

ORDINANCE No. 45

AN ORDINANCE AUTHORIZING THE ISSUANCE OF \$18,000.00 TAX REVENUE NOTES TO FINANCE THE COST OF PAVING AND REPAVING SEWALL'S POINT ROAD, AND PROVIDING FOR THE RIGHTS OF THE HOLDERS OF SUCH NOTES.

BE IT ENACTED BY THE TOWN COMMISSION OF THE TOWN OF SEWALL'S POINT, FLORIDA:

ARTICLE I.

Section 1.01. Authority of this Ordinance. This Ordinance is adopted pursuant to the provisions of Chapter 57-1865, Laws of Florida, Acts of 1957, as amended and supplemented, being the Charter of the Town of Sewall's Point, and other applicable provisions of law.

Section 1.02. Findings. It is hereby ascertained, determined and declared as follows:

A. That the paving and repaving of Sewall's Point Road in the Town of Sewall's Point is imperative in order to preserve the public health and safety of the citizens of said Town, and it is essential that such municipal improvements be accomplished as provided in this Ordinance.

B. That the Town Commission has heretofore, on 3/12/58 _____ duly adopted an Ordinance granting to Florida Power & Light Company an electric franchise for a period of thirty (30) years pursuant thereto, said Town derives and will derive franchise taxes (hereinafter called "Franchise Taxes") and that said franchise taxes are not pledged or encumbered in any manner, and it is deemed necessary and desirable to pledge such franchise taxes during the period of said franchise and any extension or renewal thereof, to the payment of the principal of and interest

E. The Town also receives each year from the Board of County Commissioners of Martin County, a Road and Bridge Tax Refund which has been averaging \$3,000.00 a year for the past several years. This annual sum of money has not been pledged by the Town or encumbered in any manner and it is deemed necessary and desirable to pledge such Road and Bridge Tax Refund as received each year from Martin County, Florida, to the payment of principal of and interest on the Tax Revenue Notes.

F. The Town also receives money from the issuance of Town Building Permits, which has been averaging approximately \$400.00 a year. This money has not heretofore been pledged by the Town or encumbered in any manner and it is deemed necessary and desirable to pledge such income from the Town Building Permits as received each year to the payment of principal and interest on said Tax Revenue Notes.

G. That there is hereby authorized the paving and repaving of the Sewall's Point Road in the Town of Sewall's Point substantially in accordance with the plans and specifications to be approved by the Town Commission of the Town of Sewall's Point.

H. That the estimated cost of said municipal improvements is the sum of \$70,000.00, however, the notes to be issued under the Ordinance shall be \$18,000.00.

I. The Town has on hand cash funds in its Road Fund of \$26,589.00 and it expects to receive \$3,000.00 from the County of Martin this year, 1966-67 as its share of the Road and Bridge Fund, and further the Town

has a reserve in its present budget for this year 1965-66 in the sum of \$8,000.00, and has the promise of a contribution toward the cost of the improvement from Martin County in the sum of \$15,000.00, which is a total of \$52,589.00, leaving a balance due on said improvement in the sum of \$17,441.00.

J. That the estimated proceeds to be derived in each year hereafter from said funds so pledged and described hereinabove in Paragraphs B, and F. C. D and E/ will be sufficient to pay the principal of and interest on the notes to be issued pursuant to this Ordinance as the same become due.

K. That the principal of and interest on the notes to be issued pursuant to this Ordinance will be paid solely from said funds so pledged, and shall not constitute a debt of said Town or be a lien on any real estate thereon.

Section 1.03. Ordinance Constitutes Contract. In consideration of the acceptance of the notes authorized to be issued hereunder by those who shall hold the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the Town of Sewall's Point, Florida, and such note holders, and the covenants and agreements herein set forth to be performed by said Town shall be for the equal benefit, protection and security of the legal holders of any and all of such notes and interest thereon, all of which shall be of equal rank and without preference, priority or distinction of any of the notes over any other thereof, except as expressly provided therein and herein.

Section 1.04. Definitions. That, as used in this ordinance, the following terms shall have the following meanings:

A. "Town" shall mean the Town of Sewall's Point, Florida.

B. "Act" shall mean the Charter of the Town, being Chapter 57-1865, Laws of Florida, Acts of 1957, as amended and supplemented, and other applicable provisions of law.

C. "Notes" shall mean the \$18,000.00 notes originally authorized to be issued pursuant to this Ordinance, and interest thereon.

D. "Noteholder" or any similar term shall mean any person who shall be the bearer or owner of any outstanding note or notes.

E. "Security or Franchise Taxes" shall mean the payments made to the Town from sources set forth in Paragraphs "B", "C", "D", "E" and "F" of Section 1.02 set out hereinabove.

