

**FLORIDA GREEN  
FINANCE AUTHORITY**

**REGULAR BOARD MEETING  
JUNE 8, 2023  
2:00 P.M.**

**AGENDA**  
**FLORIDA GREEN FINANCE AUTHORITY**  
Mangonia Park Municipal Center  
1755 East Tiffany Drive,  
Mangonia Park, Florida 33407  
1-877-873-8017  
Access #9758310  
**REGULAR BOARD MEETING**  
June 8, 2023  
2:00 p.m.

- A. Call to Order
- B. Proof of Publication .....Page 1
- C. Establish Quorum
- D. Consider Resolution No. 2023-03 – Reorganizing the Board ..... Page 2
- E. Additions or Deletions to Agenda
- F. Comments from the Public for Items Not on the Agenda
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- I. Old Business
- J. New Business
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Direction on Amicus Curiae Brief.....Page 30
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- L. Board Member Comments
- M. Adjourn

## Miscellaneous Notices

Published in The Palm Beach Post on June 1, 2023

### Location

Palm Beach County, Florida

### Notice Text

NOTICE OF REGULAR BOARD MEETING OF FLORIDA GREEN FINANCE AUTHORITY NOTICE IS HEREBY GIVEN that the Board of Supervisors ( Board ) of the Florida Green Finance Authority ( Authority ) will hold a Regular Board Meeting on June 8, 2023, at 2:00 P.M. (EST) at the Town of Mangonia Park Municipal Center located at 1755 East Tiffany Drive, Mangonia Park, Florida 33407.

The purpose of this meeting is to conduct any business coming before the Board. The meeting is open to the public and will be conducted in accordance with the provisions of Florida law. A copy of the Agenda for this meeting may be obtained from the Authority s website or by contacting the Authority Manager at 561-630-4922 and/or toll free at 1-877-737-4922 prior to the meeting.

Such meeting will involve the use of Communications Media Technology. Members of the public may attend and participate in the meeting from the Actual Meeting Location, as well as Remote Meeting Locations. Said locations where members of the public may attend and participate are as follows: Palm Beach County, FL: Town of Mangonia Park Municipal Center (Actual Meeting Location)

1755 East Tiffany Drive

Mangonia Park, FL 33407

Sarasota County, FL: City of North Port City Hall (Remote Meeting Location)  
4970 City Hall Boulevard, Room 244

North Port, FL 34286

If any person decides to appeal any decision made with respect to any matter considered at this meeting, such person will need a record of the proceedings and such person may need to ensure that a verbatim record of the proceedings is made at his or her own expense and which record includes the testimony and evidence on which the appeal is based.

In accordance with the provisions of the Americans with Disabilities Act, any person requiring special accommodations or an interpreter to participate at this meeting should contact the Authority Manager at 561-630-4922 and/or toll free at 1-877-737-4922 at least seven (7) days prior to the date of the meeting.

Meetings may be cancelled from time to time without advertised notice.

FLORIDA GREEN FINANCE AUTHORITY

[www.flgfa.org](http://www.flgfa.org)

06-01/2023

## **RESOLUTION NO. 2023-03**

### **A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE FLORIDA GREEN FINANCE AUTHORITY, REORGANIZING THE BOARD OF SUPERVISORS TO APPOINT THE CHAIR AND VICE CHAIR FOR FISCAL YEAR 2022/2023 AND CONTINUING THE DELEGATION OF THE ROLES OF SECRETARY AND TREASURER TO STAFF; PROVIDING AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.**

**WHEREAS**, the original Interlocal Agreement Between the Florida Green Finance Authority, The Town of Lantana and the Town of Mangonia Park established that the Town Manager of Lantana, or designee, shall serve as the Chair of the Authority Board for the initial four (4) year term and that a representative of Mangonia Park shall serve as the Vice Chair of the Authority Board for the initial four (4) year term; and

**WHEREAS**, the Second Amended and Restated Interlocal Agreement Forming the Florida Green Finance Authority (“ILA”) states that the Authority shall be governed by a seven (7) member Board of Directors; and

**WHEREAS**, the Authority Board reached its full seven (7) member capacity for the first time since inception in April 2018; and

**WHEREAS**, the ILA requires that the Board of Supervisors (“Board”) be governed by a Chair, a Vice Chair, a Secretary and a Treasurer; and

**WHEREAS**, the ILA provides that the Secretary and Treasurer officer roles may be delegated to a member of Staff; and

**WHEREAS**, the ILA requires that the Chair and Vice-Chair be elected from the current Board membership for a term of one (1) year to commence on October 1<sup>st</sup> of each year; and

**WHEREAS**, the ILA requires that the Board reorganize no later than September 30<sup>th</sup> of each year for the subsequent fiscal year; and

**WHEREAS**, the Board desires to make the following appointments in accordance with the ILA.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE FLORIDA GREEN FINANCE AUTHORITY AS FOLLOWS:**

**SECTION 1.** The Board of Supervisors of the Florida Green Finance Authority hereby appoints \_\_\_\_\_ as Chair of the Board of Supervisors, effective October 1, 2022. This appointment shall remain valid for one (1) year.

**SECTION 2.** The Board of Supervisors of the Florida Green Finance Authority hereby appoints \_\_\_\_\_ as Vice Chair of the Board of Supervisors, effective October 1, 2022. This appointment shall remain valid for one (1) year.



**SECTION 3.** The Board of Supervisors of the Florida Green Finance Authority hereby continues the delegation of the officer roles of Secretary and Treasurer to Todd Wodraska, Special District Services, Inc., or his designee. This delegation shall remain valid for one (1) year.

**SECTION 4.** This Resolution shall become effective immediately upon its passage and adoption.

**PASSED AND ADOPTED** this 8<sup>th</sup> day of June, 2023.

**FLORIDA GREEN FINANCE AUTHORITY**

By: \_\_\_\_\_  
Authority Chairman

**ATTEST:**

\_\_\_\_\_  
Andrew Karmeris, Authority Secretary

**Approved as to form and legal sufficiency**

\_\_\_\_\_  
Keith W. Davis, Authority General Counsel

**MINUTES**  
**FLORIDA GREEN FINANCE AUTHORITY**  
**REGULAR BOARD MEETING**  
**MARCH 2, 2023**

**A. Call to Order**

District Manager Andrew Karmeris called the March 2, 2023, Regular Board Meeting of the Florida Green Finance Authority to order at 2:02 p.m. at the Town of Lantana, 500 Greynolds Circle Lantana, Florida 33462.

**B. Proof of Publication**

Proof of publication was presented showing that notice of the Regular Board Meeting had been published in the *Palm Beach Post*, *Osceola News Gazette*, *Sarasota Herald-Tribune*, and *Pensacola News Journal* on February 22, 2023, as legally required.

**C. Establish Quorum**

A quorum was established with the following Supervisors present:

<b>Supervisor</b>	<b>Jurisdiction</b>	
Chairman Ken Metcalf	Town of Mangonia Park	Present
Vice Chair Nicole Dritz	Town of Lantana	Present
Dave Robau	City of Pensacola	Present (via telephone)
Nancy Gallinaro	City of North Port	Present (via telephone)

Others present at the meeting included:

<b>Staff Member</b>	<b>Company/Agency</b>
Andrew Karmeris	Special District Services
Mitty Barnard	Davis & Associates, P.A.
Bill Capko	Lewis, Longman & Walker
Chelsey Olsen	Renew Financial

Others appearing by phone included:

<b>Staff Member</b>	<b>Company/Agency</b>
Erin Deady	Petros Partners
Aaron Palajac	Renew Financial

Matthew Choy	Renew Financial
Jennifer Rojo-Suarez	Renew Financial

#### **D. Additions or Deletions to Agenda**

There were no additions or deletions to the agenda.

#### **E. Comments from the Public for Items Not on the Agenda**

There we no comments from the Public.

#### **F. Approval of Minutes**

##### **a. September 1, 2022 Regular Board Meeting**

There was a **motion** made by Vice Chair Dritz, seconded by Chairman Metcalf, to approve the minutes of the September 1, 2022 Regular Board Meeting, as presented. The Board was polled:

<b>Supervisor</b>	<b>Jurisdiction</b>	<b>Vote</b>
Chairman Ken Metcalf	Town of Mangonia Park	Yes
Vice Chair Nicole Dritz	Town of Lantana	Yes
Dave Robau	City of Pensacola	Yes
Nancy Gallinaro	City of North Port	Yes

The **motion** carried 4-0.

#### **G. Status/Program Update – Information Report**

##### **a. Residential**

Ms. Chelsey Olsen provided a program update by reviewing the materials in the agenda package and mentioned the departure of Ygrene operations from Florida. She then stated there is talk of Ygrene restarting Florida operations. Ms. Olsen also provided an update on the marketing efforts and programs being implemented by Renew Financial.

Mr. Matthew Choy provided some information regarding State and Federal legislation.

Ms. Jennifer Rojo-Suarez provided an update on jurisdictions and Palm Beach County.

##### **b. Commercial**

Ms. Erin Deady also commented on State and Federal legislation as well as Charlotte county terminated residential PACE.

## H. Old Business

There were no Old Business items to be addressed.

## I. New Business

### 1. Consider Resolution No. 2023-01 – Authorizing Administrator’s Request to Assign a Third Party the Authority to Close and Fund the Acquisition of Bonds or Obligations Under the Administration Services Agreement

Mr. Aaron Palajac presented Resolution No. 2023-01

#### RESOLUTION NO. 2023-01

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE FLORIDA GREEN FINANCE AUTHORITY (“FGFA”), AUTHORIZING AND APPROVING ADMINISTRATOR’S (AS DEFINED BELOW) REQUEST TO ASSIGN TO A THIRD PARTY THE AUTHORITY TO CLOSE AND FUND THE ACQUISITION OF THE BONDS OR OBLIGATIONS UNDER THE ADMINISTRATION SERVICES AGREEMENT (AS DEFINED BELOW); PROVIDING FOR CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; PROVIDING AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.**

Vice Chair Dritz had questions about the Administrative Services Agreement. Ms. Mitty Barnard answered all questions. Vice Chair Dritz then asked if next time the full agreement could be presented as an agreement.

There was a **motion** made by Vice Chair Dritz, seconded by Chairman Metcalf, to approve Resolution No. 2023-01, as presented. The Board was polled:

<b>Supervisor</b>	<b>Jurisdiction</b>	<b>Vote</b>
Chairman Ken Metcalf	Town of Mangonia Park	Yes
Vicechair Nicole Dritz	Town of Lantana	Yes
Dave Robau	City of Pensacola	Yes
Nancy Gallinaro	City of North Port	Yes

The **motion** carried 4-0.

### 2. Consider Resolution No. 2023-02 – Authorizing the Chairman to Execute the First Amendment to Commercial PACE Program Administrative Services Agreement by and Between the FGFA and Petros PACE Administrator, LLC

Ms. Mitty Barnard presented Resolution No. 2023-02

## RESOLUTION NO. 2023-02

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE FLORIDA GREEN FINANCE AUTHORITY, AUTHORIZING THE CHAIRMAN OF THE BOARD OF SUPERVISORS TO EXECUTE A CERTAIN “FIRST AMENDMENT TO COMMERCIAL PACE PROGRAM ADMINISTRATION SERVICES AGREEMENT BY AND BETWEEN THE FLORIDA GREEN FINANCE AUTHORITY AND PETROS PACE ADMINISTRATOR, LLC” WHICH AMENDMENT PROVIDES FOR CLARIFICATION WITHIN THE INDEMNIFICATION PROVISION TO ENSURE A UNIFIED DEFENSE TO CLAIMS AGAINST THE PARTIES; PROVIDING AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.**

Vice Chair Dritz asked to see a copy of this agreement as well.

There was a **motion** made by Vice Chair Dritz, seconded by Supervisor Gallinaro, to approve Resolution No. 2023-02, as presented. The Board was polled:

<b>Supervisor</b>	<b>Jurisdiction</b>	<b>Vote</b>
Chairman Ken Metcalf	Town of Mangonia Park	Yes
Vicechair Nicole Dritz	Town of Lantana	Yes
Dave Robau	City of Pensacola	Yes
Nancy Gallinaro	City of North Port	Yes

The **motion** carried 4-0.

### **J. Administrative Matters**

There were no Administrative matters to discuss.

### **K. Board Member Comments**

Vice Chair Dritz asked for executive summaries for each agenda item going forward and for a summary of all Petros deals.

### **L. Adjournment**

The meeting was adjourned at 2:43 p.m. after a **motion** by Chairman Metcalf, and a second by Vice Chair Dritz. The **motion** carried 4-0.

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Chairman/Vice Chair

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Secretary/Asst. Secretary



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## INFORMATION REPORT

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**DATE:** JUNE 8, 2023

**FGFA PROGRAM:** RENEWPACE – PROPERTY ASSESSED CLEAN ENERGY PROGRAM

**PURPOSE:**

- I. UPDATE ON RENEWPACE RESIDENTIAL PROGRAM
- II. UPDATE ON MARKETING EFFORTS
- III. UPDATE ON STATE AND FEDERAL LEGISLATION
- IV. UPDATE ON RPACE ENROLLED JURISDICTIONS
- V. UPDATE ON TAX COLLECTOR AGREEMENTS

**BOARD MEMBERS:**

CHAIR KEN METCALF, TOWN OF MANGONIA PARK  
VICE CHAIR NICOLE DRITZ, TOWN OF LANTANA  
DAVE ROBAU, CITY OF PENSACOLA  
WAYNE MESSAM, CITY OF MIRAMAR  
NANCY GALLINARO, CITY OF NORTH PORT

**Background:**

RenewPACE is a Program of the Florida Green Finance Authority (the “Authority”) designed to offer communities, property owners and capital providers a multitude of options for investing in community improvements that save both energy and money. The Authority Board of Supervisors (“Board”) is being asked to hear or consider several items for the RenewPACE residential program, as well as administrative items related to the management of the Authority:

**Discussion:**

- I. UPDATE ON RENEWPACE RESIDENTIAL PROGRAM

*Program Application Statistics (as of 05/04/2023)*

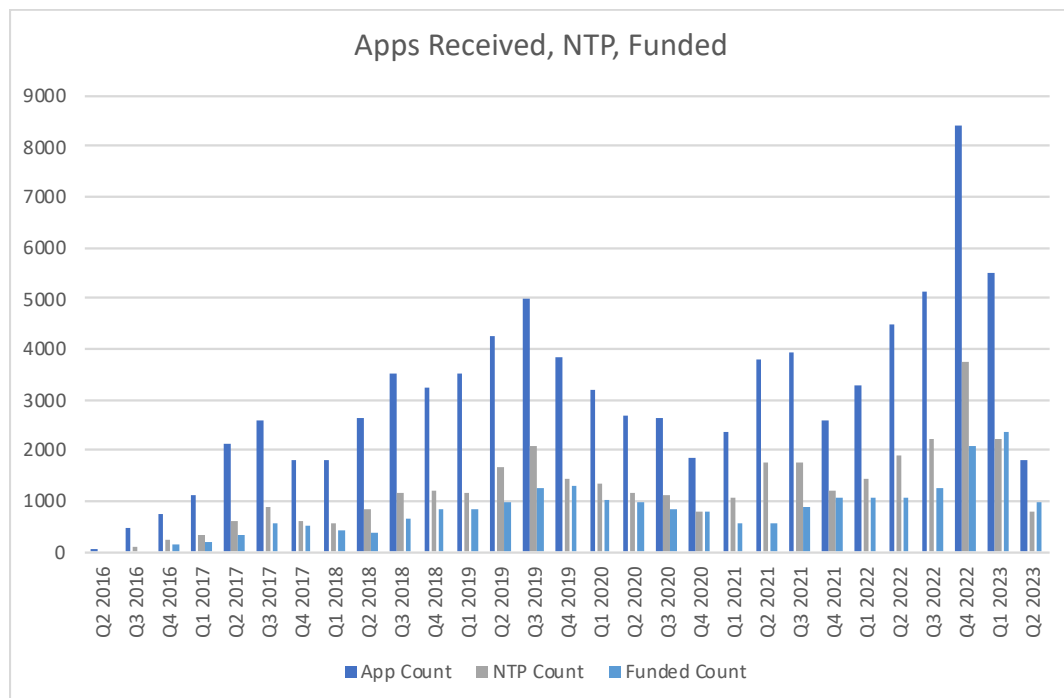
The program is contributing to the local goals of creating jobs and saving energy.

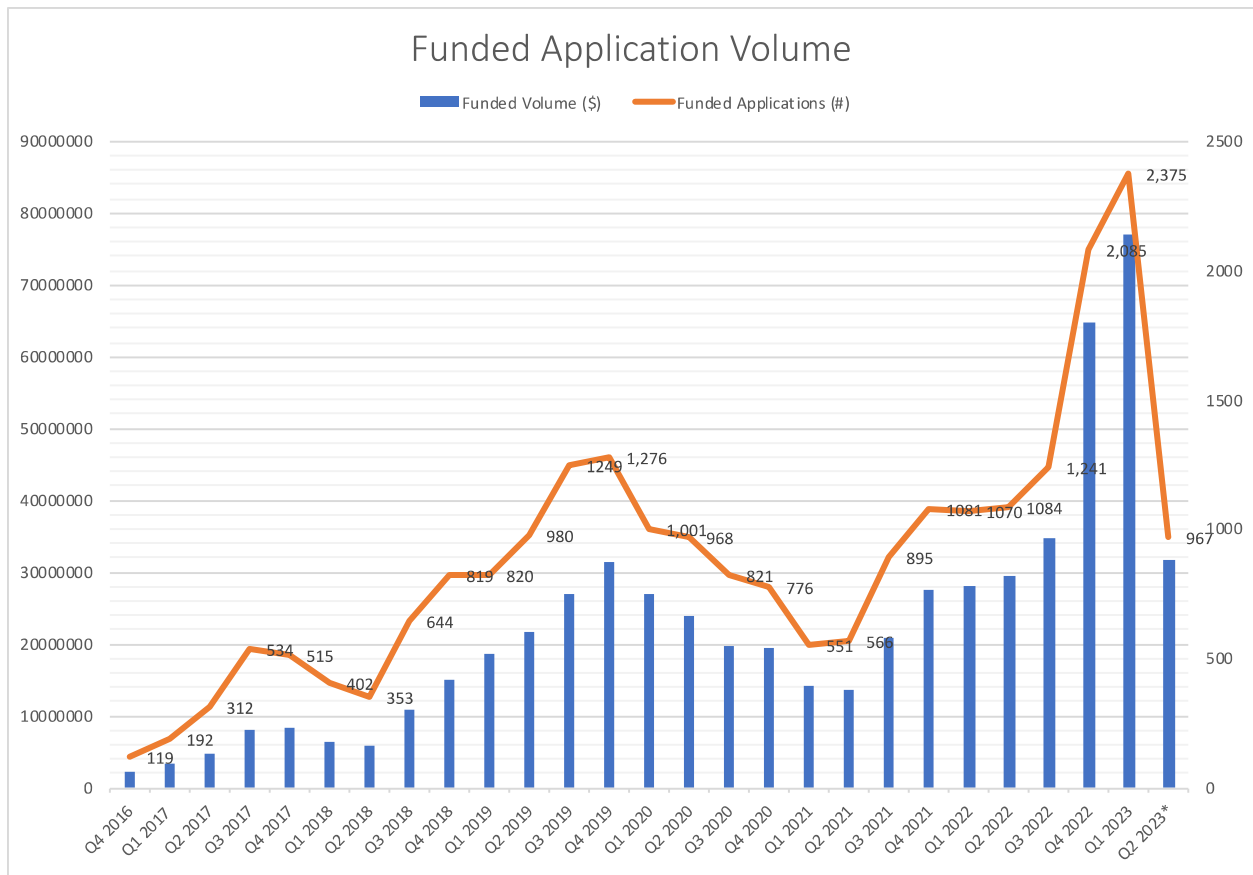
- Jobs created: 9,026
- Utility bill savings electricity (lifetime): \$ 180,860,364
- Utility bill savings natural gas (lifetime): \$14,532,603
- Lifetime energy generation & savings:
  - Renewable energy generated (kWh): 746,990,243
  - Energy saved (kWh): 158,262,092
  - Therms saved: 11,533,812
  - Green House Gas Reductions: 318,392 metric tons

Below is a summary of program application statistics.

As of 05/04/2023	8/5/2022	11/3/2022	2/13/2023	05/04/2023
# Applications	69,021	76,973	83,042	88,041
Total App Value	\$1,739,080,967	\$1,998,847,438	\$2,200,510,414	\$2,373,070,878
Average Assessment Value	\$22,161	\$23,126	\$23,767	\$24,717
Notice to Proceed (#/\$)*	27,782 / \$701,825,826	31,373 / \$826,930,723	33,590 / \$903,820,787	35,225 / \$962,255,002
Funded (#/\$)	17,450 / \$399,869,004	19,133 / \$447,370,689	21,619 / \$527,311,924	23,699 / \$596,342,801
# Active Contractors	428	605	687	734
# Counties Approved (RPACE)	25	25	25	25

*\*Inclusive of funded projects*





\*Q1 2023 up to 2/13/2023

As of 05/04/2023	# of Applications	Total Application Value	NTP # / \$*	Funded (#/\$)
Town of Mangonia Park	15	\$480,814	10 / \$347,777	7 / \$153,809
Town of Lantana	245	\$6,633,335	104 / \$2,719,743	70 / \$1,787,169
City of Pensacola	80	\$2,283,701	5 / \$101,088	1 / \$28,608
City of Miramar	2,419	\$74,651,100	1,017 / \$33,903,431	584 / \$17,769,665
City of North Port	601	\$12,677,371	257 / \$4,555,308	207 / \$3,371,246

\*Inclusive of funded projects

Applications have been submitted for a range of products including air source heat pumps, insulation, duct replacement, water heaters, windows, wind-resistant shingles, storm windows, storm shutters, doors, central air conditioners, solar, and roofs.

Renewable Energy Project %	Energy Efficiency Project %	Safety & Resilience Project %
22%	15%	63%

*Program Policy Updates*



Per Resolution 2016-03 (Section 9), the Board authorized the Program Administrator to amend the Residential Handbook from time to time. Per Exhibit A of the Third-Party Administration Services Agreement Section I.3.a.iv, Renew Financial is responsible for maintaining “Program Application & Funding Request Forms”. The following is a brief summary of the updates. Renew Financial has provided an opportunity for review of the policy details to the standard working group that includes Special District Services, legal counsels, and key partners prior to implementing any new policy.

### *Consumer Complaints*

Renew Financial tracks consumer complaints. There are currently 44 unresolved complaints. Complaints are addressed through outreach to the property owner(s) and contractor (if applicable). Complaints were resolved in an average of 43 calendar days. Renew Financial makes every effort to address and resolve issues quickly. Delays in resolution may occur depending on availability of the parties and degree of the complaint. Resolution resulted in a variety of actions including, but not limited to, additional training of contractor, confirmation of key terms with property owner, withdraw of application at request of property owner, and refund of a portion of the cost to the property owner by the contractor.

Below is a brief summary of complaints (as of 05/04/2023):

- Number of complaints received and resolved since program launch in 2016: 960
- Complaint Rate: 4%
- Contractors involved in complaints: 774
- Most common categories of complaints: Workmanship; Delayed/Incomplete Projects

### *II. UPDATE ON MARKETING EFFORTS*

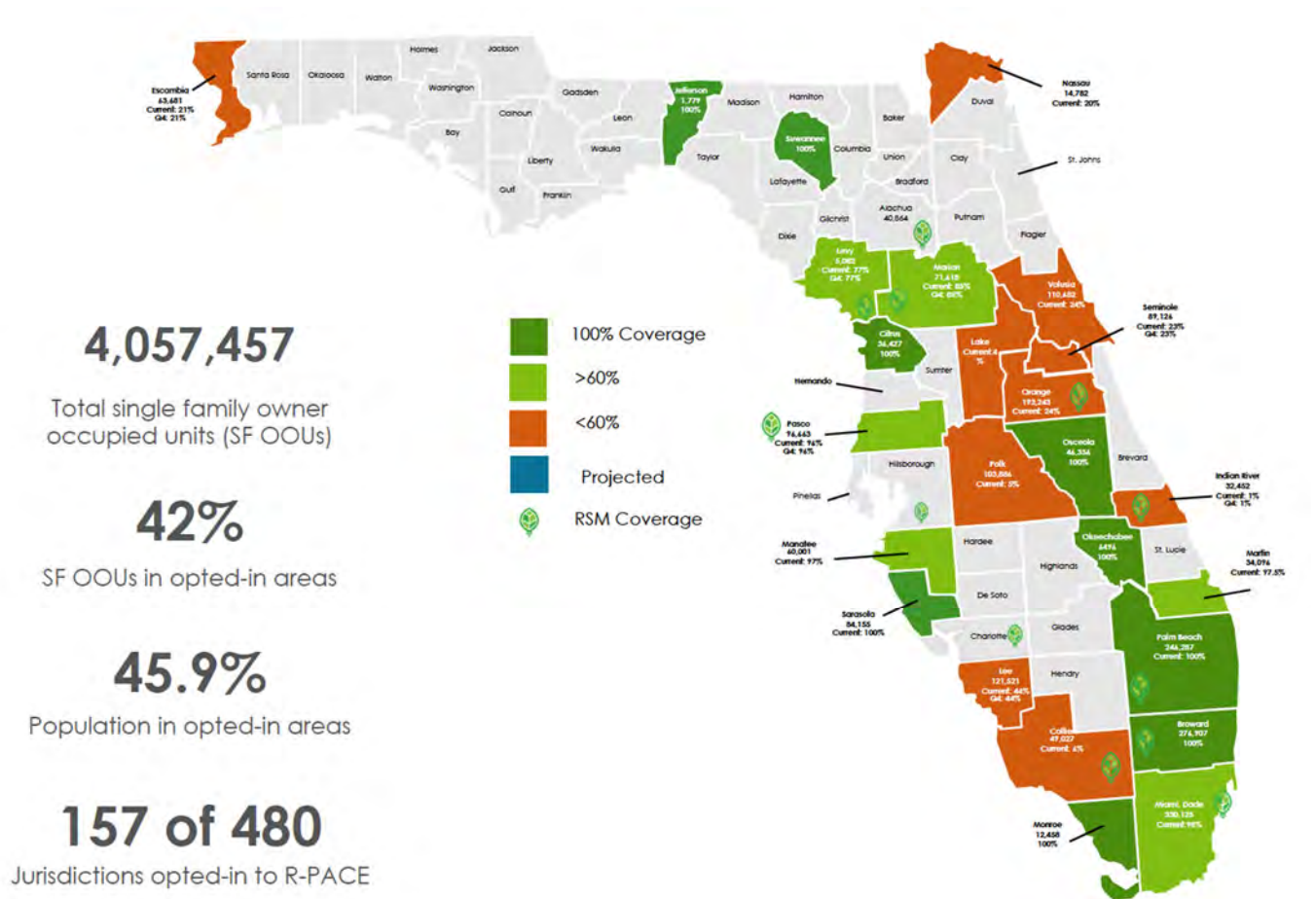
Any updates will be provided at the Authority Board meeting.

### *III. UPDATE ON STATE AND FEDERAL LEGISLATION*

Any updates will be provided at the Authority Board meeting.

### *IV. UPDATE ON ENROLLED JURISDICTIONS (see list on the following pages)*

*Map of **Residential** Opt-Ins:*



**BROWARD**

- Coconut Creek\*
- Cooper City\*
- Coral Springs\*
- Dania Beach\*
- Davie\*
- Deerfield Beach\*
- Fort Lauderdale
- Hallandale Beach\*
- Hillsboro Beach\*
- Hollywood\*
- Lauderdale-by-the-Sea\*
- Lauderdale Lakes\*
- Lauderhill\*
- Lazy Lake\*
- Lighthouse Point\*
- Margate
- Miramar
- North Lauderdale\*
- Oakland Park\*
- Parkland\*
- Pembroke Park\*
- Pembroke Pines
- Plantation\*
- Pompano Beach
- Sea Ranch Lakes\*
- Southwest Ranches\*
- Sunrise\*
- Tamarac\*
- Weston\*
- West Park\*
- Wilton Manors\*
- Unincorporated County\*

**CHARLOTTE (CPACE)**

- Punta Gorda
- Unincorporated County

**CITRUS**

- Inverness\*
- Crystal River\*
- Unincorporated County

**COLLIER**

- Naples
- Unincorporated County (CPACE)

**COLUMBIA**

- Unincorporated County (CPACE)

**ESCAMBIA**

- Century (CPACE)
- Pensacola
- Unincorporated County (CPACE)

**HIGHLANDS**

- Sebring (CPACE)
- Lake Placid (CPACE)
- Avon Park (CPACE)
- Unincorporated County (CPACE)

**INDIAN RIVER**

- Fellsmere
- *Sebastian*
- Unincorporated County (CPACE)

**JEFFERSON**

- Monticello\*
- Unincorporated County

**LAKE**

- **Eustis (CPACE)**
- Leesburg
- Mount Dora

**LEE**

- Bonita Springs
- Cape Coral
- Estero
- Fort Myers

**LEVY**

- Fanning Springs
- Williston
- Unincorporated County

**MANATEE**

- Bradenton\*
- Bradenton Beach\*
- Palmetto\*
- Unincorporated County

**PALM BEACH**

- Atlantis\*
- Belle Glade\*
- Boca Raton\*
- Boynton Beach
- Briny Breezes\*
- Cloud Lake\*
- Delray Beach
- Glen Ridge\*
- Golf
- Greenacres\*
- Gulfstream\*
- Haverhill\*
- Highland Beach\*
- Hypoluxo\*
- Juno Beach\*
- Jupiter\*
- Jupiter Inlet Colony\*
- Lake Clarke Shores\*
- Lake Park\*
- Lake Worth
- Lantana
- Loxahatchee Groves\*
- Manalapan\*
- Mangonia Park
- North Palm Beach
- Ocean Ridge\*
- Pahokee\*
- Palm Beach\*
- Palm Beach Gardens\*
- Palm Beach Shores
- Palm Springs\*
- Riviera Beach\*
- Royal Palm Beach\*
- South Bay\*
- South Palm Beach\*
- Tequesta
- Wellington\*
- West Lake\*
- West Palm Beach
- Unincorporated County

**POLK**

- Haines City
- Lake Wales

**PASCO**

- Port Richey
- Zephyrhills
- Unincorporated County

**PINELLAS**

- Gulfport (CPACE)

**SARASOTA**

- North Port\*
- Sarasota\*

MARION

- Unincorporated County

MARTIN

- Sewall's Point
- Stuart
- Unincorporated County

MIAMI-DADE

- Aventura
- Biscayne Park
- Coral Gables
- Cutler Bay
- Doral
- El Porai
- Hialeah
- Hialeah Gardens
- Homestead
- Key Biscayne
- Medley
- Miami
- Miami Beach
- Miami Gardens
- Miami Lakes
- Miami Shores Village
- Miami Springs
- North Bay Village
- North Miami
- North Miami Beach
- Opa-Locka
- Palmetto Bay
- Pinecrest
- Surfside
- Sweetwater
- Virginia Gardens
- West Miami
- Unincorporated County

MONROE

- Islamorada\*
- Key Colony Beach\*
- Key West\*
- Layton\*
- Marathon\*
- Unincorporated County

NASSAU

- Fernandina Beach

OKEECHOBEE

- Okeechobee

- Venice\*
- Unincorporated County

SEMINOLE

- Longwood
- Oviedo
- Sanford

ST. JOHNS

- Unincorporated County (CPACE)

SUWANNEE

- Branford
- Live Oak
- Unincorporated County

VOLUSIA

- Daytona Beach Shores
- Edgewater
- New Smyrna Beach
- Orange City
- Port Orange

WALTON

- Unincorporated County (CPACE)

- Unincorporated County

#### ORANGE

- Apopka
- Belle Isle
- Orlando
- Winter Garden (CPACE)
- Winter Haven (CPACE)
- Winter Park
- Unincorporated County (CPACE)

#### OSCEOLA

- Kissimmee\*
- St. Cloud\*
- Unincorporated County

<sup>1</sup> Those jurisdictions denoted with an asterisk became Parties to the Authority through the County's Interlocal Agreement.

<sup>2</sup> Please note that with regard to Sebastian that while it had signed onto the Original ILA, we are currently in extended discussions with this jurisdiction about signing onto the updated Second Amended and Restated ILA. Until we finalize these discussions we have verbally agreed not to activate residential PACE in the jurisdiction until those discussions have concluded.

#### *V. UPDATE ON TAX COLLECTOR AGREEMENTS*

Uniform Collection Agreements are currently in place with the following county Tax Collector's offices: Alachua, Brevard, Broward, Charlotte, Citrus, Collier, Escambia, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Levy, Manatee, Marion (re-executed), Martin, Miami-Dade, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Sarasota, Seminole, St. Johns, Suwannee, and Volusia.

**RESOLUTION NO. 2023-04**

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE  
FLORIDA GREEN FINANCE AUTHORITY AUTHORIZING AND  
ADOPTING AN AMENDED FINAL FISCAL YEAR 2021/2022  
BUDGET (“AMENDED BUDGET”), PURSUANT TO CHAPTER 189,  
FLORIDA STATUTES; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Board of Supervisors of the Florida Green Finance Authority is empowered to provide a funding source and to impose special assessments upon the properties within the District; and,

**WHEREAS**, the Florida Green Finance Authority has prepared for consideration and approval an Amended Budget.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS  
OF THE FLORIDA GREEN FINANCE AUTHORITY, THAT:**

**Section 1.** The Amended Budget for Fiscal Year 2021/2022 attached hereto as Exhibit “A” is hereby approved and adopted.

**Section 2.** The Secretary/Assistant Secretary of the Florida Green Finance Authority is authorized to execute any and all necessary transmittals, certifications or other acknowledgements or writings, as necessary, to comply with the intent of this Resolution.

**PASSED, ADOPTED and EFFECTIVE** this 8<sup>th</sup> day of June, 2023.

**ATTEST:**

**FLORIDA GREEN FINANCE AUTHORITY**

By: \_\_\_\_\_  
Secretary/Assistant Secretary

By: \_\_\_\_\_  
Chairperson/Vice Chairperson

# Florida Green Finance Authority

**Amended Final Budget For  
Fiscal Year 2021/2022  
October 1, 2021 - September 30, 2022**

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- II       COMMERCIAL BONDS RECAP**



**AMENDED FINAL BUDGET**  
**FLORIDA GREEN FINANCE AUTHORITY**  
**OPERATING FUND**  
**FISCAL YEAR 2021/2022**  
**OCTOBER 1, 2021 - SEPTEMBER 30, 2022**

	FISCAL YEAR 2021/2022 BUDGET 10/1/21 - 9/30/22	AMENDED FINAL BUDGET 10/1/21 - 9/30/22	YEAR TO DATE ACTUAL 10/1/21 - 9/29/22
<b>REVENUES</b>			
Carry Forward Surplus	100,000	0	0
O & M Funding Contributions	236,536	148,172	148,172
Loan Revenues (Residential)	11,000,000	19,681,088	19,681,088
Bond/Loan Revenues (Commercial)	0	1,581,078	1,581,078
Other Revenue	84,927	185,098	185,098
Other Revenue - Annual Program Fee	0	49,804	49,804
Interest Income	300	58	58
<b>TOTAL REVENUES</b>	<b>\$ 11,421,763</b>	<b>\$ 21,645,298</b>	<b>\$ 21,645,298</b>
<b>VARIABLE EXPENDITURES</b>			
Assessment Roll	109,350	139,805	139,805
Miscellaneous	9,516	95,000	84,941
<b>TOTAL VARIABLE EXPENDITURES</b>	<b>\$ 118,866</b>	<b>\$ 234,805</b>	<b>\$ 224,746</b>
<b>FIXED EXPENDITURES</b>			
Management	36,000	36,000	36,000
Legal	57,000	47,000	36,059
Audit Fees	15,000	13,000	13,000
Insurance	3,650	3,424	3,424
Legal Advertisements	15,000	10,000	4,413
New County Set-up Fee	1,000	6,000	6,000
Dues	800	800	800
Trustee Fees	7,500	0	0
Website Management	2,000	1,500	1,500
Financial Advisory Services	10,000	10,000	0
Miscellaneous	0	10,000	1,585
<b>TOTAL FIXED EXPENDITURES</b>	<b>\$ 147,950</b>	<b>\$ 137,724</b>	<b>\$ 102,781</b>
<b>TOTAL EXPENDITURES</b>	<b>\$ 266,816</b>	<b>\$ 372,529</b>	<b>\$ 327,527</b>
<b>REVENUES LESS EXPENDITURES</b>	<b>\$ 11,154,947</b>	<b>\$ 21,272,769</b>	<b>\$ 21,317,771</b>
Loan Payments (Residential)	(10,820,000)	(19,372,978)	(19,372,978)
Bond/Loan Payments (Commercial)	0	(1,545,007)	(1,545,007)
<b>BALANCE</b>	<b>\$ 334,947</b>	<b>\$ 354,784</b>	<b>\$ 399,786</b>
Fees (Residential)	(180,000)	(263,288)	(263,288)
Fees (Commercial)	0	(49,793)	(49,793)
<b>Excess/ (Shortfall)</b>	<b>\$ 154,947</b>	<b>\$ 41,703</b>	<b>\$ 86,705</b>
Program Reinvestment	(154,947)	0	0
<b>Net Excess/ (Shortfall)</b>	<b>\$ -</b>	<b>\$ 41,703</b>	<b>\$ 86,705</b>

Fund Balance As Of 9/30/2021
Projected FY 2021/2022 Activity
Projected Fund Balance As Of 9/30/2022

\$199,780
\$41,703
\$241,483

**AMENDED FINAL BUDGET  
FLORIDA GREEN FINANCE AUTHORITY  
COMMERCIAL BONDS RECAP  
FISCAL YEAR 2021/2022  
OCTOBER 1, 2021 - SEPTEMBER 30, 2022**

BOND ISSUE	ORIGINAL PAR AMOUNT	CURRENT PAR AMOUNT	MATURITY DATE	ANNUAL ASSESSMENT AMOUNT	FISCAL YEAR 2021/2022 PRINCIPAL PAYMENTS	FISCAL YEAR 2021/2022 INTEREST PAYMENTS
Series 2014 Loan (E&M Spirits)	\$46,550.00	\$12,511.63	May 2023	\$9,429.07	\$7,303.24	1,061.63
Series 2015-1 (Brandsmart Project)	\$2,225,700.00	\$0.00	-----	\$0.00	\$0.00	0.00
Series 2018 (Dadeland Mall Project)	\$2,595,468.73	\$1,961,204.94	November 2028	\$350,856.55	\$223,315.75	117,744.65
Series 2018A (Orlando Outlets Project)	\$5,562,289.94	\$5,221,703.10	November 2039	\$496,899.34	\$155,033.02	332,040.26
Series 2020-A (Avid Viera)	\$3,471,908.43	\$3,471,908.43	November 2046	\$294,927.30	\$0.00	229,748.71
Series 2020-B (Home 2 - Palm Bay)	\$3,930,000.00	\$3,930,000.00	November 2046	\$312,209.65	\$0.00	232,055.59
Series 2020-C (Hyatt - Palm Bay)	\$5,643,500.00	\$5,643,500.00	November 2046	\$447,438.17	\$0.00	331,869.16
Series 2020-D (Pruitt Health - Lutz)	\$3,340,018.09	\$3,340,018.09	November 2047	\$261,701.69	\$0.00	194,718.42
Series 2021-1 (Le Meridien)	\$37,650,000.00	\$37,650,000.00	November 2047	\$2,683,983.39	\$0.00	1,004,000.00
Series 2021-2 (Sheraton - Palmetto)	\$30,600,000.00	\$30,600,000.00	November 2048	\$2,343,740.35	\$0.00	629,850.00
Series 2022-1 (Pruitt Health - Pensacola)	\$5,335,050.00	\$5,335,050.00	November 2048	\$411,818.77	\$0.00	52,250.89
Series 2022-2 (Certus Waterford Lakes)	\$7,200,000.00	\$7,200,000.00	November 2048	\$564,980.35	\$0.00	61,880.00
Series 2022-3 (Spanish Moss Apartments)	\$3,961,068.11	\$3,961,068.11	November 2047	\$328,485.94	\$0.00	0.00
<b>Total</b>	<b>\$111,561,553.30</b>	<b>\$108,326,964.30</b>		<b>\$8,506,470.57</b>	<b>\$385,652.01</b>	<b>\$3,187,219.31</b>
<b>Note:</b>						
<b>BrandsMart Paid Off Series 2015-1 Bond In May 2021.</b>						

**RESOLUTION NO. 2023-05**

**A RESOLUTION OF THE FLORIDA GREEN FINANCE AUTHORITY,  
ADOPTING A PROPOSED BUDGET FOR FISCAL YEAR 2023/2024 AND  
PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Board of Supervisors (“Board”) of the Florida Green Finance Authority is required to approve a Proposed Budget for each fiscal year; and

**WHEREAS**, the Proposed Budget including the Assessments for Fiscal Year 2023/2024 has been prepared and considered by the Board.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS  
OF THE FLORIDA GREEN FINANCE AUTHORITY THAT:**

Section 1. The Proposed Budget including the Assessments for Fiscal Year 2023/2024 attached hereto as Exhibit “A” is approved and adopted.

