been filed is true and correct, and Seller has paid all taxes shown as payable on such returns when and as required by applicable law.
- 13) No representation or warranty by Seller in this Agreement, or any statement or certificate furnished or to be furnished to Purchaser pursuant hereto or in connection with the transactions contemplated herein, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

## ARTICLE II

### CLOSING AND PURCHASE PRICE

#### 1) Closing

- (a) The Closing shall take place within 90 days of the date of substantial completion of Seller's construction of the Facilities and the issuance of final certifications of completion, inspections, or the equivalent thereto, subject to the City of North Miami Beach's reasonable determination that the construction of the Facilities are completed substantially in accordance with the plans and are fully operational.
- (b) At the Closing, the Seller will, upon due performance by Purchaser of its obligations under the Agreement, deliver:
  - (i) such good and sufficient special warranty deeds, bills of sale with covenants of warranty, and sufficient instruments of sale, in form and substance reasonably satisfactory to Purchaser's counsel, as shall be required to vest in Purchaser marketable title to all of the Facilities used for the existing water system, free and clear of liens and encumbrances of every nature that would render title to the Facilities unmarketable;

- (ii) all of the files, documents, papers, agreements, books of account, customer lists, original cost invoices, engineering drawings, and records possessed by Seller pertaining to the water and sewer utility business conducted by Seller in the property, other than its minute books and stock records, and any other records reasonably needed by Seller;
  - (iii) all orders, permits, licenses or certificates issued or granted to Seller by any governmental authority in connection with any authorization related to the construction, operation or maintenance of its Facilities or the conduct of its water and sewer utility business; and
  - (iv) An opinion of Counsel for Seller, dated as of the Closing, that upon the delivery to Purchaser of the Bill of Sale and the approval of the respective legislative parties under Chapter 180.301 F.S. that Purchaser will then have title to the Facilities, free and clear of all liens and encumbrances in connection with the acquisition, construction, installation, and financing of the Facilities.
- (c) At the Closing and from time to time thereafter, Seller shall execute and deliver such further instruments of sale, conveyance, transfer and assignment, and take such other action (without expending funds or bringing suit) as Purchaser may reasonably request, in order more effectively to sell, convey, transfer and assign to Purchaser any of the Seller's Facilities, to confirm the title of Purchaser thereto and to assist Purchaser in exercising rights with respect thereto.

**2) Purchaser Consideration**

At the Closing Purchaser shall, upon due performance by Seller of its obligations under the Agreement, deliver to the Seller the Purchase Price (the "**Purchase Price**") in the amount of one thousand dollars (\$1,000). Purchaser does not assume any liabilities of Golden Beach wholly arising prior to Closing.

**ARTICLE III**

**AGENCY APPROVALS**

Within fifteen (15) days following the execution of this Agreement Purchaser will file applications for transfer with the FDEP and the SFWMD requesting the transfer of the Public Utility permits or sequential water use permit. Seller agrees to cooperate fully with Purchaser in Purchaser's application for such transfers and approvals.



**ARTICLE IV**

**GENERAL**

- 1) Upon purchase of the Facilities of Seller, Purchaser agrees to supply all customers within the Town of Golden Beach with continuous (subject to unavoidable outages), adequate and customary water utility service, and to operate, continuously maintain and promptly repair Facilities acquired herein. The Town of Golden Beach's customers shall receive a rate no less favorable than the rate offered by the City of North Miami Beach to any other customer it serves outside of the boundaries of the City of North Miami Beach. This warranty shall survive the Closing of this Agreement.
- 2) In the event Purchaser (a) fails to provide customary water utility service to the Town of Golden Beach (subject to unavoidable outages) or (b) fails to operate or continuously maintain the Facilities in accordance with this Agreement, and such failure continues for a period of fourteen (14) days after notice to Purchaser, or in the event of Purchaser's bankruptcy, title to the Facilities shall revert back to Town. Purchaser agrees to execute those documents reasonably necessary to carry out the provisions of this paragraph.
- 3) The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.
- 4) Any notice of delivery required to be made hereunder may be made by mailing a copy thereof addressed to the appropriate party as follows:

If to Seller            Mr. Alexander Diaz  
                                 Town Manager  
                                 Town of Golden Beach  
                                 One Golden Beach Drive  
                                 Golden Beach, FL 33160-2296

If to Purchaser      Mr. Kelvin Baker  
                                 City Manager  
                                 City of North Miami Beach  
                                 17011 NE 19th Avenue

North Miami Beach, FL 33162

Delivery when made by registered or certified mail, shall be deemed complete upon mailing.

- 5) The Attachments to this Agreement are a part hereof and are hereby incorporated in full by reference.
- 6) This Agreement shall be governed by the laws of the State of Florida.
- 7) The representations and warranties contained herein in Article I shall survive, and continue in effect, after the Closing for a period of 12 months. Purchaser agrees to indemnify Seller, its successors and assigns, and hold it harmless against any loss, damage, liability, expense or cost accruing or resulting from any misrepresentation or breach of any representation, warranty or agreement on the part of Purchaser under this Agreement or from any misrepresentation in or material omission from any certificate or other document furnished or to be furnished to Seller by Purchaser; Seller agrees to indemnify Purchaser, its successors and assigns, and hold it harmless against any loss, damage, liability, expense or cost, accruing or resulting from any misrepresentation or breach of any representation, or warranty or agreement made or to be performed by Seller under this Agreement or from any misrepresentation in or material omission from any certificate or other document furnished or to be furnished to Purchaser by Seller.
- 8) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year above first written.

**TOWN OF GOLDEN BEACH, FLORIDA**

(Seal)

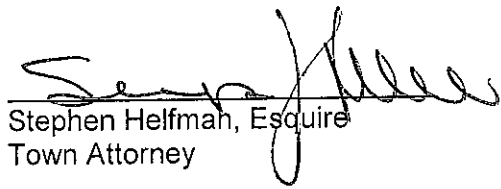
By

  
Glenn Singer, Mayor

ATTEST:

  
Elizabeth Sewell, Town Clerk

APPROVED AS TO FORM  
AND CORRECTNESS



Stephen Helfman, Esquire  
Town Attorney

CITY OF NORTH MIAMI BEACH, FLORIDA

(Seal)

By \_\_\_\_\_  
Kelvin Baker, City Manager

ATTEST:

\_\_\_\_\_  
Solomon Odenz, City Clerk

APPROVED AS TO FORM  
AND CORRECTNESS  
City Attorney

\_\_\_\_\_  
Howard Lenard, Esquire