ARTICLE II

AUTHORIZATION, TERMS AND EXECUTION OF NOTES

Section 2.01. Authorization and terms of Notes. For the purpose of financing the cost of the paving and repaving of Sewall's Point Road as provided for in this Ordinance, there is hereby authorized the issuance of negotiable Revenue Notes of the Town of Sewall's Point, Florida, (hereinafter called "Notes"), in the aggregate principal amount of \$18,000.00, which notes shall be dated October 1, 1966, in the denomination of \$1,000.00 each, numbered consecutively in numerical order from 1 to 18, both inclusive; shall bear interest at the rate of 5% per annum, such interest being payable annually on October 1st of each year, payable as to

both principal and interest at the Jensen Beach Bank, Jensen Beach, Florida, in lawful money of the United States of America; and shall mature serially in numerical order on October 1st in the year and amounts as follows:

<u>Year</u>	<u>Amount</u>
1967	\$ 4,000.00
1968	4,000.00
1969	4,000.00
1970	4,000.00
1971	2,000.00

Any notes may be redeemed at any time prior to their due date without penalty.

A notice of the prior redemption of said notes shall be published at least once each week for four consecutive weeks in the Jensen Beach Mirror, prior to the date of redemption.

Interest shall cease on the redemption date on any of said notes duly called for prior redemption, provided payment of the redemption price thereof has been duly provided for.

Section 2.02. Execution of Notes. Said Notes shall be signed in the name of the Town by its Mayor and the corporate seal of the Town shall be affixed thereto and attested by the Town Clerk.

Section 2.03. Negotiability. The Notes shall be and have all of the qualities and incidents of negotiable instruments under the Law Merchant and the Negotiable Instruments Law of the State of Florida, and each successive holder shall further be conclusively deemed to have agreed that said notes shall be incontestable in the hands of a bona fide holder

for value in the manner provided hereinafter in the form of said Notes.

Section 2.04. Notes Mutilated, Destroyed, Stolen or Lost.

In case of any note becoming mutilated or destroyed, stolen or lost, the Town may, in its discretion, issue and deliver a new Note of like tenor as the Note so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Note, upon surrender and cancellation of such mutilated note, or in lieu of and substitution for the Note destroyed, stolen or lost and upon the holder furnishing the Town proof of his ownership thereof and satisfactory indemnity by a surety company authorized to do business in the State of Florida, and complying with such other reasonable regulations and conditions as the Town may prescribe and paying such expenses as the Town may incur. All Notes so surrendered shall be cancelled by the Town Clerk and held for the account of the Town. If any such Note shall have matured or be about to mature, instead of issuing a substituted Note, the Town may pay the same 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 additional contractual obligations on the part of the Town, whether or not the lost, stolen or destroyed Note or coupons be at any time found by anyone, and such duplicate Note shall be entitled to equal and proportionate benefits and rights as to lien and source and security for payment from funds so pledged with all other Notes.

Section 2.05. Form of Note. The text of the Note shall be of substantially the following tenor, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Ordinance or any subsequent ordinance adopted prior to the issuance thereof:

No. \$1,000.00

UNITED STATES OF AMERICA
STATE OF FLORIDA
COUNTY OF MARTIN
TOWN OF SEWALL'S POINT, FLA.

TAX REVENUE NOTE

KNOW ALL MEN BY THESE PRESENTS, That the Town of Sewall's Point, in Martin County, Florida, for value received, hereby promises to pay to the bearer, on the first day of October, 19____, from the special funds described in Ordinance and _____ adopted by the Town of Sewall's Point in _____, 1966, the principal sum of -----ONE THOUSAND DOLLARS ----- with interest thereon at the rate of five per centum per annum, payable annually.

Both principal of and interest on this Note are payable at the Jensen Beach Bank, Jensen Beach, Floaida, in lawful money of the United States of America.

The Note of the issue of which this Note is one maturing in the years 1967 to 1971, inclusive, are redeemable prior to their stated dates

of maturity, at the option of the Town in whole or in part without penalty.

The Note is one of an authorized issue of Notes in the aggregate principal amount of not exceeding \$18,000.00, of like date, tenor and effect, except as to number and date of maturity, issued to finance the cost of the construction of municipal improvements in said Town as set forth in said Ordinance, and duly enacted by the Town Commission of said Town and is subject to all the terms and conditions of said Ordinance.

This Note is payable solely from and secured by a lien upon and pledge of the security in the manner provided in the Ordinance authorizing the issue of Notes of which this Note is one.

It is further agreed between the Town of Sewall's Point and the holder of this note, that this Note and the obligation evidenced thereby shall not constitute a lien upon any property of or in the Town of Sewall's Point, but shall constitute a lien only on said pledged revenue as described in said Ordinance.