Section 2. A Public Hearing is hereby scheduled for \_\_\_\_\_, 2023  
at 2:00 p.m. located at \_\_\_\_\_,  
\_\_\_\_\_ for  
the purpose of receiving public comments on the Proposed Fiscal Year 2023/2024 Budget.

**PASSED AND ADOPTED** this 8<sup>th</sup> day of June, 2023.

**ATTEST:**

**FLORIDA GREEN FINANCE AUTHORITY**

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairman

**APPROVED FOR FORM AND  
LEGAL SUFFICIENCY**

\_\_\_\_\_  
Attorney

# Florida Green Finance Authority

**Proposed Budget For  
Fiscal Year 2023/2024  
October 1, 2023 - September 30, 2024**

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- V       PARTICIPANTS**
- VI      COMMERCIAL BONDS**

**PROPOSED BUDGET**  
**FLORIDA GREEN FINANCE AUTHORITY**  
**FISCAL YEAR 2023/2024**  
**OCTOBER 1, 2023 - SEPTEMBER 30, 2024**  
**(Combined Commercial and Residential)**

	<b>FISCAL YEAR 2023/2024 BUDGET</b>
<b>REVENUES</b>	
Projected Carry Forward Surplus	100,000
O & M Funding Contributions	270,000
O & M Assessments (Commercial)	0
Loan Revenues (Residential)	18,540,000
Loan Revenues (Commercial)	0
Other Revenue - Commercial Closing Fees	10,000
Other Revenue - Administrator Cost Sharing	73,542
Interest Income	300
<b>TOTAL REVENUES</b>	<b>\$ 18,993,842</b>
<b>VARIABLE EXPENDITURES</b>	
Assessment Roll	201,670
Miscellaneous	10,000
<b>TOTAL VARIABLE EXPENDITURES</b>	<b>\$ 211,670</b>
<b>FIXED EXPENDITURES</b>	
Management	38,134
Legal	57,000
Audit Fees	15,000
Insurance	3,900
Legal Advertisements	9,000
New County Set-up Fee	1,000
Dues & Subscriptions	1,200
Trustee Fees	4,000
Website Management	2,000
Miscellaneous - postage, office supplies, etc.	1,500
Financial Advisory Fees	10,000
<b>TOTAL FIXED EXPENDITURES</b>	<b>\$ 142,734</b>
<b>TOTAL EXPENDITURES</b>	<b>\$ 354,404</b>
<b>REVENUES LESS EXPENDITURES</b>	<b>\$ 18,639,438</b>
Loan Payments (Residential)	(18,280,000)
Loan Payments (Commercial)	0
<b>BALANCE</b>	<b>\$ 359,438</b>
Fees (Residential)	(260,000)
Fees (Commercial)	0
<b>Excess/ (Shortfall)</b>	<b>\$ 99,438</b>
Program Reinvestment (Residential)	(100,000)
Program Reinvestment (Commercial)	(10,000)
<b>Net Excess/ (Shortfall)</b>	<b>\$ (10,562)</b>
<b>Projected Fiscal Year-End Fund Balance</b>	<b>89,438</b>

Approx. Participants As Of June 2023: 20,176

Approx. Additions For 2023/2024: 7019

**DETAILED PROPOSED BUDGET**  
**FLORIDA GREEN FINANCE AUTHORITY**  
**FISCAL YEAR 2023/2024**  
**OCTOBER 1, 2023 - SEPTEMBER 30, 2024**  
**(Combined Commercial and Residential)**

	FISCAL YEAR 2021/2022 ACTUAL	FISCAL YEAR 2022/2023 BUDGET	FISCAL YEAR 2023/2024 BUDGET	COMMENTS
<b>REVENUES</b>				
Projected Carry Forward Surplus	0	100,000	100,000	
O & M Funding Contributions	147,907	211,864	270,000	FY 2022/2023 O&M Revenue As Of 5-31-23 Was \$192,126
O & M Assessments (Commercial)	265	0	0	BrandsMart Has Paid Off 2015-1 Bond
Loan Revenues (Residential)	19,681,088	18,000,000	18,540,000	Loan Revenues (Residential)
Loan Revenues (Commercial)	1,581,078	0	0	Loan Revenues (Commercial)
Other Revenue - Commercial Closing Fees	185,098	10,000	10,000	
Other Revenue - Administrator Cost Sharing	49,804	73,542	73,542	
Interest Income	58	300	300	Interest Estimated At \$25 Per Month
<b>TOTAL REVENUES</b>	<b>\$ 21,645,298</b>	<b>\$ 18,395,706</b>	<b>\$ 18,993,842</b>	
<b>VARIABLE EXPENDITURES</b>				
Assessment Roll	139,805	131,010	201,670	20,176 X \$10 - Based On Approximate Participants
Miscellaneous	84,941	9,516	10,000	Miscellaneous
<b>TOTAL VARIABLE EXPENDITURES</b>	<b>\$ 224,746</b>	<b>\$ 140,526</b>	<b>\$ 211,670</b>	
<b>FIXED EXPENDITURES</b>				
Management	36,000	37,080	38,134	CPI (Capping at 3%) Increase per Contract
Legal	36,059	57,000	57,000	No Change From 2022/2023 Budget
Audit Fees	13,000	15,000	15,000	No Change From 2022/2023 Budget
Insurance	3,424	3,900	3,900	Insurance Estimate
Legal Advertisements	4,413	12,000	9,000	\$3,000 Decrease From 2022/2023 Budget
New County Set-up Fee	6,000	3,000	1,000	Estimated At One New County
Dues & Subscriptions	800	1,200	1,200	No Change From 2022/2023 Budget
Trustee Fees	0	4,000	4,000	Decreased Due To 2015-1 Bond Payoff
Website Management	1,500	2,000	2,000	No Change From 2022/2023 Budget
Miscellaneous - postage, office supplies, etc.	1,585	0	1,500	
Financial Advisory Fees	0	10,000	10,000	Financial Advisory Fees
<b>TOTAL FIXED EXPENDITURES</b>	<b>\$ 102,781</b>	<b>\$ 145,180</b>	<b>\$ 142,734</b>	
<b>TOTAL EXPENDITURES</b>	<b>\$ 327,527</b>	<b>\$ 285,706</b>	<b>\$ 354,404</b>	
<b>REVENUES LESS EXPENDITURES</b>	<b>\$ 21,317,771</b>	<b>\$ 18,110,000</b>	<b>\$ 18,639,438</b>	
Loan Payments (Residential)	(19,372,978)	(17,750,000)	(18,280,000)	Loan Payments (Residential)
Loan Payments (Commercial)	(1,545,007)	0	0	Loan Payments (Commercial)
<b>BALANCE</b>	<b>\$ 399,786</b>	<b>\$ 360,000</b>	<b>\$ 359,438</b>	
Fees (Residential)	(263,288)	(250,000)	(260,000)	Fees (Residential)
Fees (Commercial)	(49,793)	0	0	Fees (Commercial)
<b>Excess/ (Shortfall)</b>	<b>\$ 86,705</b>	<b>\$ 110,000</b>	<b>\$ 99,438</b>	
Program Reinvestment (Residential)	0	(100,000)	(100,000)	Program Reinvestment (Residential)
Program Reinvestment (Commercial)	0	(10,000)	(10,000)	Program Reinvestment (Commercial)
<b>Net Excess/ (Shortfall)</b>	<b>\$ 86,705</b>	<b>\$ -</b>	<b>\$ (10,562)</b>	
<b>Projected Fiscal Year-End Fund Balance</b>	<b>0</b>	<b>100,000</b>	<b>89,438</b>	

Approx. Participants As Of June 2023: 20,176

Approx. Additions For 2023/2024: 7019

**PROPOSED BUDGET**  
**FLORIDA GREEN FINANCE AUTHORITY**  
**FISCAL YEAR 2023/2024**  
**OCTOBER 1, 2023 - SEPTEMBER 30, 2024**  
**(Commercial Only)**

	<b>FISCAL YEAR 2023/2024 COMMERCIAL BUDGET</b>
<b>REVENUES</b>	
O & M Assessments (Commercial)	0
Bond/Loan Revenues (Commercial)	See Commercial Bond Page
Other Revenue - Commercial Closing Fees	10,000
Other Revenue - Administrator Cost Sharing	73,542
Other Revenue - Buy In	0
<b>TOTAL REVENUES</b>	<b>\$ 83,542</b>
<b>VARIABLE EXPENDITURES</b>	
Miscellaneous	1,000
<b>TOTAL VARIABLE EXPENDITURES</b>	<b>\$ 1,000</b>
<b>FIXED EXPENDITURES</b>	
Management	19,067
Legal	28,500
Audit Fees	7,500
Insurance	1,950
Legal Advertisements	4,500
New County Set-up Fee	500
Dues	600
Trustee Fees	2,000
Website Management	1,000
Miscellaneous - postage, office supplies, etc.	750
Financial Advisory Fees	5,000
<b>TOTAL FIXED EXPENDITURES</b>	<b>\$ 71,367</b>
<b>TOTAL EXPENDITURES</b>	<b>\$ 72,367</b>
<b>REVENUES LESS EXPENDITURES</b>	<b>\$ 11,175</b>
Bond/Loan Payments (Commercial)	0
<b>BALANCE</b>	<b>\$ 11,175</b>
Fees (Commercial)	0
<b>Excess/ (Shortfall)</b>	<b>\$ 11,175</b>
Program Reinvestment/Carryover Credit	(10,000)
<b>Net Excess/ (Shortfall)</b>	<b>\$ 1,175</b>
<b>Projected Fiscal Year-End Fund Balance</b>	<b>\$ -</b>

NOTE: A separate spreadsheet is kept to track provider specific carryover credit that can be applied to quarterly invoices.



**PROPOSED BUDGET**  
**FLORIDA GREEN FINANCE AUTHORITY**  
**FISCAL YEAR 2023/2024**  
**OCTOBER 1, 2023 - SEPTEMBER 30, 2024**  
**(Residential Only)**

	FISCAL YEAR 2023/2024 RESIDENTIAL BUDGET
<b>REVENUES</b>	
Projected Carry Forward Surplus	100,000
O & M Funding Contributions	270,000
Loan Revenues (Residential)	18,540,000
Interest Income	300
<b>TOTAL REVENUES</b>	<b>\$ 18,910,300</b>
<b>VARIABLE EXPENDITURES</b>	
Assessment Roll	201,670
Miscellaneous	9,000
<b>TOTAL VARIABLE EXPENDITURES</b>	<b>\$ 210,670</b>
<b>FIXED EXPENDITURES</b>	
Management	19,067
Legal	28,500
Audit Fees	7,500
Insurance	1,950
Legal Advertisements	4,500
New County Set-up Fee	500
Dues	600
Trustee Fees	2,000
Website Management	1,000
Miscellaneous - postage, office supplies, etc.	750
Financial Advisory Fees	5,000
<b>TOTAL FIXED EXPENDITURES</b>	<b>\$ 71,367</b>
<b>TOTAL EXPENDITURES</b>	<b>\$ 282,037</b>
<b>REVENUES LESS EXPENDITURES</b>	<b>\$ 18,628,263</b>
Loan Payments (Residential)	(18,280,000)
<b>BALANCE</b>	<b>\$ 348,263</b>
Fees (Residential)	(260,000)
<b>Excess/ (Shortfall)</b>	<b>\$ 88,263</b>
Program Reinvestment (Residential)	(100,000)
<b>Net Excess/ (Shortfall)</b>	<b>\$ (11,737)</b>
<b>Projected Fiscal Year-End Fund Balance</b>	<b>88,263</b>

Approx. Participants As Of June 2023: 20,176

Approx. Additions For 2023/2024: 7019

**FLORIDA GREEN FINANCE AUTHORITY  
PARTICIPANTS AS OF JUNE 2023**

COUNTY	COMMENCING FISCAL YEAR 2019/2020	COMMENCING FISCAL YEAR 2020/2021	COMMENCING FISCAL YEAR 2021/2022	COMMENCING FISCAL YEAR 2022/2023	COMMENCING FISCAL YEAR 2023/2024	TOTAL *
Alachua	9	2	5	2	0	49
Brevard	118	91	88	280	256	834
Broward	767	1,139	660	1,020	2,147	6,728
Charlotte	58	104	74	87	11	375
Citrus	27	23	28	66	81	226
Collier	30	12	0	0	0	51
Escambia	0	0	1	0	1	2
Hernando	105	90	34	0	0	238
Hillsborough	338	469	165	0	0	1,381
Indian River	0	0	0	1	1	2
Jefferson	0	0	1	0	0	1
Lake	0	0	0	1	0	1
Lee	16	48	13	44	89	210
Levy	2	4	5	4	7	24
Manatee	54	122	84	90	113	472
Marion	21	56	42	60	149	372
Martin	6	39	14	19	58	143
Miami-Dade	769	998	585	1358	2,253	6,193
Monroe	0	0	10	3	7	20
Okeechobee	0	0	0	5	18	23
Orange	35	49	61	34	35	239
Osceola	105	218	139	101	118	682
Palm Beach	380	774	449	580	1,334	3,704
Pasco	283	211	129	110	147	1,212
Polk	0	5	16	14	21	56
Sarasota	33	153	86	112	142	526
Seminole	3	10	12	3	11	43
Suwannee	0	0	0	0	1	1
Volusia	3	5	1	7	19	35
<b>Sub-Total</b>	<b>3,162</b>	<b>4,622</b>	<b>2,702</b>	<b>4,001</b>	<b>7,019</b>	<b>23,843</b>
Less Prepayments	567	885	988	1,002	0	3,667
<b>Total</b>	<b>2,595</b>	<b>3,737</b>	<b>1,714</b>	<b>2,999</b>	<b>7,019</b>	<b>20,176</b>

**Notes:**

1. 2022/2023 prepayment numbers will continue to grow until the start of next year's enrollment.
2. 2023/2024 numbers are approximates (enrollment continues through June 2022).
3. 2023/2024 prepayments do not include any prepayments that occur between now and start of next year.
4. \*Includes totals from years prior to those shown.

**FLORIDA GREEN FINANCE AUTHORITY  
COMMERCIAL BONDS AS OF JUNE 2023**

<b>BOND ISSUE</b>	<b>ORIGINAL PAR AMOUNT</b>	<b>CURRENT PAR AMOUNT</b>	<b>MATURITY DATE</b>	<b>ANNUAL ASSESSMENT AMOUNT</b>
Series 2014 Loan (E&M Spirits)	\$46,550.00	\$0.00	May 2023	\$9,429.07
Series 2015-1 (Brandsmart Project)	\$2,225,700.00	\$0.00	-----	\$0.00
Series 2018 (Dadeland Mall Project)	\$2,595,468.73	\$1,725,209.81	November 2028	\$350,856.55
Series 2018A (Orlando Outlets Project)	\$5,562,289.94	\$4,967,014.62	November 2039	\$496,899.34
Series 2020-A (Avid Viera)	\$3,471,908.43	\$0.00	November 2046	\$294,927.30
Series 2020-B (Home 2-Palm Bay)	\$3,930,000.00	\$3,857,155.38	November 2046	\$312,209.65
Series 2020-C (Hyatt-Palm Bay)	\$5,643,500.00	\$5,538,894.75	November 2046	\$447,438.17
Series 2020-D (Pruitt Health - Lutz)	\$3,340,018.09	\$3,340,018.09	November 2047	\$261,701.69
Series 2021-1 (Le Meridien)	\$37,650,000.00	\$37,650,000.00	November 2047	\$2,689,983.39
Series 2021-2 (Sheraton - Palmetto)	\$30,600,000.00	\$30,600,000.00	November 2048	\$2,418,304.48
Series 2022-1 (Pruitt Health - Pensacola)	\$5,335,050.00	\$5,335,050.00	November 2048	\$422,279.36
Series 2022-2 (Certus Waterford Lakes)	\$7,200,000.00	\$7,200,000.00	November 2048	\$572,722.58
Series 2022-3 (Spanish Moss Apartments)	\$3,961,068.11	\$3,961,068.11	November 2047	\$0.00
<b>Total</b>	<b>\$111,561,553.30</b>	<b>\$104,174,410.76</b>		<b>\$8,276,751.58</b>

**Note:**

**BrandsMart Paid Off Series 2015-1 Bond In 2021.**

**Avid Viera Paid Off Series 2020-A Bond In 2023.**

**To:** Florida Green Finance Authority Board

**Thru:** Keith Davis, Esq. & Mitty Barnard, Esq.

**From:** Erin Deady, Esq., Petros PACE Finance  
Michael Yaki, Esq., Petros PACE Finance

**Date:** May 30, 2023

**Re:** Palm Beach County litigation against the Florida PACE Funding Agency

---

On April 18, 2023, Palm Beach County had a Board of County Commissioner item briefing the County Commission on activities of the Florida PACE Funding Agency and the initiation of litigation against that PACE entity.<sup>1</sup> At that meeting they passed a Resolution finding that the Agency's continued operation in PBC without an Interlocal Agreement, in violation of their adopted Ordinance, is an immediate danger to the health, safety and welfare of the public and compromises legal rights of the County. This memorandum summarizes the background and current status of Palm Beach County's actions to date.

### **Background**

This agenda item and action is in response the Florida PACE Funding Agency's second bond validation (conducted and finalized in late 2022) where certain elements were included within the final judgment that purported to provide authority to the Florida PACE Funding Agency to operate statewide without any enabling Ordinance or Resolution from the underlying local government participating in their program and no execution of an interlocal agreement to participate in their program and that the Agency could operate in any local government throughout the state with or without the support of the underlying local government. The Florida PACE Funding Agency's final bond judgment included other elements, but notably, also purports to authorize the expansion of qualifying improvements defined in Section 163.08, F.S. to include seawalls. The Florida PACE Funding Agency sent a certified letter and brief memorandum to local governments throughout the state (in January 2023) informing them of the bond validation final judgment and the letter provided notice to terminate their existing interlocal agreements with numerous local governments upon the premise that they no longer needed that authority to operate in the jurisdictions. Many local governments do not agree with the Florida PACE Funding Agency's legal position that their bond validation provides this broad authority to operate statewide as contemplated in the judgment.

On March 7, 2023, Palm Beach County sent correspondence to the Florida PACE Funding Agency stating that they did not have the authority to operate in Palm Beach County without an executed interlocal agreement and without complying with the County's recently adopted Ordinance (November 15, 2022).

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<sup>1</sup> It should be noted that similar litigation is in process in Pinellas County (Case No. 23-006631-CI). Given the Florida Green Finance Authority's creation within Palm Beach County, this memorandum focuses on that litigation.

The County demanded the Florida PACE Funding Agency cease and desist operations within the County, but from March 7 to April 11, 2023, the Florida PACE Funding Agency kept operating in the County and closed \$4.4 million worth of PACE transactions. It is assumed they continue to operate today.

### **PBC Litigation Against the Florida PACE Funding Agency**

On April 28, 2023, Palm Beach County filed a Verified Complaint for Declaratory and Injunctive Relief and a Verified Motion for a Temporary Injunction (with a Memorandum of Law) against the Florida PACE Funding Agency in Palm Beach County Circuit Court.

#### **1. Verified Complaint for Declaratory and Injunctive Relief:**

This complaint seeks to challenge the Florida PACE Funding Agency's continued operation in Palm Beach County without an Interlocal Agreement contravening its adopted PACE Ordinance. The general allegations are that the Florida PACE Funding Agency's bond validation "collateral findings" in that final judgment exceed the statutory scope of a bond validation proceeding as well as Section 163.08(4), F.S., the PACE Act itself. As such, the County is seeking a declaration from the court that the Florida PACE Funding Agency cannot operate within PBC without entering into an Interlocal Agreement with the County and compliance with the County's November 2022 Ordinance and that the bond validation judgment does not prevent the County from enforcing its Ordinance. The County also seeks to enjoin the operation of the Florida PACE Funding Agency within PBC and undertake anymore PACE financing transactions.

#### **2. Verified Motion for Temporary Injunction and Incorporated Memorandum of Law:**

This Motion expands upon the factual and legal basis for enjoining the operation of the Florida PACE Funding Agency within PBC and provides legal authority for the basis to stop that operation.

### **Discussion of the Litigation and the Interests of the Florida Green Finance Authority**

The Florida Green Finance Authority has an interest in this litigation and its outcomes for multiple reasons:

1. The issues raised in the Florida PACE Funding Agency's bond validation judgment include numerous constitutional and competitive issues that put all other PACE programs at a disadvantage.

*Explanation: The Florida PACE Funding Agency's bond validation judgment arguably exceeds the scope of that type of proceeding by bestowing certain rights and operational advantages exclusively to that program. Some of the legal arguments raised by the County are related to the constitutional rights of local governments with regard to the passage and enforcement of local law. While some of these arguments do not apply directly to the Florida Green Finance Authority, the Authority does have an interest in maintaining PACE operations statewide consistent with how the program was always contemplated to operate, supplemental to local government home rule authority as currently contemplated in Section 163.08, F.S. Redefining PACE operations by ignoring those existing statutory procedures puts every other PACE program in Florida at a disadvantage. The Florida Green Finance Authority has an interest in maintaining the current statutory interpretations of PACE procedures as currently included in Section 163.08, F.S. and not allowing those to be redefined for one single program in a bond validation proceeding.*

2. There is an interest in assuring that the integrity of the bond validation process is maintained.

*Explanation: The Florida Green Finance Authority undertook, like all PACE entities, the bond validation process to provide legal support for funding PACE projects through the assessment repayment process. This was an expensive and time-consuming process, which ultimately was appealed to the Florida Supreme Court by representatives of the Florida PACE Funding Agency- the same entity attempting to gain these advantages. There currently are 6 such bond validation judgments in existence in Florida. All have conformed to the requirements of the scope of that proceeding except this latest one by the Florida PACE Funding Agency in 2022. If their validation judgment is upheld it provides the program with a competitive advantage because not only can they avoid the process of entering into an interlocal agreement with the underlying government to participate in PACE, it eliminates the need for the passage of a Resolution or Ordinance to operate a PACE program thus reducing the time and effort to launch PACE in a new jurisdiction for only them. There are many jurisdictions in which FGFA members are not able to compete, or in which we are working with jurisdictions to accept our program, and yet FPFA members are going in to take deals and place assessments right now. Their legal theory is that they can operate anywhere in the state without meeting this statutory provision. None of the other programs would have these advantages.*

3. The bond validation process is not the appropriate legal mechanism to expand PACE qualifying improvements.

*Explanation: Section 163.08, F.S. is the legal statute defining how PACE operates in Florida including the definition of the authorized qualifying improvements. Legislative attempts have been made each year for the last 6 years to clarify and enhance consumer protections for residential PACE, most recently recognize the differences between residential and commercial PACE, and even expand the scope of defined qualifying improvements. Allowing this Florida PACE Funding Agency bond validation judgment to stand as written allows one specific PACE program to deviate from the statute and expand the scope of qualifying improvements to seawalls, thus giving their program another competitive advantage outside of the statute.*

4. Partnerships, public policy and home rule are weakened for PACE operations.

*Explanation: PACE has always been viewed as a program that operates in partnership with the underlying local governments. The Florida PACE Funding Agency's legal position is that they do not need any partnership with an underlying local government and can operate in a jurisdiction whether or not the local government even wants PACE at all or wants to regulate it on some level, for instance, with reporting or consumer protection standards. This encroaches upon local government's home rule with regard to enforcement of adopted or prospective PACE policy through Resolutions or Ordinances, contemplated to be a threshold requirement to operating a PACE program at the time the statutory section was enacted in 2010. The legal interpretation of the Florida PACE Funding Agency is the antithesis of how PACE has operated throughout Florida since its inception.*

#### **Potential Actions the Florida Green Finance Authority Can Undertake**

The Florida Green Finance Authority can file an Amicus Curiae ("friend of the court") brief in this case to support Palm Beach County's position and help the court understand the interests at stake. This brief does not have to be filed immediately, likely, it would be at some point after initial substantive briefs are due further along in the litigation. The process would be to simply prepare the brief, consult with both parties in the litigation (PBC and Florida PACE Funding Agency), and provide a statement as to their position for a party to file an Amicus Brief, coordinate with Palm Beach County legal staff on the issues potentially raised

in the brief and file a Motion with the Circuit Court requesting leave to file the brief. It would not matter that the Florida PACE Funding Agency objects to the filing of the Brief, that is ultimately the court's decision. There is no other evidentiary or motion practice required for the Florida Green Finance Authority. The brief can likely be prepared in house without the need to hire outside counsel.

Another PACE provider (the Green Corridor reached out to Erin Deady) has raised the possibility of also filing an Amicus Brief in the proceeding. This would be another option: to jointly file an Amicus Brief with another provider. This should be subject to further strategic discussion about the pros and cons of joint versus separately filed, but coordinated, briefs.

IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

CASE NO.:

PALM BEACH COUNTY,  
Plaintiff,

v.

FLORIDA PACE FUNDING AGENCY,  
Defendant.

\_\_\_\_\_ /

**PLAINTIFF, PALM BEACH COUNTY'S VERIFIED MOTION FOR  
TEMPORARY INJUNCTION AND INCORPORATED MEMORANDUM OF LAW**

Plaintiff, Palm Beach County, (County) by and through its undersigned counsel, moves this Court for entry of a temporary injunction pursuant to Rule 1.610(a), Florida Rules of Civil Procedure, requiring the Defendant, Florida PACE Funding Agency (FPFA) to immediately stop entering into financing agreements with residents of Palm Beach County until such time as re-authorized by this Court. In support of its Motion the County states as follows:

**BACKGROUND**

1. On or about April 28, 2023, the County brought a declaratory and injunctive relief action to challenge FPFA's continued operation within Palm Beach County without the benefit of an Interlocal Agreement and in violation of the County's PACE Ordinance 2022-030 and general law.<sup>1</sup>

2. As part of its requested relief as it relates to Count II, the County asked this Court to temporarily enjoin FPFA from operating in the County unless and until it complies with the

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<sup>1</sup> The allegations of the Verified Complaint state adequate and sufficient grounds for entry of a temporary injunction against FPFA. This motion will highlight the allegations that are particularly relevant to the County's request for temporary injunction.



County's PACE Ordinance, which, amongst other things requires FPFA to enter into an Interlocal Agreement with the County.

3. The term "PACE" refers to a type of financing that is used for certain home improvements that consumers pay back through an assessment collected through their property taxes.

4. Section 163.08, Florida Statutes, entitled "Supplemental authority for improvements to real property," (PACE Act) creates the framework for PACE programs to operate in Florida. The statute provides a mechanism for property owners to voluntarily finance certain energy efficiency, renewable energy and wind resistance-qualifying improvements to their property, with local government assistance, and allows for PACE programs to levy non-ad valorem assessments.

5. Defendant, FPFA is a PACE loan provider. It is an entity created by interlocal agreement in accordance with Chapter 163, Florida Statutes. It was created in June of 2011, by Interlocal Agreement Relating to the Establishment of the Florida PACE Funding Agency, and was established between Flagler County, Florida and the City of Kissimmee, Florida acting as original incorporators pursuant to section 163.01(7), Florida Statutes.

6. Palm Beach County is a political subdivision of the State of Florida, and is a charter county, governed by the Palm Beach County Charter. The Charter establishes "true home rule" which gives the Board of County Commissioners (BCC) the ability to create local laws, through a local public hearing ordinance procedure, that are not in conflict with, or specifically prohibited by state general law or the Florida Constitution.

7. On April 4, 2017, the County adopted the Palm Beach County Property Assessed Clean Energy (PACE) Program Ordinance No. 2017-012 (Original PACE Ordinance). The

County's stated intent in adopting the Ordinance was to "establish qualifications and consumer protection disclosure requirements for PACE programs that provide financing for qualifying improvements in accordance with section 163.08, Florida Statutes, and provisions of this Ordinance." The Original PACE Ordinance is attached hereto as *Exhibit 1*.

8. On August 15, 2017, the County simultaneously executed a Resolution and an accompanying Interlocal Agreement (ILA), authorizing FPFA to levy non-ad valorem assessments on properties within Palm Beach County's PACE boundaries. The Resolution and Interlocal Agreement are attached here to as *Exhibit 2* and *Exhibit 3*.

9. The ILA included specific terms and conditions for FPFA to operate within Palm Beach County. The ILA among other things, required that any program FPFA offered in the County and participating municipalities had to comply with program guidelines and consumer protections set forth in the PACE Ordinance, as may be amended from time to time. The ILA contained substantive consumer protection requirements that were material to the County's decision to allow FPFA to conduct its program in accordance with the Palm Beach County Charter and Palm Beach County Code, and levy non-ad valorem special assessments in the County.

10. On November 15, 2022, the County adopted and approved Ordinance 2022-030 (Amended PACE Ordinance). The Amended PACE Ordinance clarified and strengthened qualifications and consumer protection and disclosure requirements for PACE programs that operate within Palm Beach County. The Amended PACE Ordinance is attached hereto as *Exhibit 4*.

11. The Amended Ordinance has been adopted and codified in the Palm Beach County's Code of Ordinances (County Code), in Chapter 17 "Licenses, Taxation and Miscellaneous Regulations, pursuant to the County's home rule authority, effective November 16,

2022.

12. As with the Original PACE Ordinance, the Amended PACE Ordinance required that all PACE providers operating in Palm Beach County enter and operate in accordance with interlocal agreements with the County. Specifically, the Amended Ordinance provides that :

PACE Agencies/Authorities/Districts and Third-Party Administrators offering financing for Qualifying Improvements on Residential and Non-Residential Properties pursuant to this Article shall be approved by the County and authorized through interlocal agreements to provide financing subject to the requirements of this Article and the PACE Statute. A resolution indicating the County's desire to join a PACE Agency/Authority/District shall be prepared by County staff and presented to the Board for consideration with each interlocal agreement. The interlocal agreements shall include specific terms and conditions for PACE Agencies/Authorities/Districts and Third-Party Administrators to operate within Palm Beach County.

13. On or about January 3, 2023, the County received a certified letter from FPFA, in which FPFA announced that it was immediately terminating its ILA with the County, citing to the County's adoption of the Amended PACE Ordinance as grounds for the termination. The FPFA Letter is attached hereto as *Exhibit 5*.

14. FPFA, in its letter, stated that though it was terminating the ILA, and would not participate in the regulatory structure that the County has established, that it would continue operating in the County based on its "independent authority" on a "uniform statewide basis" as recognized in a Bond Validation Final Judgment, issued in Case No. 2022-CA-1562, by the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida (Leon County Circuit Court), on October 6, 2022. ("Final Judgment.") The Final Judgment is attached hereto as *Exhibit 6*.

15. Case No. 2022-CA-1562, Florida PACE Funding Agency v. State of Florida et. al., was a bond validation proceeding, brought pursuant to Chapter 75 and section 163.01(7)(d), Florida Statutes. In its Complaint for Validation, FPFA sought to validate the total of Five Billion

Dollars (\$5,000,000,000) in FPFA Revenue Bonds.

16. Generally, the purpose of a bond validation proceeding is to procure in advance final judicial determination of the validity of bonds issued by counties or other political subdivisions. As acknowledged in the Final Judgment, in a bond validation proceeding, a court has three tasks: it must determine 1) whether the bond issuer (FPFA) has legal authority to issue the contemplated indebtedness; 2) whether the purpose of the obligation is legal; and 3) whether the issuance complies with the requirements of law.

17. Here, the Final Judgment included a number of collateral findings that went beyond the permissible scope of a bond validation proceeding, including a finding that FPFA may operate independent of local government regulation and cooperation, and has independent authority to impose non-ad valorem assessments statewide. Not only did this finding purport to eliminate Palm Beach County's authority to regulate within Palm Beach County, but, it is also in direct conflict with the express language of the PACE Act, which specifically provides that "*subject to local government ordinance or resolution*, a property owner may apply to the local government for funding to finance a qualifying improvement and enter into a financing agreement with the local government." §163.08(4), Fla. Stat. More importantly, the legislature emphasized that "*this section is additional and supplemental to county and municipal home rule authority and not in derogation of such authority or a limitation upon such authority.*" §163.08(15), Fla. Stat.

18. Despite FPFA's failure to provide notice to the County or property owners in Palm Beach County, the collateral finding sought by FPFA and incorporated into the Final Judgment affects the rights and powers of the County and purports to eliminate the County's authority to regulate the PACE program within Palm Beach County.

19. On March 7, 2023, the County sent via certified mail correspondence to FPFA, in

which the County acknowledged FPFA's termination of the ILA. However, the County informed FPFA that it did not have the legal authority to continue operating in Palm Beach County without an executed Interlocal Agreement, and without complying with the consumer protection provisions of the Amended PACE Ordinance. The County's Letter is attached hereto as *Exhibit 7*.

20. The County demanded that FPFA immediately cease and desist its operations in Palm Beach County, and immediately stop executing new financing agreements with property owners in Palm Beach County.

21. Notwithstanding the County's letter, from March 7, 2023 to April 11, 2023, FPFA executed approximately 136 new loans in Palm Beach County, in the amount of approximately 4.4 million dollars (\$4,400,000.00) in total.

### **MEMORANDUM OF LAW**

#### **Elements for a Temporary Injunction.**

"To obtain a temporary injunction, the petitioner must satisfy a 'four-part test under Florida law: a substantial likelihood of success on the merits; lack of an adequate remedy at law; irreparable harm absent the entry of an injunction; and that injunctive relief will serve the public interest.'" *Reform Party of Fla. v. Black*, 885 So.2d 303, 305 (Fla. 2004) (quoting *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1258 (Fla. 2017)). However, as will be discussed *infra*, "this showing [of factors required to support a grant of temporary injunction] is relaxed when

an injunction is sought by a governmental entity to enforce its police powers<sup>2</sup>.”<sup>3</sup> In such circumstances, the government entity need not come forth with proof to show irreparable harm or lack of an alternate remedy, instead, any legal remedy is ignored and irreparable harm is presumed.<sup>4</sup> Further, Florida Courts have consistently held that the “substantial likelihood of success on the merits” prong is met where a party against whom the injunction is sought has violated a law, code or ordinance.<sup>5</sup> Finally, under these this circumstances, as it relates to the “public interest” prong of the test, courts have consistently held that the public has an interest in seeing that its ordinances and city zoning plans are complied with.

Here, all prongs of the temporary injunction test are met, and the County is entitled to its requested relief.

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<sup>2</sup> “Police power” is the power of a local governmental body to impose laws and regulations which are reasonably related to the protection or promotion of a public good, such as health, safety, and welfare. Pursuant to section 125.86, Florida Statutes, the legislative responsibilities of a county is assigned and vested in the board of county commissioners, and includes the power and duty to

(7) Adopt, pursuant to the provisions of the charter, such ordinances of countywide force and effect as are necessary for the health, safety, and welfare of the residents. It is the specific legislative intent to recognize that a county charter may properly determine that certain governmental areas are more conducive to uniform countywide enforcement and may provide the county government powers in relation to those areas as recognized and as may be amended from time to time by the people of that county; and

(8) All other powers of local self-government not inconsistent with general law as recognized by the Constitution and laws of the state and which have not been limited by the county charter.

<sup>3</sup> See *Ware v. Polk County*, 918 So.2d 977, 979 (Fla. 2d DCA 2005).

<sup>4</sup> *City of Miami v. City of Miami Firefighters' and Police Officers' Retirement Trust & Plan*, 249 So. 3d 709 (Fla. 3d DCA 2018); *Manatee County v. 1187 Upper James of Florida, LLC*, 104 So. 3d 1118 (Fla. 2d DCA 2012); *Rudge v. City of Stuart*, 65 So. 3d 645 (Fla. 4th DCA 2011).

<sup>5</sup> See *P.M. Realty & Invs., Inc. v. City of Tampa*, 779 So.2d 404, 406. (Fla. 2d DCA 2000).

**A. The County Has a Clear Legal Right to the Enforcement of its Ordinance.**

The “substantial likelihood of success on the merits” prong of the temporary injunction test is satisfied when the movant shows that it has a “clear legal right” to relief. *See, e.g., Keystone Creations, Inc. v. City of Delray Beach*, 890 So.2d 1119, 1124 (Fla. 4th DCA 2004). As it relates to local government, courts across Florida have uniformly held that a government has a clear legal right to a temporary injunction when it demonstrates that the opposing party is violating that local government’s code.

In *Keystone Creations*, the City of Delray Beach sought a temporary injunction to enjoin the operations of a stonecutting business because of its ongoing violations of City ordinances and code. The Fourth District Court of Appeal affirmed the issuance of the temporary injunction. In discussing the “clear legal right” prong of the temporary injunction test, the court held that “in circumstances where one continues to operate a business while aware of ordinance violations, ‘the government has a clear legal right to relief.’” 890 So.2d at 1124.

Like the Fourth District, courts across Florida have uniformly held that in considering the “substantial likelihood of prevailing on the merits” prong of the temporary injunctive relief test, that a government entity demonstrates a clear legal right to injunctive relief by showing that a party has violated a law, code, or ordinance. *See e.g., O’Brien*, 660 So.2d 364; *Manatee County*, 104 So.3d at 1121; *P.M. Realty & Invs., Inc. v. City of Tampa*, 779 So.2d 404, 406 (Fla. 2d DCA 2000); *Dispoto v. Marion County*, 969 So.2d 423 (Fla. 5th DCA 2007).

In *Metropolitan Dade County v. O’Brien*, the O’Briens established a business without complying with various county ordinances. The Third District Court of Appeal reversed the trial court’s denial of a temporary injunction, holding, in relevant part, that under the circumstance where one opens a business aware of the violations to the ordinances and continues to operate that

business in violation, the government has a clear legal right to relief. *See* 660 So.2d at 365.

In *Manatee County v. 1187 Upper James of Florida, LLC*, Manatee County sought to enjoin to temporary enjoin a restaurant that repeatedly violated a zoning ordinance to comply with the ordinance while the parties litigated the ordinance's enforceability. In reversing the trial court's denial of a temporary injunction, the Second District Court of Appeal outlined the four prongs of injunctive relief and explained that the "only true disputed issue" was whether the county had a substantial likelihood of prevailing on the merits given the deference to municipalities when enforcing police power. *Manatee County*, 104 So. 3d at 1121. When considering whether Manatee County was likely to succeed on the merits, the court held that "where one opens a business aware of the violations to the ordinances and continues to operate that business in violation, the government has a clear legal right to relief." *Id.* (Citing *P.M. Realty & Invs., Inc.* 779 So.2d at 406). The court noted that the restaurant, despite having knowledge of the zoning restrictions was still operating "in clear defiance" of the restrictions in the zoning ordinance. *Id.* at 1118. The court concluded that the restaurant's "*continuing violation of a known ordinance gives the County a clear legal right to the issuance of the injunction.*" *Id.* (Emphasis added).<sup>6</sup>

The Fifth District Court of Appeal applied the prongs for temporary injunction in a similar manner in *Disputo v. Marion County*, 969 So.2d 423 (Fla. 5th DCA 2007). That case involved operation of a radio station and construction of a 130-foot broadcast tower without the permits

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<sup>6</sup> In rendering its decision, the court in *Manatee County* also relied on an earlier Second District decision in *Ware v. Polk County*, 918 So.2d 980. There, the court found that Polk County was entitled to temporary injunction against property owner's use of structure constructed without a building permit. Irreparable harm was presumed, the county's alternative remedies were disregarded, because the county was seeking to enforce its police powers, the county had a clear legal right to relief in that the owner was aware that he was in violation of building code, and injunction would serve the public interest because public had an interest in having ordinances enforced. *Id.*



required by the county. Marion County sought injunctive relief to cease operation of the station and compel the owners to remove the tower since both acts were contrary to county regulations, which the trial court granted. *Id.* at 425. The Fifth District recited the four-prong temporary injunction standard and with regards to the “clear legal right” prong noted that “the County satisfied the third prong - that it had a clear legal right to relief - because the [property owners] were engaged in continuing violations of the County's building and zoning codes.” *Id.* (Citing to *Ware*, 918 So.2d at 980).

