

TOWN OF GOLDEN BEACH, FLORIDA

RESOLUTION NO. 2046.09

A RESOLUTION OF THE TOWN OF GOLDEN BEACH, FLORIDA AUTHORIZING THE ISSUANCE BY THE ISSUER OF \$900,000.00 CAPITAL IMPROVEMENT REFUNDING REVENUE NOTE, SERIES 2009 FOR THE PURPOSE OF REFUNDING THE OUTSTANDING TOWN OF GOLDEN BEACH, FLORIDA CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2008; PLEDGING TO SECURE PAYMENT OF THE PRINCIPAL AND INTEREST ON SUCH NOTE WITH A COVENANT TO BUDGET AND APPROPRIATE NON-AD VALOREM REVENUES; PROVIDING FOR THE RIGHTS OF THE HOLDERS OF SUCH NOTE; FINDING THE NECESSITY FOR A NEGOTIATED SALE OF THE NOTE AND APPROVING THE SALE OF SAID NOTE TO NORTHERN TRUST BANK; APPOINTING A REGISTRAR; PROVIDING FOR OTHER RELATED MATTERS; PROVIDING CERTAIN OTHER AGREEMENTS AND COVENANTS IN CONNECTION WITH THE ISSUANCE OF SUCH NOTE; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, as follows:

SECTION 1. AUTHORITY. This Resolution (hereinafter called the "Resolution") is adopted pursuant to the provisions of Chapter 166, Part II, Florida Statutes and other applicable provisions of law.

SECTION 2. DEFINITIONS. The following terms shall have the following meanings, unless the context clearly otherwise requires:

"Authorized Officers" shall mean the Town Mayor of the Issuer or his designee. The Town Clerk or any Deputy Town Clerk is hereby designated and authorized on behalf of the Issuer to attest to the seal of the Issuer and to the signature of the Town Mayor of the Issuer or his designee, if such attestation is required.

"Bond Counsel" shall mean Bryant Miller Olive, P.A., Miami, Florida.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Commitment" means the commitment letter issued by Northern Trust Bank dated "October 1, 2009"

"Fiscal Year" shall mean the period commencing on October 1 of each year and ending on the succeeding September 30.

"Issuer" shall mean the Town of Golden Beach, Florida.

"Non-Ad Valorem Revenues" shall mean all legally available non-ad valorem revenues of the Issuer derived from any source whatsoever other than ad valorem taxation on real and personal property.

"Note" shall mean the Issuer's Capital Improvement Refunding Revenue Note, Series 2009 authorized pursuant to this Resolution.

"Note Holder" or "Holder" shall mean, initially, Northern Trust Bank, and subsequently, the person or persons in whose name the Note is registered with the Registrar.

"Paying Agent" shall mean, initially, the Town Clerk of the Town of Golden Beach, Florida, or such other person as shall be appointed by the Issuer as paying agent for the Note.

"Pledged Revenues" shall mean those Non-Ad Valorem Revenues budgeted and appropriated by the Issuer each Fiscal Year in an amount sufficient to pay the interest and principal on the Note.

"Refunded Obligations" shall mean the outstanding \$1,399,912.24 Town of Golden Beach, Florida Capital Improvement Revenue Note, Series 2008.

"Registrar" shall mean, initially, the Town Clerk of the Town of Golden Beach, Florida, or such other person as shall be appointed by the Issuer as registrar for the Note.

"Resolution" shall mean this instrument, as the same may from time to time be amended, modified or supplemented.

"Town Clerk" shall mean the person performing the duties of the Clerk for the Issuer.

"Town Manager" shall mean the person performing the duties of Manager of the Issuer.

"Town Mayor" shall mean the person performing the duties of the Mayor for the Issuer.

SECTION 3. FINDINGS. It is hereby ascertained, found, determined and declared by the Issuer that:

A. The Issuer is a municipal corporation organized under the laws of the State of Florida and is authorized under the Act to issue the Note and use the proceeds thereof for the purpose of refinancing the Refunded Obligations as defined herein.

B. The Refunded Obligations were initially issued on October 16, 2006 pursuant to Resolution No. 1816.06 and on January 9, 2007 pursuant to Resolution No. 1825.06, respectively, for the purpose of financing the acquisition of two vacant lots located within the Town of Golden Beach, Florida to be owned by the Issuer and used for any governmental public purpose.