The Town in said Ordinance has covenanted and agreed with the holders of the Notes of this issue that it will not repeal any Franchise Ordinance described in Paragraphs "B", "C", "D", "E" and "F", and will not amend or modify said Ordinance in any manner so as to reduce the amount of said Franchise Taxes collected thereunder or impair or adversely affect the power of the Town to collect said Franchise Taxes, or impair or adversely affect in any manner the pledge of Franchise Taxes made herein or any other security or pledges. Said Town has entered into certain further covenants with the holders of the Note of this issue, for the terms of which reference is made to said Ordinance.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the issuance of this Note, exist, have happened, and have been performed in regular and due form and time as required by the Laws and Constitution of the State of Florida applicable thereto, and that the issuance of this Note and of the issue of Notes of which this Note is one is in full compliance with all constitutional, statutory or charter limitations or provisions.

This Note is and has all the qualities and incidents of negotiable instrument under the law merchant and negotiable instrument law of the State of Florida; and the original holder and each successive holder of this Note, shall be conclusively deemed by his acceptance thereof to have agreed that this Note thereto shall be and have all the qualities and incidents of negotiable instruments under the Law Merchant and the Negotiable Instruments Law of the State of Florida.

IN WITNESS WHEREOF, said Town of Sewall's Point has issued this Note and has caused the same to be signed by its Mayor, and the corporate seal of said Town to be affixed hereto and attested by its Town Clerk, all as of the _____ day of _____, 1966.

TOWN OF SEWALL'S POINT

By _____
As Mayor

ATTEST:

As Town Clerk

(Corporate Seal)

ARTICLE III

FRANCHISE TAXES, OTHER REVENUE PLEDGED
AND APPLICATION THEREOF

Section 3.01. Notes Not to be Indebtedness of the Town of Sewall's Point. The Notes shall not be or constitute an indebtedness of the Town of Sewall's Point within the meaning of any constitutional, statutory or charter limitations of indebtedness, but shall be payable from the proceeds of said funds so pledged by this Ordinance. 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 Town to pay the said Note or the interest thereon, or be entitled to payment of such principal and interest from any other funds of the Town except the funds so pledged for payment of said Note as provided herein.

Section 3.02. Note secured by Pledge of Funds as set out herein. The payment of the debt service of all the Notes issued hereunder shall be secured forthwith equally and ratably by a first lien on and pledge of the proceeds received by the Town from revenues collected as disclosed in Paragraphs "B", "C", "D", "E" and "F" of Section 1.02 of this Ordinance.

The Town does further covenant and agree that it will not repeal any Ordinance granting any Franchise Ordinance, the Franchise Tax herein pledged, nor will it repeal or modify any Ordinance that would affect the security of these Notes.

The Town further expressly represents that the covenant entered into between the Town and the holders pursuant to this Section 3.02 constitutes a valid and legally binding contract between the Town and such Noteholder not subject to repeal, amendment or modification by the Town.

Section 3.03. Application of Note Proceeds. All moneys received from the sale of any or all of the \$18,000.00 of Notes issued pursuant to this Ordinance shall be deposited by the Town of Sewall's Point in a trust fund to be known as the "Road Repair and Construction Fund", and shall be used and applied by the Town solely to the payment of the cost of the construction of the municipal improvements as provided in this Ordinance, and for no other purposes whatsoever. Said fund shall be maintained by the Town at Jensen Beach Bank at Jensen Beach, Florida, or any other bank or trust Company so designated, and all moneys at any time in said Road Repair and Construction Fund shall be continuously secured in the same manner as deposits of State and Municipal Funds are required to be secured by the present Laws of the State of Florida. Withdrawals shall be made only for the purposes designated in this Ordinance from said Construction Fund; for the interest maturing on the Notes, and for legal and engineering expenses, expenses for financial or fiscal services, and expenses in connection with the authorization and issuance of the Notes authorized by this Ordinance. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to, such purposes, then such unapplied proceeds shall be paid into the Town Tax Revenue Fund. All moneys in said Construction Fund shall constitute a trust fund for such purposes and there is hereby created a lien upon such funds until so applied, in favor of the holders of the notes issued pursuant to this Ordinance.

Section 3.04. Covenants of the Town. So long as any of the Notes shall be outstanding and unpaid, the Town covenants with the holders of any and all of the Notes issued pursuant to this Ordinance, as follows:

A. REVENUE FUND. That all of the proceeds of the Franchise Taxes required to be paid annually to the Town, together with any other income pledged by this Ordinance, shall be deposited immediately upon the receipt thereof by the Town in a trust fund in the Jensen Beach Bank at Jensen Beach, Florida, or any other bank or trust company hereafter so designated by the Town, which fund is hereby created and designated as the "Town Tax Revenue Fund". Said Town Tax Revenue Fund shall constitute a trust fund for the purposes provided in this Ordinance, and shall be kept separate and distinct from all other funds of the Town and used solely for the purposes and in the manner provided in this Section 3.04.