Applying the standards outlined above, here, FPFA’s deliberate and continuing violation of the Amended PACE Ordinance gives the County a clear legal right to the issuance of the temporary injunction. The Ordinance was duly adopted and codified. It is an appropriate exercise of the County’s police power under as provided in section 125.86, Florida Statutes, and Section 3.3 of the Palm Beach County Charter. The County’s PACE Ordinance is presumed valid, and the Court ought to indulge every reasonable presumption in favor of an ordinance’s enforceability. *Hoesch v. Broward County*, 53 So. 3d 1177, 1180 (Fla. 4th DCA 2011) (citing *Lowe v. Broward County*, 766 So. 2d 1199, 1203 (Fla. 4th DCA 2000)). This presumption is bolstered by the clear language in the PACE Act itself: placing PACE funding agreements subject to local government ordinance in section 163.08(4) and subordinating the PACE Act to county home rule authority and expressly avoiding a reading of the PACE Act to be in derogation of or placing a limitation on such authority in section 163.08(16). It is further supported by the general principles that when an area of law is not preempted by state law, a county can pass ordinances concurrently on subjects regulated by state statute, and that an ordinance is not in conflict with a statute simply because it is more stringent than the statute, and that the more stringent ordinance is read to supplement the

statute. *Id.* at 1179 (citing *Jordan Chapel Freewill Baptist Church v. Dade County*, 334 So. 2d 661, 664-65 (Fla. 3d DCA 1976)).

It is undisputed that FPFA is knowingly and deliberately violating the PACE Act and the County's PACE Ordinance. As a preliminary matter, FPFA expressly informed the County that it intended to operate in Palm Beach County without complying with the Amended PACE Ordinance in its January 3, 2023 Letter. The Ordinance requires that PACE providers that wish to do business in Palm Beach County must enter into an interlocal agreement with the County (and comply with a number of other enumerated consumer protection safeguards in the course of its operation). Here, FPFA terminated the interlocal agreement and since then, to the present day, has continued to issue PACE financing loans to citizens of Palm Beach County. FPFA has continued its illegal operations even after being informed by the County that FPFA's actions were in direct violation of County's PACE Ordinance.<sup>7</sup> In light of the foregoing, the County has a clear legal right to a temporary injunction.

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<sup>7</sup> Further, it should be noted that FPFA relies on the collateral finding in the Final Judgment to support its willing violation of the PACE Act and the County's PACE Ordinance. This collateral finding sought by FPFA and incorporated into the Bond Validation Final Judgment affects the rights and powers of Palm Beach County and property owners within Palm Beach County, and purports to eliminate Palm Beach County's authority to regulate within Palm Beach County.

In addition, FPFA's attempt to usurp the County's police power through its bond validation made the County an indispensable party to that action. Yet the County was not named as a defendant, was never put on notice of the action, and was not aware of it until FPFA's January 3, 2023 letter informed the County, for the first time, of the Final Judgment. A judgment is void for failing to join indispensable parties. *Toyano's Auto Repair Svcs. v. Southern Auto Finance Co., LLC*, 331 So 3d. 186, 188 (Fla. 4th DCA 2021) (citing *Citibank, N.A. v. Villanueva*, 174 So. 3d 612, 614 (Fla. 4th DCA 2015)). An indispensable party "has a due process right to defend the suit in the same way any other named party to civil litigation has a due process right to defend." *Id.* at 188-89 (internal citations omitted).

**B. The County's Status as a Governmental Entity Obviates the Need to Show a Lack of an Adequate Remedy at Law or Irreparable Harm.**

The County likewise satisfies the “irreparable harm” and “lack of adequate remedy” prongs of the temporary injunction test because it is well established that “[w]here the government seeks an injunction in order to enforce its police power, any alternative legal remedy is ignored and irreparable harm is presumed.” *O'Brien*, 660 So.2d 365 (citing to the Florida Supreme Court's decision in *Rich v. Ryals*, 212 So.2d 641 (Fla.1968); *Florida Dep't of Envtl. Regulation v. Kaszyk*, 590 So.2d 1010 (Fla. 3d DCA 1991); *Harvey v. Wittenberg*, 384 So.2d 940 (Fla. 3d DCA 1980)).

In *Keystone Creations*, the Fourth District, relying on the *O'Brien* decision, found that the inadequate remedy at law prong of the temporary injunction test was satisfied in circumstances “where the government seeks an injunction to enforce its police power.” 890 So.2d 1124. The Court noted that in these circumstances, money damages would be inadequate to keep the contractor from violating the county code. *Id.* The Court further found that because the contractor was conducting its stonecutting business without complying with the county ordinance that “[i]rreparable harm must be presumed in this case.” *Id.*

The Courts in the *Manatee County*, *Ware*, *Dispoto* reached similar conclusions, holding, in each case, that the respective government petitioner did not need to demonstrate an alternative legal remedy or irreparable harm because they sought to enforce their police power. *See Manatee County* 104 So.3d at 1118; *Ware*, 918 So.2d at 979; *Dispoto*, 969 So.2d at 425.<sup>8</sup>

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<sup>8</sup> See also, *Miami-Dade County v. Fernandez*, 905 So.2d 213; 215 (Fla. 3d DCA 2005) (presuming irreparable harm where governmental entity seeks “to enforce its police powers”); *Rudge v. City of Stuart*, 65 So. 3d 645 (Fla. 4th DCA 2011).

Here, as discussed, the Amended PACE Ordinance was enacted pursuant to the County's lawful exercise of its police power. In seeking this injunction, and requiring compliance with county code, the County is only seeking to enforce its police powers.

Based on the foregoing, the County satisfies the "lack of an adequate remedy at law" and "irreparable harm" elements of the test for a temporary injunction.

**C. The Injunction Will Serve the Public Interest.**

The County also satisfies the fourth prong of the temporary injunction test: that the grant of a temporary injunction will serve the public interest because it is well established in Florida law that the public has an interest in the enforcement of lawfully enacted ordinances. *See Keystone*, 890 So. 2d at 1125 (citing *P.M. Realty & Invs., Inc. v. City of Tampa*, 779 So.2d at 404, 406).

A review of *Keystone*, *O'Brien*, *Manatee County*, *Ware* and *Dispoto* decisions shows that the test as to whether a temporary injunction will serve the public interest as it relates to a local government does not require that the local government make a showing of negative impact in a specific case. In *Keystone*, for example, the contractor argued that there was no evidence that its operations were dangerous or posed a danger or harm to the community. 890 So.2d at 1125. The Fourth District rejected this argument as being applicable to a local government trying to enforce its ordinances, stating that:

"Keystone argues that the injunction [will] disserve the public because there is no evidence that its operations were dangerous, or posed a danger of harm to the community. However, because the public has an interest in seeing that city ordinances and zoning plans are complied with, the issuance of an injunction here does serve the public interest... The public has an interest in seeing that its ordinances and city zoning plans are complied with." *Id.* (citing to *P.M. Realty & Invs., Inc. v. City of Tampa*, 779 So. 2d 404, 406 (Fla. 2d DCA 2000)).

The court in Manatee County court reached a similar conclusion, stating that "an injunction merely requiring compliance with binding laws cannot be said to unduly harm [a business owner]

or to be a disservice to the public.” *Manatee County*, 104 So.3d at 1121.

Further, in this case, Palm Beach County enacted the Amended PACE Ordinance specifically to protect the citizens of Palm Beach County in their dealings with PACE loan providers. Certainly, public interest is furthered by the County’s requiring that FPFA operate in compliance with a consumer protection ordinance.

Finally, here, Palm Beach County’s Charter, which was voted on and passed by the public, reflects the will of the people and expressly gives the County the right to adopt ordinances to protect the public’s health, safety, and welfare, such as the PACE Ordinance. By upholding the Charter, the injunctive relief sought herein will further the public interest.

For the foregoing reasons, the issuance of a temporary injunction will serve the public interest.

**D. No Bond Should Be Required.**

Although a bond is ordinarily required for the entry of a temporary injunction, a court, in its discretion and with due regard for the public interest, is authorized to dispense with the bond requirement when the injunction is issued “on the pleading of a municipality or the state or any officer, agency, or political subdivision thereof.” Fla. R. Civ. P. 1.610(b); *see also Lieberman v. Marshall*, 236 So.2d 120, 125 (1970) (“The rule also provides for bond, dispensable if the injunction is sought by a public agency. A state university is such an agency, and the trial judge had authority to issue the injunction without requiring bond.”); *Sunshine State News Co. v. State*, 121 So.2d 705 (Fla. 3d DCA 1960) (affirming order denying application for bond to be posted on behalf of state as a condition of issuing injunction). The reasons for not requiring a bond from such governmental entities are that they are “presumed to be financially responsible” and “to save the [government] the expense, inconvenience, and delay in obtaining such a bond.” *Provident*

*Management Corp. v. City of Treasure Island*, 718 So. 2d 738, 740 (Fla. 1998).

Here, as a political subdivision of the State of Florida, the County should not be required to post a bond as a condition of the issuance of the injunction. As no such bond is required by the applicable rule of civil procedure or case law, the Court may require or dispense with it in its discretion. Dispensing with a bond in this case would be beneficial to the interests of the public. It is in the public's best interest for the County not to redirect taxpayer dollars and expend time and resources to post a bond in order to seek injunctive relief in this case.

**WHEREFORE**, the County prays that this Court grant the following relief in its favor:

- i) A temporary injunction enjoining FPFA from entering into financing agreements with property owners in Palm Beach County unless and until such time as FPFA has a valid interlocal agreement with the County.
- ii) A temporary injunction enjoining FPFA from entering into financing agreements with property owners in Palm Beach County that do not comport with the requirements for such agreements provided for by the County's Amended PACE Ordinance;
- iii) Any further relief that the Court deems just and proper.

**VERIFICATION**

Under penalties of perjury, I declare that, on this 28th day of April, 2023, I have read the foregoing Motion for Temporary Injunction and that the facts stated in it are true.



\_\_\_\_\_  
Patrick W. Rutter  
Assistant County Administrator  
Palm Beach County

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Respectfully submitted this 28th day of April, 2023.

/s/ Marianna Sarkisyan

Marianna Sarkisyan, Esquire

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[Aairey@pbcgov.org](mailto:Aairey@pbcgov.org); [APanholzer@pbcgov.org](mailto:APanholzer@pbcgov.org)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Temporary Injunction will be served at the same time as the Complaint.

DATED this 28th day of April 2023.

/s/ Marianna Sarkisyan

Marianna Sarkisyan, Esquire

Florida Bar No. 57059

Scott H. Holtz, Esquire

Florida Bar No. 69080

David R.F. Ottey, Esquire

Florida Bar No. 15590

300 North Dixie Highway, Suite 359

West Palm Beach, Florida 33401

Tel: (561) 355-2529; Fax: (561) 355-4234

Email: [Msarkisyan@pbcgov.org](mailto:Msarkisyan@pbcgov.org); [Sholtz@pbcgov.org](mailto:Sholtz@pbcgov.org),

[Dottey@pbcgov.org](mailto:Dottey@pbcgov.org), [Ldennis@pbcgov.org](mailto:Ldennis@pbcgov.org),

[Aairey@pbcgov.org](mailto:Aairey@pbcgov.org), [APanholzer@pbcgov.org](mailto:APanholzer@pbcgov.org)

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ESTABLISHING THE PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM ORDINANCE; PROVIDING FOR A TITLE; PROVIDING FOR AUTHORITY; PROVIDING FOR APPLICABILITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

1       **WHEREAS**, Property Assessed Clean Energy (PACE) programs have been  
2 established across the country to provide mechanisms for funding energy efficiency, renewable  
3 energy, and other types of improvements to residential and commercial properties; and

4       **WHEREAS**, PACE programs are typically established by local governments and are  
5 administered by the local government or by for-profit or not-for-profit entities; and

6       **WHEREAS**, PACE financing is repaid as an assessment on the property's regular tax  
7 bill; and

8       **WHEREAS**, Section 163.08, Florida Statutes, authorizes programs, typically referred  
9 to as PACE programs, that levy non-ad valorem assessments allowing property owners to  
10 apply to local governments for financing certain energy efficiency, renewable energy and wind  
11 resistant improvements; and

12       **WHEREAS**, Section 163.08, Florida Statutes, provides that properties retrofitted with  
13 energy-related qualifying improvements benefit from reduced energy consumption, reduced  
14 potential for wind damage, and assist in the fulfillment of the state's energy and hurricane  
15 mitigation policies; and

16       **WHEREAS**, the PACE assessment is collected pursuant to Florida's uniform  
17 method for the levy, collection and enforcement of non-ad valorem assessments, Section  
18 197.3632, Florida Statutes; and

19       **WHEREAS**, the Board of County Commissioners intends to establish qualifications  
20 and consumer protection disclosure requirements for PACE programs that provide financing  
21 for qualifying improvements in accordance with Section 163.08, Florida Statutes, and  
22 provisions of this Ordinance; and



1           **WHEREAS**, it is the intent of the County to enter into interlocal agreements with  
2 multiple PACE agencies/authorities/districts to encourage competition and provide more  
3 choices for property owners; and

4           **WHEREAS**, the Board of County Commissioners acknowledges the Florida  
5 Legislature's finding that there is a compelling state interest in enabling property owners who  
6 wish to undertake such improvements and to enable property owners to voluntarily finance  
7 such improvements with local government assistance and finds that creation of a PACE  
8 program will serve the public health and welfare of the citizens of Palm Beach County; and

9           **WHEREAS**, the Board of County Commissioners has conducted a duly noticed public  
10 hearing to consider this Ordinance in accordance with Section 125.66, Florida Statutes; and

11           **WHEREAS**, the Board of County Commissioners of Palm Beach County, pursuant to  
12 its authority under the Florida Constitution, Article VIII, Section 1(g), Section 125.01, Florida  
13 Statutes, and the Palm Beach County Charter, hereby adopts the Palm Beach County Property  
14 Assessed Clean Energy (PACE) Ordinance.

15

16           **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**  
17 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

18           **Section 1. TITLE:**

19           This Ordinance shall be titled the "Palm Beach County Property Assessed Clean  
20 Energy (PACE) Ordinance."

21           **Section 2. AUTHORITY:**

22           This article is adopted pursuant to the authority granted to charter counties under Article  
23 VIII, Section 1(g) of the Florida Constitution, Chapter 125, Florida Statutes and Article 1 of the  
24 Palm Beach County Home Rule Charter.

25           **Section 3. APPLICABILITY:**

26           This Ordinance shall be applicable within the unincorporated areas of Palm Beach County,  
27 and in all municipalities that have not adopted an ordinance governing any or all of the subject  
28 matter of this Ordinance, regardless of the time of passage of the municipal ordinance.

29           **Section 4. DEFINITIONS:**

30           For purposes of this Ordinance, the following words and phrases shall have the  
31 following meanings:

32           (1) *Board or County* is the Palm Beach County Board of County Commissioners.

- 1 (2) *Financing Agreement* shall mean the financing agreement or the summary memorandum  
2 of such agreement the property owner signs establishing terms and conditions for the  
3 financing of qualified improvements which is required to be recorded in the public  
4 records pursuant to the PACE Statute.
- 5 (3) *Qualifying Improvements* includes energy conservation and efficiency, renewable energy,  
6 and wind resistance improvements as defined by Section 163.08, Florida Statutes, as may  
7 be amended by law.
- 8 (4) *PACE assessment* shall mean the non-ad valorem assessment placed on a property  
9 owner's tax bill as a result of financing obtained pursuant to this Ordinance.
- 10 (5) *PACE agencies/authorities/districts* shall mean one or more local governments defined in  
11 Section 163.08(2)(a), Florida Statutes, authorized by Palm Beach County to offer PACE  
12 financing for qualifying improvements.
- 13 (6) *PACE Program* shall mean the County's provision through interlocal agreements with  
14 PACE agencies/authorities/districts offering financing for qualifying improvements as  
15 approved by the State of Florida pursuant to Section 163.08, Florida Statutes, further  
16 refined in this Ordinance, as may be amended by law.
- 17 (7) *PACE Statute* shall mean Section 163.08, Florida Statutes and all future amendments  
18 thereto.
- 19 (8) *Residential Property* shall mean a residential property consisting of four (4) or less  
20 residential units.
- 21 (9) *Non-Residential Property* shall mean commercial, industrial, agricultural and residential  
22 properties consisting of five (5) or more residential dwelling units.

23 **Section 5. PACE PROGRAM AUTHORIZATION:**

- 24 (1) PACE agencies/authorities/districts offering financing for Qualifying Improvements  
25 pursuant to this Ordinance shall be approved by the County and authorized through  
26 interlocal agreements to provide financing subject to the requirements of this Ordinance  
27 and the PACE Statute. A resolution indicating the County's desire to join a PACE  
28 agency/authority/district shall be prepared by County staff and presented to the Board for  
29 consideration with each interlocal agreement. The interlocal agreements shall include  
30 specific terms and conditions for PACE agencies/authorities/districts to operate within  
31 Palm Beach County.

1 (2) PACE agencies/authorities/districts desiring to provide financing pursuant to this  
2 Ordinance shall provide sufficient documentation as requested by the County to provide  
3 reasonable assurance that the requirements of this Ordinance and the PACE Statute can be  
4 met by the PACE agency/authority/district.

5 **Section 6. DISCLOSURE REQUIREMENTS:**

6 (1) In addition to any disclosure requirements in the PACE Statute, PACE  
7 agencies/authorities/districts that extend financing pursuant to the PACE Statute and levy  
8 non-ad valorem assessments to fund the qualifying improvements shall present to the  
9 property owner a separate, written notice disclosing the following ("Notice"):

- 10 (a) The estimated total amount of the debt, including amount financed, fees, fixed interest  
11 rate, capitalized interest and the effective rate of the interest charged ("Annual  
12 Percentage Rate" or "APR");
- 13 (b) That PACE agencies/authorities/districts may only offer fixed simple interest rates and  
14 payments that fully amortize the obligation. Variable or negative amortization  
15 financing terms are not permitted. Capitalized interest included in the original balance  
16 of a PACE financing does not constitute negative amortization.
- 17 (c) The repayment process and terms, amounts and a schedule that fully amortizes the  
18 amount financed including the estimated annual PACE assessment;
- 19 (d) That the PACE assessment will appear on the property owner's tax bill;
- 20 (e) That there is no discount for paying the PACE assessment early;
- 21 (f) The nature of the lien recorded and that the PACE assessment will be collected in the  
22 same manner as real estate taxes. That failure to pay the PACE assessment may cause  
23 a tax certificate to be issued against the property, and that failure of payment thereof  
24 may result in the loss of property subject to the PACE assessment, including homestead  
25 property, in the same manner as failure to pay property taxes;
- 26 (g) The specific improvements to be financed and installed and that such improvements  
27 and PACE assessment may or may not affect the overall value of the property;
- 28 (h) A PACE assessment payment term that does not exceed the useful life of the  
29 improvements;
- 30 (i) The right of pre-payment without penalty;
- 31 (j) Notice that the property owner may be required to pay any PACE assessment in full at  
32 the time of refinance or sale of the property; and

- 1 (k) The 3-day right to cancel the financing.
- 2 (2) The Notice must be delivered to the property owner by the PACE agency/authority/district
- 3 and must be signed and dated by the property owner prior to or contemporaneously with
- 4 the property owner's signing of any legally enforceable documents under the PACE
- 5 program. The property owner and the PACE agency/authority/district must keep the
- 6 signed Notice with the property owner's executed financing agreement.
- 7 (3) The PACE agency/authority/district shall record, or cause to be recorded, the financing
- 8 agreement or a summary memorandum of the financing agreement, in accordance with
- 9 Section 163.08(8), Florida Statutes.

10 **Section 7. ELIGIBLE PROPERTIES/PROGRAM REQUIREMENTS:**

- 11 (1) As defined in the PACE Statute, PACE agencies/authorities/districts that extend financing
- 12 pursuant to the PACE Statute and levy non-ad valorem assessments to fund the qualifying
- 13 improvements shall comply with the following:
- 14 (2) Residential Property. PACE agencies/authorities/districts may finance qualifying
- 15 improvements on Residential Properties provided they comply with the following criteria
- 16 inclusive of all eligibility criteria listed in the PACE Statute and all future amendments
- 17 thereto, along with additional consumer protections.
- 18 (a) Without the consent of the holders or loan servicers of any mortgage encumbering or
- 19 otherwise secured by the property, the total amount of any non-ad valorem assessment
- 20 for a property under the PACE Statute may not exceed twenty percent (20%) of the
- 21 just/fair market value of the property as determined by the county property appraiser,
- 22 excepted as otherwise provided by statute; and
- 23 (b) All property taxes and other assessments levied on the property tax bill have been paid
- 24 and have not been delinquent for the preceding three years, or the property owner's
- 25 period of ownership, whichever is less; and
- 26 (c) There are no involuntary liens, including but not limited to construction liens on the
- 27 property; and
- 28 (d) No notices of default or other evidence of property-based debt delinquency have been
- 29 recorded during the preceding three years, or the property owner's period of ownership,
- 30 whichever is less; and, additionally
- 31 (e) All mortgage debt on the property is current and not delinquent; and

1 (f) All mortgage-related debt on the underlying property may not exceed 90% of the  
2 property's fair market value; and

3 (g) The total mortgage-related debt on the underlying property plus the PACE program  
4 financing may not exceed the fair market value of the property.

5 (3) Non-Residential Properties. PACE agencies/authorities/districts may finance Qualifying  
6 Improvements on Non-Residential Properties provided they comply with the requirements  
7 set forth in the PACE Statute and all future amendments thereto and inclusive of those  
8 listed under Section 7(2)(a-d) of this Ordinance.

9 (4) Qualifying Improvements. The PACE agency/authority/district will finance energy  
10 efficiency, renewable energy and wind resistant improvements that are permanently affixed  
11 to the property as more specifically described in the PACE Statute. All improvements and  
12 products should identify efficiency standards established by the U.S. Department of  
13 Energy, the U.S. Environmental Protection Agency, or Florida state agencies as applicable.  
14 All qualifying improvements must comply with the PACE Statute for energy efficiency,  
15 renewable energy and wind resistance or other improvements as permissible by law. PACE  
16 agencies/authorities/districts shall establish procedures confirming that the property owner  
17 applying for financing through the PACE agency/authority/district intends to install  
18 eligible products, and that at the time of funding such improvements have been installed.

19 (5) Inquiries and Complaints.

20 (a) The PACE agency/authority/district shall be required to receive, manage, track, timely  
21 resolve and report on complaints from property owners regarding the funded work  
22 performed by the contractors. The PACE agency/authority/district shall investigate  
23 and mediate disputes between property owners and contractors in a timely manner.

24 (b) Payment inquiries. The PACE agency/authority/district shall be required to respond to  
25 inquiries and resolve any issues in a timely manner, related to payments, including but  
26 not limited to prepayments and payment reconciliation.

27 (c) Review. In the event that ten percent or more of a PACE agency's/authority's/district's  
28 projects result in complaints or disputes, or such complaints or disputes remain  
29 unresolved six months after completion of a project, the County may review the PACE  
30 agency's/authority's/district's handling of complaints and may request corrective  
31 actions or initiate suspension proceedings pursuant to Section 7(13).

32 (6) Data Security. The PACE agency/authority/district is responsible for taking security

1 measures that protect the security and confidentiality of consumer records and information  
2 in proportion to the sensitivity of the information, and as required by state and federal law.

3 (7) Consumer Privacy. The PACE agency/authority/district must develop and maintain a  
4 privacy policy that complies with state and federal law and, in particular, shall provide a  
5 property owner the ability to opt-out of having the property owner's information shared  
6 with third parties, except where expressly permitted by state and federal law.

7 (8) Marketing and Communications. Marketing practices for a PACE agency/authority/district  
8 that are or could appear to be unfair, deceptive, abusive, or misleading, or that violate  
9 applicable laws or regulations, that are inappropriate, incomplete or are inconsistent with  
10 the PACE agency's/authority's/district's purpose are prohibited.

11 (9) Protected Classes. The PACE agency/authority/district shall not discriminate against  
12 individuals on the basis of race, color, ancestry, disability, national origin, religion, age,  
13 familial status, marital status, sex, gender, sexual orientation, gender identity and  
14 expression, or genetic information.

15 (10) Contractor Management.

16 (a) Any work under a PACE agency/authority/district requiring a license under any  
17 applicable law to make a qualifying improvement shall be performed by a contractor  
18 properly licensed, certified or registered pursuant to state or local law.

19 (b) Contractors performing work under a PACE agency/authority/district shall comply  
20 with each of the following conditions: (i) Be licensed and insured pursuant to the  
21 applicable statutory requirements; (ii) Agree to comply with all program requirements  
22 and marketing guidelines; (iii) Act in good faith to timely resolve property owner  
23 complaints.

24 (c) PACE programs shall have and shall strictly enforce anti-kickback policies and  
25 procedures that prohibit direct financial or other monetary incentives to contractors in  
26 exchange for or related to such contractor being awarded work under a PACE program,  
27 excepting payment for the contractor's installation of eligible improvements.

28 (11) Financing. The PACE agency/authority/district will establish pricing rules and  
29 enforcement mechanisms to ensure property owners are protected from excessive or  
30 unjustified prices and charges. In addition, the PACE agency/authority/district shall  
31 require compliance with each of the following conditions prior to the issuance of any  
32 funding to the contractor:

- 1 (a) Contractors have certified that any necessary permits have been obtained;
- 2 (b) Verification that the qualifying improvements have been installed;
- 3 (c) The property owner and the contractor have signed a final inspection and/or certificate
- 4 of completion that all improvements have been installed to the property owner's
- 5 satisfaction.
- 6 (12) Reporting. Each PACE agency/authority/district shall provide a report to the County
- 7 on a quarterly calendar basis, which shall include, at a minimum, the following
- 8 information:
- 9 (a) Dates of the reporting period;
- 10 (b) List of PACE projects (including addresses including municipal jurisdiction, financed
- 11 amount, interest rate, assessment duration, and project description) started during the
- 12 reporting period, separated by building type (e.g., single family, multifamily, retail,
- 13 office, industrial, etc.);
- 14 (c) List of PACE projects (including addresses including municipal jurisdiction)
- 15 completed during the reporting period, separated by building type project (e.g., single
- 16 family, multifamily, retail, office, industrial, etc.), specify; (1) the qualifying
- 17 improvements made; (2) project start date and completion date; (3) the projected energy
- 18 savings and/or amount of potential renewable energy to be generated; (4) financial
- 19 information such as cost per kilowatt hour saved/generated; (5) other resource savings
- 20 if data is available; and (6) audits performed detailing the audit results, if applicable to
- 21 the project;
- 22 (d) Number of actual or estimated jobs created during the reporting period, including local
- 23 versus non-local jobs and permanent versus temporary jobs;
- 24 (e) Number of applications declined during the reporting period;
- 25 (f) Unresolved complaints and/or contractor issues and status; and
- 26 (g) Description of the standardized third-party methodologies and supporting assumptions
- 27 used to verify data, and any changes in the methodologies and assumptions from the
- 28 previous reporting period.
- 29 (13) Suspension or Termination of PACE agency/authority/district. In the event any PACE
- 30 agency/authority/district fails to incorporate and continually provide for all of the foregoing
- 31 service components or to otherwise abide by the provisions of this Ordinance and/or the
- 32 interlocal agreement the County, in its sole discretion, may suspend or terminate the

1 interlocal agreement and support of the County at any time upon written notice to that  
2 PACE agency/authority/district. Any project that has been initiated as of the time of  
3 suspension or termination shall be permitted to be completed.

4 **Section 8. REPEAL OF LAWS IN CONFLICT:**

5 All local laws and ordinances in conflict with any provisions of this Ordinance are  
6 hereby repealed to the extent of such conflict.

7 **Section 9. SEVERABILITY:**

8 If any section, paragraph, sentence, clause, phrase or word of this Ordinance is for any  
9 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void,  
10 such holding shall not affect the remainder of this Ordinance.

11 **Section 10. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

12 The provisions of this Ordinance shall become and be made a part of the Palm Beach  
13 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish  
14 such, and the word Ordinance may be changed to section, article, or other appropriate word.

15 **Section 11. ENFORCEMENT:**

16 This Ordinance is enforceable by all means provided by law. Additionally, the County  
17 may choose to enforce this Ordinance by seeking injunctive relief in the Circuit Court of Palm  
18 Beach County.

19 **Section 12. PENALTY:**

20 Any violation of any portion of this Ordinance shall be punishable as provided by law.

21 **Section 13. CAPTIONS:**

22 The captions, section headings and section designations used in this Ordinance are for  
23 convenience only and shall have no effect on the interpretation of the provisions of this  
24 Ordinance.

25 **Section 14. EFFECTIVE DATE:**

26 The provisions of this Ordinance shall become effective upon filing with the  
27 Department of State.

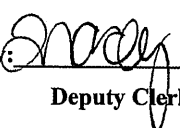
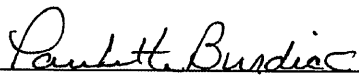
28 **APPROVED and ADOPTED** by the Board of County Commissioners of Palm  
29 Beach County, Florida, on this the 4th day of April, 2017.

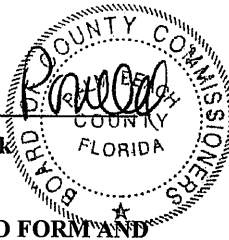
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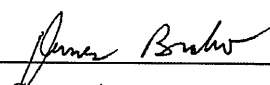
1 SHARON R. BOCK, CLERK

PALM BEACH COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS

2  
3  
4  
5  
6 By:  Deputy Clerk  
7  
8 By:  Paulette Burdick, Mayor  
9



10 APPROVED AS TO FORM AND  
11 LEGAL SUFFICIENCY  
12  
13

14 By:   
15 County Attorney  
16

17 EFFECTIVE DATE: Filed with the Department of State on the 7th day of  
18 April, 2017.

NOT A CERTIFIED COPY



## FLORIDA DEPARTMENT of STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

April 7, 2017

Honorable Sharon R. Bock  
Clerk and Comptroller  
Palm Beach County  
301 North Olive Avenue  
West Palm Beach, Florida 33401

Attention: Timothy Montiglio, Administrative Specialist II

Dear Ms. Bock:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Palm Beach County Ordinance No. 2017-012, which was filed in this office on April 7, 2017.

Sincerely,

Ernest L. Reddick  
Program Administrator

ELR/lb

**RESOLUTION NO. 2017- 1104**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND FLORIDA PACE FUNDING AGENCY FOR A PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM; APPROVING AN INDEMNIFICATION AGREEMENT BETWEEN PALM BEACH COUNTY AND COUNTERPOINTE ENERGY SOLUTIONS (FL) LLC FOR THE BENEFIT OF PALM BEACH COUNTY; AND AUTHORIZING THE COUNTY ADMINISTRATOR OR DESIGNEE TO EXECUTE THESE AND SUBSEQUENT AGREEMENTS WITH ADMINISTRATORS OF FLORIDA PACE FUNDING AGENCY FOR THE BENEFIT OF PALM BEACH COUNTY, AND EXERCISE CERTAIN PROVISIONS IN THE AGREEMENTS.**

**WHEREAS**, on April 4, 2017, the Board of County Commissioners ("BCC") adopted Ordinance 2017-012, known as the Palm Beach County PACE Program Ordinance; and

**WHEREAS**, the attached interlocal agreement between Palm Beach County ("County") and Florida PACE Funding Agency ("FPFA") and the Indemnification Agreement with CounterPointe Energy Solutions (FL), LLC, as the administrator for FPFA, are being recommended for approval by the BCC.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, THAT:**

**Section 1.** This Board hereby approves the interlocal agreement between the County and FPFA (Exhibit 1) and the indemnification agreement between the County and CounterPointe Energy Solutions (FL), LLC, as the administrator of FPFA (Exhibit 2), and this Board authorizes the County Administrator or designee to execute the above-mentioned agreements, in substantially the form attached.

**Section 2.** This Board authorizes the County Administrator or designee to execute indemnification agreements with subsequent administrators of FPFA, in a form approved by the County Attorney's Office, to provide that such subsequent administrator of FPFA shall indemnify and hold harmless the County.

**Section 3.** This Board authorizes the County Administrator or designee to exercise the provisions in the above-mentioned agreements including, but not limited to, audits, enforcement, revisions, notifications, and termination.

The foregoing resolution was offered by Commissioner Abrams, who moved its adoption. The motion was seconded by Commissioner Kerner, and upon being put to a vote, the vote was as follows:

COMM. PAULETTE BURDICK, Mayor	<u>Aye</u>
COMM. MELISSA MCKINLAY, Vice Mayor	<u>Aye</u>
COMM. HAL R. VALECHE	<u>Aye</u>
COMM. DAVID KERNER	<u>Aye</u>
COMM. STEVEN L. ABRAMS	<u>Aye</u>
COMM. MARY LOU BERGER	<u>Aye</u>
COMM. MACK BERNARD	<u>Nay</u>

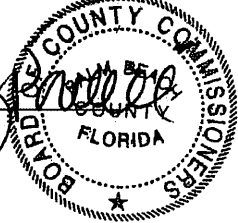
The Mayor thereupon declared the resolution duly passed and adopted this 15th day of August, 2017.

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS  
SHARON R. BOCK, CLERK

By: James Brubaker  
County Attorney

By: Sharon R. Bock  
Deputy Clerk



STATE OF FLORIDA, COUNTY OF PALM BEACH  
I, SHARON R. BOCK, Clerk and Comptroller,  
certify this to be a true and correct copy of the original  
filed in my office on Aug 15, 2017  
dated at West Palm Beach, Florida  
By: Sharon R. Bock  
Deputy Clerk




EXHIBIT 1

R 2017-1105

**NON-EXCLUSIVE INTERLOCAL AGREEMENT  
RELATING TO THE FUNDING AND FINANCING  
OF QUALIFYING IMPROVEMENTS BY THE  
FLORIDA PACE FUNDING AGENCY**

AUG 15 2017

This non-exclusive Interlocal Agreement is made and entered into as of           , 2017 ("Interlocal Agreement"), by and between Palm Beach County, Florida, ("County"), and the Florida PACE Funding Agency, a separate legal entity and public body and unit of local government, established pursuant to Section 163.01(7), Florida Statutes, ("Agency"), by and through their respective governing bodies. The purpose of this Agreement is to better secure, in an efficient and uniform manner, for local property owners (as hereinafter defined) the privileges and benefits provided for herein and by law, and particularly by Section 163.08, Florida Statutes, as amended ("PACE Statute"), relating to the voluntary determination by affected property owners to obtain and finance certain improvements to property for energy efficiency, renewable energy or wind resistance.

**RECITALS**

**WHEREAS**, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969" authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

**WHEREAS**, Part I of Chapter 163, Florida Statutes, permits public agencies as defined therein to enter into interlocal agreements with each other to jointly exercise any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

**WHEREAS**, Section 163.08, Florida Statutes, ("PACE Statute") authorizes financing of qualifying improvements through agreements for property to be subject to a voluntary, non-ad valorem special assessment process as the repayment mechanism, commonly known as Property Assessed Clean Energy ("PACE"); and

**WHEREAS**, on April 4, 2017, the Palm Beach County Board of County Commissioners adopted Ordinance No. 2017-012, entitled the Palm Beach County Property Assessed Clean Energy Ordinance (PACE) ("Ordinance"), and provided for certain consumer protections and requirements for PACE Providers; and

**WHEREAS**, the County is concurrently adopting a Resolution authorizing the Agency to provide PACE financing and funding with property owners for qualifying improvements within the County, in accordance with the PACE Statute and the Ordinance; and

**WHEREAS**, the Parties have determined that entering into this Interlocal Agreement is in the best interest and welfare of the property owners within the County.

**NOW, THEREFORE**, in consideration of the terms and conditions, promises and covenants hereinafter set forth, the Parties agree as follows:

EXHIBIT

Page 63

NOW, THEREFORE, in consideration of the terms and conditions, promises and covenants hereinafter set forth, the Parties agree as follows:

## ARTICLE I

### DEFINITIONS AND CONSTRUCTION

**SECTION 1.01. DEFINITIONS.** As used in this Agreement, the following terms shall have the meanings as defined unless the context requires otherwise:

**“Agency”** shall mean the Florida PACE Funding Agency, a separate legal entity and public body and unit of local government, and also characterized as a special purpose local government.

**“Agency Charter Agreement”** or **“Charter”** shall mean, unless the context otherwise requires, the separate interlocal agreement which created and established the Agency, including any amendments, supplements or restatements thereto executed and delivered in accordance with the terms thereof.

**“Agency’s Program”** shall mean the activities of the Agency to provide financing for qualifying improvements undertaken within this State.

**“Board of Directors”** shall mean the governing body of the Agency.

**“County”** shall mean Palm Beach County, a political subdivision of the State of Florida.

**“Financing Agreement”** shall mean the financing agreement or the summary memorandum of such agreement the property owner signs establishing terms and conditions for the financing of qualifying improvements which is required to be recorded in the public records pursuant to the PACE Statute.

**“Financing Documents”** shall mean the resolution or resolutions duly adopted by the Agency, as well as any indenture of trust, trust agreement, interlocal agreement or other instrument relating to the issuance or security of any bond or obligations of the Agency and any agreement, pursuant to which the property owners obtain access to funds provided by the Agency.

**“Interlocal Agreement”** shall mean this interlocal agreement executed under the auspices of Section 163.01, Florida Statutes, known as the “Florida Interlocal Cooperation Act of 1969”, or if the context requires, a similar interlocal agreement between the Agency and any municipality, county or other government or separate legal entity permitted by the PACE Statute to enter into financing agreements as provided for therein. This Agreement simply presents a means of coordination and communication among local governments as the Agency serves and makes available, in a non-exclusive manner, funding and financing of qualifying improvements by the Agency to interested private property owners in the manner provided by law.

**“Obligations”** shall mean a series of bonds, obligations or other evidence of indebtedness, including, but not limited to, notes, commercial paper, certificates or any other obligations of the Agency issued pursuant hereto, or under any general law provisions, and pursuant to the financing documents. The term shall also include any lawful obligation committed to by the Agency or pursuant to an interlocal agreement with another governmental body or agency and/or warrants issued for services rendered or administrative expenses.

**“Ordinance”** shall mean Ordinance No. 2017-012, entitled the Palm Beach County Property Assessed Clean Energy (PACE) Ordinance, and as codified.

**“PACE”** is an acronym for the colloquial financing concept commonly referred to as ‘property assessed clean energy’; in Florida, the name or acronym PACE is derived from the provisions of general law related to financing energy efficiency, renewable energy and wind resistance improvements addressed by the Ordinance, and encouraged by the Legislature in Section 163.08, Florida Statutes, which is entitled “supplemental authority for improvements to real property.”

**“PACE Statute”** sometimes called the “Supplemental Act”, shall mean the defined terms, general law provisions, and additional and supplemental authority described in Section 163.08, Florida Statutes, as amended.

**“Participating Municipalities”** shall mean all municipalities that have not adopted an ordinance governing any or all of the subject matter of the Ordinance, regardless of the time of passage of the municipal ordinance.

**“Pledged Funds”** shall mean (A) the revenues derived from special assessments and other moneys received by the Agency or its designee relating to some portion thereof, (B) until applied in accordance with the terms of the financing documents, all moneys in the funds, accounts and sub-accounts established thereby, including investments therein, and (C) such other property, assets and moneys of the Agency as shall be pledged pursuant to the financing documents; in each case to the extent provided by the Board of Directors pursuant to the financing documents. The Pledged funds pledged to one series of obligations may be different than the Pledged funds pledged to other series of obligations. Pledged funds shall not include any general or performance assurance fund or account of the Agency.

**“Property Owner”** shall mean, singularly or collectively as the context requires, all of the record owners of real property subject to a financing agreement with the Agency.

**“Qualifying Improvements”** includes energy conservation and efficiency, renewable energy, and wind resistance improvements as defined by the PACE Statute, as may be amended by law.

**“Special Assessments”** shall mean the non-ad valorem assessments authorized by the PACE Statute and levied by the Agency on property owned by a property owner to fund the costs of qualifying improvements.

## **SECTION 1.02      CONSTRUCTION.**

(A) Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms and corporations. The terms "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms, shall refer to this Agreement; the term "heretofore" shall mean before the date this Agreement is executed; and the term "hereafter" shall mean after the date this Agreement is executed.

(B) Each recital, covenant, agreement, representation and warranty made by a party herein shall be fairly deemed to be material and to have been relied on by the other party to this Agreement. Both parties have independently reviewed this Agreement with their own counsel and covenant that the provisions hereof shall not be construed for or against either the County or the Agency by reason of authorship.