C. On October 21, 2008 adopted Resolution No.1962.08 for the purpose of refunding the outstanding Town of Golden Beach, Florida Capital Improvement Revenue Notes, Series 2006 & 2006A.

D. The Issuer deems it necessary, desirable and in the best interest of the Issuer that a covenant to budget and appropriate Non-Ad Valorem Revenues be pledged to the payment of the principal of and interest on the Note.

E. The Pledged Revenues will be sufficient to pay the principal of and interest on the Note herein authorized, as it becomes due.

F. The principal of and interest on the Note and all other payments hereunder shall be payable from the Pledged Revenues, as provided herein. The Issuer shall never be required to levy ad valorem taxes on any property in the Town of Golden Beach to pay the principal of and interest on the Note or to make any of the other payments and such Note shall not constitute a lien upon any real or tangible personal property of or in the Town of Golden Beach.

G. It is hereby found and determined that the Note to be issued by the Issuer is in a relatively small aggregate principal amount and thus constitutes notes not readily marketable at public sale. A public sale of the Note is therefore found to be impractical in the prevailing bond market, and protection of the public interest necessitates the approval of a negotiated sale of the Note directly to the Note Holder. No underwriter or consultant has dealt with the Issuer and no official statement or prospectus of the Issuer was utilized concerning the issuance and sale of the Note.

SECTION 4. RESOLUTION TO CONSTITUTE CONTRACT. In consideration of the acceptance of the Note by those who shall hold the same from time to time, the provisions of this Resolution shall be deemed to be and shall constitute a contract between the Issuer and the Holders from time to time of the Note. The pledge made in this Resolution and the provisions, covenants and agreements herein set forth to be performed by or on behalf of the Issuer shall be for the equal benefit, protection and security of the Note Holder.

SECTION 5. AUTHORIZATION OF REFUNDING. There is hereby authorized the refinancing of the Refunded Obligations. The findings contained in Section 3 herein are determined to be true and correct findings of the Issuer.

SECTION 6. AUTHORIZATION AND DESCRIPTION OF THE NOTE. The Note is entitled to the benefit, protection and security of this Resolution. It is hereby authorized to be issued in the principal amount of \$900,000.00 for the principal purpose of refinancing the Refunded Obligations and paying certain costs of issuance incurred with respect to such Note. Such Note shall be designated as the "Town of Golden Beach, Florida Capital Improvement Refunding Revenue Note, Series 2009."

The Note shall be issued as one fully registered Note in the principal amount of \$900,000.00 shall be dated as of the date of issuance and shall mature October 16, 2010 (the "Maturity"). The Note shall be payable to Northern Trust Bank, and shall bear interest at a fixed rate equal to 2.75% per annum, calculated on the basis of a 360-day year for the actual number of days elapsed. Interest shall be paid on the 16<sup>th</sup> day of every month with principal due at maturity. The Note shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts. The interest on the Note shall be payable by the paying agent (the "Paying Agent") to the person appearing on the registration books of the Issuer hereinafter provided for as the registered Holder thereof, by check, mailed to such registered Holder at his address as it appears on such registration books. Payment of the principal of the Note shall be made as the same shall become due and payable. The principal and interest on the Note shall be payable only to the registered Holder or his legal representative at the office of the Registrar.

The form of the Note shall be as set forth in Exhibit "A" attached hereto with such omissions, insertions and variations as are necessary to comport with the terms hereof, and as may otherwise be required or desirable, to be approved by the Town Mayor, and the Town Clerk prior to the issuance thereof (which necessity and/or desirability and approval shall be evidenced conclusively by the Issuer's delivery of the Note to the Note Holder thereof).

SECTION 7. EXECUTION OF THE NOTE. The Note shall be executed in the name of the Issuer by the manual or facsimile signature of the Town Mayor of the Issuer and attested by the manual or facsimile signature of the Town Clerk and a facsimile of the official seal of the Issuer shall be imprinted on the Note. In case any one or more of the officers who shall have signed or sealed the Notes shall cease to be such officer of the Issuer before the Note so signed and sealed shall have been actually sold and delivered, the Note may nevertheless be sold and delivered, as herein provided, and may be issued as if the person who signed or sealed the Note had not ceased to hold such office.