B. DISPOSITION OF REVENUE FUNDS. Moneys in the Revenue Fund shall be used only for the purposes of the payment of maturing principal of or interest on the Notes and for no other purpose.

C. ISSUANCE OF OTHER OBLIGATIONS PAYABLE OUT OF REVENUE FUNDS. The Town will not issue any other obligations payable from the funds pledged by this Ordinance until the Notes described herein are paid.

D. BOOKS AND RECORDS. That the Town will keep books and records of the collection of said funds so pledged by this Ordinance, which shall be separate and apart from all other books, records and accounts of the Town, and any holder of a Note or Notes issued pursuant to this Ordinance shall have the right at all reasonable times to inspect all records, accounts and data of the Town relating thereto.

The Town shall at least once a year, cause the books, records and

accounts relating to said funds so pledged by this Ordinance, to be properly audited and shall mail, upon request, and make available generally, the reports of such audits to any holder or holders of Notes issued pursuant to this Ordinance.

E. REMEDIES . Any holder of Notes issued under the provisions of this Ordinance, or any Trustee acting for such Noteholder in the manner hereinafter provided, may, either at law or in equity, by suit, action, mandamus, or other proceeding in any Court of competent jurisdiction, protect and enforce any and all rights under the Laws of the State of Florida or granted and contained in this Ordinance, and may enforce and compel the performance of all duties required by this Ordinance or by any applicable statutes to be performed by the Town or by any officer thereof, including the collecting of such funds so pledged.

In the event that default shall be made in the payment of the principal of or interest on any of the Notes issued pursuant to this Ordinance as the same shall become due, or in the event that the Town or any officer, agent or employee thereof shall fail or refuse to comply with the provisions of this Ordinance, or shall default in any covenant made herein, and in the further event that any such default shall continue for a period of thirty days, any holder of such Note, or any Trustee appointed to represent Noteholder as hereinafter provided, shall be entitled as of right to the appointment of a receiver to collect and receive said funds so pledged by this Ordinance, in any Court of competent jurisdiction. Said receiver shall collect and receive all funds pledged by this Ordinance and comply under the jurisdiction of the Court appointing such receiver, with all of the provisions of this Ordinance.

Whenever all that is due upon Notes issued pursuant to this Ordinance, and interest thereon, shall have been paid and made good, and all defaults under the provisions of this Ordinance shall have been cured and made good, said receivership shall be terminated upon the entry of an Order of the Court to that effect. Upon any subsequent default, any holder of notes issued pursuant to this Ordinance, or any Trustee appointed for Noteholder as hereinafter provided, shall have the same right to secure the further appointment of a receiver upon such subsequent default.

Such receiver shall, in the performance of the powers hereinabove conferred upon him, be under the direction and supervision of the Court making such appointment, shall at all times be subject to the Orders and Decrees of such Court, and may be removed thereby and a successor receiver appointed in the discretion of such Court.

F. ENFORCEMENT OF COLLECTION. That the Town will diligently enforce and collect said funds pledged by this Ordinance, and take all steps, actions and proceedings for the enforcement and collection of such funds which shall become delinquent to the extent permitted or authorized by the Charter of said Town and the applicable Laws of the State of Florida.

G. INVESTMENT OF FUNDS. Moneys in the Town Tax Revenue Fund may be invested in direct obligations of the United States maturing not later than five years after their purchase or invested in savings accounts that are insured by the United States Government. Interest earned on said funds invested as provided above shall be credited to and deposited in said Tax Revenue Fund.

ARTICLE IV.

MISCELLANEOUS

Section 4.01. Modification or Amendment. No material modification or amendment of this Ordinance or of any Ordinance amendatory hereof or supplemental hereto may be made without the consent in writing of the holders of two-thirds or more in the principal amount of the Notes then outstanding; provided, however, that no modification or amendment shall permit a change in the maturity of such Notes or a reduction in the rate of interest thereon, or in the amount of the principal obligation thereof or affecting the unconditional promise of the Town to pay the principal of and interest on the Notes as the same shall become due from said funds so pledged or reduce the percentage of Noteholder required to consent to any material modification or amendment of this Ordinance, without the consent of the holder or holders of such Notes.

Section 4.02. Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions of this Ordinance shall be held contrary to any provisions of law 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 or provisions, and shall in no way affect the validity of any of the other provisions of this Ordinance or of the Notes or coupons issued hereunder.

Section 4.04. This Ordinance shall become effective upon its due passage according to law.