**SECTION 1.03. SECTION HEADINGS.** Any headings preceding the texts of the several articles and sections of this Interlocal Agreement and any table of contents or marginal notes appended to copies hereof shall be solely for convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

**SECTION 1.04. FINDINGS.** It is hereby ascertained, determined and declared that:

(A) The State Legislature has determined there is a compelling state interest in enabling private property owners to voluntarily finance qualifying improvements with local government assistance. The actions authorized by the PACE Statute, including the financing of qualifying improvements through the execution of financing agreements and the related imposition of a special assessment, have been determined by the Legislature as reasonable and necessary for the prosperity and welfare of the State, and its property owners and inhabitants.

(B) The Agency has provided to the County a binding Final Judgment and its governance Charter which both expressly evidence the Agency is distinct from the County and that the County shall not in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of the Agency or its agents, and the Agency has no independent power to obligate the County or any municipality within the County served by the Agency.

(C) Nothing in this Agreement does, nor shall be construed to empower the Agency to obligate or foist any liability upon the County, in any manner, without the express written permission of both parties; and no such permission is included in this Agreement.

(D) The availability of the non-exclusive financing program offered by the Agency (without cost to, assumption of liability by or demand upon the credit of the County or any participating municipality) and the voluntary participation in the Agency's financing program by property owners provides an alternative financing option to private property owners who choose to finance and repay the costs to provide and install qualifying improvements.

(E) The Agency is authorized by law and pursuant to the provisions of the PACE Statute to undertake this financing service and associated activities to interested property owners.



(F) This Agreement provides a cooperative, interlocal, alternative, supplemental and non-exclusive means to encourage and achieve, *inter alia*, immediate local economic development in a manner provided by the Legislature, provide for local commerce and job creation, as well as achieving the compelling State interest and public purposes described in the PACE Statute.

NOT A CERTIFIED COPY

## **ARTICLE II**

### **IMPLEMENTATION OF A COMPELLING STATE AND LOCAL INTEREST**

#### **SECTION 2.01. AUTHORITY; AND, PURPOSE.**

(A) The execution hereof has been duly authorized by the resolution of the governing bodies of each party hereto.

(B) The Agency by this Agreement is approved to serve, to provide its lawful services, and lawfully conduct its affairs within the County in accord with applicable general law and local legislation.

**SECTION 2.02. CREATION OF STATE, COUNTY OR MUNICIPAL DEBTS PROHIBITED.** The Agency shall not be empowered or authorized in any manner to create a debt against the County or any participating municipality and may not pledge the full faith and credit of the County or any participating municipality. All revenue bonds or debt obligations of the Agency shall contain on the face thereof a statement to the effect that the State, County, or any participating municipality, shall not be obligated to pay the same or the interest and that they are only payable from Agency revenues or the portion thereof for which they are issued and that neither the full faith and credit nor the taxing power of the County, or any participating municipality, is pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue or refunding bonds under the provisions of law, the Charter Agreement, or any other agreement shall not directly or indirectly or contingently obligate the County, or any participating municipality, to levy or to pledge any form of ad valorem taxation or other County, or any participating municipality, revenues or to make any appropriation for their payment.

#### **SECTION 2.03. ADOPTION OF RATES, FEES AND CHARGES.**

(A) The Board of Directors necessarily must adopt or authorize from time to time by resolution such rates, fees or other charges for the provision of the services of the Agency to be paid by the property owner pursuant to a financing agreement described in the PACE Statute.

(B) Such rates, fees and charges shall be adopted and revised so as to provide moneys, which, with other funds available for such purposes, shall be at least sufficient at all times to pay the expenses of administering, managing, and providing for the services and administration of the activities of the Agency, to pay costs and expenses provided for by law or the Charter Agreement and the financing documents, and to pay the principal and interest on the obligations as the same shall become due and reserves therefore, and to provide for necessary administration and reasonable margin of safety over and above the total amount of such payments. Notwithstanding any other provision in the Charter Agreement or this Agreement, such rates, fees and charges shall not exceed a rate of interest greater than the equivalent of 18 percent per annum simple interest either directly or indirectly, and always be sufficient to comply fully with any covenants contained in the financing documents.

(C) Such rates, fees and charges may vary from jurisdiction to jurisdiction, but shall be just and equitable and uniform at the time of imposition for the Property Owners within the

same class, or within each subscribing local governmental jurisdiction, and may be based upon or computed upon any factor (including, by way of example and not limitation, competitive or market conditions, distinguishing between residential and non-residential properties or uses, distinguishing between variable costs of administrative services and local government cooperation over time) or combination of factors affecting the demand or cost of the services furnished or provided to administer the services and affairs of the Agency as may be determined by the Board of Directors from time to time.

**SECTION 2.04. FINANCING OF IMPROVEMENTS TO REAL PROPERTY; COLLECTION OF ASSESSMENTS.**

(A) Program Guidelines: The Agency's Program to be offered in the County and participating municipalities will comply with program guidelines and consumer protections set forth in the Ordinance, as may be amended from time to time. The parties concur that at the time of execution of this Agreement, the Agency's program guidelines and consumer protections are consistent with the Ordinance. However, if there is a conflict between the Agency's Program and the Ordinance, the Agency shall notify the County in writing.

(B) Any financing assistance for qualifying improvements pursuant to the PACE Statute shall be conducted solely between the Agency and an interested private property owner, done pursuant to general law and the Ordinance, and shall not be construed to be the legal, financial or administrative responsibility of the County or participating municipalities in any manner whatsoever.

(C) This Agreement provides for accomplishment of a compelling state interest, recognizes and carefully encourages uniform and scalable processes statewide to finance energy conservation and efficient, renewable energy, and wind resistance improvements to real property, and is intended to create local economic development and local employment. Even though this Agreement affords service to interested private property owners who voluntarily desire to take advantage of and use the financing and supplemental authority for improvements to real property described in the PACE Statute, all such activities must be independently accomplished without cost, liability, or any demand upon the County's and participating municipalities credit or use of significant staff time or resources.

(D) In no event shall the County and participating municipalities served by the Agency be held individually or jointly liable for the torts of the officers or employees of the Agency, or any other tort attributable to the Agency, and the Agency shall be solely liable for any torts attributable to it or for torts of its officers, employees or agents, to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes. Nothing in this Agreement shall be construed to inure to the benefit of any third-party or for allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

(E) By law the Agency shall at all times be a qualified, distinct and separate special purpose local government funding and financing instrumentality separate and apart from the County and participating municipalities and separate from their treasuries; and, neither the County nor participating municipalities, nor the local governments who are either incorporators

or members of, or have joined, or are served by the Agency, or any subsequently served or participating local government in the affairs of the Agency, shall be liable for the actions of or in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of the Agency, or its successor in function, and neither the Agency nor any agent, employee, officer or official of same shall have any authority or power to otherwise represent or obligate the County or participating municipalities in any manner as a result of this Agreement.

(F) The County and participating municipalities shall not incur nor ever be requested to authorize any obligations secured by special assessments associated with qualifying improvements imposed by the Agency pursuant to the PACE Statute. No special purpose local government acting pursuant to the PACE Statute, the Ordinance, or this Agreement shall be empowered or authorized in any manner to create a debt against the state, the County, or participating municipalities, and shall not pledge the full faith and credit of the state, or the County, or participating municipalities, in any manner whatsoever. No revenue bonds or debt obligations of any special purpose local government acting pursuant to the PACE Statute, shall ever pledge or imply any pledge that the County, or participating municipalities, shall be obligated to pay the same or the interest thereon, nor state or imply that such obligations payable from the full faith and credit or the taxing power of the state, the County, or participating municipalities, as a result the Ordinance or this Agreement. The issuance of revenue or refunding bonds by the Agency under the provisions of law, the Agency's charter or governance documents, or any other agreement or resolution shall not as the result of the Ordinance or this Agreement be deemed in any manner, directly or indirectly or contingently, to obligate the County or participating municipalities to levy or to pledge any form of ad valorem taxation or other county or municipal revenues or to make any appropriation for their payment whatsoever.

(G) Upon execution by the respective property owners and the Agency, the statutorily required financing agreement or a summary governmental notice or memorandum thereof shall be recorded by the Agency in the Official Records within five (5) days after execution of the agreement, as required by general law which provides constructive notice that the non-ad valorem assessment to be levied on the subject property constitutes a lien of equal dignity to ad valorem taxes and assessments from the date of recordation.

(H) In a reasonably cooperative and uniform manner, the Agency must timely provide to the property appraiser and tax collector a digital copy of the recorded financing agreement or other digital summary thereof, the most recent property identification number and annual amount of the non-ad valorem assessment along with such other efficient and reasonable information and test-rolls necessary for the tax collector to collect such amounts as a non-ad valorem assessment on behalf of the Agency pursuant to Sections 163.01, 163.08, 197.3632, and 197.3635, Florida Statutes, or their successors in function.

(I) The Agency will inform every property owner that by law these non-ad valorem assessments must be collected only pursuant to Sections 163.01, 163.08, 197.3632, and 197.3635, Florida Statutes; and, are not imposed by the County, any participating municipality, the property appraiser, nor the tax collector, and that they are levied and imposed solely by the Agency, and only then upon voluntary application of the private property owner as expressly enabled, authorized and encouraged by the PACE Statute, as well as the Ordinance, to accomplish a compelling state interest with the Agency's local government assistance.

(J) The Agency must at all times acknowledge that the statutory duties of the property appraiser and the tax collector in each county, under Section 197.3632, Florida Statutes, are ministerial and the property appraiser and tax collector are by law without discretion with regard to the imposition of non-ad valorem assessments and collection on the tax notice once the affected private property owner has voluntarily entered into the statutorily required financing agreement and evidence of the non-ad valorem assessment through the required notice is recorded; and, the Agency is solely responsible for the local government role in such circumstance for complying with the requirements of Sections 197.3632 and 163.08, Florida Statutes.

(K) The Agency must comply with the statutory responsibility to enter into a separate written agreement required by Section 197.3632(2), Florida Statutes, accept the terms specified by Sections 197.3632(2) and 192.091(2)(b)2., Florida Statutes, for reimbursement and compensation of tax collectors and property appraisers, and allow for payment of such amounts by deduction as the non-ad valorem assessments are collected. The Agency, as a duly authorized special purpose local government shall be solely responsible for timely and professionally coordinating all interface with the tax collector or property appraiser, and minimize to the greatest extent reasonably possible the time, effort and attention of these public officials and offices.

(L) The Agency, as a duly authorized special purpose local government, is the local government imposing the subject non-ad valorem assessments, not the County nor participating municipalities and shall be solely responsible for compliance with all applicable law and all matters associated with origination, funding, financing, administration, and collection (in concert with the uniform method of collection) of each of the resulting non-ad valorem assessments.

#### **SECTION 2.05. COORDINATION IN COLLECTION ACTIVITIES.**

The Agency as a local government created and authorized by general law to impose the special assessments, is also required by general law to use the uniform method of collecting such special assessments, and shall be solely responsible for professionally coordinating all interface with the tax collector and property appraiser, and minimize to the greatest extent reasonably possible, the time, effort and attention of these public officials to accomplish the public purposes and direction of the PACE Statute.

#### **SECTION 2.06. PLEDGE OF PROCEEDS FROM NON-AD VALOREM ASSESSMENTS.**

(A) The Agency will take such actions as are necessary for the lawful levy of the Special Assessments against all lands and properties specially benefitted by the acquisition, construction and financing of qualifying improvements. If any assessment made with respect to any property shall be either in whole or in part annulled, vacated or set aside by the judgment of any court, or if the Agency shall be satisfied that any such assessment is so irregular or defective that the same cannot be enforced or collected, the Agency will take all necessary steps to cause a new assessment to be made for the whole or any part of any qualifying improvements or against any property specially benefitted by such improvement, to the extent and in the manner provided by law.

(B) Pursuant to the financing documents, this Agreement, and the Ordinance the Agency shall irrevocably pledge and, to the fullest extent permitted by law, pledge and assign any and all revenues derived from special assessments to the repayment of any debt obligation issued by the Agency pursuant to the financing documents.

(C) The County and participating municipalities shall not incur or ever be requested to authorize any obligations secured by special assessments associated with qualifying improvements imposed by the Agency.

(D) Each series of financing documents shall be secured forthwith equally and ratably by a pledge of and lien upon the special assessments. The obligations of the Agency under and pursuant to the financing documents shall not be or constitute general obligations or an indebtedness of the County, or participating municipalities, as "bonds" within the meaning of the Constitution of Florida, but shall be payable from and secured solely by a lien upon and pledge of the special assessments as provided herein. Neither the Agency nor any holder of any debt obligation issued by the Agency pursuant to the financing documents shall ever have the right to compel the exercise of the ad valorem taxing power of the County, or participating municipalities, or other taxation in any form, of property therein to pay any amount due under any financing documents or any special assessment. The financing documents shall not constitute a lien upon any property of or in the County's, or participating municipalities' jurisdiction except as to the respective special assessments in the manner provided herein and by law.

[Remainder of page intentionally left blank.]

## ARTICLE III

### GENERAL PROVISIONS

**SECTION 3.01. INTERLOCAL AGREEMENT PROVISIONS.** This Agreement is deemed to be an "interlocal agreement" within the meaning of the Florida Interlocal Cooperation Act of 1969, as amended. The Agency shall file this Interlocal Agreement with the Clerk of the Circuit Court of Palm Beach County, Florida.

**SECTION 3.02. DISCLOSURE; NONDISCRIMINATION; COVENANT TO COOPERATE.**

A) The Agency has provided a copy of (1) the PACE Statute, (2) the Agency's Charter Agreement, (3) the Final Judgment in *Fla. PACE Funding Agency v. State*, No. 2011-CA-1824 (Fla. 2d Cir. Ct. 2011), and (4) other relevant disclosure information and background materials to the County prior to execution hereof. County, through its own staff and advisors, has independently reviewed and considered the foregoing and other relevant information of its choosing.

(B) The Agency and the County agree that no person shall practice discrimination on the basis of race, age, color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, gender, sexual orientation, gender identity and expression, or genetic information.

(B) The objective of the Agency's mission is to offer a uniform, standardized and scalable approach that provides efficiencies and economies of scale intended to attract voluntary financing of qualifying improvements by private property owners desirous of also achieving, a compelling state interest and stimulate a substantial and meaningful flow of private sector economic activity and new job creation. In doing so under this Interlocal Agreement, the County recognizes the non-exclusive availability of the Agency's funding and financing program to constituent property owners and the County and Agency covenant to cooperate, coordinate and communicate on an interlocal basis.

**SECTION 3.03. TERM OF AGREEMENT; DURATION OF AGREEMENT; NO EXCLUSIVITY.**

(A) The term of this Interlocal Agreement shall commence as of the date first above written.

(B) The term shall continue so long as the Agency has obligations outstanding which are secured by Pledged Revenues derived from financing agreements relating to any properties within the boundaries of the County and participating municipalities or the Agency has projects for qualified improvements underway therein; the applicable provisions, authority and responsibility under this Agreement reasonably necessary to carry out the remaining aspects of the Agency's Program and responsibilities of Agency then underway, shall remain in effect and survive any termination until such time as those obligations and all associated remaining Agency responsibilities are fulfilled (including, but not limited to, the collection of assessments in due course). Provided, however, the Agency's powers employed and exercised shall be non-

exclusive, and the County and participating municipalities are free to and reserve the right to enter into or otherwise encourage or commence any other program for financing qualified improvements using non-ad valorem assessments.

(C) Notwithstanding subsection (B), either party may at any time terminate this Interlocal Agreement upon sixty (60) days written notice provided as required by Section 3.05. Provided, however, no termination of this Interlocal Agreement shall preclude the Agency from exercising any of its power or authority after any termination, including without limiting the generality of the foregoing, that specifically associated with its mission or collection of any of its obligations outstanding which are secured by pledged revenues derived from financing agreements. In the event the Agency's rights under this Interlocal Agreement to impose new non-ad valorem assessments shall ever end, then as of the effective date of the termination, all rights and obligations of the parties shall continue as specified in subsection (B) until such time as all Agency's obligations, and all associated remaining responsibilities under the Agency's Program are fulfilled (including, but not limited to, the collection of assessments in due course).

**SECTION 3.04. AMENDMENTS AND WAIVERS.** Except as otherwise provided herein, no amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the County and Agency.

**SECTION 3.05. NOTICES.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered (or confirmed electronic facsimile transmission) or mailed by registered or certified mail, postage prepaid, or sent by nationally recognized overnight courier (with delivery instructions for "next business day" service) to the parties at the following addresses:

County: Palm Beach County  
ATTN: County Administrator  
301 North Olive Avenue, Suite 1101  
West Palm Beach, Florida 33401

With a copy to: Palm Beach County  
ATTN: County Attorney  
301 North Olive Avenue, Suite 601  
West Palm Beach, Florida 33401

Agency: Executive Director  
Florida PACE Funding Agency  
c/o City of Kissimmee  
101 North Church Street, Fifth Floor  
Kissimmee, Florida 34741

With a copy to: Program Counsel for the Florida PACE Funding Agency  
P.O. Box 14043  
Tallahassee, Florida 32317-4043



Any of the parties may, by notice in writing given to the other, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand (or confirmed electronic facsimile transmission) or three days after the date mailed.

**SECTION 3.06. QUALITY CONTROL AND COMMUNICATION.** For quality control purposes, the Agency and County desire, and the Agency covenants to continually develop, implement and employ policies, systems and procedures which set or reflect industry standards; with such standards being reasonably expected to change and evolve over time. This Agreement serves to establish an ongoing positive and professional line of communication between staff and agents for the parties and is encouraged. At any time, notwithstanding lack of default or lack of material breach hereunder, each party is encouraged to objectively and specifically communicate to the other in writing as provided for herein any concerns, suggestions or disapproval with performance, policies, systems or procedures being employed by each party concerning the funding and financing of qualified improvements. The Agency through its administrator, Executive Director, or a duly authorized designee, will promptly respond in writing to all such communications (reasonably within fifteen (15) days of receipt of any such written communication, but sooner if necessary) from the County and follow-up accordingly; and, also promptly communicate any such response, follow-up, and all related communication to the Board of Directors for review. This paragraph shall not be construed as containing any obligation for the County to receive complaints or concerns about the Agency's performance, policies, systems, or procedures, and the County is requested to and specifically authorized to refer all such complaints or concerns directly to the Agency for a response.

**SECTION 3.07. IMMUNITY; LIMITED LIABILITY.**

(A) All of the privileges and immunities from liability and exemptions from laws, ordinances and rules which apply to the activity of officials, officers, agents or employees of the parties shall apply to the officials, officers, agents or employees thereof when performing their respective functions and duties under the provisions of this Agreement.

(B) The County and Agency are and shall be subject to Sections 768.28 and 163.01(9)(c), Florida Statutes, and any other provisions of Florida law governing sovereign immunity. Pursuant to Section 163.01(5)(o), Florida Statutes, that certain final judgment in *Fla. PACE Funding Agency v. State*, No. 2011-CA-1824 (Fla. 2d Cir. Ct. 2011), and this covenant of the parties hereto, the local governments who are either the incorporators, or members of the Agency, or any subsequently served or participating local government shall not be held jointly liable for the torts of the officers or employees of the Agency, or any other tort attributable to the Agency, and that the Agency alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes. The County and Agency acknowledge and agree that the Agency shall have all of the applicable privileges and immunities from liability and exemptions from laws, ordinances, rules and common law which apply to the municipalities and counties of the State.

(C) To the extent provided by law, the Agency agrees to protect, defend, reimburse, indemnify and hold the County and participating municipalities served by the Agency, its agents,

employees and elected officers (Indemnified Parties), and each of them free and harmless at all times from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature (collectively, a "Claim") whether arising in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any act, omission or fault whether active or passive of the County and participating municipalities of anyone acting under its direction or control, or on its behalf in connection with or incident to the performance of this Agreement. Agency's aforesaid indemnity and hold harmless obligations, or portions or applications thereof, shall apply to the fullest extent permitted by law but in no event shall they apply to liability caused by the negligence or willful misconduct of the County or participating municipalities their respective agents, servants, employees or officers, nor shall the liability limits set forth in 768.28, Florida Statutes, be waived. Nothing in this Agreement is intended to inure to the benefit of any third-party or for the purpose of allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. In the event any Claim is brought against an Indemnified Party, the Agency, shall upon written notice from an Indemnified Party, defend each Indemnified Party against each such Claim by counsel satisfactory to the Indemnified Party or, at the Indemnified Party's option, it may elect to provide its own defense. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

(D) The Agency is an independent local government funding and financing instrumentality. Neither the County nor any participating municipality served by the Agency, shall in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of the Agency, its Board of Directors or any other agents, employees, officers or officials of the Agency, except to the extent otherwise mutually and expressly agreed upon in writing. In addition, the Agency, its Board of Directors or any other agents, employees, officers or officials of the Agency shall have no authority or power to otherwise obligate either the County or any participating municipality served by the Agency.

(E) Notwithstanding anything to the contrary herein, neither the County nor the Agency waive any sovereign immunity as a result of this or any other agreement resulting from the subject matter hereof; and, nothing herein shall be construed to usurp or contract away any immunity, or the duty or authority of either party to exercise any general law or police powers as defined by law.

**SECTION 3.08. BINDING EFFECT.** This Agreement shall be binding upon the parties, their respective successors and assigns and shall inure to the benefit of the parties, their respective successors and assigns.

**SECTION 3.09. SEVERABILITY.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**SECTION 3.10. ADMINISTRATION INDEMNIFICATION; ADDITIONAL INSURED.**

(A) The Agency will promptly request and obtain from its administrator, CounterPointe Energy Solutions (FL), LLC, and any subsequent administrator, a separate indemnification agreement as to its actions and activities on behalf of the Agency concerning all of the subject matter of this Agreement for the benefit of the County and participating municipalities. The form of the indemnification agreement shall be approved by the County Attorney's Office, prior to the administrator assuming responsibilities for the Agency.

(B) The Agency will promptly request and obtain from its administrator, CounterPointe Energy Solutions (FL), LLC, and any subsequent administrator, and provide the County a certificate showing the County as an additional insured for the coverages the Agency requires of its administrator, which are currently:

Worker's Compensation	Statutory
Employer's Liability	\$1,000,000
Commercial General Liability	\$1,000,000 per occurrence
	\$1,000,000 aggregate
Commercial Auto Liability	\$1,000,000 combined single limit
Professional Liability (E&O)	\$1,000,000 per occurrence
	\$2,000,000 aggregate

The statement or certificate evidencing the County is named as an additional insured will include a standard insurance industry statement prohibiting cancellation, termination, or modification of the policy or a reduction of coverage without first giving the County (as an additional insured) at least ten (10) days prior written notice of such proposed action.

**SECTION 3.11. INSURANCE BY THE AGENCY:** Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statute, the Agency acknowledges to be self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$200,000 Per Person and \$300,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. In the event the Agency maintains third-party Commercial General Liability and Commercial Auto Liability in lieu of exclusive reliance of self-insurance under Section 768.28 Florida Statute, the Agency shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage. The Agency agrees to maintain or to be self-insured for Workers' Compensation & Employer's Liability insurance in accordance with Section 440, Florida Statutes. When requested, the Agency shall agree to provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which County agrees to recognize as acceptable for the above mentioned coverage. Compliance with the foregoing requirements shall not relieve the Agency of its liability and obligations under this Interlocal Agreement.

**SECTION 3.12. EXECUTION IN COUNTERPARTS.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 3.13. APPLICABLE LAW; ENFORCEMENT; DELEGATION.** A breach of this Agreement shall mean a material failure to comply with the PACE Statute or any

covenants or provisions of this Agreement. If any party breaches any obligation herein, then, upon receipt of written notice by the non-breaching party, the breaching party shall proceed diligently and in good faith to take all reasonable actions to cure such breach, and shall continue to take all such actions until such breach is cured, or be subject to termination for cause.

(A) The parties agree time is of the essence in all performance hereunder. At all times the parties may proceed at law or in equity to enforce their rights under this Agreement using all available remedies.

(B) The venue of any legal or equitable action that arises out of or relates to this Agreement shall be in the appropriate state court in Palm Beach County, Florida. In any such action, Florida law shall apply and the parties waive any right to jury trial.

(C) Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and/or conditions of this Agreement shall be borne by the respective parties, provided; however, BY ENTERING INTO THIS AGREEMENT, THE AGENCY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF THE AGENCY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE COUNTY OF VIOLATION OF THIS SECTION, THE AGENCY SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE COUNTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

(D) Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, county, or municipal officers.

**SECTION 3.14. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements among the parties in connection with the subject matter hereof, except as specifically set forth herein.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have caused this Non-Exclusive Interlocal Agreement to be duly executed and entered into as of the date first above written.

R2017-1105  
AUG 15 2017  
BOARD OF COUNTY  
COMMISSIONERS OF PALM BEACH  
COUNTY


(SEAL)

By: Paulette Burdick  
Paulette Burdick, Mayor

Attest:

Approved as to form:

Sharon R. Bock  
Sharon R. Bock, Clerk and Comptroller,  
Deputy Clerk



James Brako  
James Brako, Assistant County Attorney

Approved as to terms and conditions

By: Natalie Belin

IN WITNESS WHEREOF, the undersigned have caused this Non-Exclusive Interlocal Agreement to be duly executed and entered into as of the date first above written.

**THE FLORIDA PACE FUNDING AGENCY**

(SEAL)



By: \_\_\_\_\_

Michael H. Steigerwald, Executive Director

ATTEST:

\_\_\_\_\_  
*Donald T. Smallwood*

Donald T. Smallwood, Assistant Secretary

## ORDINANCE NO. 20 22 - 030

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING PALM BEACH COUNTY CODE, CHAPTER 17, ARTICLE XVII, (ORDINANCE 2017-012), SECTION 17-504 THROUGH SECTION 17-507, REGARDING THE PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

1       **WHEREAS**, Property Assessed Clean Energy (PACE) programs for Residential and  
2 Non-Residential Properties have been established across the country to provide mechanisms  
3 for funding energy efficiency, renewable energy, and other types of improvements to  
4 residential and commercial properties; and

5       **WHEREAS**, PACE Programs for Residential and Non-Residential Properties are  
6 typically established by local governments, as defined by Section 163.08, Florida Statutes, and  
7 are administered by the local government or by for-profit or not-for-profit entities; and

8       **WHEREAS**, PACE financing for Residential and Non-Residential Properties is repaid  
9 as an assessment on the property's regular tax bill; and

10       **WHEREAS**, Section 163.08, Florida Statutes, authorizes programs, typically referred  
11 to as PACE Programs, that levy non-ad valorem assessments allowing property owners to  
12 apply to local governments for financing certain energy efficiency, renewable energy, and  
13 wind resistant improvements; and

14       **WHEREAS**, Section 163.08, Florida Statutes, provides that properties retrofitted with  
15 energy-related Qualifying Improvements benefit from reduced energy consumption, reduced  
16 potential for wind damage, and assist in the fulfillment of the state's energy and hurricane  
17 mitigation policies; and

18       **WHEREAS**, the PACE assessment is collected pursuant to Florida's uniform  
19 method for the levy, collection, and enforcement of non-ad valorem assessments, Section  
20 197.3632, Florida Statutes; and

1           **WHEREAS**, the County has entered into interlocal agreements with multiple PACE  
2 Agencies/Authorities/Districts to encourage competition and provide more choices for  
3 property owners; and

4           **WHEREAS**, the Board of County Commissioners intends to clarify and strengthen  
5 qualifications and consumer protection disclosure requirements for PACE Programs for  
6 Residential and Non-Residential Properties that provide financing for Qualifying  
7 Improvements in accordance with Section 163.08, Florida Statutes, and provisions of this  
8 Ordinance; and

9           **WHEREAS**, the Board of County Commissioners of Palm Beach County, pursuant to  
10 its authority under the Florida Constitution, Article VIII, Section 1(g), Section 125.01, Florida  
11 Statutes, and the Palm Beach County Charter, hereby adopts the following amendments to the  
12 Palm Beach County Property Assessed Clean Energy (PACE) Ordinance (Ordinance 2017-  
13 012).

14

15           **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**  
16 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

17 **Section 1. Chapter 17, Article XVII, Section 17-504, entitled "DEFINITIONS" is hereby**  
18 **amended as follows:**

19           For purposes of this Ordinance, the following words and phrases shall have the  
20 following meanings:

21 (1) *Board or County* is the Palm Beach County Board of County Commissioners.

22 (2) Fair Market Value shall mean the value of the property as determined by a reputable valuation  
23 service, the method of which shall be reported to the County quarterly.

24 ~~(2)(3)~~ *Financing Agreement* shall mean the financing agreement or the summary memorandum of  
25 such agreement the property owner signs establishing terms and conditions for the financing  
26 of ~~qualifying improvements~~ Qualifying Improvements which is required to be recorded in  
27 the public records pursuant to the PACE Statute.

28 (4) *PACE Assessment* shall mean the non-ad valorem assessment placed on a property owner's tax  
29 bill as a result of financing obtained pursuant to this Ordinance for Qualifying Improvements.

30 ~~(3)(5)~~ *Qualifying Improvements* ~~includes—shall mean~~ energy conservation and efficiency,  
31 renewable energy, and wind resistance improvements as defined by F.S. § 163.08, as may be  
32 amended by law.

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1 (6) PACE Third-Party Administrator shall mean the entity administering the PACE Program  
2 and operating on behalf of the PACE Agency/Authority/District. The Third-Party  
3 Administrator is an entity contracted with a PACE Agency/Authority/District to perform  
4 administrative functions, including, but not limited to, processing PACE financing  
5 applications and determining eligibility.

6 ~~(5)(7) PACE agencies/authorities/districts~~ Agencies/Authorities/Districts shall mean one or  
7 more local governments defined in F.S. § 163.08 (2)(a), authorized by Palm Beach County  
8 to offer PACE financing for ~~qualifying improvements~~ Qualifying Improvements.

9 ~~(6)(8) PACE Program~~ shall mean the County's provision through interlocal agreements with  
10 PACE ~~agencies/authorities/districts~~ Agencies/Authorities/Districts offering financing for  
11 ~~qualifying improvements~~ Qualifying Improvements as approved by the State of Florida  
12 pursuant to F.S. § 163.08, further ~~defined~~ in this Ordinance, as may be amended by law.

13 ~~(7)(9) PACE Statute~~ shall mean F.S. § 163.08 and all future amendments thereto.

14 ~~(8)(10) Residential Property~~ shall mean a residential property consisting of four (4) or ~~less~~ fewer  
15 residential dwelling units.

16 ~~(9)(11) Non-Residential Property~~ shall mean commercial, industrial, agricultural, mixed use  
17 and residential properties consisting of five (5) or more residential dwelling units.

18 **Section 2. Chapter 17, Article XVII, Section 17-505, entitled "PACE PROGRAM**  
19 **AUTHORIZATION" is hereby amended as follows:**

20 (1) PACE agencies/authorities/districts Agencies/Authorities/Districts and Third-Party  
21 Administrators offering financing for qualifying improvements Qualifying Improvements  
22 on Residential and Non-Residential Properties pursuant to this Ordinance shall be approved  
23 by the County and authorized through interlocal agreements to provide financing subject  
24 to the requirements of this Ordinance and the PACE Statute. A resolution indicating the  
25 County's desire to join a PACE agency/authority/district Agency/Authority/District shall  
26 be prepared by County staff and presented to the Board for consideration with each  
27 interlocal agreement. The interlocal agreements shall include specific terms and conditions  
28 for PACE agencies/authorities/districts Agencies/Authorities/Districts and Third-Party  
29 Administrators to operate within Palm Beach County.

30 (2) PACE agencies/authorities/districts Agencies/Authorities/Districts and Third-Party  
31 Administrators desiring to provide financing pursuant to this Ordinance shall provide  
32 sufficient documentation as requested by the County to provide reasonable assurance that

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1 the requirements of this Ordinance and the PACE Statute can be met by the PACE  
2 ~~agency/authority/district.~~Agency/Authority/District and/or Third-Party Administrator.  
3 Document requests shall include but are not limited to a list of Qualifying Improvements,  
4 standard financing agreements, consumer protection provisions, and certificates of  
5 insurance. PACE Agencies/Authorities/Districts and Third-Party Administrators shall  
6 comply with reasonable requests for data and business practices within 90 days, consistent  
7 with state and federal law.

8 **Section 3. Chapter 17, Article XVII, Section 17-506, entitled "DISCLOSURE**  
9 **REQUIREMENTS" is hereby amended as follows:**

10 ~~(a)~~(1) For Residential Properties, in addition to any disclosure requirements in the PACE  
11 Statute, PACE ~~agencies/authorities/districts~~Agencies/Authorities/Districts and Third-Party  
12 Administrators that extend financing pursuant to the PACE Statute and levy non-ad  
13 valorem assessments to fund the qualifying improvements shall present to Qualifying  
14 Improvements must have the property owner sign a separate, written notice disclosing,  
15 PACE Agencies/Authorities/Districts and Third-Party Administrators must disclose to  
16 property owners essential terms in a "Residential Consumer Disclosure Notice" that must  
17 be pre-approved by the County. The County will not unreasonably withhold approval. The  
18 Residential Consumer Disclosure Notice must be a consolidated summary of the following  
19 ("Notice")information:

20 ~~(1)~~(a) The estimated total amount of the debt, including amount financed, fees, fixed  
21 interest rate, capitalized interest and the effective rate of the interest charged ("Annual  
22 Percentage Rate" or "APR");

23 ~~(2)~~(b) That PACE ~~agencies/authorities/districts~~Agencies/Authorities/Districts and Third-  
24 Party Administrators may only offer fixed simple interest rates and payments that fully  
25 amortize the obligation. Variable or negative amortization financing terms are not  
26 permitted. Capitalized interest included in the original balance of a PACE financing  
27 agreement does not constitute negative amortization-;

28 ~~(3)~~(c) The repayment process and terms, amounts and a schedule that fully amortizes the  
29 amount financed including the estimated annual PACE assessment;

30 ~~(4)~~(d) That the PACE assessment will appear on the property owner's tax bill;

31 ~~(5)~~(e) That there is no discount for paying the PACE assessment early;

32 ~~(6)~~(f) The nature of the lien recorded and that the PACE assessment will be collected in  
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- 1 the same manner as real estate taxes. That failure to pay the PACE assessment may  
2 cause a tax certificate to be issued against the property, and that failure of payment  
3 thereof may result in the loss of property subject to the PACE assessment, including  
4 homestead property, in the same manner as failure to pay property taxes;
- 5 ~~(7)(g)~~ The specific improvements to be financed and installed and that such improvements  
6 and PACE assessment may or may not affect the overall value of the property;
- 7 ~~(8)(h)~~ A PACE assessment payment term that does not exceed the useful life of the  
8 improvements, as determined by reputable third-party sources, including, but not  
9 limited to, the U.S. Department of Energy;
- 10 ~~(9)(i)~~ The right of pre-payment without penalty;
- 11 ~~(10)(j)~~ Notice that the property owner may be required to pay any PACE assessment in full  
12 at the time of refinance or sale of the property; and
- 13 ~~(11)(k)~~ The three-day right to cancel the financing. The property owner has at least a three-day  
14 right to cancel the financing. PACE Agencies/Authorities/Districts and Third-Party  
15 Administrators must furnish to the property owner a notice of the right to rescind the  
16 PACE financing agreement. The property owner may exercise the right to rescind until  
17 midnight of the third business day following the execution of the agreement by giving  
18 notice to the other party by either certified or registered mail, electronic mail, fax  
19 machine, phone call, or any other method approved by the PACE  
20 Agencies/Authorities/Districts and Third-Party Administrators;
- 21 (l) The property owner has a three-day right to cancel a home improvement contract per  
22 F.S. § 520.72;
- 23 (m) In the event of an emergency, property owners may waive their right to the PACE  
24 financing agreement three-day right to cancel to allow PACE contractors to begin the  
25 project. For the purposes of this section, an emergency is defined as a situation that  
26 poses an immediate threat to the health, safety, or well-being of the property owner and  
27 requires immediate abatement by the installation of a Qualifying Improvement. The  
28 property owner may waive their right to the three-day right to cancel for emergencies  
29 either through the Consumer Disclosure Notice or by giving notice by either certified  
30 or registered mail, or electronic mail, fax machine, phone call, or any other method  
31 approved by the PACE Agencies/Authorities/Districts and Third-Party Administrators;
- 32 (n) An emergency waiver option for the three-day right to cancel;

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- 1 (o) Except as required by law, PACE Agencies/Authorities/Districts and Third-Party  
2 Administrators may not disclose or permit disclosure to a PACE contractor or third-party  
3 engaged in soliciting financing agreements of the maximum amount of the PACE  
4 financing for which a property owner is eligible;
- 5 (p) That the County has programs that property owners may qualify for to fund  
6 improvements, such as the Weatherization Assistance Programs. The County retains  
7 the right to provide information about County programs within and/or in addition to  
8 the Residential Consumer Disclosure Notice, which the PACE  
9 Agencies/Authorities/District and Third-Party Administrator must provide to the  
10 homeowner; and
- 11 (q) That before the PACE three-day right to cancel ends, the PACE  
12 Agencies/Authorities/Districts or Third-Party Administrators will speak with the  
13 property owner or authorized representative to review the terms of the PACE financing  
14 agreement and confirm that the property owner understands the financial implications  
15 and communicate all essential terms including what the Consumer Disclosure Notice  
16 requires. The PACE Agencies/Authorities/Districts or Third-Party Administrators will  
17 conduct the conversation in the property owner's preferred language. The PACE  
18 Agencies/Authorities/Districts or Third-Party Administrators will record the "confirm  
19 terms" call, unless the property owner declines to be recorded. If the property owner  
20 declines to be recorded, the PACE entity must take detailed notes of the conversation  
21 to demonstrate compliance with the "confirm terms" requirement; and
- 22 (r) Contact information for the PACE Agency/Authority/District or Third-Party  
23 Administrator, including the name, phone number, and email (if applicable).
- 24 ~~(b) The Notice must be delivered to the property owner by the PACE agency/authority/district~~  
25 ~~and must be signed and dated by the property owner prior to or contemporaneously with~~  
26 ~~the property owner's signing of any legally enforceable documents under the PACE~~  
27 ~~program. The property owner and the PACE agency/authority/district must keep the signed~~  
28 ~~Notice with the property owner's executed financing agreement.~~
- 29 ~~(c) The PACE agency/authority/district shall record, or cause to be recorded, the financing~~  
30 ~~agreement or a summary memorandum of the financing agreement, in accordance with F.S.~~  
31 ~~§ 163.08(8).~~

1 (2) For Non-Residential Properties under \$250,000 for a PACE assessment, in addition to any  
2 disclosure requirements in the PACE Statute, PACE Agencies/Authorities/Districts and  
3 Third-Party Administrators that extend financing pursuant to the PACE Statute and levy  
4 non-ad valorem assessments to fund the Qualifying Improvements shall have the property  
5 owner sign a separate, written notice. PACE Agencies/Authorities/Districts and Third-  
6 Party Administrators must disclose to property owners essential terms in a "Non-  
7 Residential Consumer Disclosure Notice" that must be pre-approved by the County. The  
8 County will not unreasonably withhold approval. The Non-Residential Consumer  
9 Disclosure Notice must be a consolidated summary of the following information:

10 (a) The estimated total amount of the debt, including amount financed, fees, fixed or  
11 variable interest rate, capitalized interest and the effective rate of the interest charged  
12 (APR);

13 (b) That PACE Agencies/Authorities/Districts and Third-Party Administrators may only  
14 offer payments that fully amortize the obligation. Negative amortization financing  
15 terms are not permitted. Capitalized interest included in the original balance of a PACE  
16 financing does not constitute negative amortization;

17 (c) The repayment process and terms, amounts and a schedule that fully amortizes the  
18 amount financed including the estimated annual PACE assessment;

19 (d) That the PACE assessment will appear on the property owner's tax bill;

20 (e) That there is no discount for paying the PACE assessment early;

21 (f) The nature of the lien recorded and that the PACE assessment will be collected in the  
22 same manner as real estate taxes. That failure to pay the PACE assessment may cause  
23 a tax certificate to be issued against the property, and that failure of payment thereof  
24 may result in the loss of property subject to the PACE assessment in the same manner  
25 as failure to pay property taxes;

26 (g) The specific improvements to be financed and installed and that such improvements  
27 and PACE assessment may or may not affect the overall value of the property;

28 (h) A PACE assessment payment term that does not exceed the useful life of the  
29 improvements, as determined by reputable third-party sources, including, but not  
30 limited to, the U.S. Department of Energy;

31 (i) Notice that the property owner may be required to pay any PACE assessment in full at  
32 the time of refinance or sale of the property;

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1 (j) The 3-day right to cancel the financing. PACE Agencies/Authorities/Districts and  
2 Third-Party Administrators must furnish to the property owner a notice of the right to  
3 rescind the PACE financing agreement. The property owner may exercise the right to  
4 rescind until midnight of the third business day following the execution of the  
5 agreement by giving notice to the other party by either certified or registered mail,  
6 electronic mail, fax machine, or a recorded phone call;

7 (k) In the event of an emergency, property owners may waive their right to the PACE  
8 financing agreement three-day right to cancel to allow PACE contractors to begin the  
9 project. For the purposes of this section, an emergency is defined as a situation that  
10 poses an immediate threat to the health, safety or well-being of the property owner and  
11 requires immediate abatement by the installation of a Qualifying Improvement. The  
12 property owner may waive their right to the three-day right to cancel for emergencies  
13 either through the Consumer Disclosure Notice or by giving notice by either certified  
14 or registered mail, or electronic mail, fax machine, phone call, or any other method  
15 approved by the PACE Agencies/Authorities/Districts and Third-Party Administrators;

16 (l) An emergency waiver option for the three-day right to cancel; and

17 (m) Contact information for the PACE Agency/Authority/District or Third-Party  
18 Administrator, including the name, phone number, and email (if applicable).