SECTION 8. NOTE MUTILATED, DESTROYED, STOLEN OR LOST. In case any Note shall become mutilated, or be destroyed, stolen or lost, the Issuer may in its discretion cause the issuance and delivery of a new Note of like date and tenor as the Note so mutilated, destroyed, stolen or lost, in exchange and substitution for such

mutilated Note or in lieu of and substitution for the Note destroyed, stolen or lost, and upon the Holder's furnishing to the Issuer and the Registrar proof of his ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer or its agent may incur. The Note so surrendered shall be canceled by the Issuer. If the Note shall have matured or be about to mature, instead of issuing a substitute Note, the Issuer may provide for payment of the same at maturity, upon being indemnified as aforesaid, and if such Note be lost, stolen or destroyed, without surrender thereof.

Any such duplicate Note issued pursuant to this Section shall constitute original, additional contractual obligations on the part of the Issuer whether or not the lost, stolen or destroyed Note shall be at any time found by anyone, and such duplicate Note shall be entitled to equal and proportionate benefits and rights as to lien on, and source and security for payment from the revenues pledged for the payment of the Note to the same extent as any Note issued hereunder.

SECTION 9. NEGOTIABILITY AND REGISTRATION. The Registrar shall keep books for the registration of and for the registration of transfers of Note as provided herein and in the Resolution. The transfer of the Note may be registered only upon such books and only upon surrender thereof to the Registrar together with an assignment duly executed by the Holder or his attorney or legal representative in such form as shall be satisfactory to the Registrar. Upon any such registration of transfer the Issuer shall execute and the Registrar shall authenticate and deliver in exchange for such Note a new Note registered in the name of the transferee, and in an aggregate principal amount equal to the principal amount of such Note so surrendered.

In all cases in which the Note shall be exchanged, the Issuer shall execute and the Registrar shall authenticate and deliver, at the earliest practicable time, a new Note in accordance with the provisions of this Resolution. The Note surrendered in any such exchange or registration of transfer shall forthwith be canceled by the Registrar. The Issuer or the Registrar may make a charge for every such exchange or registration of transfer of the Note sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or registration of transfer, but no other charge shall be made to any Holder for the privilege of exchanging or registering the transfer of the Note under the provisions of this Resolution. Neither the Issuer nor the Registrar shall be required to make any such exchange or registration of transfer of the Note during the fifteen (15) days immediately preceding any interest payment date.

The Note shall be and shall have all of the qualities and incidents of negotiable instruments under the laws of the State of Florida, and each successive owner, in accepting the Note, shall be conclusively deemed to have agreed that such Note shall be and have all the qualities and incidents of negotiable instruments under the laws of the State of Florida.

Notwithstanding the foregoing or any provision of this Resolution to the contrary, the Note shall not be transferred unless the new purchaser has executed an "investment letter"

in substantially the same form and substance as the "investment letter" executed by the original purchaser of the Note.

SECTION 10. AUTHENTICATION OF NOTE. Only the Note as shall have endorsed thereon a certificate of authentication substantially in the form herein below set forth, duly executed by the Registrar as authenticating agent, shall be entitled to any benefit or security under this Resolution. No Note shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly adopted by the Registrar, and such certificate of the Registrar upon any such Note shall be conclusive evidence that such Note has been duly authenticated and delivered under this Resolution. The Registrar's certificate of authentication on any Note shall be deemed to have been duly executed if signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the certificate of authentication of the Note that may be issued hereunder at any one time.

SECTION 11. EXCHANGE OF NOTE. Any Note, upon surrender thereof at the principal office of the Registrar, together with an assignment duly executed by the Holder or his attorney or legal representative in such form as shall be satisfactory to the Registrar, may, at the option of the Holder, be exchanged for an aggregate principal amount of the Note equal to the principal amount of the Note so surrendered.

The Registrar shall make provision for the exchange of the Note at the principal office of the Registrar. Notwithstanding the foregoing, the Note shall always be one fully registered Note in the denomination set forth in Section 6 hereof.

SECTION 12. OWNERSHIP OF NOTE. The person in whose name the Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the principal of the Note, and the interest on the Note, shall be made only to or upon the order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note and interest thereon to the extent of the sum or sums so paid.

SECTION 13. REDEMPTION PROVISIONS. The Note shall be subject to redemption prior to its maturity at the price of par plus interest accrued to the date of redemption.

Unless waived by the Holder thereof, notice of such redemption shall, at least ten (10) days prior to the redemption date, be filed with the Registrar; and mailed, first class mail, postage prepaid, to the Holder of the Note to be redeemed at its address as it appears on the registration books hereinbefore provided for. Each such notice shall set forth the date fixed for redemption, the redemption price to be paid and, in the case of a Note to be redeemed in part only, the portion of the principal amount thereof to be redeemed.