19 (3) Non-Residential PACE Agencies/Authorities/Districts and Third-Party Administrators  
20 providing PACE financing in the amount of \$250,000 or greater are not required to provide  
21 a Consumer Disclosure Notice. However, they are required to conform to the following  
22 obligations:

23 (a) That PACE Agencies/Authorities/Districts and Third-Party Administrators may only  
24 offer payments that fully amortize the obligation. Negative amortization financing  
25 terms are not permitted. Capitalized interest included in the original balance of a PACE  
26 financing does not constitute negative amortization; and

27 (b) That PACE Agencies/Authorities/Districts and Third-Party Administrators may only  
28 provide a PACE assessment payment term that does not exceed the useful life of the  
29 improvements, as determined by reputable third-party sources, including, but not  
30 limited, to the U.S. Department of Energy.

31 (4) For both Residential and Non-Residential where applicable, PACE  
32 Agency/Authority/District or Third Party-Administrators must submit updated Consumer

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1 Disclosure Notices that incorporate the updated Palm Beach County-approved consumer  
2 protection language. Once approved by the County, PACE Agency/Authority/District or  
3 Third Party-Administrators must fully implement and utilize the approved Palm Beach  
4 County-approved Consumer Disclosure Notice within one hundred and eighty (180) days  
5 of notice of approval.

6 (5) A copy of the Consumer Disclosure Notices must be provided to the property owner either  
7 by electronic mail or hard copy by the PACE Agency/Authority/District or Third Party  
8 Administrator within the 3-day right to cancel period and must be signed and dated by the  
9 property owner prior to or contemporaneously with the property owner's signing of any  
10 legally enforceable documents under the PACE Program. Upon the property owner's  
11 request, the PACE Agency/Authority/District or Third-Party Administrator must provide  
12 the property owner with a hardcopy of the Consumer Disclosure Notice within the three-  
13 day right to cancel. The property owner and the PACE Agency/Authority/District or Third-  
14 Party Administrator must keep the signed Consumer Disclosure Notice with the property  
15 owner's executed financing agreement.

16 (6) The PACE Agency/Authority/District or Third-Party Administrator shall provide the  
17 signed Consumer Disclosure Notice to the Palm Beach County Office of Resilience and  
18 the Palm Beach County Tax Collector in electronic format within five (5) business days  
19 after execution of the PACE financing agreement.

20 (7) The PACE Agency/Authority/District and Third-Party Administrator shall record, or cause  
21 to be recorded, the financing agreement or a summary memorandum of the financing  
22 agreement, in accordance with F.S. § 163.08 (8).

23 **Section 4. Chapter 17, Article XVII, Section 17-507, entitled "ELIGIBLE**  
24 **PROPERTIES/PROGRAM REQUIREMENTS" is hereby amended as follows:**

25 (a) As defined in the PACE Statute, PACE  
26 ~~agencies/authorities/districts~~ Agencies/Authorities/Districts and Third-Party  
27 Administrators that extend financing pursuant to the PACE Statute and levy non-ad  
28 valorem assessments to fund the ~~qualifying improvements~~ Qualifying Improvements shall  
29 comply with the following: terms in the subsections below. Subsections apply to both  
30 Residential and Non-Residential Properties except where the subsection specifically refers  
31 to Residential or Non-Residential.

1 (1) *Residential Property.* PACE ~~agencies/authorities/districts~~

2 Agencies/Authorities/Districts and Third-Party Administrators may finance ~~qualifying~~  
3 ~~improvements~~ Qualifying Improvements on Residential Properties provided they comply  
4 with the following criteria inclusive of all eligibility criteria listed in the PACE Statute and  
5 all future amendments thereto, along with additional consumer protections-;

6 (a) Without the consent of the holders or loan servicers of any mortgage encumbering or  
7 otherwise secured by the property, the total amount of any non-ad valorem assessment  
8 for a property under the PACE Statute may not exceed twenty (20) percent of the  
9 ~~just/fair market~~ value of the property as determined by the county property appraiser,  
10 excepted as otherwise provided by statute; ~~and~~

11 (b) All property taxes and other assessments levied on the property tax bill have been paid  
12 and have not been delinquent for the preceding three years, or the property owner's  
13 period of ownership, whichever is less; ~~and~~

14 (c) There are no involuntary liens, including but not limited to construction liens on the  
15 property; ~~and~~

16 (d) No notices of default or other evidence of property-based debt delinquency have been  
17 recorded during the preceding three (3) years, or the property owner's period of  
18 ownership, whichever is less; ~~and, additionally~~

19 (e) All mortgage debt on the property is current and not delinquent; ~~and~~

20 (f) All mortgage-related debt on the underlying property may not exceed ninety (90)  
21 percent of the property's Fair Market Value ~~fair market value~~; ~~and~~

22 (g) The total mortgage-related debt on the underlying property plus the PACE ~~p~~Program  
23 financing may not exceed the ~~fair market value~~ Fair Market Value of the property-;

24 (h) The total estimated annual payment amount for the PACE assessment does not exceed  
25 10 percent of the property owner's annual household income determined using  
26 sufficient and credible documentation, for example using adjusted gross income from  
27 a recent tax return; and

28 (i) That the property owner is not currently in bankruptcy proceedings.

29 (2) *Non-Residential Properties.* PACE

30 ~~agencies/authorities/districts~~ Agencies/Authorities/Districts and Third-Party

31 Administrators may finance Qualifying Improvements on Non-Residential Properties

32 provided they comply with the ~~requirements set forth~~ eligibility criteria listed in the PACE

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1 Statute and all future amendments thereto ~~and inclusive of those listed under Section 17-~~  
2 ~~507(a)(1)(a. d.) of this article,~~ along with the following consumer protections:

3 (a) Without the consent of the holders or loan servicers of any mortgage encumbering or  
4 otherwise secured by the property, the total amount of any non-ad valorem assessment  
5 for a property under the PACE Statute may not exceed twenty percent (20%) of the just  
6 value of the property as determined by the county property appraiser, excepted as  
7 otherwise provided by statute;

8 (b) All property taxes and other assessments levied on the property tax bill have been paid  
9 and have not been delinquent for the preceding three years, or the property owner's  
10 period of ownership, whichever is less;

11 (c) There are no involuntary liens, including but not limited to construction liens on the  
12 property;

13 (d) No notices of default or other evidence of property-based debt delinquency have been  
14 recorded during the preceding three years, or the property owner's period of ownership,  
15 whichever is less;

16 (e) All mortgage debt on the property is current and not delinquent; and  
17 (f) That the property owner is not currently in bankruptcy proceedings.

18 (3) *Qualifying Improvements.* The PACE ~~agency/authority/district~~Agency/Authority/District  
19 and Third-Party Administrator will finance energy efficiency, renewable energy and wind  
20 resistant improvements that are permanently affixed to the property as more specifically  
21 described in the PACE Statute. All improvements and products should identify efficiency  
22 standards established by the U.S. Department of Energy, the U.S. Environmental Protection  
23 Agency, or Florida state agencies as applicable. All ~~qualifying improvements~~Qualifying  
24 Improvements must comply with the PACE Statute for energy efficiency, renewable energy,  
25 and wind resistance or other improvements as permissible by law. PACE  
26 ~~agencies/authorities/districts~~Agencies/Authorities/Districts and Third-Party Administrators  
27 shall establish procedures confirming that the property owner applying for financing through  
28 the PACE ~~agency/authority/district~~Agencies/Authorities/Districts and Third-Party  
29 Administrators intends to install ~~eligible products~~Qualifying Improvements, and that at the  
30 time of funding such improvements have been installed.

31 (4) *Inquiries and Complaints.*

32 a. *Complaints.* PACE ~~agency/authority/district~~shall be Agencies/Authorities/Districts and  
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1 Third-Party Administrators are required to receive, manage, track, timely resolve, and report  
2 on complaints from property owners regarding the funded work performed by the contractors.  
3 ~~The PACE agency/authority/district shall~~ PACE Agencies/Authorities/Districts and Third-  
4 Party Administrators must investigate and mediate disputes between property owners and  
5 contractors in a timely manner.

6 b. *Payment inquiries.* ~~The PACE agency/authority/district shall be~~ PACE  
7 Agencies/Authorities/Districts and Third-Party Administrators are required to respond to  
8 inquiries and resolve any issues in a timely manner, related to payments, including but not  
9 limited to prepayments and payment reconciliation.

10 c. *Review.* In the event that ten percent or more of a PACE agency's/authority's/district's  
11 Agency's/Authority's/District's and Third-Party Administrator's projects result in complaints  
12 or disputes, or such complaints or disputes remain unresolved six (6) months after completion  
13 of a project, the County may review the PACE  
14 ~~agency's/authority's/district's~~ Agency's/Authority's/District's and Third-Party  
15 Administrator's handling of complaints and may request corrective actions or initiate  
16 suspension proceedings pursuant to Section 17-507(a)(12)-17-508(1).

17 (5) *Data Security.* ~~The PACE agency/authority/district is~~ Agencies/Authorities/Districts and  
18 Third-Party Administrators are responsible for taking security measures that protect the  
19 security and confidentiality of consumer records and information in proportion to the  
20 sensitivity of the information, and as required by state and federal law.

21 (6) *Consumer Privacy.* ~~The PACE agency/authority/district~~ Agencies/Authorities/Districts and  
22 Third-Party Administrators must develop and maintain a privacy policy that complies with local,  
23 state, and federal law and, in particular, shall provide a property owner the ability to opt-out of  
24 having the property owner's information shared with third-parties, except where expressly  
25 permitted by local, state, and federal law.

26 (7) *Marketing and Communications.* ~~Marketing~~

27 (a) A person or entity may not engage in PACE marketing practices for a PACE  
28 agency/authority/district that are or could appear to be unfair, deceptive, abusive, or misleading,  
29 or that violate applicable laws or regulations, that are inappropriate, incomplete or are inconsistent  
30 with the PACE ~~agency's/authority's/district's purpose are prohibited~~ ordinance. Violations are  
31 subject to code enforcement proceedings.

32 (b) A person or entity may not create, use, or distribute PACE marketing material that conveys

Coding: Words in strike through type are deletions from existing text. Words in underscored type are additions.

1 the following messages: that PACE financing is a free form of public assistance, that PACE  
2 financing is a Palm Beach County government program, that PACE financing will be repaid by  
3 the subsequent owner of the qualifying residential property, that the improvements will pay for  
4 themselves, or that the property owner will receive tax benefits from the program. Violations are  
5 subject to code enforcement proceedings.

6 (8) ~~Protected Classes. The PACE agency/authority/district~~PACE Agencies/Authorities/Districts  
7 and Third-Party Administrators shall not discriminate against individuals on the basis of race,  
8 color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, gender,  
9 sexual orientation, gender identity and expression, or genetic information.

10 (9) *Contractor Management.*

11 (a) ~~Any work under a PACE agency/authority/district requiring a license under any~~  
12 ~~applicable law to make a qualifying improvement shall be performed by a contractor~~  
13 ~~properly licensed, certified or registered pursuant to state or local law. No contractor~~  
14 ~~shall contract for or install any Qualifying Improvement pursuant to the PACE program~~  
15 ~~unless the contractor is properly licensed, registered, certified, or otherwise legally~~  
16 ~~authorized to perform such work. A PACE Agency/Authority/District or Third-Party~~  
17 ~~Administrator may not finance Qualifying Improvements that are installed by~~  
18 ~~contractors that a PACE Agency/Authority/District or Third-Party Administrator~~  
19 ~~knows, or should know, are not properly licensed, registered, certified, or otherwise~~  
20 ~~legally authorized to perform such work. PACE Agencies/Authorities/Districts and~~  
21 ~~Third-Party Administrators must obtain the contractor's written agreement that the~~  
22 ~~contractor shall comply with each of the following conditions:~~

- 23 1. Be licensed and insured pursuant to the applicable state and local requirements;  
24 2. Agree to comply with all program requirements and marketing guidelines; and  
25 3. Act in good faith to timely resolve property owner complaints.

26 (b) ~~Contractors performing work under a PACE agency/authority/district shall comply with~~  
27 ~~each of the following conditions: (i) Be licensed and insured pursuant to the applicable~~  
28 ~~statutory requirements; (ii) Agree to comply with all program requirements and marketing~~  
29 ~~guidelines; (iii) Act in good faith to timely resolve property owner complaints.~~PACE  
30 Agencies/Authorities/Districts and Third-Party Administrators for Residential Properties  
31 must execute a contractor agreement with all contractors for which they intend to use to

1 complete Residential PACE projects. The contractor agreement must address at a  
2 minimum the following:

- 3 1. Agree to not present a higher price for a Qualifying Improvement on financed by  
4 a PACE financing agreement than the contractor would otherwise reasonably  
5 present if the Qualifying Improvement were not being financed through a PACE  
6 financing agreement;
- 7 2. Branding and/or marketing guidelines, including imposing enhanced monitoring  
8 at a minimum for contractors found to have violated the marketing and  
9 communications provisions;
- 10 3. Consumer protection code of conduct for the contractor;
- 11 4. PACE training for contractors that the contractor must attend in order to become  
12 an eligible contractor; and
- 13 5. Suspension and termination provisions.

14 (c) Kickbacks. PACE programs Agencies/Authorities/Districts and Third-Party  
15 Administrators shall have and shall strictly enforce anti-kickback policies and  
16 procedures that prohibit direct financial or other monetary incentives to contractors in  
17 exchange for or related to such contractor being awarded work under a PACE  
18 pProgram, excepting payment for the contractor's installation of eligible  
19 improvements. Qualifying Improvements.

- 20 1. Any person or entity who accepts, provides or facilitates kickback payments  
21 or incentives in exchange for work being awarded under a PACE program  
22 commits a violation of this ordinance.

23 (d) For Residential and Non-Residential Projects Less than \$250,000, before disbursing  
24 funds to a PACE contractor, PACE Agencies/Authorities/Districts or Third-Party  
25 Administrators must first confirm the applicable work or service has been completed,  
26 either through written certification from the property owner, a recorded telephone call  
27 with the property owner, time-stamped and geo-tagged photos, or a site inspection  
28 through third-party means. For Non-Residential Projects equal to or larger than  
29 \$250,000, PACE Agencies/Authorities/Districts and Third-Party Administrators shall  
30 disburse funds in accordance with the terms of their finance agreement.

31 10. Financing. The PACE agency/authority/district PACE Agencies/Authorities/Districts and  
32 Third-Party Administrators will must establish pricing rules and enforcement mechanisms to ensure

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1 property owners are protected from excessive or unjustified prices and charges. In addition, the  
2 PACE ~~agency/authority/district shall~~ Agencies/Authorities/Districts and Third-Party  
3 Administrators must require compliance with each of the following conditions prior to the issuance  
4 of any ~~funding~~ final disbursement to the contractor:

- 5 (a) Contractors have certified that any necessary permits have been obtained;
- 6 (b) Verification that the ~~qualifying improvements~~ Qualifying Improvements have been  
7 installed; and
- 8 (c) The property owner and the contractor have signed a final inspection and/or certificate  
9 of completion that all improvements have been installed to the property owner's  
10 satisfaction.

11 (11) *Reporting.* Each PACE ~~agency/authority/district shall~~ Agency/Authority/District and  
12 Third-Party Administrator must provide a report to the County on a quarterly calendar basis,  
13 ~~which due 30 days following the close of the quarter.~~ Each PACE Agency/Authority/District and  
14 Third-Party Administrator shall utilize the County-supplied spreadsheet for the report. This  
15 spreadsheet shall not be modified, though additional information may be supplied in a separate  
16 spreadsheet. The quarterly reports shall include, at a minimum, the following information:

- 17 (a) Dates of the reporting period;
- 18 (b) List of PACE projects (including addresses including municipal jurisdiction, parcel  
19 control numbers, financed amount, annual estimated payments, interest rate,  
20 assessment duration, and project description) started during the reporting period,  
21 separated by building type (e.g., single family, multifamily, retail, office, industrial,  
22 etc.);
- 23 (c) List of PACE projects (including addresses including municipal jurisdiction and parcel  
24 control numbers) completed during the reporting period, separated by building type  
25 project (e.g., single family, multifamily, retail, office, industrial, etc.), For each project,  
26 specify:
  - 27 1. The ~~q~~ Qualifying i Improvements made;
  - 28 2. Project start date and completion date;
  - 29 3. The projected energy savings and/or amount of potential renewable energy to be  
30 generated;
  - 31 4. Financial information such as projected cost per kilowatt hour saved/generated or  
32 estimated utility bill savings;

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- 1           5. Other resource savings if data is available;
- 2           6. Audits performed detailing the audit results, if applicable to the project;
- 3           7. Total amount financed, including total amount (in dollars) of financing spent on
- 4           each improvement, if multiple; and
- 5           8. Annual estimated payments.
- 6       (d) Number of actual or estimated jobs created during the reporting period, including local
- 7           versus non-local jobs and permanent versus temporary jobs;
- 8       (e) Number of applications declined during the reporting period;
- 9       (f) ~~Unresolved~~Resolved and unresolved complaints and/or contractor issues and status; ~~and~~
- 10           Description, including category of each complaint and/ or issue, when the standardized
- 11           third-party methodologies and supporting assumptions used to verify data, and any
- 12           changes in the methodologies and assumptions from the previous reporting
- 13           period-complaint/issue was filed, and when the complaint/issue was resolved;
- 14       (g) Assumptions and methodologies used for energy savings, renewable energy, cost per
- 15           kilowatt hour saved/generated, other resource savings, audits, and jobs calculations
- 16           under this subsection, including third-party sources and methodologies. Describe any
- 17           changes in the methodologies and assumptions from the previous reporting period. If
- 18           available, PACE Agencies/Authorities/Districts and Third-Party Administrators shall
- 19           use nationally accepted standardized assumptions and methodologies so that reporting
- 20           is consistent. If no national standards are available, PACE
- 21           Agencies/Authorities/Districts and Third-Party Administrators shall work with the
- 22           County to agree upon and use the same assumptions and methodologies so that the
- 23           County has a consistent data. If the PACE Agencies/Authorities/Districts and Third-
- 24           Party Administrators are unable to agree on uniform assumptions and methodologies,
- 25           the County reserves the right to cite reputable, nationally recognized standard
- 26           assumption and methodology sources for these calculations that the PACE
- 27           Agencies/Authorities/Districts and Third-Party Administrators must use within 90 days
- 28           of receipt, going forward with data collection;
- 29       (h) Just value of property as determined by the county property appraiser for the most
- 30           recent calendar year;
- 31       (i) Fair Market Value used during underwriting;
- 32       (j) Method for determining the Fair Market Value used during underwriting and proof of

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1           that determination available upon request; and

2           (k) Date of Confirmed Terms Call.

3   ~~(12) Suspension or Termination of PACE agency/authority/district. In the event any PACE~~  
4   ~~agency/authority/district fails to incorporate and continually provide for all of the foregoing~~  
5   ~~service components or to otherwise abide by the provisions of this article and/or the~~  
6   ~~interlocal agreement the County, in its sole discretion, may suspend or terminate the~~  
7   ~~interlocal agreement and support of the County at any time upon written notice to that PACE~~  
8   ~~agency/authority/district. Any project that has been initiated as of the time of suspension or~~  
9   ~~termination shall be permitted to be completed.~~ Data and Document Requests. Each PACE  
10   Agency/Authority/District and Third-Party Administrator must comply with reasonable  
11   requests for additional data or documents from the County and provide such data within 60  
12   days of the request, consistent with federal and state law.

13   (13) Incomplete Data or Late Reporting. In the event any PACE Agency/Authority/District  
14   or Third-Party Administrator fails to provide complete data or provide reports by the stated  
15   due dates, they will be given 60 days to cure the defect, after which written notice will be  
16   given prior to any administrative act to suspend. The suspension will take place 30 days  
17   after this notice is given. After such defect, any new project starts from the PACE  
18   Agency/Authority/District or Third-Party Administrator of which the reports are  
19   incomplete will be suspended until the complete data is provided. The right to cure is an  
20   option before suspension or termination will occur. Suspension will be done by the County  
21   Administrator or designee.

22   (14) Administrative Fees. PACE Agencies/Authorities/Districts and Third-Party  
23   Administrators will be responsible for paying administrative fees to the County on an  
24   annual basis. The Board will establish fees for administrative tasks carried out by County  
25   staff, including interlocal agreements, indemnification agreement for new PACE  
26   Agencies/Authorities/Districts and Third-Party Administrators. Residential projects  
27   funded during the year, and Non-Residential projects funded during the year. PACE  
28   Agencies/Authorities/Districts and Third-Party Administrators shall send an annual  
29   summary of all projects completed within that year and provide a payment per project to  
30   the County.

31   Section 5. Chapter 17, Article XVII, Section 17-508, entitled "ENFORCEMENT" is  
32   hereby created as follows:

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- 1 (1) Suspension or Termination of PACE Agency/Authority/District and Third-Party  
2 Administrators. In the event any PACE Agency/Authority/District or Third-Party  
3 Administrator fails to incorporate and continually provide for all of the foregoing service  
4 components or to otherwise abide by the provisions of this Ordinance and/or the interlocal  
5 agreement the County, in its sole discretion, may suspend or terminate the interlocal  
6 agreement or by other means prohibit a PACE Agency/Authority/District or Third-Party  
7 Administrator from operating in the County's jurisdiction and support of the County at any  
8 time upon written notice to that PACE Agency/Authority/District or Third-Party  
9 Administrators. Suspension, termination or prohibition will be done by the County  
10 Administrator or designee. Any project that has been initiated or received PACE financing  
11 as of the time of suspension or termination shall be permitted to be completed, and continue  
12 until such time that all outstanding debt has been satisfied.
- 13 (2) Code Enforcement Officers and any other enforcement personnel as authorized by the  
14 County Administrator are authorized to enforce Section 17-507(a)(7), *Marketing and*  
15 *Communications*, and Section 17-507(a)(9)(c), *Kickbacks*, of this Ordinance.
- 16 (3) Code Enforcement Officers and other authorized enforcement personnel do not have to  
17 provide a reasonable time period to correct the violation prior to issuing a citation or notice  
18 of violation and may immediately issue a citation or notice of violation if a repeat violation  
19 is found or if the code enforcement officer has reason to believe that the violation presents  
20 a serious threat to the public health, safety, or welfare, or if the violation is irreparable or  
21 irreversible.
- 22 (4) A violation of Section 17-507(a)(7), *Marketing and Communications*, or Section 17-  
23 507(a)(9)(c), *Kickbacks*, of this Ordinance may be enforced pursuant to terms and  
24 procedures in Chapter 162, F.S., Local Government Code Enforcement Boards Act, and  
25 Article 10 of the Palm Beach County Unified Land Development Code, all as may be  
26 amended or recodified from time to time. Pursuant to Section 162.09(2)(d), F.S., the Palm  
27 Beach County Special Master may impose fines that shall not exceed one thousand dollars  
28 (\$1,000.00) per day per violation for a first violation, five thousand dollars (\$5,000.00) per  
29 day per violation for a repeat violation, and up to fifteen thousand dollars (\$15,000.00) per  
30 violation if the Palm Beach County Special Master finds the violation to be irreparable or  
31 irreversible in nature. In determining the amount of the fine, the Palm Beach County  
32 Special Master shall consider:

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- 1     (a) The gravity of the violation;  
2     (b) Any actions taken by the violator to correct the violation; and  
3     (c) Any previous violations committed by the violator.  
4     (5) A violation of Section 17-507(a)(7), *Marketing and Communications*, or Section 17-  
5     507(a)(9)(c), *Kickbacks*, of this Ordinance may also be enforced pursuant to the procedures  
6     and penalties of Chapter 162, F.S., Supplemental County or Municipal Code or Ordinance  
7     Enforcement Procedures as may be amended or recodified from time to time, as follows:  
8     (a) The County court shall have jurisdiction over all civil citations issued pursuant to this  
9     Ordinance.  
10    (b) The County shall maintain a system by which violators are given written notice of all  
11    violations.  
12    (c) Code Enforcement Officers and other authorized enforcement personnel who have  
13    reasonable cause to believe that a person has committed an act in violation of this  
14    Ordinance shall issue a civil citation. If the person who has committed the violation does  
15    not contest the citation, the fines shall be \$400.00 but may be increased to \$500 if the  
16    fine is contested in county court.  
17    (d) Payment shall be made, either by mail or in person, to the location and within the time  
18    specified upon the citation. If such person follows this procedure, the person shall be  
19    deemed to have admitted to the infraction and to have waived the right to a hearing on  
20    the issue of the commission of the infraction.  
21    (e) Any person who fails to make payment within the time period specified on the citation  
22    shall be deemed to have waived the right to pay the civil penalty as set forth in the  
23    citation and shall appear before the county court.  
24    (f) Any person who elects to appear before the court to contest the citation shall be deemed  
25    to waive the right to pay the civil penalty. The court, after a hearing, shall make a finding  
26    as to whether a violation has occurred and may impose a civil penalty not to exceed five  
27    hundred dollars (\$500.00) plus court costs.  
28    (g) If a person fails to pay the civil penalty or fails to appear in court to contest the citation,  
29    he shall be deemed to have waived his right to contest the citation and, in such case, a  
30    default judgment shall be entered and the judge may impose a penalty up to the maximum  
31    civil penalty of five hundred dollars (\$500.00) plus court costs.

1        (h) Any person who refuses to sign and accept a citation issued pursuant to this Section shall  
2        be guilty of a misdemeanor of the second degree, punishable as provided by Sections  
3        775.082 or 775.083, F.S.

4        (6) In addition to the sanctions contained herein, the County may take any other appropriate legal  
5        action to enforce the provisions of this Ordinance, including, but not limited to, cease and  
6        desist orders, instituting civil action, and requesting temporary and permanent injunctions.

7        (7) It is the purpose of this Ordinance to provide additional cumulative remedies.

8        (8) Each day in violation of the provisions of this Ordinance shall constitute a separate violation  
9        or offense and be punishable as such.

10       **Section 6. REPEAL OF LAWS IN CONFLICT:**

11       All local laws and ordinances in conflict with any provisions of this Ordinance are  
12       hereby repealed to the extent of such conflict.

13       **Section 7. SAVINGS CLAUSE:**

14       Notwithstanding the section of this ordinance regarding repeal of laws in conflict, all  
15       administrative and court orders, fines, and pending enforcement issued pursuant to this  
16       authority and procedures established by Chapter 17, Article XVII, of the Palm Beach County  
17       Code shall remain in full force and effect.

18       **Section 8. SEVERABILITY:**

19       If any section, paragraph, sentence, clause, phrase or word of this Ordinance is for any  
20       reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void,  
21       such holding shall not affect the remainder of this Ordinance.

22       **Section 9. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

23       The provisions of this Ordinance shall become and be made a part of the Palm Beach  
24       County Code. The sections of this Ordinance may be renumbered or relettered to accomplish  
25       such, and the word Ordinance may be changed to section, article, or other appropriate word.

26       **Section 11. PENALTY:**

27       Any violation of any portion of this Ordinance shall be punishable as provided by law.

28       **Section 12. CAPTIONS:**

29       The captions, section headings and section designations used in this Ordinance are for  
30       convenience only and shall have no effect on the interpretation of the provisions of this  
31       Ordinance.

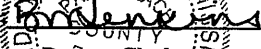
1 **Section 13. EFFECTIVE DATE:**

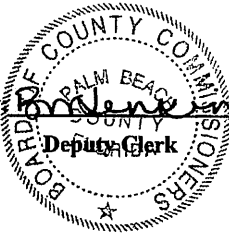
2 The provisions of this Ordinance shall become effective one hundred and eighty days  
3 (180) after ~~upon~~ filing with the Department of State.

4  
5 **APPROVED and ADOPTED** by the Board of County Commissioners of Palm  
6 Beach County, Florida, on this the 15th day of November, 2022.

7  
8 **JOSEPH ABRUZZO, CLERK**

**PALM BEACH COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS**

9  
10  
11  
12  
13 By:   
14 **Deputy Clerk**



By:   
**Robert Weinroth, Mayor**

15  
16  
17  
18  
19 **APPROVED AS TO FORM AND**  
20 **LEGAL SUFFICIENCY**

21  
22  
23  
24 By:   
25 **County Attorney**

26  
27 **EFFECTIVE DATE:** Filed with the Department of State on the 16th day of  
28 November, 2022.



**FLORIDA DEPARTMENT of STATE**

**RON DESANTIS**  
Governor

**CORD BYRD**  
Secretary of State

November 16, 2022

Honorable Joseph Abruzzo  
Clerk of the Circuit Court and Comptroller  
Palm Beach County  
301 North Olive Avenue  
West Palm Beach, Florida 33401

Attn: Biaggia Jenkins

Dear Honorable Joseph Abruzzo:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Palm Beach County Ordinance No. 2022-030, which was filed in this office on November 16, 2022.

Sincerely,

Anya Owens  
Program Administrator

ACO/ra

**R. A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250**  
**Telephone: (850) 245-6270**



VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

January 3, 2023

Dear County Attorney:

I'm writing to share some promising changes in the Florida PACE Funding Agency's operations that will have a positive impact on property owners in your county.

Since its inception in 2011, the Florida PACE Funding Agency and its partners have been working diligently to provide all eligible property owners with an affordable and accessible financing option to make needed property improvements to resist the impacts of hurricanes and tropical storms, reduce energy usage, and improve access to renewable energy. As we have seen just this year, natural disasters are affecting all of Florida's property owners, and low-to-moderate income homeowners often lack access to the ability to secure their homes against these natural disasters.

There is no single solution to solve the challenges facing Florida's property owners during these trying times. Limited, and frequently expensive, property insurance availability and the need to continually make investments to harden properties against weather-related disasters will continue to disadvantage the State financially, particularly as higher proportions of losses are borne by Citizens Property Insurance.

This is the reason that the Legislature adopted section 163.08 of the Florida Statutes, commonly referred to as the Property-Assessed Clean Energy, or PACE, program. Though PACE is not the only financing option for these qualifying improvements, it is a necessary and extremely useful tool in helping homeowners to affordably manage property maintenance and economic uncertainty.

The Florida PACE Funding Agency has long been a leader in advancing the mission of PACE statewide while championing consumer protection measures. To provide clarity on the respective responsibilities for carrying out the PACE program, the Agency underwent a judicial validation process that concluded this fall. This process finally determined that improvements such as seawalls that harden properties against storm surge qualify for PACE financing, and further clarified that the Agency has independent authority to carry out its mission of offering PACE financing statewide, without requiring additional efforts from individual counties or cities.

Over the past several years, Palm Beach County, seemingly at the behest of the Tax Collector, has worked to impose more stringent restrictions on the local governments operating PACE programs in the County. This culminated with the adoption of Ordinance 2022-030 last November. During your discussions, you were informed that adoption of the then-proposed Ordinance would violate terms of the interlocal agreement, and members of the Board of County Commissioners expressed concerns that overreaching regulation would result in the power to regulate being taken away.

Unfortunately, these fears have come to pass. The Agency finds that the adoption of Ordinance 2022-030 violates the terms of the interlocal agreement, and by this communication we are providing notice of that breach. As the County took this action after being informed it would place them in breach of the Agreement,

**[www.FloridaPace.gov](http://www.FloridaPace.gov)**

Florida PACE Funding Agency c/o Mike Moran 4411 Bee Ridge Rd #134 Sarasota FL 34233



it is not appropriate to provide additional time to cure, and therefore the Agreement is terminated effective immediately. However, should the County decide to repeal its ordinance, this letter also serves as notice of termination for convenience effective sixty (60) days from today. Please note this termination does not affect the Agency's contractual relationships with the Tax Collector, which remain in effect pursuant to the settlement agreement reached in 2017.

Pursuant to general law, the Agency will transition its operations to the independent authority recognized by the court system (for more details, please see the final judgment recorded in the Official Records of Palm Beach County, instrument number 20220465228, which is binding on the County). Our reports to your Office of Resilience will be completed for the quarter ending December 31, 2022, and afterwards will be made available in a general format online. We are happy to continue working with Resilience staff, but will decline to participate in the regulatory structure you have established, including specified forms of disclosure, fees, or specialized reporting.

This means that PACE financing will remain available to property owners in your county, and every county in the state, with industry-standard homeowner protections. The Agency will operate on a uniform statewide basis, and invites participation from counties and cities through a new interlocal agreement that facilitates information sharing and feedback. The interlocal agreement is not necessary to provide PACE in your county, but you will likely find collaboration on helping property owners harden homes and businesses against natural disasters beneficial. Attached, please find the new Interlocal Agreement (ILA).

A brief overview of both the PACE process, from the county's perspective, and an overview of the takeaways from the judicial validation proceeding, are included here. While the ruling only directly impacts the Florida PACE Funding Agency's relationship with counties and cities, other PACE authorities may be treated the same way by Florida law, and dialogue with those entities is encouraged. Florida PACE Funding Agency staff is always available for communication and assistance, so please reach out if necessary to: [Info@FloridaPACE.gov](mailto:Info@FloridaPACE.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "M. Moran".

Michael A. Moran

Executive Director

**[www.FloridaPace.gov](http://www.FloridaPace.gov)**

Florida PACE Funding Agency c/o Mike Moran 4411 Bee Ridge Rd #134 Sarasota FL 34233



## MEMORANDUM REGARDING PACE JUDICIAL VALIDATION

From: Jamy Dinkins, CivForge Law, P.A.

Date: December 1, 2022

The Florida PACE Funding Agency obtained a judgment this fall from the Circuit Court in Leon County validating up to \$5,000,000 in PACE bonds and establishing several pertinent legal concepts. Each of those is detailed below.

### **SEAWALLS ARE QUALIFYING IMPROVEMENTS UNDER THE PACE STATUTE**

PACE assessments, or assessments for "Qualifying Improvements" under section 163.08, can be imposed by a local government such as the Florida PACE Funding Agency when they are used to fund and finance improvements to real property that fit into one of three criteria: energy efficiency, renewable energy, and wind-resistance. Previously, there was a question as to whether improvements (such as seawalls) that protect a property against wind-driven water damage (i.e., storm surge during a tropical storm) are wind-resistance improvements for purposes of the state statute. The recent judicial validation determined that they are. Accordingly, a property owner may now use PACE financing to install a seawall on property that is at risk for damage from storm surge.

### **THE COLLECTION OF PACE ASSESSMENTS IS A MINISTERIAL DUTY OF THE TAX COLLECTOR, NOT SUBJECT TO ADDITIONAL CONTRACTUAL DEMANDS OR TIMEFRAMES**

As a method of consumer protection, PACE assessments must be collected using the Uniform Method of Collection, a process by which assessments are collected on the same bill as taxes. The Uniform Method imposes a ministerial duty on each county's tax collector to place assessments on the tax bill without questioning the authority or propriety of the assessments—the Legislature has committed that judgment to the local government imposing the assessments. Unfortunately, some tax collectors in the state have ignored this law, and Florida Department of Revenue direction, and imposed unlawful conditions or timeframes on the collection of PACE assessments.

In addition, the Uniform Method requires reimbursement of actual costs of collection to the tax collectors, with a cap of two percent of the collection. This cost is passed on to property owners. While counties who have calculated actual costs arrive at a number consistently below one percent, some tax collectors do not calculate the costs and instead charge the statutory maximum.

The recent judicial validation directs tax collectors to place the assessments on the same bill as taxes without these conditions and to report, on request, the actual costs of collection so that they may be reimbursed (as opposed to simply charging the statutory cap on expenses).

### **FPFA HAS INDEPENDENT AUTHORITY TO IMPOSE ASSESSMENTS STATEWIDE**

The PACE statute does not grant authority to any entity to impose assessments. Rather, it allows entities who already have such a power to impose the specific type of assessment described, within the limitations of the statute.

**[www.FloridaPace.gov](http://www.FloridaPace.gov)**

Florida PACE Funding Agency c/o Mike Moran 4411 Bee Ridge Rd #134 Sarasota FL 34233



Some general purpose local governments have attempted to use home-rule power to limit the authority of other local governments to impose PACE assessments. This can come in the form of prohibiting PACE assessments altogether, imposing a fee on assessments, or requiring adherence to particular contracts or extra-statutory conditions. **The recent judicial validation clarifies that such ordinances apply only to those programs administered by the municipality or county adopting the ordinance, but not to those PACE programs administered by other local governments.** The judicial validation further clarifies that, because the Florida PACE Funding Agency derives its authority to impose assessments from state statute, it does not need further authority or permission from a general purpose local government to operate within any particular territory, and no local government has liability, responsibility, or authority relating to PACE programs of another local government.

NOT A CERTIFIED COPY

**[www.FloridaPace.gov](http://www.FloridaPace.gov)**

Florida PACE Funding Agency c/o Mike Moran 4411 Bee Ridge Rd #134 Sarasota FL 34233



**INTERLOCAL AGREEMENT**  
between  
**THE FLORIDA PACE FUNDING AGENCY**  
and  
**[NAME OF COUNTY], FLORIDA**  
relating to

**PROVISION OF FUNDING AND FINANCING FOR QUALIFYING IMPROVEMENTS**

**THIS INTERLOCAL AGREEMENT** is made and entered into as of \_\_\_\_\_ 1, 202\_, ("Agreement"), by and between the Florida PACE Funding Agency, a separate legal entity and unit of local government established pursuant to section 163.01(7), Florida Statutes ("Agency"), and [Name of County], a political subdivision of the State of Florida ("County"), by and through their respective governing bodies, for the purpose of recognizing the authority of the Agency to fund and finance qualifying improvements within the boundaries of the County, assisting the County with coordinating efforts to mitigate the effects of, and adapt to, climate events, and coordinating efforts to reduce energy consumption and mitigate damage from hurricanes and other windstorms.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the Agency and the County hereby agree as follows:

**1. FINDINGS.**

(A) Agency and County have reviewed the provisions of section 163.08(1), Florida Statutes, and find those facts as originally determined by the Legislature to be true in relation to the County and its inhabitants as of the date of this Agreement, and therefore incorporate those recitals as if fully set forth herein.

(B) Agency and County find that County has no liability or obligation relating to the activities of the Agency, and Agency's authority is derived from state statute and governed by Agency's governing board, not ordinance or resolution of County.

(C) County will benefit from the provision of standard periodic reports from Agency to quantify Agency's activity within the boundaries of County for the purpose of environmental and windstorm mitigation calculation, planning, and reporting.

**2. AUTHORITY.** The execution of this Agreement has been duly authorized by Resolution of the governing bodies of each party hereto. Nothing within this Agreement limits the authority of Agency to enter into similar agreements with other local

governments or provide its program outside of the boundaries of County. Nothing within this Agreement limits the authority of County to establish programs of a similar nature, or to contract with or otherwise enable other local governments to provide similar programs within the boundaries of County.

**3. RESPONSIBILITIES OF AGENCY.**

(A) Agency will provide County with access to a report no less frequently than once per calendar quarter that quantifies basic, aggregate information about Agency activities within the boundaries of County. This report will include, for example, number and value of projects completed within the boundaries of Subdivision, both monthly and in aggregate.

(B) Agency will conduct a public meeting in the third quarter of each calendar year at which comments and suggestions may be submitted to the governing body by County, in addition to written or verbal communication between Agency staff and County staff as the need arises.

(C) Agency will promptly respond to specific constituent concerns brought to the attention of Agency by County.

**4. RESPONSIBILITIES OF COUNTY.** County will forward any complaint or other communication from a constituent to Agency promptly for Agency resolution.

**5. ADMINISTRATION.**

(A) Agency and County are both units of local government within the State of Florida, and as such, are subject to the provisions of chapter 119, Florida Statutes. Nothing within this Agreement changes the rights or responsibilities of the parties with respect to public records.

(B) Agency and County are both units of local government within the State of Florida, and as such, are invested with certain privileges and immunities from liability and exemptions from laws, ordinances, and rules which apply to the activity of officials, officers, agents, or employees of public bodies. Nothing within this Agreement disturbs or constitutes a waiver by either party of any such privilege, immunity, or exemption.

(C) The term of this Agreement will begin on the date first written above, and will continue until terminated by either party upon ninety (90) days' written notice delivered to the other. No amendment, supplement, modification, or waiver of this Agreement is binding unless executed in writing by both parties. The parties understand that termination of this agreement does not affect the obligations and authorities of the parties to initiate or collect non-ad valorem assessments under section 163.08, Florida Statutes. If this Agreement is terminated for any reason, the Agency will operate in the County as recognized in *Florida PACE Funding Agency v. State*, No. 2022-CA-1562 (Fla.

2d Cir. Ct. Oct. 6, 2022), which recognized Agency has independent authority to conduct its programs within the boundaries of County without transfer of power from County.

(D) This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes any prior agreements, understandings, negotiations, and discussions of the parties, written or oral, with respect thereto. This Agreement is binding on the parties, their respective successors, and assigns, and inures to the benefit of the parties, their respective successors, and assigns. This Agreement may not be assigned except to the lawful governmental successor of a party.

(E) Should any portion of this Agreement be held to be invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other aspect of this Agreement.

(F) This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which constitute but one and the same document. A true and correct facsimile copy may serve as an original in all respects.

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be duly executed under seal and entered into as of the date first written above.

**FLORIDA PACE FUNDING AGENCY**

**[NAME OF COUNTY]**

By: \_\_\_\_\_

*Mike Moran, Executive Director*

(seal)

Attest: \_\_\_\_\_

*Wendi Leach, Director of Operations*

By: \_\_\_\_\_

*[Name and title]*

(seal)

Attest: \_\_\_\_\_

*[Name and title]*

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FLORIDA PACE FUNDING  
AGENCY, a public body corporate  
and politic,

Plaintiff,

vs.

STATE OF FLORIDA, and the  
taxpayers, property owners and  
citizens of the State of Florida,  
including non-residents owning  
property or subject to taxation  
therein, and others claiming any  
right, title or interest in property to  
be affected by the issuance of the  
Bonds herein described or to be  
affected in any way thereby,

Defendants.

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IN THE CIRCUIT COURT  
OF THE SECOND JUDICIAL  
CIRCUIT OF THE STATE OF  
FLORIDA, IN AND FOR LEON  
COUNTY, FLORIDA

CIRCUIT CIVIL

CIVIL ACTION NO: 2022-CA-1562

VALIDATION NOT TO EXCEED  
\$5,000,000,000 FLORIDA PACE  
FUNDING AGENCY REVENUE  
BONDS (QUALIFYING  
IMPROVEMENT FINANCE  
PROGRAM), VARIOUS SERIES

**FINAL JUDGMENT**

The above and foregoing cause has come to final hearing on the date  
and at the time and place set forth in the Order to Show Cause heretofore  
issued by this Court on the Complaint for Validation (the "Complaint") filed  
by the Plaintiff, Florida PACE Funding Agency, against the State of Florida  
and all of the property owners, taxpayers and citizens of the entire State of  
Florida, and including non-residents owning property or subject to taxation  
therein and all others having or claiming any right, title, or interest in

property to be affected by the Plaintiff's issuance of not exceeding \$5,000,000,000 in the aggregate principal amount at any one time outstanding of the Florida PACE Funding Agency Revenue Bonds (Qualifying Improvement Finance Program) Various Series (the "Bonds"), hereinafter described, or to be affected in any way thereby, and said cause having duly come on for final hearing, and the Court having considered the same and heard the evidence and being fully advised in the premises, finds as follows:<sup>1</sup>

*The Plaintiff*

FIRST. The Plaintiff is authorized under chapter 75, Florida Statutes, and chapter 163, Part I, Florida Statutes, including section 163.01(7)(g)9., Florida Statutes, to file its Complaint in this Court to determine the validity of the Bonds,<sup>2</sup> the pledge of revenues for the payment thereof, the validity of the non-ad valorem assessments which shall comprise all or in substantial part the revenues pledged, the proceedings relating to the issuance thereof and all matters connected therewith. All actions and proceedings of the Plaintiff in this cause are in

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<sup>1</sup> For convenience, capitalized terms used herein will have the meaning attributed to them in the Complaint and exhibits thereto, unless the context clearly requires otherwise.

<sup>2</sup> The Plaintiff is the sole and only issuer of the Bonds which are the subject of this validation proceeding.

accordance with chapter 75, Florida Statutes, and chapter 163, Part I, Florida Statutes, each as amended.

SECOND. Section 163.01(7)(g), Florida Statutes (hereinafter the "Separate Legal Entity Act"), authorizes by general law the creation of a separate legal entity by interlocal agreement and provides that such separate legal entity possesses express general law powers, as well as the common powers specified in the interlocal agreement, exercisable in the manner or method set forth in such interlocal agreement.

THIRD. The Plaintiff is a separate legal entity duly formed in accord with the Separate Legal Entity Act, is a valid and legally existing independent public body corporate and politic within the State of Florida, created by general law in accordance with Florida Interlocal Cooperation Act of 1969, section 163.01, Part I, Florida Statutes, as amended (the "Interlocal Act") and pursuant to the provisions of a certain adopted and duly filed Amended and Restated Interlocal Agreement Relating to the Establishment of the Florida PACE Funding Agency, effective as of February 20, 2017 (the "Charter Agreement"), initially between Flagler County, Florida, and the City of Kissimmee, Florida<sup>3</sup> (and, subsequently between any additional counties or municipalities joining the

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<sup>3</sup> Currently, the only members of the Plaintiff are Flagler County and the City of Kissimmee.

Plaintiff as a member). As the context requires, the term "Incorporators" as used herein collectively include Flagler County, Florida; the City of Kissimmee, Florida; and, any additional counties or municipalities joining the Plaintiff as a member. By general law the Charter Agreement has been lawfully entered into and executed by the parties thereto, duly evidences the establishment and creation of the Plaintiff pursuant to general law, has been properly recorded as required by the Interlocal Act, and constitutes a legal, valid and binding agreement. A certified copy of the Charter Agreement was received into evidence as Plaintiff's Exhibit 1.

FOURTH. By general law and the Charter Agreement lawfully entered into in accord with general law, the Plaintiff by and through its Board of Directors (the "Board of Directors") as a separate legal entity described in the Separate Legal Entity Act is empowered to act separately and independently as a special purpose local government throughout Florida.

*Express Authority for Plaintiff to Act*

FIFTH. In concert with the Charter Agreement adopted as provided by general law, and by express provisions of general law, all of the privileges, benefits, powers and terms of section 125.01 relating to counties, and section 166.021, relating to municipalities, are also

fully applicable to the Plaintiff in the conduct of its affairs, purpose and mission.

SIXTH. The Florida Legislature (the “Legislature”) has determined that all energy consuming improvements to property that are not using energy conservation strategies contribute to the burden resulting from fossil fuel energy production. See § 163.08(1)(b), Fla. Stat. (2022). This comports with the declared public policy of the State to play a leading role in developing and instituting energy management programs to promote energy conservation, energy security, and the reduction of greenhouse gases, in addition to establishing policies to promote the use of renewable energy. See § 163.08(1)(a), Fla. Stat. (2022).

SEVENTH. In furtherance of its stated policy objectives, the Legislature enacted and has amended section 163.08, Florida Statutes, entitled “Supplemental authority for improvements to real property” (the “Supplemental Act”), which provides the statutory general law framework and supplemental authority for the funding and financing of qualifying improvements for energy efficiency, renewable energy, and wind resistance in order to promote energy conservation and efficiency, the reduction of



greenhouse gases and fulfillment of the goals of the State's energy and hurricane mitigation policies.<sup>4</sup>

EIGHTH. General law expressly provides the Plaintiff with independent and concurrent authority to finance facilities on behalf of any person, relating to a governmental function or purpose, which may serve populations within or outside of the members of the Plaintiff.

NINTH. General law alternatively, concurrently and expressly provides that by the Charter Agreement, the Separate Legal Entity Act, and the Supplemental Act, all power and authority available to the Plaintiff under the Charter Agreement and general law, including without limitation, chapters 163, 189, and 197, Florida Statutes, has been duly authorized by the Legislature and may be implemented by the Plaintiff to serve populations throughout the State, both within and outside of members of the Plaintiff.

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<sup>4</sup> The Supplemental Act, in part, implements the general national concept of "property assessed clean energy" or "property assessed clean environment" or the associated acronym "PACE", but as uniquely applied by the Legislature to the entire State of Florida. The Supplemental Act broadly enlists local governments to enable alternative financing to private property owners who voluntarily determine to accomplish compelling state interests. As the Legislature does not use the foregoing "PACE" terminology in the Florida Statutes, such terminology is not employed herein to avoid confusion.

TENTH. The Supplemental Act enables and authorizes local governments, as defined therein, (1) to finance such energy conservation efficiency and renewable energy and wind resistance improvements, as defined in section 163.08(2)(b), Florida Statutes, by entering into financing agreements with qualified owners of real property evidencing the property owner's consent to imposition of a non-ad valorem assessment against the real property specially benefitted by such improvements (see section 163.08(1)(c), Florida Statutes); and, (2) to incur debt for purposes of funding and financing such qualifying improvements, payable from revenues received from such non-ad valorem assessments or any other available revenue source authorized by law. See § 163.08 (3), (4), and (7), Fla. Stat. (2022).

ELEVENTH. The findings in the Charter Agreement provide examples of benefits to the people of the State for the increase of their commerce and prosperity and the improvement of their health and living conditions.

TWELFTH. The Plaintiff does not employ the use of any State, county or municipal funding or financial support. The Plaintiff and the Plaintiff's records are by general law subject to the "Sunshine Law", section 286.011, Florida Statutes and "Florida's Public Records Law",

chapter 119, Florida Statutes. The Plaintiff's functions and services are paid for by rates, fees and charges from participating private property owners which are disclosed, acknowledged and agreed to in writing in advance of any funding or financing of any qualifying improvement. Stated differently, the Plaintiff is financially self-supporting – it is not funded by the State or any general purpose local government. The foregoing are, among other things, examples of performance and funding of essential governmental functions expressly authorized by the Legislature for the public health, safety and welfare done in accomplishing the Plaintiff's purpose of assisting private property owners in improving Florida's building stock.

THIRTEENTH. Prior to 2012, the Plaintiff initially validated its authority to issue debt obligations in *Florida PACE Funding Agency v. State*, No. 2011-CA-1824 (Fla. 2nd Cir. Ct., August 25, 2011), recorded in Official Record Book 4279, at page 852, Public Records of Leon County, Florida (the "2011 Final Judgement"). As provided by law the 2011 Final Judgement is incorporated herein by reference and remains in full force and effect. See § 75.11(2), Fla. Stat. With the passage of time and changes in law, the Plaintiff determined to and duly adopted its Resolution No. 2022-0822(1) (the "Second Master Bond Resolution"). A certified copy

of the Second Master Bond Resolution was received into evidence as Plaintiff's Exhibit 2.

FOURTEENTH. The Second Master Bond Resolution authorizes issuance of the Bonds and provides for the adoption of supplemental series resolutions approving the financing terms and conditions applicable to each series of Bonds.

FIFTEENTH. The Plaintiff has properly filed its Complaint in this matter seeking validation of its authority to issue the Bonds and to provide for the repayment thereof through the proceeds of non-ad valorem assessments (sometimes referred to as special assessments) evidenced and imposed pursuant to financing agreements which must be collected pursuant to section 197.3632, Florida Statutes, among other things, all as contemplated by and authorized under the Supplemental Act and the Separate Legal Act, and other provisions of general law.

*The Court's Task in Bond Validation*

SIXTEENTH. The Court's task in bond validation is to determine (1) whether the issuer has legal authority to issue the contemplated indebtedness, (2) whether the purpose of the obligation is legal, and (3) whether the issuance complies with the requirements of law. *Strand v. Escambia County*, 992 So. 2d 150 (Fla. 2008), *reh'g denied* (Fla.

2008); and *Boschen v. City of Clearwater*, 777 So. 2d 958, 962, 966 (Fla. 2001).

SEVENTEENTH. Subsumed within the inquiry as to whether the issuer has the legal authority to issue the contemplated indebtedness are matters which are clearly a basic part of unique financing arrangements. See *Keys Citizens for Responsible Gov't, Inc. v. Florida Keys Aqueduct Authority*, 795 So. 2d 940, 946 (Fla. 2001). The validity of matters tied to and representing a basic part of the financing arrangement are reasonably part of the Court's inquiry into whether the issuer has the authority to issue bonds. *Id.* at 947. The function of a validation proceeding is merely to settle the basic validity of the securities and the power of the issuing agency to act in the premises. *State v. Manatee County Port Auth.*, 171 So. 2d 169, 171 (Fla. 1965). The Court is not called upon to reweigh the evidence or to second-guess the political, financial, or policy considerations underlying the issuance. See, e.g., *Boschen*, 777 So. 2d at 968; *Panama City Beach Cmty. Redevelopment Agency v. State*, 831 So. 2d 662, 667-69 (Fla. 2002). "[I]t is not the function of this Court to decide whether the proposed financing is wise or even fiscally sound." *State v. Brevard County*, 539 So. 2d 461, 464 (Fla. 1989). The Florida Supreme Court has indicated that trial courts "must maintain a very deferential standard of review when

testing the validity of statutorily authorized revenue bonds.” *Panama City Beach Redevelopment Agency*, 831 So. 2d at 664.

EIGHTEENTH. It is the intent of the law that bond validations be expedited at the earliest time reasonably possible. *Rianhard v. Port of Palm Beach Dist.*, 186 So. 2d 503, 505 (Fla. 1966) (trial court did not abuse its discretion in not setting further hearing for taking of testimony but rather it properly proceeded after considering all that was offered at initial hearing to enter decree of validation). The Legislature's intent for expedited handling is expressly reflected both in the text of chapter 75, Florida Statutes (“...the court shall determine all questions of law and fact and make such orders as will enable it to properly try and determine the action and render a final judgment with the least possible delay”), and the fact that the procedure set forth is summary in nature.

NINETEENTH. The Plaintiff is authorized under chapter 75, Florida Statutes, and chapter 163, Part I, Florida Statutes, including section 163.01(7)(g)9., Florida Statutes, to file its Complaint for Validation in this Court to determine the validity of (i) the Bonds, (ii) the power of Plaintiff by general law to independently act in the premises, (iii) the pledge of revenues for the payment thereof, (iv) the validity of the non-ad valorem assessments which shall comprise all or in substantial part the revenues

pledged, (v) the proceedings relating to the issuance thereof and (vi) all matters connected therewith. All actions and proceedings of the Plaintiff in this cause are in accordance with chapter 75, Florida Statutes, and chapter 163, Part I, Florida Statutes, each as amended.

*Extraordinary General Law Authority and Assignment of Responsibilities  
Conferred Upon the Plaintiff to Accomplish Compelling State Interests*

TWENTIETH. Authority is conferred upon the Plaintiff, under and by virtue of the general law of the State of Florida, particularly the Separate Legal Entity Act, the Charter Agreement, and the Supplemental Act, to independently impose and levy non-ad valorem assessments for public purposes and compelling state interests announced by the Legislature to fund and finance qualifying improvements, through voluntary execution of financing agreements by private property owners with the Plaintiff, as set forth in the Supplemental Act, and to issue its bonds or other debt obligations for the purposes of financing qualifying improvements, all in the manner as described and authorized by the Legislature in general law.

TWENTY-FIRST. The subject matter of general law authority described in the Supplemental Act, the Separate Legal Entity Act, and the Charter Agreement is black-letter law authority expressly provided by the Legislature in the Florida Statutes that separate legal entities, formed in the

same manner as that of the Plaintiff, once constituted and established as provided by general law, are authorized to act alone to assist private property owners who alternatively and voluntarily choose to apply to and consent to such financing directly with the Plaintiff by virtue of execution of a financing agreement as provided for in the Supplemental Act. The Legislature has provided express general law authority to the Plaintiff to independently fund and finance qualifying improvements for interested private property owners throughout the State in a concurrent, alternative, but non-exclusive manner. Such funding and financing of qualifying improvements discretely and uniquely accomplishes specific compelling state interests described in general law.

TWENTY-SECOND. The Supplemental Act (i) defines "local government" and "qualifying improvements"; (ii) authorizes local governments to finance qualifying improvements through the execution of financing agreements and the related imposition of non-ad valorem assessments; (iii) authorizes local governments to incur debt for purposes of funding and financing such qualifying improvements payable from revenues received from such non-ad valorem assessments or any other available revenue source authorized by law; and (iv) provides there is no requirement or necessity for the Plaintiff to enter into any agreement or



partnership, beyond the general law provisions of the Charter Agreement, to serve any property owner.

TWENTY-THIRD. The Bonds, or other debt obligations issued by the Plaintiff, enable the Plaintiff to lawfully fund a qualifying improvement financing program as authorized and encouraged by the Legislature and assist property owners who wish to undertake improvements to their real property for (i) energy conservation and efficiency improvements, (ii) renewable energy improvements, (iii) wind resistance improvements, (iv) or any other qualifying improvements authorized by the Legislature (herein “qualifying improvements”). The Bonds may be solely secured by the proceeds derived from special assessments in the form of non-ad valorem assessments imposed by the Plaintiff as evidenced by the voluntary agreement of the record owners of the affected property as authorized by the Supplemental Act. In order to pay the costs of qualifying improvements, the Supplemental Act expressly authorizes the imposition and collection of “non-ad valorem assessments” as defined in section 197.3632(1)(d), Florida Statutes, which constitute a lien against the affected property, including homestead property, as permitted by article X, section 4 of the Florida Constitution.

TWENTY-FOURTH. In order to make qualifying improvements more affordable and assist property owners who wish to undertake such improvements, the Legislature has found that there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance.

TWENTY-FIFTH. The Legislature has rationally determined the actions authorized under the Supplemental Act, including, but not limited to, the financing of qualifying improvements through the execution of financing agreements between property owners and local governments and the resulting imposition of non-ad valorem assessments are necessary to serve and achieve compelling state interests, and are also necessary for the prosperity and welfare of the State and its property owners and inhabitants. Such determination comports with the performance of a governmental function and purpose described by the Legislature in the Separate Legal Entity Act. The mission, financing and service of the Plaintiff authorized by the Legislature all relate to accomplishing governmental functions and purposes described in section (1)(c) of the Supplemental Act, and sections (7)(g) 1., 7., and 10. of the Separate Legal Entity Act.

*The Use of and Nature of Non-Ad Valorem Assessments  
in Implementing Supplemental Authority to Improve Real Property*

TWENTY-SIXTH. The non-ad valorem assessments imposed pursuant to the Supplemental Act (i) are only imposed with the written consent of the affected property owners, (ii) are evidenced by a financing agreement as provided for in the Supplemental Act which comports with and evidences the provision of due process to every affected property owner, (iii) constitute a valid and enforceable lien permitted by article X, section 4 of the Florida Constitution, of equal dignity to taxes and other non-ad valorem assessments and is paramount to all other titles, liens or mortgages not otherwise on parity with the lien for taxes and non-ad valorem assessments, which lien runs with, touches and concerns the affected property, and (iv) are used to pay the costs of qualifying improvements necessary to achieve the public purposes articulated by the Supplemental Act. As such, the non-ad valorem assessments imposed pursuant to the Supplemental Act are indistinguishable from and fully equivalent to all other non-ad valorem assessments providing for the payment of costs of capital projects, improvements, and/or essential services (e.g., infrastructure and services related to roads, stormwater, water, sewer, garbage removal/disposal, etc.) which benefit property or relieve a burden created by property in furtherance of a public purpose.

TWENTY-SEVENTH. Florida law provides the amount of any given non-ad valorem assessment may not exceed the benefit conferred on the property, nor may it exceed the cost for the improvement and necessary incidental expenses. Non-ad valorem assessments imposed pursuant to the Supplemental Act are no different than any other non-ad valorem assessment imposed by a local government and therefore may not exceed the cost of the improvement and necessary incidental expenses including, but not limited to, costs of financing, collection and enforcement, and the reasonably apportioned annual assessment administration costs by the local government imposing the non-ad valorem assessment.

TWENTY-EIGHTH. Non-ad valorem assessments imposed pursuant to the Supplemental Act, among other things, meet and comply with the well-settled case law requirements of a special benefit and fair apportionment required for a valid special or non-ad valorem assessment.

TWENTY-NINTH. Any non-ad valorem assessments levied and imposed against the affected real property pursuant to the Supplemental Act must be collected pursuant to the uniform collection method set forth in section 197.3632, Florida Statutes, pursuant to which non-ad valorem assessments are collected annually over a period of years on the same bill as property taxes.

THIRTIETH. Non-ad valorem assessments imposed pursuant to the Supplemental Act are not subject to discount for early payment.

THIRTY-FIRST. The Supplemental Act expressly and carefully clarifies and distinguishes the relationship of (i) prior contractual obligations or covenants which allow or are associated with unilateral acceleration of payment of a mortgage note or lien or other unilateral modification, with (ii) the action of a property owner entering into a financing agreement pursuant to the Supplemental Act. The Supplemental Act lawfully recognizes the financing agreement required therein as the means to evidence a non-ad valorem assessment and renders unenforceable any provision in any agreement between a mortgagee or other lienholder and a property owner which allows for the acceleration of payment of a mortgage, note, lien or other unilateral modification solely as a result of entering into a financing agreement pursuant to the Supplemental Act which thereby establishes a non-ad valorem assessment. This provision of the Supplemental Act does not result in a contractual impairment of the mortgage or similar lien which differs from any other lawful non-ad valorem assessment as the value of the prior contract (e.g., mortgagee's interest) is not impaired by the

financing agreement nor is the prior contract impaired by giving priority to a lien for a subsequent non-ad valorem assessment.

THIRTY-SECOND. Even if there were to be an impairment of contract as a result of the Supplemental Act, such impairment is not substantial nor does it constitute an intolerable impairment, and as such does not warrant overturning the Supplemental Act as there is an overriding necessity for the Supplemental Act. Pursuant to the Supplemental Act, any mortgage lien holder on a participating property shall be provided not less than 30 days prior notice of the property owners' intent to enter into a financing agreement together with the maximum principal amount of the non-ad valorem assessment and the maximum annual assessment amount. The Supplemental Act does not limit the authority of the mortgage holder or loan servicer to increase or require monthly escrow payments in an amount necessary to annually pay the qualifying improvement assessment. The Supplemental Act additionally requires as a condition precedent to the effectiveness of a non-ad valorem assessment (i) a reasonable determination of a recent history of timely payment of taxes, (ii) a reasonable determination of the absence of involuntary liens or property-based debt delinquencies, (iii) verification that the property owner is current on all mortgage debt on the property, (iv) that,

without the consent of the mortgage holder or loan servicer, the total amount of any non-ad valorem assessment for qualifying improvements not exceed twenty percent (20%) of the just value of the property, except that energy conservation and efficiency improvements and renewable energy improvements are not subject to the twenty percent (20%) of just value limit if such improvements are supported by an energy audit which demonstrates that annual energy savings from the improvements equal or exceed the annual repayment of the non-ad valorem assessment, and (v) that any work requiring a license under any applicable law to make the qualifying improvement be performed by a properly certified or licensed contractor. Finally, each financing agreement (or a memorandum thereof) must be submitted for recording and constructive notice in the public records of the county where the property is located promptly after the execution thereof.

THIRTY-THIRD. The Supplemental Act (i) was enacted to deal with broad generalized economic or social problems, (ii) is based on historical principles of law in existence before any affected mortgage or other debt instrument was entered into and operates and will be administered in an area of intense governmental regulation and public scrutiny, (iii) has been in place for over a decade and (iv) is, or provides for

conditions which are, temporary in nature and thus tolerable in light of covenants contained in mortgage and other debt instruments which may otherwise allow for unilateral acceleration. See the Florida House of Representatives Staff Analysis (CS/HB 7179) Qualifying Improvements to Real Property (the "2010 House Report") associated with the initial adoption of the Supplemental Act. A certified copy of the 2010 House Report was received into evidence as Plaintiff's Exhibit 3.

THIRTY-FOURTH. The qualifying improvements and all costs associated therewith funded with the proceeds of the non-ad valorem assessments evidenced by any financing agreement pursuant to the Supplemental Act must convey a special benefit to the real property subject to the assessment and the cost of the service or improvement must be fairly and reasonably apportioned to such real property. The special benefit necessary to support the imposition of such a non-ad valorem assessment may wholly or in part consist of the relief or mitigation of a burden created by the affected real property.

THIRTY-FIFTH. Qualifying improvements address the public purpose of reducing, mitigating or alleviating the affected properties' environmental burdens including energy consumption resulting from use of fossil fuel energy and/or reduce burdens or demands of affected properties



that might otherwise result or manifest from potential wind, storm or hurricane events or damage.

THIRTY-SIXTH. The voluntary application for funding to finance a qualifying improvement and entry into a written financing agreement as required by general law pursuant to the Supplemental Act provides direct, competent, and substantial evidence that each affected property owner has determined and acknowledged that the cost of the qualifying improvement is equal to or less than the benefits received or burdens relieved or mitigated as to any affected property and has been provided and received substantive and procedural due process in the imposition of the resulting non-ad valorem assessments.

THIRTY-SEVENTH. The unique and specific procedures required by the Supplemental Act provide written and publicly recorded evidence that no affected property owner will be deprived of due process in the imposition of the non-ad valorem assessments or subsequent constructive notice that the assessment has been imposed.

*Uniform Method of Collection*

THIRTY-EIGHTH. The uniform method of collection as set forth in sections 197.3632 and 197.3635, Florida Statutes, and Rule 12D-18, Florida Administrative Code, provides for collection of non-ad valorem

assessments on the same annual bill as for annual property taxes. Where non-ad valorem assessments are collected using this uniform method, the assessments must be collected as a ministerial act by the tax collector at the same time as payment of other taxes and non-ad valorem assessments (see section 197.374 (7), Florida Statutes, and Rules 12D-13.002 (2) and 12D-18.010, Florida Administrative Code). The fundamental requirement that all non-ad valorem assessments imposed under the Supplemental Act must be collected and enforced using the uniform method of collection evidences a narrowly tailored general law that forms an extraordinary and pervasive means, using a mandatory method of imposition and collection, to attract alternative capital and protect property owners who voluntarily use such capital to accomplish the compelling state interests articulated by the Legislature.

THIRTY-NINTH. The use of the uniform method of collection is by general law a fundamental and uniform collection approach required statewide by the Supplemental Act. Inasmuch as all non-ad valorem assessments in Florida are imposed solely by local governments, the unique and extraordinary means employed by the Legislature to cause financing assistance to property owners to carry out the assorted compelling state interests described in the Supplemental Act necessarily

depends on robust, effective and available qualifying improvement financing programs administered by each of the local governments described and authorized in the Supplemental Act.

FORTIETH. Non-ad valorem assessments are not imposed or levied by any property appraiser or tax collector. Any duties of a property appraiser or tax collector with regard to collection of non-ad valorem assessments under section 197.3632, Florida Statutes, including the duty to collect the assessments and remit payment to the local government and to calculate the actual additional costs associated with the uniform method, are wholly ministerial and the property appraiser and tax collector are without any discretion with regard to the collection of non-ad valorem assessments on the same notice as for taxes or otherwise once the local government elects to use the uniform method and complies with the requirements of section 197.3632, Florida Statutes.

FORTY-FIRST. The Florida Department of Revenue, among other things, is charged with oversight and supervision of non-ad valorem assessment collection and enforcement processes by the State's 67 county tax collectors. The uniform method is of significant statewide import. Statewide the annual gross collection of non-ad valorem assessments imposed by local governments using the uniform method most recently is

approximated at over 4 billion dollars. Evidence substantiating the magnitude of such collections in the form of a certified copy of the most recent statewide tabulation of non-ad valorem assessments imposed, obtained by the Plaintiff from the Florida Department of Revenue ("FDOR"), was received into evidence as Plaintiff's Exhibit 4.

FORTY-SECOND. Regardless of whether the Supplemental Act requires the use of the uniform method of collection, any local government authorized to impose such assessments upon timely providing an initial notice of intent to use the uniform method of collection of a class or genus of non-ad valorem assessments to the property appraiser, the tax collector and the FDOR by United States Mail is entitled to use such uniform method for the next fiscal year and all ensuing years.

FORTY-THIRD. Where a local government sends to a tax collector or property appraiser, a certified letter via the United States Postal Service, including a statement unequivocally agreeing to all the terms and scope of the agreement required by section 197.3632(2), Florida Statutes, and the tax collector and property appraiser receives the same, the requirement of a statutory agreement under section 197.3632(2), Florida Statutes, is met. Such transmittal from the local government, among other things, creates an enforceable contract satisfying the requirements of the

statute of frauds and complies with the local government's obligation to enter into the required limited written agreement in section 197.3632(2), Florida Statutes. Such action and compliance are also consistent with on-point guidance letters from the Florida Department of Revenue. Certified copies of relevant FDOR guidance letters were received into evidence as Plaintiff's Composite Exhibit 5.

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*The Legislature's Leading Role in the Supplemental Act*

FORTY-FOURTH. In developing and considering the Second Master Bond Resolution, the Board of Directors of the Plaintiff considered in particular the following determinations of the Legislature:

**(A)** In chapter 2008-227, Laws of Florida, the Legislature amended the energy goal of the State comprehensive plan to provide, in part, that the State shall reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors and reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources.

**(B)** That act also declared it the public policy of the State to play a leading role in developing and instituting energy management programs that promote energy conservation, energy security and the reduction of greenhouse gases.

**(C)** In chapter 2008-191, Laws of Florida, the Legislature adopted energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments.

**(D)** The Legislature finds that all energy-consuming improved properties that are not using energy conservation strategies contribute to

the burden affecting all improved property resulting from fossil fuel energy production.

**(E)** Improved property that has been retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption.

**(F)** All improved properties not protected from wind damage by wind resistance qualifying improvements contribute to the burden affecting all improved property resulting from potential wind damage.

**(G)** Improved property that has been retrofitted with wind resistance qualifying improvements receives the special benefit of reducing the property's burden from potential wind damage.

**(H)** The installation and operation of qualifying improvements not only benefit the affected properties for which the improvements are made, but also assist in fulfilling the goals of the State's energy and hurricane mitigation policies.

**(I)** In order to assist property owners who wish to undertake qualifying improvements, the Legislature finds there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance.

FORTY-FIFTH. Unique to the Supplemental Act is that the Legislature has acted on a statewide basis to create alternative access to capital markets for private property owners to finance and secure improvements to private property *to fulfill paramount public purposes involved with encouraging qualifying improvements* (e.g., the goals of the State's energy and hurricane policies) announced in general law.

FORTY-SIXTH. In considering the Second Master Bond Resolution, the Board of Directors of the Plaintiff employed the authority in the Charter Agreement, which provides in part:

By this Charter, the provisions of section 163.01(7)(g), Florida Statutes, the Supplemental Act, or by resolution of the governing bodies of a general purpose local government affected and as implemented pursuant to a Subscription Agreement, collectively, alternatively, or supplementally, all power and authority available to the [Plaintiff] under this Charter Agreement, and general law, including without limitation, Chapters 163, 189 and 197, Florida Statutes, shall be deemed to be authorized and may be implemented by the [Plaintiff] to serve populations within and outside of the members of the [Plaintiff].

The Charter Agreement is both formed and implemented by general law.

FORTY-SEVENTH. As expressly granted, authorized and provided by the Legislature in the Separate Legal Entity Act, and by the Charter Agreement duly implemented by general law in the manner provided by the Legislature pursuant to the provisions of the Separate



Legal Entity Act, the Plaintiff has been imbued by the Legislature with express independent authority to act by general law in all respects to independently exercise concurrently and alternatively all power and authority described as available to the Plaintiff under the Charter Agreement and general law, including without limitation, chapters 163, 189 and 197, Florida Statutes. Such express assignment of authority and responsibility to the Plaintiff, and other similarly situated separate legal entities, is duly authorized by general law to accomplish compelling state interests and may, at the sole option of the Plaintiff in this circumstance, be implemented by the Plaintiff to independently, concurrently and non-exclusively serve populations within and outside of the members of the Plaintiff with its qualifying improvement financing program and associated activities in Florida.

FORTY-EIGHTH. The power and authority of the Plaintiff to independently engage and transact with private property owners, enter into financing agreements in the manner provided by the Legislature with private property owners throughout the State to accomplish compelling state interests and impose non-ad valorem assessments, issue its obligations to fund and finance qualifying improvements, all as provided by general law is separate, alternative, concurrent with, and in all respects

independent from any other financing regime or program implemented by any other local government in Florida, unless in all respects voluntarily agreed otherwise by the Plaintiff from time to time.

FORTY-NINTH. The Legislature has announced strong and specific policy reasons in the Supplemental Act to implement the Legislature's pervasive strategy and statewide approach intended to be spread throughout Florida, broadly and non-exclusively motivating local governments to assist private property owners throughout Florida to voluntarily engage in improving the state's building stock as a supplemental means to make alternative capital more available to improve real property for paramount public purposes (e.g., addressing significant and consequential energy and environment challenges facing this State).

FIFTIETH. Expansion of the definition of 'local government' in the Supplemental Act by the Legislature in 2012 broadened the array of local governments directly authorized by the Legislature to provide funding and engaged in the compelling state interest of assisting private property owners with financing authorized by the Supplemental Act.

FIFTY-FIRST. The additional supplemental authority and non-derogation provisions of sections 163.08(1) and (16), Florida Statutes, (2022) relate to the authority and subject matter of the compelling state

interest in enabling property owners to voluntarily finance qualifying improvements with local government assistance, and does not authorize regulation of one local government by another in the financing and non-ad valorem assessment process described by the Legislature, which in the instance of the Supplemental Act and its consensual general law authority providing for voluntary imposition of assessments for qualifying improvements on private property, is within the reserved general law domain of the Legislature.

FIFTY-SECOND. Any local government defined in section 163.08(2)(a), Florida Statutes, is free to govern and regulate its own activities, but cannot frustrate the announced necessity to serve and achieve the compelling state interest, expressly determined by the Legislature in the Supplemental Act as necessary for the welfare of the State and its property owners and inhabitants, by interfering in governance and the scope of general law powers and procedures of an independent special district or special purpose local government exercised independently, concurrently and non-exclusively as expressly authorized by the Legislature. For example, regarding the circumstance of the Supplemental Act, a general purpose local government may establish its own financing program but is not authorized to prohibit associated behavior

and action by the Plaintiff otherwise expressly allowed by general law, require actions of the Plaintiff prohibited by or fundamentally contrary to general law, provide for or require another way to do the same act to the exclusion of an act expressly authorized by general law, impose conditions on or otherwise regulate the authorized exercise of general law powers by the Plaintiff, frustrate the accomplishment of compelling state interests specifically articulated as desirous statewide by general law, or provide for different methods for doing a particular act by the Plaintiff than the methods set forth by authorizing State legislation.

*Considerations by the Plaintiff*

FIFTY-THIRD. On or before August 22, 2022, the Board of Directors of the Plaintiff received and considered an independent and learned review addressing seawalls as a wind resistance improvement from Dr. Frederick Bloetscher (the "Bloetscher Report"). The Bloetscher Report was received into evidence as Plaintiff's Exhibit 6. On or before August 22, 2022, the Board of Directors of the Plaintiff also received and considered an overview and analysis concerning the Plaintiff's qualifying improvement finance program prepared by Dr. Owen Beitsch (the "Beitsch Report"). The Beitsch Report was received into evidence as Plaintiff's Exhibit 7.

FIFTY-FOURTH. Inclusive of the Bloetscher Report and the Beitsch Report, the Board of Directors has considered learned reviews and comment from qualified and knowledgeable community development, economic, and engineering expertise, insight from staff, management, program advisors, counsel, conducted a duly noticed public hearing, and as well considered the individual knowledge and considerations discussed and shared at public meetings by members of the Board of Directors both recently and over a period of years. A certified copy of the transcript of the August 22, 2022 public hearing concerning the Second Master Bond Resolution, including exemplary copies and internet links from the Plaintiff's website given to the court reporter and received into the meeting record, was received into evidence as Plaintiff's Exhibit 8.

*Seawalls Determined to be Wind Resistance Improvements*

FIFTY-FIFTH. The Bloetscher Report was accepted by the Plaintiff's Board of Directors and serves as competent, substantial evidence supporting the Plaintiff's determination that seawalls, coastal armaments and similar infrastructure facilities (collectively herein "seawalls") provide a substantial benefit to the protection of structures and property resulting from wind driven wave action, and are therefore a wind resistance improvement and a measure to offset the effects of wind and storms. In the

context of the Supplemental Act, the proviso using the “*which includes, but is not limited to*” language in section 163.08 (2)(b)3, Florida Statutes, combined with the reasoned nexus supplied by Dr. Bloetscher (that wind driven water and associated wind resistance features of seawalls supports the Plaintiff’s Board of Directors’ determination that financing of qualifying improvements such as seawalls is authorized by the Supplemental Act) is premised fundamentally upon the reasonable implication that such proviso is permissive, rather than exclusionary. The addition of seawalls to the Plaintiff’s qualifying improvement financing program is consistent with the express dictates and implications of the Supplemental Act.

Reasoned Sizing

FIFTY-SIXTH. The not to exceed dollar amount of \$5,000,000,000 provided for in the Second Master Bond Resolution is based upon competent substantial evidence from both the Bloetscher Report and the Beitsch Report considered by the Plaintiff and anticipates a conservative level of interest in the Plaintiff’s qualifying improvement finance program from qualified property owners, though the total principal balance outstanding at any point in time may be considerably lower depending on actual demand.

*The Second Master Bond Resolution*

FIFTY-SEVENTH. The Second Master Bond Resolution authorizes Plaintiff's issuance of not exceeding \$5,000,000,000 in aggregate principal amount at any one time outstanding of Florida PACE Funding Agency Revenue Bonds (Qualifying Improvement Financing Program), in Various Series, in order to provide funds with which to administer an energy, wind resistance or other qualifying improvement finance program expressly authorized by the Legislature and which comports with the Plaintiff's mission, Charter Agreement and express provisions of general law in the Separate Legal Entity Act and Supplemental Act.

FIFTY-EIGHTH. The Second Master Bond Resolution provides that the Bonds will be issued in such amounts, at such time or times, be designated as such series, be dated such date or dates, mature at such time or times, be subject to tender at such times and in such manner, contain such redemption provisions, bear interest at such rates not to exceed the maximum permitted by Florida law, including variable and fixed rates, and be payable on such dates as provided in the various trust indentures, if required by law, to be entered into and by and between the Plaintiff and one or more national banking associations or trust companies

authorized to provide trust services in Florida, to be determined by a resolution of the Plaintiff to be adopted prior to the issuance of the Bonds (the "Indentures").

FIFTY-NINTH. The Plaintiff is not prohibited from enacting, implementing and operating a non-ad valorem assessment program to finance qualifying improvements under the Supplemental Act by any provision of any agreement between any local government and a public or private power or energy provider or other utility provider, since any provision of such agreements are rendered unenforceable if used to limit or prohibit any local government from exercising its general law authority to operate a program under the Supplemental Act.

SIXTIETH. The Second Master Bond Resolution provides that the principal of, premium, if any, and interest on the Bonds shall be payable solely from the proceeds of non-ad valorem assessments imposed by the Plaintiff pursuant to financing agreements with affected property owners as provided for in the Supplemental Act, and the funds and accounts described in and as pledged and as limited under the Indentures and under any applicable or alternative subscription agreements to be executed and delivered by the local governments (the "Pledged Revenues").



SIXTY-FIRST. The Pledged Revenues pledged to one series of Bonds may be different than the Pledged Revenues pledged to other series of Bonds.

SIXTY-SECOND. Bonds issued pursuant to the Second Master Bond Resolution to redeem and/or refund any bonds or other indebtedness of the Plaintiff shall be deemed to be a continuation of the debt refunded or redeemed and shall not be considered to be an issuance of an additional principal amount of debt chargeable against the amount originally validated in this proceeding and authorized to be issued.

SIXTY-THIRD. The Bonds and any series thereof may be issued such that the interest thereon shall not be excluded from gross income of the holders thereof for purposes of federal income taxation or may be issued such that the interest thereon shall be excluded from gross income of the holders thereof for purposes of federal income taxation.