Upon surrender of any Note for redemption in part only, the Registrar shall authenticate and deliver to the Holder of the Note thereof, the cost of which shall be paid by the Issuer, a new Note of an authorized denomination equal to the unredeemed portion of the Note surrendered.

SECTION 14. SECURITY FOR THE NOTE. Payment of the principal of and interest on the Note shall be secured by a covenant to budget and appropriate Non-Ad Valorem Revenues to the payment of the principal of and interest on the Note in accordance with the provisions hereof.

The Pledged Revenues shall immediately be subject to the lien of this pledge without any physical delivery thereof or further act, and is in all respects valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Issuer.

The Issuer covenants and agrees to appropriate in its annual budget for each Fiscal Year in which the Note remains outstanding, sufficient amounts of Non-Ad Valorem Revenues for the payment of principal of and interest due on the Note in each such Fiscal Year. Such covenant and agreement on the part of the Issuer shall be cumulative and shall continue until all payments of principal of and interest on the Note shall have been budgeted, appropriated and actually paid. The Issuer agrees that this covenant and agreement shall be deemed to be entered into for the benefit of the holders of the Note and that this obligation may be enforced in a court of competent jurisdiction. Except as provided in Section 20 hereof, this covenant and agreement shall not be construed as a limitation on the ability of the Issuer to pledge all or a portion of such Non-Ad Valorem Revenues for other legally permissible purposes. Nothing herein shall be deemed to pledge ad valorem taxation revenues or to permit or constitute a mortgage upon any assets owned by the Issuer and no person may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Issuer for the payment of the Issuer's obligations hereunder. The Note shall not be or constitute general obligations or indebtedness of the Issuer as "bonds" within the meaning of the Constitution of the State of Florida, and no Holder or Holders of any Note issued hereunder shall ever have the right to compel the exercise of the ad valorem taxing power of the Issuer or taxation in any form of any real or personal property therein. The obligation of the Issuer to appropriate Non-Ad Valorem Revenues shall be subject in all respects to the obligation of the Issuer to provide for essential governmental services and further shall be subject to the provisions of Section 166.241, Florida Statutes. Notwithstanding any provisions of this Resolution to the contrary, the Issuer shall not be obligated to exercise ad valorem taxing power to maintain or continue any of the activities of the Issuer which generate user service charges, regulatory fees or other Non-Ad Valorem Revenues.

SECTION 15. GENERAL AUTHORIZATION. The Town Mayor, the Town Manager, the Town Clerk or any other appropriate officers of the Issuer are hereby authorized and directed to execute any and all certifications or other instruments or documents which are specifically authorized or are not inconsistent with the terms and provisions of this Resolution, the Commitment or any other document referred to above as a prerequisite or

precondition to the issuance of the Note and any such representation made therein shall be deemed to be made on behalf of the Issuer.

The Town Manager and Town Clerk are hereby authorized to use the proceeds of the Note to pay the Refunded Obligations on the date of delivery of the Note. The Town Manager and the Town Clerk are authorized to provide any such notices and documentation in connection therewith.

All action taken to date by the officers of the Issuer in furtherance of the issuance of the Note is hereby approved, confirmed and ratified.

SECTION 16. HOLDER NOT AFFECTED BY USE OF PROCEEDS. The Note Holder shall have no responsibility for the use of the proceeds thereof, and the use of such proceeds by the Issuer shall in no way affect the rights of such Note Holder. The Issuer shall be irrevocably obligated to pay the principal of and interest on the Note and to make all other payments provided for herein from Non-Ad Valorem Revenues notwithstanding any failure of the Issuer to use and apply such proceeds in the manner provided herein.

SECTION 17. SALE OF THE NOTE. The Note is hereby sold and awarded to Northern Trust Bank, at the price of par and the Town Mayor and the Town Clerk are hereby authorized to execute and deliver the Note in the form set forth herein, receive the purchase price thereof and apply the proceeds thereof to the Refunded Obligations, without further authority from this body. The Town Mayor and the Town Clerk are authorized to make any and all changes on the form of the Note which shall be necessary to conform the same to the Commitment. Execution of the Note by the Town Mayor and the Town Clerk shall be conclusive evidence of their approval of the form of the Note. Prior to the issuance of the Note, the Issuer shall receive from the Bank a Purchaser's Certificate, the form of which is attached hereto as Exhibit "B."