SIXTY-FOURTH. The Bonds and any series thereof may be issued such that the Bonds are or are not further secured by one or more bond insurance policies, letters of credit, surety bonds or other form of credit support.

SIXTY-FIFTH. The Second Master Bond Resolution provides that the Bonds and the obligations and covenants of the Plaintiff under the

Indentures, and other documents (collectively, the "Program Documents") shall not be or constitute a debt, liability, or general obligation of the Plaintiff, the Incorporators, the State of Florida, or any political subdivision or municipality thereof (excluding any local governments to the extent of their respective obligations under any respective subscription or other agreement in the event of a written and express guarantee), nor a pledge of the full faith and credit or any taxing power of the Plaintiff, the Incorporators, the State or any political subdivision or municipality thereof, but shall constitute special obligations payable solely from the non-ad valorem assessments as evidenced by the financing agreements and secured under the Indenture, in the manner provided therein (and in any other applicable Program Documents, only if expressly applicable). The holders of the Bonds shall not have the right to require or compel any exercise of the taxing power of the Plaintiff, the Incorporators, or any local government entering into any financing agreement with an affected property owner, the State of Florida or of any political subdivision thereof to pay the principal of, premium, if any, or interest on the Bonds or to make any other payments provided for under the Indentures, or the Program Documents. The issuance of the Bonds shall not directly, indirectly, or contingently obligate the Plaintiff, the Incorporators, the State of Florida or

any political subdivision or municipality thereof (excluding any local governments to the extent otherwise expressly provided in writing in any respective Program Documents) to levy or to pledge any form of taxation or assessments whatsoever therefore.

*Sovereign Immunity and Comprehensive Limitation of Liability*

SIXTY-SIXTH. Plaintiff and the general purpose local governments incorporating or acting as members of the Plaintiff are and shall be subject to sections 768.28 and 163.01(9)(c), Florida Statutes, and any other provisions of Florida law governing sovereign immunity. Pursuant to section 163.01(5)(o), Florida Statutes, such local governments may not be held jointly liable for the torts of the officers or employees of the Plaintiff, or any other tort attributable to the Plaintiff or another member of the Plaintiff, and the Plaintiff alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the extent of the waiver of sovereign immunity or limitation of liability as specified in section 768.28, Florida Statutes.

SIXTY-SEVENTH. Plaintiff is a legal entity separate and distinct from the Incorporators, and neither of the Incorporators, nor any subsequent local government member of the Plaintiff, nor any local government within which the Plaintiff serves and provides financing to a

property owner therein in which a non-ad valorem assessment is imposed, nor any subsequently subscribing local government shall in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of the Plaintiff, its Board of Directors nor any other agents, employees, officers or officials of the Plaintiff, except to the extent otherwise mutually and expressly agreed upon, and neither the Plaintiff, its Board of Directors or any other agents, employees, officers or officials of the Plaintiff have any authority or power to otherwise obligate any county, municipality nor any other local government, nor any subsequently participating member or subscribing local government, in any manner.

*Determinations Concerning Validation Proceeding*

SIXTY-EIGHTH. All requirements of the Constitution and laws of the State of Florida pertaining to the issuance of the Bonds and the adoption of the proceedings of the Plaintiff have been complied with.

SIXTY-NINTH. By general law pursuant to the Charter Agreement and (applicable provisions of general law) and by virtue of the authority thereof, the Plaintiff's Board of Directors, on August 22, 2022, properly and lawfully adopted the Second Master Bond Resolution. The Second Master Bond Resolution properly and lawfully authorized the issuance of the Florida PACE Funding Agency Revenue Bonds (Quality

Improvement Finance Program), Various Series not to exceed \$5,000,000,000, to fund the acquisition and/or construction of facilities and improvements including, without limitation, the construction of seawalls and other qualifying improvements as designated by the Supplemental Act or the Legislature as may be defined therein in any series as the "Project."

SEVENTIETH. Authority is conferred upon the Plaintiff, under and by virtue of the laws of the State of Florida, particularly the Constitution of the State of Florida, sections 163.01(7)(g), 163.08, 197.3632, and 197.3635, Florida Statutes, the Agency Charter, and other applicable provisions of general law, and the Second Master Bond Resolution, to issue the Bonds for the purpose of providing funds to pay the costs of the Project and paying the costs of issuing the Bonds. The legislative findings and determinations of the Board of Directors as set forth in the Second Master Bond Resolution, are lawful, valid, not arbitrary, and based upon competent substantial evidence, and consistent with overriding general law.

SEVENTY-FIRST. The character of the Bonds and the nature of the Plaintiff entitle the Plaintiff to proceed in accordance with general law and the provisions of chapter 75, Florida Statutes, including the filing of the Complaint in this Court, for the purpose of obtaining the Court's determination of the power and authority of the Agency to issue the Bonds,

the validity of the Bonds, the power and authority of the Plaintiff to independently and concurrently transact with property owners without interference or regulation from any other local government concerning the funding and financing of qualifying improvements, the imposition, collection and use of non-ad valorem assessments originated by the Plaintiff throughout the State as Pledged Revenues to repay the Bonds, and all matters in connection therewith.

SEVENTY-SECOND. Due and proper notice addressed to the State of Florida, and the taxpayers, property owners and citizens of this State, including non-residents owning property or subject to taxation therein, and all others having or claiming any right, title, or interest in property to be affected by the issuance by the Plaintiff of the Bonds and the related imposition of non-ad valorem assessments, all as directed and authorized by the Supplemental Act and the Separate Legal Entity Act, or to be affected in any way thereby, was duly published in (i) *The Tallahassee Democrat*, a newspaper published and of general circulation in Leon County, Florida, (ii) *The Daytona Beach News-Journal*, a newspaper published and of general circulation in Flagler County, Florida, and (iii) *The Orlando Sentinel*, a newspaper published and of general circulation in Osceola County, Florida, each week for two consecutive weeks, the first

such publication being not less than twenty (20) days prior to the date of said hearing, as required by law.

SEVENTY-THIRD. The Answers of the State Attorneys for and on behalf of the State of Florida, and any parties intervening, if any, have been carefully considered by this Court. Such Answers, or appearances if any, show no cause why the prayers of the Agency should not be granted and discloses no irregularity or illegality in the proceedings set forth in the Complaint.

SEVENTY-FOURTH. This Court has found that all requirements of the Constitution and laws of the State of Florida pertaining to the applicable law and proceedings in the above entitled matter have been followed.

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that the issuance by the Plaintiff of its not to exceed \$5,000,000,000 Florida PACE Funding Agency Revenue Bonds (Qualifying Improvement Finance Program), Various Series, bearing interest payable in such manner and on such dates, at interest rates not exceeding the maximum rate permitted by law, all as provided by resolution of the Plaintiff, is for proper, legal and paramount public purposes and is fully authorized by law, and that this Final Judgment validates and confirms the authority of the Plaintiff to issue the Bonds; the legality and validity of the Second Master Bond Resolution

and the independent and concurrent imposition and means of collection of non-ad valorem assessments to annually fund the agreed upon debt service to repay the cost of funding and financing the assessments; the special benefit conveyed to real property or the relief of burden caused by real property as agreed to by each property upon consenting to the assessments which run with, touch and concern the affected real property; the method of determining and apportioning the assessments among real property subject thereto; the rates, fees, and charges comprising the assessment along with the apportioned costs of administration; the lien of assessments being equal in rank and dignity with the lien of all state, county and municipal taxes; the power and method of collection provided in the Supplemental Act; the pledge of the assessments to the payment of the Bonds; and, the legality of all proceedings and matters in connection therewith.

There shall be stamped or written on the back of the Bonds a statement in substantially the following form:

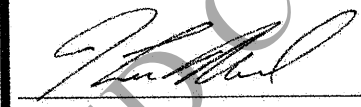
“This Bond was validated by judgment of the Circuit Court for Leon County, Florida rendered on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Chair”



provided that such statement or certificate shall not be affixed within thirty (30) days after the date of this judgment and unless no appeal be filed in this cause.

DONE AND ORDERED at the Leon County Courthouse in Tallahassee, Florida this Thursday, October 6, 2022.

2022-CA-001562-10/06/2022 03:21:07 PM  
  
Lee Marsh, Circuit Judge

37-2022-CA-001562 10/06/2022 03:21:07 PM

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Conformed copies by email to:

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**Palm Beach County  
Board of County  
Commissioners**

Gregg K. Weiss, Mayor

Maria Sachs, Vice Mayor

Maria G. Marino

Michael A. Barnett

Marci Woodward

Sara Baxter

Mack Bernard

**County Administrator**

Verdenia C. Baker

*"An Equal Opportunity  
Affirmative Action Employer"*

Official Electronic Letterhead

March 7, 2023

Florida Pace Funding Agency (FPFA)  
c/o Mike Moran  
4411 Bee Ridge Ed. #134  
Sarasota, FL 34233

Dear Mr. Moran,

Palm Beach County Attorney's Office is in receipt of your January 3, 2023 Letter.

We acknowledge the termination of FPFA's Interlocal Agreement with the County (ILA). However, it is the County's position that FPFA does not have the legal authority to continue operating in Palm Beach County without an executed ILA and outside of the amended PACE Ordinance No. 2022-030.

The bond validation judgment rendered in Case No. 2022-CA-1562, by a Circuit Court in Leon County, is not binding on Palm Beach County. The court's conclusion that FPFA may operate independent of local government regulation on a statewide basis is beyond the statutory scope of bond validation proceedings, and infringes upon the County's constitutional authority.

We are also troubled that though Palm Beach County was member of FPFA at the time that judgment was issued, and had interest in properties affected by the judgment, FPFA never published notice in Palm Beach County, nor did it notify the County that the bond validation proceeding was pending. This is a clear violation of the County's constitutional and statutory procedural due process rights because the County was deprived of a real opportunity to be heard on a matter that ultimately infringed upon the County's substantive rights.

In conclusion, we demand that you immediately cease and desist your operations in Palm Beach County, and immediately stop executing new financing agreements with property owners in Palm Beach County.

Best regards,

Marianna Sarkisyan, Esq.  
Assistant County Attorney  
Palm Beach County Attorney's Office

ec: David Ottey, Chief Assistant County Attorney  
Scott Holtz, Assistant County Attorney

**EXHIBIT**

IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

CASE NO.:

PALM BEACH COUNTY,  
Plaintiff,

v.

FLORIDA PACE FUNDING AGENCY,  
Defendant.

\_\_\_\_\_ /

**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

For its VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF against Defendant, FLORIDA PACE FUNDING AGENCY (FPFA), PALM BEACH COUNTY (County), alleges, by and through the undersigned counsel, and avers, by and through its County Administrator as follows:

**PRELIMINARY STATEMENT**

1. The County brings this civil action to challenge FPFA's continued operation within Palm Beach County without the requirement of an Interlocal Agreement and in violation of Ordinance 2022-030, which violate the County's Charter and general law.

**JURISDICTION AND VENUE**

2. This is an action for declaratory relief brought pursuant to section 86.021, Florida Statutes, and injunctive relief pursuant to section 86.061, Florida Statutes.

3. This Court has jurisdiction to issue declaratory judgments pursuant to section 86.011, Florida Statutes and to issue injunctive relief pursuant to section 26.012(3), Florida Statutes.

4. Venue is appropriate in Palm Beach County, Florida because the acts complained

4. Venue is appropriate in Palm Beach County, Florida because the acts complained of herein occurred in Palm Beach County and pertains to the Defendant's business operation in Palm Beach County

5. All pre-suit conditions have been met.

6. On April 18, 2023, the County's Board of County Commissioners passed Resolution 2023-0546 by a unanimous vote finding that FPFA's continued operation within Palm Beach County without the requirement of an Interlocal Agreement, and in violation of Ordinance 2022-030, constituted an immediate danger to the health, safety, or welfare of the public requiring immediate action. Resolution 2023-0546 also found that FPFA's ongoing actions compromise significant legal rights of the County. Accordingly, there are no administrative remedies required before the maintenance of this suit.

#### PARTIES

7. Plaintiff, Palm Beach County, is a political subdivision of the State of Florida, with the authority to sue and be sued.

8. Defendant, FPFA, is a separate legal entity created pursuant to section 163.01(7), Florida Statutes. FPFA was created in June of 2011, by Interlocal Agreement Relating to the Establishment of the Florida PACE Funding Agency, and was established between Flagler County, Florida and the City of Kissimmee, Florida acting as original incorporators pursuant to section 163.01(7), Florida Statutes. The Interlocal Agreement was restated and amended in 2017. FPFA has the authority to sue and be sued. The Restated and Amended Interlocal Agreement Relating to the Establishment of the Florida PACE Funding Agency is attached hereto as *Exhibit 1*.

## **FPFA'S UNLAWFUL ACTIONS**

### **The Background of PACE Programs**

9. Property Assessed Clean Energy (PACE) is a type of financing used for certain types of building improvements that consumers and businesses pay back by an assessment collected through their property taxes.

10. Section 163.08, Florida Statutes, entitled "Supplemental authority for improvements to real property," (PACE Act) creates the framework for PACE programs to operate in Florida. The statute permits PACE programs to levy non-ad valorem assessments, allowing property owners to finance certain energy efficiency, renewable energy, and wind resistant improvements.

11. PACE programs are typically established by local governments, as defined by section 163.08, Florida Statutes, and are administered either by a local government, for-profit or not-for-profit entities.

12. The PACE Act states that all PACE applications and financing agreements are subject to local government ordinance or resolution.

13. PACE financing is repaid through a special (non-ad valorem) assessment on the property's regular tax bill each year. The PACE assessment is collected pursuant to section 197.3632, Florida Statutes, "Uniform method for levy, collection, and enforcement of non-ad valorem assessments."

14. The assessment attaches to the property, rather than the owner of the property, therefore, if the property owner sells the property before the assessment is paid off, the balance of the assessment remains with the property.

### **The County's PACE Ordinances**

15. On April 4, 2017, the County adopted Ordinance 2017-012 (PACE Ordinance). The County's stated intent in adopting the Ordinance was to "establish qualifications and consumer protection disclosure requirements for PACE programs that provide financing for qualifying improvements in accordance with section 163.08, Florida Statutes, and provisions of this Ordinance." The PACE Ordinance is attached hereto as *Exhibit 2*.

16. On August 15, 2017, the County simultaneously executed a Resolution and an accompanying Interlocal Agreement (ILA), authorizing FPFA to levy non-ad valorem assessments on properties within Palm Beach County's PACE boundaries. The Resolution and Interlocal Agreement are attached here to as *Exhibit 3* and *Exhibit 4* respectively.

17. The ILA included specific terms and conditions for FPFA to operate within Palm Beach County. The ILA among other things, required that any program FPFA offered in the County and participating municipalities, had to comply with program guidelines and consumer protections set forth in the PACE Ordinance, as may be amended from time to time. The ILA contained substantive consumer protection requirements that were material to the County's decision to allow FPFA to conduct its program in accordance with the Palm Beach County Charter and Palm Beach County Code, and levy non-ad valorem special assessments, in the County.

18. Palm Beach County has entered into similar ILAs with three other PACE providers, and all have agreed to these same consumer protection requirements.

19. On November 15, 2022, the County adopted and approved Ordinance 2022-030 (Amended PACE Ordinance). The Amended PACE Ordinance clarified and strengthened qualifications and consumer protection disclosure requirements for PACE programs that operate within Palm Beach County. The Amended PACE Ordinance is attached hereto as *Exhibit 5*.



20. The Amended Ordinance has been adopted and codified in the Palm Beach County's Code of Ordinances (County Code), in Chapter 17 "Licenses, Taxation and Miscellaneous Regulations pursuant to the County's home rule authority, effective November 16, 2022.

#### **FPFA'S Illegal Operations within Palm Beach County**

21. On or about January 3, 2023, the County received a certified letter from FPFA, in which FPFA announced that it was immediately terminating its ILA with the County, citing to the County's adoption of the Amended PACE Ordinance as grounds for the termination. The FPFA Letter is attached hereto as *Exhibit 6*.

22. FPFA's stated position in its letter is consistent with its vehement opposition to the County amending the PACE Ordinance with the additional consumer protection requirements, prior to the passage of the Amended PACE Ordinance.

23. FPFA, in its letter, stated that though it was terminating the ILA, and would not participate in the regulatory structure that the County has established, that it would continue operating in the County based on its "independent authority" on a "uniform statewide basis" as recognized in a Bond Validation Final Judgment, issued in Case No. 2022-CA-1562, by the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida (Leon County Circuit Court), on October 6, 2022. ("Final Judgment.") The Final Judgment is attached hereto as *Exhibit 7*.

24. Case No. 2022-CA-1562, Florida PACE Funding Agency v. State of Florida et. al., was a bond validation proceeding, brought pursuant to Chapter 75 and section 163.01(7)(d), Florida Statutes. In its Complaint for Validation, FPFA sought to validate the total of Five Billion Dollars (\$5,000,000,000) in FPFA Revenue Bonds.

25. The parties to the Bond Validation Case were FPFA as Plaintiff and the State of



Florida, “the taxpayers, property owners and citizens of the State of Florida, including nonresidents owning property to be affected by the issuance of the Bonds herein described or to be affected in any way thereby” as the defendants.

26. Generally, the purpose of a bond validation proceeding is to procure in advance final judicial determination of the validity of bonds issued by counties or other political subdivisions. As acknowledged in the Final Judgment, in a bond validation proceeding, a court has three tasks: it must determine 1) whether the bond issuer (FPFA) has legal authority to issue the contemplated indebtedness; 2) whether the purpose of the obligation is legal; and 3) whether the issuance complies with the requirements of law.

27. The Leon County Circuit Court approved FPFA’s authority to finance qualifying improvements for property owners in Florida in the aggregate principal amount of Five Billion Dollars (\$5,000,000,000.00).

28. However, in rendering its Final Judgment, the Leon County Circuit Court also made a number of collateral findings that went beyond the statutory scope of bond validation proceedings, including, the finding that is at issue in this case: that FPFA may operate independent of local government regulation and cooperation, and has independent authority to impose non-ad valorem assessments statewide<sup>1</sup>.

29. This collateral finding incorporated into the Bond Validation Final Judgment affects the rights and powers of Palm Beach County and property owners within Palm Beach County, and purports to eliminate Palm Beach County’s authority to regulate within Palm Beach County.

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<sup>1</sup> The Court’s other findings that went beyond the scope of the bond validation proceeding included findings that the tax collector’s role as purely ministerial and have no discretion with regard to the collection of non-ad valorem assessments; and that seawalls constitute a qualifying improvement that may be financed through FPFA financing

30. This collateral finding is also in direct conflict with the express language of the PACE Act, which in section 163.08(4) provides explicitly that “*subject to local government ordinance or resolution*, a property owner may apply to the local government for funding to finance a qualifying improvement and enter into a financing agreement with the local government” and in section 163.08 (15) states that, “*this section is additional and supplemental to county and municipal home rule authority and not in derogation of such authority or a limitation upon such authority.*”

31. Though the County had agreements with FPFA at the time that the Final Judgment was issued, and had an interest in properties intended by FPFA to be affected by the judgment, FPFA failed to publish notice in Palm Beach County, or otherwise notify the County that the bond validation proceeding was pending.

32. The County only learned of the Final Judgment when it received FPFA’s January 3, 2023 Letter.

33. As such, the County was deprived of an opportunity to be heard on a matter that ultimately infringed on the County’s constitutional and statutory procedural due process rights.

34. On March 7, 2023, the County sent correspondence to FPFA via certified mail, in which the County informed FPFA that it did not have the legal authority to continue operating in Palm Beach County without an executed Interlocal Agreement, and without FPFA complying with the consumer protection provisions of the Amended PACE Ordinance. The County’s Letter is attached hereto as *Exhibit 8*.

35. The County demanded that FPFA immediately cease and desist its operations in Palm Beach County, and immediately stop executing new financing agreements with property owners in Palm Beach County.

36. Notwithstanding the County's letter, from March 7, 2023 to April 11, 2023, FPFA has executed approximately 136 new loans in Palm Beach County, for approximately 4.4 million dollars (\$4,400,000.00) in total, and continues to originate new loans.

### Legal Framework

37. Article VIII, section 1(g) of the Florida Constitution states that:

*Charter Government. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances. (Emphasis added).<sup>2</sup>*

38. Palm Beach County's Charter was lawfully enacted.

39. Palm Beach County Charter Article III, section 3.3, – Protection of Health, Safety and Welfare – sets forth that:

*It shall be the policy of the county to protect the health, safety, and general welfare of all residents of Palm Beach County. The Board of County Commissioners may adopt appropriate ordinances to accomplish these purposes....*

40. Sections 125.01(1)(h) and (t) Florida Statutes – Powers and duties – state that:

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, *this power includes, but is not restricted to, the power to:*

...

(h) *Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public.*

...

(t) *Adopt ordinances and resolutions necessary for the exercise of its powers and prescribed fines and penalties for the violation of ordinances in accordance with law. (Emphasis added).*

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<sup>2</sup> Though the 2017 amended interlocal agreement creating the FPFA refers to itself as a "Charter Agreement" it should not be confused with a County local government Charter as contemplated by the Florida Constitution which creates constitutional home rule powers.

41. Section 163.08(4), Florida Statutes – Supplemental authority for improvements to real property – states that:

*Subject to local government ordinance or resolution, a property owner may apply to the local government for funding to finance a qualifying improvement and enter into a financing agreement with the local government. Costs incurred by the local government for such purpose may be collected as a non-ad valorem assessment. (Emphasis added).*

42. Section 163.08(2)(a), Florida Statutes – Supplemental authority for improvements to real property – states that:

(2) As used in this section the term:

...  
(a) “Local government” means a county, a municipality, a dependent special district as defined in s. 189.012, or a separate legal entity created pursuant to s. 163.01(7)

43. Section 163.08(15), Florida Statutes – Supplemental authority for improvements to real property – states that:

*This section is additional and supplemental to county and municipal home rule authority and is not in derogation of such authority or a limitation upon such authority. (Emphasis added).*

44. Section 75.09, Florida Statutes (2022), provides in relevant part that judgments validating bonds are:

forever conclusive as to all matters adjudicated against plaintiff [the party seeking bond validation] and all parties affected thereby, including all property owners, taxpayers and citizens of the plaintiff, and all others having or claiming any right, title or interest in the property to be affected in any way thereby....

45. However, it is well established in Florida law that:

[i]t was never intended that proceedings instituted under the authority of this chapter [Chapter 75] to validate governmental securities would be used for the purpose of deciding collateral issues or other issues not going directly to the power to issue the securities and the validity of the proceedings with relation thereto.”

*Gainesville v. State*, 366 So.2d 1164, 1166 (Fla. 1979) citing *State v. City of Miami*, 103 So.2d 185, 188 (Fla. 1958), emphasis added.

### **COUNT I – DECLARATORY JUDGMENT**

46. The County incorporates and re-alleges the allegations in Paragraphs 1-45 as if fully set forth herein.

47. The County maintains that pursuant to section 163.08, Florida Statutes, that all PACE applications and financing agreements are subject to local government ordinance or resolution. Pursuant to the Amended PACE Ordinance, PACE providers such as FPFA can only operate in the County subject to an executed Interlocal Agreement, and in compliance with the Ordinance. However, FPFA contends that based on the collateral issues decided the bond validation proceeding, that it can continue operations in Palm Beach County without entering into an Interlocal Agreement with the County, and without having to comply with the County's Amended PACE Ordinance. Consequently, FPFA is continuing its operations in the County. Based on FPFA's actions, the County's rights and obligations as it relates to the operation of FPFA's program in the County have been placed in doubt.

48. Accordingly, there is a bona fide, actual, present and practical need for a declaration by this Court as to resolve this dispute.

49. The County seeks a declaration from this Court determining that in FPFA cannot operate in Palm Beach County without entering into an Interlocal Agreement with the County, and without having to comply with the Amended PACE Ordinance.

50. The County's request for declaration concerns a present, concrete and ascertainable state of facts and a present controversy pertaining to those facts. Thus, this Court is not asked to offer an advisory opinion or opine on a hypothetical situation.



51. The County and FPFA each have an actual, present, antagonistic, and adverse interest in the subject matter before the Court. FPFA's interests are directly adverse to the interests of Palm Beach County, as FPFA claims that it can operate in the County without complying with the Amended PACE Ordinance and without entering into an Interlocal Agreement, a position that the County disagrees with, and which is contrary to the Florida Constitution, state law, the County's Charter, and County Ordinance.

**WHEREFORE**, the County requests a final declaratory judgment against the Defendant, Florida PACE Funding Agency, as follows:

- i) That Palm Beach County can enforce the Amended PACE Ordinance, adopted pursuant to home rule charter authority against FPFA;
- ii) That FPFA cannot operate in Palm Beach County unless it complies with the provisions of the Amended PACE Ordinance;
- iii) that FPFA cannot operate in Palm Beach County without first entering into an Interlocal Agreement with the County;
- iv) That the collateral issues contained in the Final Judgment, rendered in *Florida PACE Funding Agency v. State of Florida, et. al.*, 2022-CA-001562 (Fla. 2d Cir. Ct. October 6, 2022), are not binding on Palm Beach County, and do not prohibit Palm Beach County from enforcing its consumer protection or other powers in the County.
- v) That, pursuant to section 86.061, Florida Statutes, the County may apply by motion to the Court for further relief based upon the declaratory judgment;
- vi) Awarding costs; and
- vii) For any other declaration finding FPFA's actions unlawful that this Court determines is consistent with justice and the law.

## **COUNT II – INJUNCTIVE RELIEF**

52. The County incorporates and re-alleges the allegations in Paragraphs 1-45 as if fully stated herein.

53. As a form of supplemental relief authorized by sections 26.012(3), 86.011(2) and 86.061, Florida Statutes, Palm Beach County seeks injunctive relief enjoining FPFA from conducting PACE business in Palm Beach County in violation of the County Code.

54. The County is suffering from irreparable harm and has no adequate remedy at law as FPFA is violating the Florida Constitution, section 163.08, Florida Statutes, the County's Charter and the Amended PACE Ordinance by its continued operation in Palm Beach County without the benefit of an Interlocal Agreement with the County and by entering into financing agreements with property owners that do not comply with the requirements of the Amended PACE Ordinance.

55. The threat to the County's Charter and ordinance outweighs the harm to FPFA because FPFA's unlawful continued operation in Palm Beach County without the benefit of an Interlocal Agreement with the County and FPFA's entering into financing agreements with property owners that do not comply with the requirements of the Amended PACE Ordinance, violate the Florida Constitution, section 163.08, Florida Statutes, the County's Charter and the Amended PACE Ordinance.

56. The County's Charter and the Amended PACE Ordinance reflect the will of the people and were put in place by the voters and therefore, injunctive relief will serve the public interests.

57. The public's interest is served by the enforcement of general law with respect to the powers given to and reserved for charter counties.

58. The public's interest is served by the enforcement of the County's duly adopted

ordinances enacted for the public welfare.

59. FPFA's unlawful actions have caused, are causing, and will continue to cause the County to suffer undue and actual hardship and irreparable injury.

60. The County has no adequate remedy at law to correct the continuing violation of its Charter and Amended Pace Ordinance.

**WHEREFORE**, the County prays that this Court issue the following relief:

- i) A permanent injunction enjoining FPFA from entering into financing agreements with property owners in Palm Beach County, unless and until such time as FPFA has a valid Interlocal Agreement with the County;
- ii) A permanent injunction enjoining FPFA from entering into financing agreements with property owners in Palm Beach County that do not comport with the requirements for such agreements provided for by County ordinance;
- iii) A temporary injunction enjoining FPFA from entering into financing agreements with property owners in Palm Beach County, unless and until such time as FPFA has a valid Interlocal Agreement with the County;
- iv) A temporary injunction enjoining FPFA from entering into financing agreements with property owners in Palm Beach County that do not comport with the requirements for such agreements provided for by the County's Amended PACE Ordinance;
- v) Attorney's fees and costs, and;
- vi) Any relief the Court deems just and proper.

*This space intentionally left blank*



**VERIFICATION**

Under penalties of perjury, I declare that I have read the foregoing Complaint for Declaratory and Injunctive Relief and Damages against the Florida PACE Funding Agency and that the facts stated in it are true.

DATED this 28th day of April 2023.



Patrick W. Rutter  
Assistant County Administrator  
Palm Beach County

Respectfully submitted this 28th day of April, 2023.

/s/ Marianna Sarkisyan

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## Florida PACE Funding Agency

Amended and Restated Interlocal Agreement Relating to the Establishment of the Florida PACE Funding Agency between the Board of County Commissioners of Flagler County and the City Commission of the City of Kissimmee, entered into and effective as of February 20, 2017

Annexed hereto:

Florida PACE Funding Agency Amended and Restated Charter Agreement

### Certification

The Florida PACE Funding Agency, a legally existing public body corporate and politic within the State of Florida (the "Agency"), does hereby affix its seal and certify that the instrument to which this Certification is attached is a true and correct copy thereof and is included in the records of the Agency.

FLORIDA PACE FUNDING AGENCY

By: CounterPointe Energy Solutions (FL) LLC, as the Agency's Program Administrator

By: 

Name: David S. Schaefer

Title: Chief Operating Officer

Date: 4/13/2017



**AMENDED AND RESTATED  
INTERLOCAL AGREEMENT  
RELATING TO THE ESTABLISHMENT OF THE  
FLORIDA PACE FUNDING AGENCY**

NOT A CERTIFIED COPY

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**AMENDED AND RESTATED  
INTERLOCAL AGREEMENT RELATING TO THE ESTABLISHMENT OF  
THE FLORIDA PACE FUNDING AGENCY**

**THIS AMENDED AND RESTATED OF THE INTERLOCAL AGREEMENT** is made and entered into as of the last date of execution hereof by the Incorporators (hereinafter the "Charter Agreement" or "Charter"), by and among the local governments acting as Incorporators hereof (each an "Incorporator", and collectively, the "Incorporators") as evidenced by their execution hereof, by and through their respective governing bodies. This amendment and restatement concerns the Interlocal Agreement recorded at Official Record Book 4143, at Page 2562, as amended at Official Record Book 4210, at Page 2544 in the Official Records of Osceola County, Florida, and in Record Book 1821 at Page 1493, as amended at Official Record Book, at Page 1843, page 415 in the Official Records of Flagler County, Florida (the "Interlocal Agreement"). The purpose of the Interlocal Agreement was to create and establish a separate legal entity, public body and unit of local government, pursuant to Section 163.01(7)(g), Florida Statutes, with all of the privileges, benefits, powers and terms provided for therein and by law.

**WITNESSETH:**

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and for other good and valuable consideration each to the other, receipt of which is hereby acknowledged by each Incorporator and the Agency, the parties hereby update, amend, codify and restate the Interlocal Agreement, and agree, stipulate and covenant as follows:

## ARTICLE I DEFINITIONS AND CONSTRUCTION

**SECTION 1.01. DEFINITIONS.** As used in this Charter Agreement, the following terms shall have the meanings as defined unless the context requires otherwise:

**"Agency"** means the Florida PACE Funding Agency, a separate legal entity and public body created pursuant to the provisions of the Interlocal Agreement, and as updated, amended, codified and restated by this Charter Agreement. The name or acronym PACE is derived from the concept commonly referred to as 'property assessed clean energy' and relates hereto to the provisions of general law related to funding and financing energy efficiency, renewable energy, and/or wind resistance improvements encouraged and authorized by Section 163.08, Florida Statutes.

**"Charter Agreement"** or **"Charter"** means this Charter Agreement which updates, amends, codifies as a single document, and restates the Interlocal Agreement in its entirety and confirms the establishment of the Agency, including any amendments and supplements hereto executed and delivered in accordance with the terms hereof.

**"Financing Documents"** shall mean the resolution or resolutions duly adopted by the Agency, as well as any indenture of trust, trust agreement, interlocal agreement or other instrument relating to the issuance or security of any bond or debt obligations of the Agency, or the lending or provision of the proceeds thereof to a Subscribing Local Government.

**"Incorporator" and "Incorporators"** shall mean those local governments executing the Interlocal Agreement and this Charter Agreement, acting as the Incorporators of the Agency, and any future constituent local government member of the Agency who may join in to this Charter Agreement.

**"Obligations"** shall mean a series of bonds, obligations or any other evidence of indebtedness, including, but not limited to, notes, commercial paper, certificates or any other obligations of the Agency issued under the Interlocal Agreement or hereunder, or under any general law provisions, and pursuant to the Financing Documents. The term shall also include any lawful debt obligation committed to by the Agency pursuant to an interlocal agreement with another governmental body or agency and/or warrants issued for services rendered or administration expenses.

**"Pledged Funds"** shall mean (A) the revenues derived from non-ad valorem special assessments levied in association with Qualified Improvements by a local government or the Agency and other moneys received by the Agency or its designee relating to some portion thereof, (B) until applied in accordance with the terms of the Financing Documents, all moneys in the funds, accounts and sub-accounts established thereby, including investments therein, and (C) such other property, assets and moneys of the Agency as shall be pledged pursuant to the Financing Documents; in each case to the extent provided by the Board of Directors pursuant to the Financing Documents. The Pledged Funds pledged to one series of Obligations may be different than the Pledged Funds pledged to other series of Obligations. Pledged Funds shall not include any general or performance assurance fund or account of the Agency.

**"Qualifying Improvement"** means those improvements for energy efficiency, renewable energy, and/or wind resistance or any such similar purposes described or authorized in the Supplemental Act or any amendment thereto, to be affixed or installed by the record owner of an affected property. Until subsequently determined by the Board of Directors of the Agency once the Agency's programs have become established, Qualifying Improvements shall not include improvements completed before the property has received an initial certificate of occupancy.

**"Serve", "service" or the "provision of service"** as such terms are used herein relate to a governmental function or purpose identified by law, which serve and achieve what the Legislature has determined as a compelling state interest necessary for the prosperity and welfare of the state and its property owners and inhabitants, and shall include and mean all actions authorized by the Supplemental Act and this Charter, including, but not limited to, the funding and financing of Qualifying Improvements through the execution of financing agreements and the related imposition of voluntary non-ad valorem assessments to finance facilities on behalf of private property owners within or outside of any Incorporator, all of which have been authorized and declared by the Legislature to benefit the people of the state, increase their commerce and prosperity, improve their health and living conditions, and to allow for the performance of essential governmental functions by the Agency.

**"Subscribing Local Government" or "Subscriber"** shall mean any municipality, county or other government permitted by the Supplemental Act to enter into financing agreements as provided for therein which elects to participate in the Agency's financing program for Qualifying Improvements by entering into a Subscription Agreement with the Agency.

**"Subscription Agreement"** means a separate interlocal agreement between the Agency and any municipality, county or other government permitted by general law to

finance Qualifying Improvements or permitted by the Supplemental Act to enter into financing agreements as provided for therein. At a minimum, such Subscription Agreement shall provide for (1) the request or confirmation of authority of the Agency to act, provide its services, and conduct its affairs in cooperation with and/or within the subscribing government's area of service or boundaries; (2) the Agency or local government to facilitate by law the voluntary acquisition, delivery, installation or any other manner of provision of Qualifying Improvements to record owners desiring such improvements who are willing to enter into financing agreements as provided for in the Supplemental Act and agree to impose non-ad valorem assessments which shall run with the land on their respective properties; (3) the Agency or local government to levy, impose and collect non-ad valorem assessments pursuant to such financing agreements; (4) the issuance of Obligations of the Agency to fund and finance the Qualifying Improvements; (5) the proceeds of such non-ad valorem assessments to be timely and faithfully paid to the Agency or its bondholders; (6) the withdrawal from, discontinuance of, or termination of the Subscription Agreement by either party upon reasonable notice in a manner not detrimental to the holders of any Obligations of the Agency or inconsistent with general law or any Financing Documents; (7) such disclosures, consents or waivers reasonably necessary to concurrently use or employ the service and activities of the Agency; and (8) such other covenants or provisions deemed necessary and mutually agreed to by the parties in respect of general law to carry out the purpose and mission of the Agency.

"**Supplemental Act**" means the provisions of, and additional and supplemental authority described in, Section 163.08, Florida Statutes, and as may be amended from time to time and contemporaneously in effect.

#### **SECTION 1.02 CONSTRUCTION.**

A) Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms and corporations. The terms "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms, shall refer to this Charter Agreement; the term "heretofore" shall mean before the date this Charter Agreement is entered into; and the term "hereafter" shall mean after the date this Charter Agreement is entered into.

B) Each recital, covenant, agreement, representation and warranty made by a party herein shall be deemed to have been material and to have been relied on by the other party to this Charter Agreement. Each Incorporator has reviewed and desires to enter into this Charter Agreement; the Agency is a successor to such Incorporators and a beneficiary thereof, and the provisions hereof shall not be construed for or against any Incorporator or the Agency by reason of authorship or incorporation.



**SECTION 1.03. SECTION HEADINGS.** Any headings preceding the texts of the several Articles and Sections of this Charter Agreement and any table of contents or marginal notes appended to copies hereof shall be solely for convenience of reference and shall neither constitute a part of this Charter Agreement nor affect its meaning, construction or effect.

**SECTION 1.04. FINDINGS.** It is hereby ascertained, determined and declared that:

(A) The Legislature has determined that all energy consuming improvements to property that are not using energy conservation strategies contribute to the burden resulting from fossil fuel energy production. This comports with the declared public policy of the State to play a leading role in developing and instituting energy management programs to promote energy conservation, energy security, and the reduction of greenhouse gases, in addition to establishing policies to promote the use of renewable energy.

(B) The Legislature has also determined that improved properties not protected from wind damage by wind-resistant improvements contribute to the burden resulting from potential wind damage; and, the installation and operation of Qualifying Improvements not only benefit the affected properties for which the improvements are made, but also assist in fulfilling the goals of the State's energy and hurricane mitigation policies.

(C) In the Supplemental Act, the Legislature finds that there is a compelling State interest in enabling property owners to voluntarily finance such improvements with local government facilitative assistance.

(D) In the Supplemental Act, the Legislature makes it clear that the financing of Qualifying Improvements through the execution of financing agreements and related imposition of voluntary assessments is reasonable and necessary for the prosperity and welfare of the State and its property owners and inhabitants.

(E) The Supplemental Act also expressly allows for, but does not require, local governments to enter into partnerships with one or more local governments for the purpose of providing and financing Qualifying Improvements. Such provision allows among other things for innovation in carrying out service and the compelling state interest described in the Supplemental Act.

(F) Although, in theory, assessments for Qualifying Improvements could be imposed under home rule authority, the Legislature felt it necessary and desirable to

provide supplemental authority and encouragement which provides a framework for local, regional, and even state-wide approaches to service. The Supplemental Act provides guidelines, safeguards and clarifies necessary aspects of implementation. The concept that each landowner voluntarily subjects their land as security for payment of the non-ad valorem assessments through an individual financing agreement is unique and fundamental to reasonably attracting funding secured by assessments for Qualifying Improvements which include energy efficiency, renewable energy, wind resistant improvements.

(G) A simplified and standardized state-wide program offers efficiencies, economies of scale, and uniformity that can efficiently attract a stream of financing and uniform program implementation and avoid administrative burdens and inefficient expenditures by local governments throughout Florida. The approach embodied in this Charter Agreement allows the local governments executing this Charter Agreement to act initially as 'incorporators' to create a focused single legal entity which minimizes their involvement and exposure in a manner like that of an incorporator in the corporate sense. The Legislature has expressly determined that the Agency shall be defined as a local government in the Supplemental Act and is independently authorized by law to impose these types of voluntary assessments for energy efficiency, renewable energy or wind resistant Qualifying Improvements.

(H) The Agency achieves local economic development, the hardening of building stock and creates local jobs by bringing owners and contractors together to facilitate the provision, funding, and financing of Qualifying Improvements. As a separate legal entity, the Agency is expressly authorized by general law to finance facilities on behalf of any person relating to a governmental function or purpose which may serve populations within or outside of the members of the entity.

(I) This approach requires a match of demand by individual property owners, both residential and commercial, to the reservoir of qualified labor, tradesmen and vendors in communities throughout Florida. The Agency presents *inter alia* a focused governmental function of attracting and educating qualified labor, tradesman and vendors in how to effectively serve a new market. Facilitation by creating uniform and standardized approaches, careful disclosure to interested private property owners, and developing financing underwritten voluntarily by individual property owners not only addresses energy efficiency, renewable energy, and/or wind resistance burdens and benefits, but will stimulate a substantial and meaningful flow of private sector economic activity and new job creation.