SECTION 18. FINANCIAL STATEMENT. The Issuer shall submit annual audited statements within 30 days of completion (but not later than 210 days of fiscal year end), together with an annual budget within 30 days of adoption, together with any other information that the Bank may reasonably request.

SECTION 19. DISCLOSURE UNDER SECTION 218.385. The Issuer has been provided all applicable disclosure information required by Section 218.385, Florida Statutes, a copy of which is attached as Exhibit "C".

SECTION 20. ADDITIONAL OBLIGATIONS. The Issuer covenants and agrees not to issue any other obligations or incur any other indebtedness, except refunding obligations, payable from any portion of a covenant to budget and appropriate Non-Ad Valorem Revenues unless it shall obtain the prior written approval of the Bank, which shall not be unreasonably withheld.



SECTION 21. TAX CONVENANTS. The Issuer covenants with the Note Holder that it shall not use the proceeds of such Note in any manner which would cause the interest on such Note to be or become includable in the gross income of the Note Holder for federal income tax purposes and the Issuer further covenants with the Note Holder that it will comply with all provisions of the Code necessary to maintain the exclusion of interest on the Note from the gross income of the Note Holder for federal income tax purposes, including, in particular, the payment of any amount required to be rebated to the U.S. Treasury pursuant to the Code. The Town Mayor or the Town Manager is hereby authorized to approve and execute such tax certificates as are required by Bond Counsel and customarily executed for tax-exempt notes which are necessary to reflect the covenants of the Issuer as provided in this Section.

SECTION 22. NO THIRD PARTY BENEFICIARIES. Except such other persons as may be expressly described herein or in the Note, nothing in this Resolution, or in the Note, expressed or implied, is intended or shall be construed to confer upon any person other than the Issuer and the Note Holder any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any provision hereof, or of the Note, all provisions hereof and thereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Note Holder.

SECTION 23. NO PERSONAL LIABILITY. No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member of the Issuer or agent or employee of the Issuer in his individual capacity, and neither the members nor any officer or employee or agent of the Issuer nor any official executing the Note shall be liable personally on the Note or be subject to any personal liability or accountability by reason of the issuance thereof or by reason of any acts of commission or omission in the performance of any obligation under the Resolution or the Note.

SECTION 24. WAIVER OF JURY TRIAL. To the extent permitted by law, the Issuer knowingly, voluntarily, and intentionally waives any right it may have to a trial by jury, with respect to any litigation or legal proceedings based on or arising out of the Resolution or the Note, including any course of conduct, course of dealings, verbal or written statement or actions or omissions of any party which in any way relates to the Note or this Resolution.

SECTION 25. SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions of this Resolution shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements and provisions of this Resolution and shall in no way affect the validity of any of the other covenants, agreements or provisions hereof or of the Note issued hereunder.

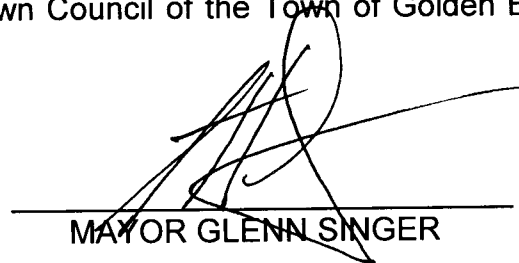
SECTION 26. REPEALING CLAUSE. All Resolutions or Resolutions, or parts thereof, of the Issuer in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

SECTION 27. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption hereof.

The Motion to adopt the foregoing Resolution was offered by Councilmember Bernstein, seconded by Councilmember Einstein 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 22<sup>nd</sup> day of September, 2009.



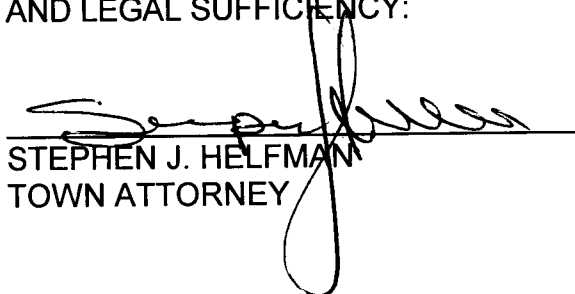
MAYOR GLENN SINGER

ATTEST:



ELIZABETH SEWELL  
TOWN CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:



STEPHEN J. HELFMAN  
TOWN ATTORNEY