(J) The creation and establishment of the Florida PACE Funding Agency serves to minimize duplication of effort and unnecessary government exposure or

involvement, and by law accomplishes a compelling state interest through the provision of service by making available uniform, competitive and credible funding and financing for individual property owners wishing to participate. The increased availability of funding and financing service by the Florida PACE Funding Agency serves to convert a resource of unused trade and construction skill-sets into productive new private sector job markets, naturally creates local employment, and carefully complies with relevant industry guidelines, safeguards and implementation authorization provided by the Legislature in the Supplemental Act.

(K) This Charter Agreement serves to expressly address and conform to a change in general law subsequent to the execution and effective date of the Interlocal Agreement in order to more broadly serve and provide competitive opportunities to communities, labor markets, material markets, populations, and persons and help to improve properties throughout Florida in order to assist property owners in voluntarily achieving the compelling state interest and fulfilling the goal of the state's energy and hurricane policies articulated in the Supplemental Act.

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**ARTICLE II  
THE AGENCY**

**SECTION 2.01. ESTABLISHMENT AND CREATION.**

(A) Creation and establishment of the "Florida PACE Funding Agency," a separate legal entity and public body and unit of local government with all of the privileges, benefits, powers and terms provided for herein and by law, and as defined herein as the "Agency", by the Interlocal Agreement is ratified and confirmed.

(B) Initial membership in and the Incorporators of the Agency consists of those local governments executing the Interlocal Agreement and this Charter Agreement as Incorporators. To the extent permitted by Section 163.01, Florida Statutes, additional members may be included or deleted by amendment hereto approved by all member local governments of the Agency and the governing body of the Agency. As a condition to membership in the Agency, each member shall be a municipality or county, or other government permitted by the Supplemental Act to enter into financing agreements as provided for therein.

(C) The boundaries or non-exclusive jurisdiction of the Agency shall embrace the territory of any county or municipality throughout the state within which any person owning a property therein determines to enter into a financing agreement evidencing the levy and imposition of a non-ad valorem assessment for a Qualifying Improvement funded or financed by the Agency.

(D) A municipality or county or other government permitted by the Supplemental Act to enter into financing agreements as provided for therein need not be a local government member in or of the Agency, and by law need not otherwise enter into a Subscription Agreement, nor undertake any exclusive relationship with the Agency, nor otherwise take any action to acquiesce, encourage or request the Agency to act, provide its services, or conduct its affairs within the local governments' boundaries.

(E) The Agency is created for purposes set forth in Section 163.01(7)(g), Florida Statutes, and this Charter Agreement as the same may be amended from time to time, in order to facilitate, administer, implement and assist in providing funding and financing for Qualifying Improvements, enter into Subscription Agreements and other agreements, and otherwise serve or provide its services to facilitate financing agreements and non-ad valorem assessments only on properties subjected to same by the record owners thereof, develop funding and financing markets, develop structures and procedures to finance Qualifying Improvements, and to take any actions associated

therewith or necessarily resulting therefrom, as contemplated by the Supplemental Act and general law.

(F) The Agency charter created by this Charter Agreement may be amended only by written amendment hereto, or by special act of the Legislature, upon the consent by resolution of the governing bodies of the then members of the Agency.

(G) The mission of the Agency shall be to aspire to and undertake, cause and/or perform all such acts as shall be necessary to provide an independent, uniform and efficient local platform capable of serving private property owners in Florida, by securing economies of scale, market-based competition and uniform implementation on a state-wide basis as authorized by general law and this Charter to facilitate the provision of service, and the funding and financing of Qualifying Improvements to only interested property owners desiring to voluntarily achieve the compelling state interests expressed in the Supplemental Act.

(H) The Agency's mission fundamentally includes a judicially-confirmed structure which eliminates responsibility or liability for the Agency's actions with regard to any other governmental official or entity, while benefitting local commerce, fulfilling the state's energy and hurricane mitigation policies, and allows for cooperation and sharing information with general purpose local governments; and, shall focus upon education of interested and participating property owners, along with providing for direct written disclosure and constructive notice which meets and exceeds relevant industry standards and the extraordinary direct and constructive notice provided by the Supplemental Act.

(I) The Agency, pursuant to general law and by judicial determination, is (1) a legal entity separate and distinct from its Incorporators or members, and (2) a valid and legally existing public body corporate and politic within the State of Florida created pursuant to the Interlocal Agreement and other general law. The Agency is not and cannot be characterized as a dependent special district under section 189.012, Florida Statutes. Accordingly, for providing a status statement and substantial compliance with section 189.03, Florida Statutes and its predecessor in function, as previously requested by the Department of Economic Opportunity, the status of the Agency is "independent." Such status is consistent with the determination of the Department of Economic Opportunity.

**SECTION 2.02. AUTHORITY TO ADMINISTER THE PROVISION OF SERVICE, FUNDING AND FINANCING OF QUALIFYING IMPROVEMENTS.** By this Charter, the provisions of section 163.01(7)(g), Florida Statutes, the Supplemental Act, or by resolution of the governing bodies of a general purpose local government

affected and as implemented pursuant to a Subscription Agreement, collectively, alternatively, or supplementally, all power and authority available to the Agency under this Charter Agreement, and general law, including without limitation, Chapters 163, 189 and 197, Florida Statutes, shall be deemed to be authorized and may be implemented by the Agency to serve populations within and outside of the members of the Agency.

### **SECTION 2.03. GOVERNANCE.**

(A) The governing body of the Agency shall consist of a number of persons equal to one (1) member of the Agency's Board of Directors appointed by each Incorporator, and due to the event of an even number of Incorporators, one (1) member of the Agency's Board of Directors shall be selected jointly by all Incorporators, each of whom shall serve a staggered term of three (3) years commencing on October 1. To immediately broaden geographic and insightful participation in governance, until the Agency attains a total of four (4) local government members (including the initial Incorporators) as provided for in the preceding sentence, the Board of Directors of the Agency is directed and authorized to appoint Board Director No. 4 and Board Director No. 5 using substantially the process as provided in subsection (C) of this Section. However, any person so appointed by the Board of Directors concerning Board Director No. 4 or Board Director No. 5 shall be appointed for the unexpired term. Each Director shall hold office until his or her successor has been appointed, qualified and taken an oath of office. The procedure for appointment of members of the Board of Directors and their initial terms of office shall be as follows:

(1) Board Director No. 1, Barbara Revels, is hereby confirmed and appointed by the Board of County Commissioners of Flagler County and accepted to serve a second term ending on September 30, 2019.

(2) Board Director No. 2, Cheryl Grieb, is hereby confirmed and appointed by the City Commission of the City of Kissimmee and accepted to serve a second term ending on September 30, 2017.

(3) Board Director No. 3, Jim Ley, is hereby jointly confirmed and appointed, due to the event of an even number of initial Board of Directors appointed by the Incorporators, and accepted to serve a first term ending September 30, 2018.

(4) Board Director No. 4, as soon as reasonably practicable, shall be appointed as provided herein or as otherwise directed and authorized to an initial term ending on September 30, 2019.

(5) Board Director No. 5, as soon as reasonably practicable, shall be appointed as provided herein or as otherwise directed and authorized to an initial term ending on September 30, 2018.

(6) All members of the Board of Directors shall be qualified electors of the State of Florida.

To the extent necessary, if at all, and without assumption of any liability therefore by the Incorporators, all actions of the Incorporators, the Agency's Board of Directors, and their duly authorized officers and agents, beginning with the inception of the Agency through execution hereof, are hereby ratified and confirmed. This confirmation and ratification provision serves the purpose of a savings clause for the avoidance of doubt in favor of the public interest, and for purposes of repose in the conduct of orderly public affairs.

(B) Members of the Board of Directors shall serve no more than three (3) consecutive three (3) year terms, not including any initial term of less than three (3) years. Provided, however, they shall continue to hold office for the terms for which they were appointed until their successors are chosen, qualified and taken an oath or office.

(C) Upon the occasion of a vacancy for any reason in the term of office of a member of the Board of Directors, which vacancy occurs prior to the replacement of the Board member by appointment and which remains unfilled for thirty (30) days after such vacancy due to inaction or the failure of the respective Incorporator's governing body to duly appoint a successor who is a qualified elector of the State as provided in subsection (A) hereof or otherwise, a successor shall be appointed by a majority of a quorum of the remaining Board of Directors at a meeting held for such purposes. Except as specifically provided on an interim basis in subsection (A) concerning Board Director No. 4 and Board Director No. 5, any person so appointed to fill a vacancy shall be appointed to serve only for the unexpired term or until a successor is duly appointed.

(D) The Board of Directors shall elect a Chairperson, Vice-Chairperson, Secretary, Assistant Secretary and such other officers of the Agency as may be hereafter designated and authorized by the Board of Directors, each of whom shall serve for one (1) year commencing as soon as practicable after October 1 and until their successor is chosen. The Chairperson, the Vice-Chairperson, or the Secretary shall conduct the meetings of the Agency and perform such other functions as herein provided. The Chairperson and Vice-Chairperson shall take such actions, and have all such powers and sign all documents on behalf of the Agency in furtherance of this Charter Agreement or as may be approved by resolution of the Board of Directors adopted at a

duly called meeting. The Vice-Chairperson, in the Chairperson's absence, shall preside at all meetings. The Secretary, or the Secretary's designee, shall keep minutes of all meetings, proceedings and acts of the Board of Directors, but such minutes need not be verbatim. Copies of all minutes of the meetings of the Agency shall promptly be sent by the Secretary, or the Secretary's designee, to all members of the Board of Directors and to each general purpose local government which is an Incorporator or Subscribing Local Government. The Secretary and any Assistant Secretary may also attest to the execution of documents. The Secretary and any Assistant Secretary, or other person duly designated by resolution of the Board, shall have such other powers as may be approved by resolution of the Board of Directors adopted at a duly called meeting.

(E) The Board of Directors shall have those administrative duties set forth in this Charter Agreement and Chapter 189, Florida Statutes, as the same may be amended from time to time. Any certificate, resolution or instrument signed by the Chairperson, Vice-Chairperson or such other person on behalf of the Agency as may hereafter be designated and authorized by resolution of the Board of Directors shall be evidence of the action of the Agency and any such certificate, resolution or other instrument so signed shall be conclusively presumed to be authentic.

(F) Except as provided in this subsection, the members of the Board of Directors shall receive no compensation for their services. Each member of the Board of Directors may be reimbursed for expenses as provided in Section 112.061, Florida Statutes, or, as an alternative, receive a per diem to compensate each member for the inconvenience of travel and associated expenses not to exceed \$350 per calendar day or as otherwise approved by the Board of Directors for travel on Agency business. Provided, however, such expenses or per diem shall not be construed as a salary, and accrue and only be payable as, if and when funds to pay same are available to the Agency.

(G) A majority of the Board of Directors shall constitute a quorum for the transaction of business of the Agency. The affirmative vote of the majority of the members of the Board of Directors present and voting (exclusive of any member having a conflict) shall be necessary to transact business.

(H) By the Interlocal Agreement, prior to the appointment of the entire Board of Directors and the first organizational meeting thereof, the affairs of the Agency were governed by joint resolution of the Incorporators and the then members of the Agency. In such interim period, however long, such acts were necessarily made on behalf of and shall be binding upon the Agency by joint resolution of said Incorporators and the then members. Such acts shall be deemed actions of the governing body of the Agency. In this context, "joint resolution" shall mean any one or a set of resolutions adopting



concurrent direction and authorization under the provisions of the Interlocal Agreement or the Charter, and may be evidenced by resolutions executed separately, jointly or with counterpart or other similar provisions, and do not require the joint meeting of the Incorporators. Such actions shall be exclusively on behalf of the Agency, and no liability or responsibility therefor shall be imputed to said Incorporators or the then members. Such acts may include any power or authority otherwise available to the Agency and shall include, among other things, approval of such Financing Documents as were deemed advisable to file all necessary validation or other pleadings, and undertake appellate matters if necessary, in order to obtain validation of the authority for the Agency to undertake its purpose and mission and issue its Obligations associated there with, the retention of counsel, the procurement of other professional services and all other reasonable acts to initiate and validate the purpose, mission and authority of the Agency, with the cost thereof accruing exclusively to and only payable by the Agency as, if and when funds from or associated with the programs of the Agency become available. All such actions taken or instruments executed on behalf of the Agency are ratified and confirmed and shall continue to be valid and binding in every respect upon the Agency as if duly executed by the Chairman on behalf of the Board of Directors or any other person authorized by the Board of Directors to execute same.

**SECTION 2.04. MEETINGS; NOTICE.** Unless determined otherwise by the Board of Directors, the Board of Directors shall hold meetings pursuant to Section 189.015, Florida Statutes. Notice of meetings and the adoption of the annual budget shall be promulgated on the Agency's website, and notice concerning same shall be published in newspapers of general circulation in the counties of the Incorporators and members of the Agency. Meetings may be noticed and conducted in any reasonable manner in any lawful location within the State.

**SECTION 2.05. REPORTS; BUDGETS; AUDITS.** Unless determined otherwise by the Board of Directors, the Agency shall prepare and submit reports, budgets and audits as provided in Sections 189.016, Florida Statutes.

**SECTION 2.06. POWERS, FUNCTIONS AND DUTIES.**

(A) The Agency shall have all powers to carry out the purposes of this Charter Agreement and the functions and duties provided for herein, including the following powers which shall be in addition to and supplementing any other privileges, benefits and powers granted by this Charter Agreement or by law:

(1) To execute all contracts and other documents, adopt all proceedings and perform all acts determined by the Board of Directors as

necessary or advisable to carry out the purpose or mission of the Agency, the purposes of the Interlocal Agreement or this Charter Agreement or any Subscription Agreement with a local government. Unless otherwise provided for herein or authorized by the Board of Directors, the Chairperson or Vice-Chairperson shall execute contracts and other documents on behalf of the Board of Directors.

(2) To plan and provide for the provision, funding, and financing of Qualified Improvements in any manner or means determined by the Board of Directors.

(3) To contract for the service of administrators, accountants, attorneys and any other experts, advisors, or consultants, and such other professionals, agents and employees as the Board of Directors may require or deem appropriate from time to time.

(4) To contract for such services, costs, goods, facilities, or other costs or expenses on a contingent, at risk or deferred basis with the providers, purveyors, or vendors thereof with the express understanding that payment therefore may be evidenced by warrants only due or payable from the Agency (and absolutely no other person, entity or Incorporator) as, if and when identified funds to pay same are available to the Agency.

(5) To reimburse any Incorporator for actual and verifiable costs and expenses reasonably associated with the creation and establishment of the Agency, if any, as, if and when identified funds to repay same are available to the Agency.

(6) To adopt all necessary rules, regulations, procedures, or standards by resolution.

(7) To exercise jurisdiction, control and supervision over the provision, funding, and financing of Qualified Improvements and to make and enforce such rules, procedures and regulations applicable thereto as may be, in the judgment of the Board of Directors, necessary or desirable for the efficient operation of the Agency in accomplishing the purpose and mission of the Agency, and purposes of this Charter Agreement.

(8) To enter into interlocal agreements or join with any other special purpose or general purpose local governments, public agencies or authorities in the exercise of common powers.

(9) To contract with private or public entities or persons.

(10) Subject to such provisions and restrictions as may be set forth in any Financing Document, to enter into contracts with the government of the United States or any agency or instrumentality thereof, the State, or with any municipality, county, district, authority, political subdivision, private corporation, partnership, association or individual providing for or relating to the provision, funding, or financing of Qualifying Improvements and any other matters relevant thereto or otherwise necessary to effect the purpose and mission of the Agency and purposes of this Charter Agreement.

(11) To receive and accept from any federal or State agency, grants or loans for or in aid of the planning, administration, provision or financing of Qualifying Improvements, and to receive and accept aid or contributions or loans from any other source of either money, labor or other things of value, to be held, used and applied only for the purpose for which such grants, contributions or loans may be made.

(12) To purchase, finance, assume the ownership of, lease, operate, manage and/or control of any administrative facilities, including all equipment or personal property deemed necessary by the Board of Directors to achieve the purpose or mission of the Agency.

(13) To appoint advisory boards and committees to assist the Board of Directors in the exercise and performance of the powers and duties provided in this Charter Agreement.

(14) To sue and be sued in the name of the Agency and participate as a party in any civil, administrative or other action.

(15) To provide or contract for record retention and public records administration.

(16) To adopt and use a seal and authorize the use of a facsimile thereof.

(17) To employ or contract with any public or private entity or person to administer, manage, operate or provide professional services or other efforts associated with any Agency activity, program or facilities, or any portion thereof, including project or program management or similar plans, upon such terms as the Board of Directors deems appropriate.

(18) Subject to such provisions and restrictions as may be set forth in any Financing Document, to own, use, manage or otherwise dispose of any administrative facilities, equipment or personal property, or any portion thereof, upon such terms as the Board of Directors deems appropriate.

(19) Subject to such provisions and restrictions as may be set forth in any Financing Document, to acquire, own, manage, or otherwise dispose of carbon, renewable energy or similar credits upon such terms as the Board of Directors deems appropriate; and use the proceeds of same, if any materialize, to underwrite start-up or on-going program costs, payment to professionals for deferred or contingent fee or other work or retainers, the advancement of educational programs, deposit into any general or performance assurance fund and/or payment of other reasonable costs or expenditure to advance the mission and purpose of the Agency.

(20) To acquire, by purchase, gift, devise, tax sale certificate or otherwise, and to dispose of, real or personal property, or any estate therein in the course of the purpose or mission of the Agency.

(21) To make and execute contracts or other instruments necessary or convenient to the exercise of its powers.

(22) To maintain an office or offices within the State at such place or places as the Board of Directors may designate from time to time.

(23) To utilize and employ technology and innovation to the maximum extent possible, unless otherwise inconstant with general law, in conducting the meetings and affairs of the Agency.

(24) To lease, as lessor or lessee, to or from any person, firm, corporation, association or body, public or private, facilities or property of any nature to carry out any of the purposes authorized by law or this Charter Agreement.

(25) To borrow money and issue bonds, certificates, warrants, notes, obligations or other evidence of indebtedness of any kind.

(26) To independently act, assist, serve or provide service within the bounds of any general purpose local government to fund, finance, assess, levy, impose, collect and enforce non-ad valorem assessments authorized by Section 163.08, Florida Statutes, as expressly authorized to do so by either the Legislature and this Charter or by the general purpose local government in which the lands

assessed are located. Such non-ad valorem assessments may only be to fund and finance Qualifying Improvements.

(27) To contract, apply for and accept grants, loans, assignments and subsidies from any governmental entity for the provision, funding and financing of Qualifying Improvements, and to comply with all requirements and conditions imposed in connection therewith.

(28) To the extent allowed by law and to the extent required to effectuate the purposes of this Charter Agreement, to have and exercise all privileges, immunities and exemptions accorded municipalities and counties of the State under the provisions of the constitution and laws of the State.

(29) To adopt investment policies from time to time and/or invest its moneys in such investments as directed by the Board of Directors in a manner which shall be consistent in all instances with the applicable provisions of the Financing Documents and State law.

(30) To purchase such insurance, bonds, sureties, contracts of indemnity, or similar facilities of any kind or nature as it deems appropriate.

(31) To do all acts and to exercise all of the powers necessary, convenient, incidental, implied or proper, in connection with any of the powers, duties, obligations or purposes authorized by this Charter Agreement or by law.

(B) The Board of Directors may appoint or contract with one or more persons or entities to act as the third party administrator for the Agency having such functions, duties, and responsibilities to implement the services and affairs of the Agency as the Board of Directors may prescribe.

(C) The Board of Directors may appoint or contract with a person or entity to act as executive director of the Agency having such official title, functions, duties, and powers as the chief administrative officer of the Agency as the Board of Directors may prescribe. The Board of Directors shall appoint a person or entity to act as the legal counsel for the Agency. The executive director and legal counsel shall each answer directly to the Board of Directors. The third party administrator shall answer to the executive director, unless otherwise directed by the Board of Directors. Neither the executive director, the third party administrator, legal counsel, nor any other employee of the Agency shall be a member of the Board of Directors.

(D) The Board of Directors (or the executive director prior to the first meeting of Board of Directors) may use or employ any procurement procedures or approach not otherwise inconsistent with general law.

(E) The Board of Directors (or the executive director prior to the first meeting of Board of Directors) may request proposals, or receive unsolicited proposals; provided, however, a courtesy notice thereof shall be provided to the chief administrative officer of each then Incorporator or member of the Agency.

(F) The executive director shall be authorized to execute and deliver on behalf of the Agency such documents and to take such actions as shall be authorized from time to time by the governing body of the Agency. The executive director, or other person or entity otherwise specifically directed to do so, is hereby directed and authorized to undertake such reasonable actions to request proposals, receive unsolicited proposals or employ any procurement procedures necessary to reasonably and timely advance the mission and purpose of the Agency, and thereafter make recommendations to the Board of Directors.

(G) In exercising the powers conferred by this Charter Agreement, the Board of Directors shall act by resolution or motion made and adopted at duly noticed and publicly held meetings in conformance with applicable law.

(H) The provisions of Chapter 120, Florida Statutes, shall not apply to the Agency.

(I) However, nothing herein shall affect the ability of the Agency to engage in or pursue any civil or administrative action or remedies, including but not limited to any proceeding or remedy available under Chapter 120, Florida Statutes, or its successor in function.

**SECTION 2.07. CREATION OF STATE, COUNTY OR MUNICIPAL DEBTS PROHIBITED.** The Agency shall not be empowered or authorized in any manner to create a debt as against the State, any county or any municipality, and may not pledge the full faith and credit of the State, any county, or any municipality. All revenue bonds or debt obligations shall contain on the face thereof a statement to the effect that the state, county or any municipality shall not be obligated to pay the same or interest thereon and that they are only payable from Agency revenues or the portion thereof for which they are issued and that neither the full faith and credit nor the taxing power of the state or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue or refunding bonds under the provisions of law or this Charter Agreement shall not directly or indirectly or

contingently obligate the state, or any county or municipality to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

**SECTION 2.08. ADOPTION OF RATES, FEES AND CHARGES.**

(A) The Board of Directors may adopt from time to time by resolution such rates, fees or other charges for the provision of the services of the Agency to be paid by the record owner of any property, pursuant to a financing agreement described in the Supplemental Act.

(B) Such rates, fees and charges shall be adopted and revised so as to provide moneys, which, together with other funds available for such purposes, shall be at least sufficient at all times to pay the expenses of administering, managing, and providing for the services and administration of the activities of the Agency, to pay costs and expenses provided for by law or this Charter Agreement and the Financing Documents (including the funding of any financing or operating reserves deemed advisable by the Agency), and to pay the principal and interest on the Obligations as the same shall become due and reserves therefor, and to provide a reasonable margin of safety over and above the total amount of such payments. Notwithstanding any other provision in this Charter Agreement, such rates, fees and charges shall always be sufficient to comply fully with any covenants contained in the Financing Documents. The Agency shall charge and collect such rates, fees and charges so adopted and revised, and such rates, fees and charges shall not be subject to supervision or regulation by any other commission, board, bureau, agency or other political subdivision of the State.

(C) Such rates, fees and charges may vary from jurisdiction to jurisdiction, but shall be just and equitable and uniform at the time of imposition for the record owners (within each community served or subscribing local governmental jurisdiction) electing to enter into any financing agreement described in the Supplemental Act within the same class, and may be based upon or computed upon any factor (including, by way of example and not limitation, distinguishing between residential and non-residential customers or uses, distinguishing between variable costs of administrative services, the degree of local cooperation, assistance from and coordination with local officials, underwriting or market factors over time) or combination of factors affecting the demand or cost of the service furnished by the Agency or provided to administer the affairs of the Agency and provision of service as may be determined or approved by the Board of Directors from time to time.

(D) Notwithstanding anything in this Charter Agreement to the contrary, the Agency may establish a general fund and/or performance assurance account into which moneys may be deposited from an annual surcharge not to exceed one percent (1%)

upon any assessments, or any rates, fees and charges imposed, pledged to or collected by the Agency. Any moneys deposited to such general fund account from such a surcharge represent a fair and reasonable cost of administration and shall be considered legally available for any lawful purpose approved by the Board of Directors. Moneys in such general fund and/or performance assurance account may be used to pay for or reimburse initial costs and expenses advanced or associated with start-up costs, feasibility studies, economic analysis, financial advisory services, program development or implementation costs or enhancements, public education, administration, quality control, vendor procurement, and any other lawful purpose approved by the Board of Directors.

## **SECTION 2.09. BONDS AND OBLIGATIONS.**

(A) The Board of Directors shall have the power and it is hereby authorized to provide pursuant to the Financing Documents, at one time or from time to time in one or more series, for the issuance of Obligations of the Agency, or notes in anticipation thereof, for one or more of the following purposes:

- (1) Paying all or part of the cost of one or more Qualifying Improvements,
- (2) Refunding any bonds or other indebtedness of the Agency,
- (3) Assuming or repaying the indebtedness relating to Qualifying Improvements,
- (4) Setting aside moneys in a reserve or performance assurance account,
- (5) Funding a debt service reserve account,
- (6) Capitalizing interest on the Obligations,
- (7) Paying costs of issuance relating to the Obligations, and
- (8) Any other purpose relating to the purpose or mission of the Agency or this Charter Agreement.

(B) The principal of and the interest on each series of Obligations shall be payable from the Pledged Funds, all as determined pursuant to the Financing Documents. The Agency may grant a lien upon and pledge the Pledged Funds in favor of the holders of each series of Obligations in the manner and to the extent provided in



the Financing Documents. Such Pledged Funds shall immediately be subject to such lien without any physical delivery thereof and such lien shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Agency.

(C) The Obligations of each series shall be dated, shall bear interest and such rate or rates, shall mature at such time or times not exceeding forty (40) years from their date or dates, may be made redeemable before maturity, at the option of the Agency, at such price or prices and under such terms and conditions, all as shall be determined by the Board of Directors pursuant to the Financing Documents. The Board of Directors shall determine the form of the Obligations, the manner of executing such Obligations, and shall fix the denomination of such Obligations and the place of payment of the principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or facsimile of whose signature shall appear on any Obligations shall cease to be such officer before the delivery of such Obligations, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until delivery. The Board of Directors may sell Obligations in such manner and for such price as it may determine to be in the best interest of the Agency in accordance with the terms of the Financing Documents. In addition to the Pledged Funds, the Obligations may be secured by such credit enhancement as the Board of Directors determines to be appropriate pursuant to the Financing Documents. The Obligations may be issued as capital appreciation bonds, current interest bonds, term bonds, serial bonds, variable bonds or any combination thereof, all as shall be determined pursuant to the Financing Documents.

(D) Prior to the preparation of definitive Obligations of any series, the Board of Directors may issue interim receipts, interim certificates or temporary Obligations, exchangeable for definitive Obligations when such Obligations have been executed and are available for delivery. The Board of Directors may also provide for the replacement of any Obligations which shall become mutilated, or be destroyed or lost. Obligations may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this Charter Agreement, the Financing Documents or other applicable laws.

(E) The Board of Directors may enter into such swap, hedge or other similar arrangements relating to any Obligations as it deems appropriate.

(F) The proceeds of any series of Obligations shall be used for such purposes, and shall be disbursed in such manner and under such restrictions, if any, as the Board of Directors may provide pursuant to the Financing Documents.

(G) The Financing Documents may also contain such limitations upon the issuance of additional Obligations as the Board of Directors may deem appropriate, and such additional Obligations shall be issued under such restrictions and limitations as may be prescribed by such Financing Documents. The Financing Documents may contain such provisions and terms in relation to the Obligations and the Pledged Funds as the Board of Directors deems appropriate and which shall not be inconsistent herewith.

(H) Obligations shall not be deemed to constitute a general obligation debt of the Agency or a pledge of the faith and credit of the Agency, but such Obligations shall be payable solely from the Pledged Funds and any moneys received from the credit enhancers of the Obligations, in accordance with the terms of the Financing Documents. The issuance of Obligations shall not directly or indirectly or contingently obligate the Agency to levy or to pledge any form of ad valorem taxation whatsoever therefor. No holder of any such Obligations shall ever have the right to compel any exercise of the ad valorem taxing power on the part of the Agency or any incorporating local government or subscribing local government to pay any such Obligations or the interest thereon or the right to enforce payment of such Obligations, or the interest thereon, against any property of the Agency, nor shall such Obligations constitute a charge, lien or encumbrance, legal or equitable, upon any property of the Agency, except the Pledged Funds in accordance with the terms of the Financing Documents.

(I) All Pledged Funds shall be deemed to be trust funds, to be held and applied solely as provided in the Financing Documents. Such Pledged Funds may be invested by the Agency in such manner as provided in the Financing Documents.

(J) Any holder of Obligations, except to the extent the rights herein given may be restricted by the Financing Documents, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under the Financing Documents, and may enforce and compel the performance of all agreements or covenants required by this Charter Agreement, or by such Financing Documents, to be performed by the Agency or by any officer thereof.

(K) From time to time the Agency may issue warrants, payable not from Pledged Funds, but as, if and when other legally available funds become available; or as otherwise authorized under the Financing Documents.

(L) Obligations may be validated, at the sole discretion of the Board of Directors, pursuant to Chapter 75, Florida Statutes. Obligations may be issued pursuant to and secured by a resolution of the Board of Directors. Provided, however, the

Agency's power and authority to issue its Obligations for proper, legal, and paramount public purposes in the amount not to exceed \$2,000,000,000 in revenue bonds (various series), together with the validity of the Interlocal Agreement, and all of its terms, provisions and powers, the Pledged Funds, the power and authority of the Agency and any subscribing local government to enter into a Subscription Agreement, the provision, funding, and financing of Qualifying Improvements, the power and authority for local governments to enter into financing agreements and impose non-ad valorem assessments and the status of such non-ad valorem assessments as a lien of equal dignity to taxes and assessments as described in the Supplemental Act, and all matters associated therewith were required to be and were validated pursuant to Chapter 75, Florida Statutes, as soon as practicable after the execution of the Interlocal Agreement.

(M) In addition to the other provisions and requirements of this Charter Agreement, any Financing Documents may contain such provisions as the Board of Directors deems appropriate.

(N) All Obligations issued hereunder shall not be invalid for any irregularity or defect in the proceedings for the issuance and sale thereof and shall be incontestable in the hands of bona fide purchasers for value. No proceedings in respect to the issuance of such Obligations shall be necessary except such as are required by law, this Charter Agreement or the Financing Documents. The provisions of the Financing Documents shall constitute an irrevocable contract between the Agency and the holders of the Obligations issued pursuant to the provisions thereof.

(O) Holders of Obligations shall be considered third party beneficiaries hereunder and may enforce the provisions of this Charter Agreement or general law.

#### **SECTION 2.10. MERGER; DISSOLUTION.**

(A) In no event shall a merger involving the Agency be permitted, unless otherwise approved by resolution of the local governments which are then members of the Agency pursuant to this Charter Agreement.

(B) The dissolution of the Agency shall occur by law and transfer the title to all property owned by the Agency in a manner consistent with Chapter 189, Florida Statutes, unless (1) the Agency is merged into an independent special district as acknowledged herein, (2) this Charter Agreement is terminated pursuant to Section 3.02 hereof, or (3) as otherwise provided in a dissolution plan approved and adopted by resolution of the local governments which are then members of the Agency pursuant to this Charter Agreement.

**SECTION 2.11. ENFORCEMENT AND PENALTIES.** The Board of Directors or any aggrieved person may have recourse to such remedies in law and equity as may be necessary to ensure compliance with the provisions of this Charter Agreement, including injunctive relief to mandate compliance with or enjoin or restrain any person violating the provisions of this Charter Agreement and any bylaws, resolutions, regulations, rules, codes, and orders adopted under this Charter Agreement, and the court shall, upon proof of such failure of compliance or violation, have the duty to issue forthwith such temporary and permanent injunctions as are necessary to mandate compliance with or prevent such further violations thereof.

**SECTION 2.12. TAX EXEMPTION.** As the exercise of the powers conferred by this Charter Agreement to effect the purposes of this Charter Agreement constitute the performance of essential public functions, and as the programs of the Agency constitute public purposes as more particularly articulated in the Supplemental Act, all assets and properties of the Agency and all Obligations issued hereunder and interest paid thereon and all assessment proceeds, rates, fees, charges, and other revenues derived by the Agency from the activities, services, and programs provided for by this Charter Agreement or otherwise shall be exempt from all taxes by the State or any political subdivision, agency, or instrumentality thereof, except that this exemption shall not apply to interest earnings subject to taxation under Chapter 220, Florida Statutes.

[Remainder of page intentionally left blank.]

### ARTICLE III GENERAL PROVISIONS

**SECTION 3.01. INTERLOCAL AGREEMENT PROVISIONS.** This Charter Agreement constitutes a joint exercise of power, privilege or authority by and between the Incorporators and shall be deemed to be an "interlocal agreement" within the meaning of the Florida Interlocal Cooperation Act of 1969, as amended. This Charter Agreement shall be filed with the applicable clerk of the circuit court as provided by Section 163.01(11), Florida Statutes.

**SECTION 3.02. TERM OF AGREEMENT; DURATION OF AGREEMENT.**

(A) The term of this Charter Agreement shall commence as of the date first above written, and shall continue for so long as the Agency shall exist.

(B) The Agency shall continue to exist so long as the Agency has Obligations outstanding. At such time as no Obligations are outstanding, the Agency may dissolve by a majority vote of the Board of Directors in a manner provided for herein.

(C) So long as the Agency has Obligations outstanding, the members of the Agency covenant not to undertake any act or action to withdraw from or otherwise terminate this Charter Agreement; and any such action shall not be effective if such action would leave less than two (2) members.

**SECTION 3.03. AMENDMENTS AND WAIVERS.**

(A) Except as otherwise provided herein, no amendment, supplement, modification or waiver of this Charter Agreement shall be binding unless executed in writing by the Agency and the local governments which are then members of the Agency pursuant to this Charter Agreement.

(B) To the extent the Agency has no outstanding bonds, Obligations or other evidence of indebtedness, this Charter Agreement may be amended or modified or provisions hereto waived upon the written consent of all the then members of the Agency as more particularly described in Section 2.01(B) hereof.

(C) This Charter Agreement is fairly determined as not materially adverse to the holders of any Agency Obligations. Notwithstanding any other provision herein interpreted to the contrary, to the extent the Agency has outstanding Obligations or other evidence of indebtedness, this Charter Agreement may not be amended or modified in any way that is materially adverse to holders of such Obligations or other evidence of indebtedness without the consent in writing of the holders of at least two-

thirds (2/3) or more in principal amount of such Obligations or other evidence of indebtedness then outstanding, or any trustee or insurer duly authorized to provide such consent on behalf of such holders.

#### **SECTION 3.04. NOTICES.**

(A) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered (or confirmed electronic facsimile transmission) or mailed by registered or certified mail, postage prepaid, or sent by nationally recognized overnight courier (with delivery instructions for "next business day" service) to the Incorporators at the addresses appearing on their respective signature page.

(B) Upon execution hereof all notices shall also be sent to the Agency, to the attention of its Chair, with a separate copy to the legal counsel and registered agent of the Agency.

(C) Any of the Incorporators (including the Agency after execution hereof by the Incorporators) may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand (or confirmed electronic facsimile transmission) or three days after the date mailed.

#### **SECTION 3.05. IMMUNITY; LIMITED LIABILITY.**

(A) All of the privileges and immunities from liability and exemptions from laws, ordinances and rules which apply to the activity of officials, officers, agents or employees of the general purpose local governments incorporating or by law deemed members of the Agency shall apply to the officials, officers, agents or employees of the Agency when performing their respective functions and duties under the provisions of this Charter Agreement.

(B) The Agency and the general purpose local governments incorporating or by law deemed members of the Agency are and shall be subject to Sections 768.28 and 163.01(9)(c), Florida Statutes, and any other provisions of Florida law governing sovereign immunity. Pursuant to Section 163.01(5)(o), Florida Statutes, such local governments may not be held jointly or severally liable for the torts of the officers or employees of the Agency, or any other tort attributable to the Agency or another member of the Agency, and that the Agency alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the

extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes. The general purpose local governments incorporating or by law deemed members of the Agency intend that the Agency shall have all of the privileges and immunities from liability and exemptions from laws, ordinances, rules and common law which apply to the municipalities and counties of the State. Nothing in this Charter Agreement is intended to inure to the benefit of any third-party for the purpose of allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

(C) Neither any Incorporator nor any subsequent Subscribing Local Government shall in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of the Agency, the Board of Directors or any other agents, employees, officers or officials of the Agency, except to the extent otherwise mutually and expressly agreed upon, and neither the Agency, the Board of Directors nor any other agents, employees, officers or officials of the Agency have any authority or power to otherwise obligate one or more of the Incorporators or Members of the Agency, nor any subsequently Subscribing Local Government in any manner.

**SECTION 3.06. BINDING EFFECT.** All actions of the Agency heretofore are acknowledged and ratified as to effect. To the extent provided herein, this Charter Agreement shall be binding upon the parties, their respective successors and assigns and shall inure to the benefit of the parties, their respective successors and assigns.

**SECTION 3.07. SEVERABILITY.** In the event any provision of this Charter Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable the Interlocal Agreement otherwise or any other provision hereof.

**SECTION 3.08. EXECUTION IN COUNTERPARTS.** This Charter Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

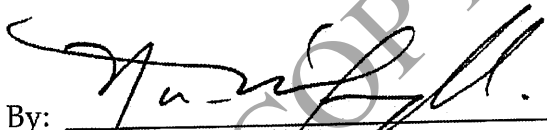
**SECTION 3.09. APPLICABLE LAW.** This Charter Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

**SECTION 3.10. ENTIRE AGREEMENT.** This Charter Agreement constitutes the entire updated, amended, codified and restated agreement among the parties pertaining to the subject matter hereof, and there are no warranties, representations or other agreements among the parties in connection with the subject matter hereof, except as specifically set forth herein.

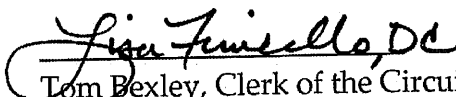
*Incorporator Signature Page*

IN WITNESS WHEREOF, the undersigned have caused this Charter Agreement to be duly executed and entered into as of this date.

**BOARD OF COUNTY COMMISSIONERS  
OF FLAGLER COUNTY, FLORIDA**

By:   
Nate McLaughlin, Chair

ATTEST:

  
Tom Bexley, Clerk of the Circuit Court  
and Comptroller

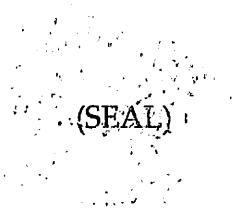
APPROVED AS TO FORM:

  
Al Hadeed, County Attorney



*Incorporator Signature Page*

IN WITNESS WHEREOF, the undersigned have caused this Charter Agreement to be duly executed and entered into as of this date.



THE CITY COMMISSION OF THE  
CITY OF KISSIMMEE, FLORIDA

By: \_\_\_\_\_  
Mayor

ATTEST:

Linda S. Hensell  
City Clerk

NOT A CERTIFIED COPY

*Agency Acknowledgment Page*

IN WITNESS WHEREOF, the undersigned on behalf of the Agency hereby accepts and acknowledges this Charter Agreement and the provisions set forth herein.

FLORDIA PACE FUNDING AGENCY

(SEAL)



By:

Barbara J. Frels  
Chair

ATTEST:

[Signature]  
Executive Director

ORDINANCE NO. 20 17 - 012

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ESTABLISHING THE PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM ORDINANCE; PROVIDING FOR A TITLE; PROVIDING FOR AUTHORITY; PROVIDING FOR APPLICABILITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

1       WHEREAS, Property Assessed Clean Energy (PACE) programs have been  
2 established across the country to provide mechanisms for funding energy efficiency, renewable  
3 energy, and other types of improvements to residential and commercial properties; and

4       WHEREAS, PACE programs are typically established by local governments and are  
5 administered by the local government or by for-profit or not-for-profit entities; and

6       WHEREAS, PACE financing is repaid as an assessment on the property's regular tax  
7 bill; and

8       WHEREAS, Section 163.08, Florida Statutes, authorizes programs, typically referred  
9 to as PACE programs, that levy non-ad valorem assessments allowing property owners to  
10 apply to local governments for financing certain energy efficiency, renewable energy and wind  
11 resistant improvements; and

12       WHEREAS, Section 163.08, Florida Statutes, provides that properties retrofitted with  
13 energy-related qualifying improvements benefit from reduced energy consumption, reduced  
14 potential for wind damage, and assist in the fulfillment of the state's energy and hurricane  
15 mitigation policies; and

16       WHEREAS, the PACE assessment is collected pursuant to Florida's uniform  
17 method for the levy, collection and enforcement of non-ad valorem assessments, Section  
18 197.3632, Florida Statutes; and

19       WHEREAS, the Board of County Commissioners intends to establish qualifications  
20 and consumer protection disclosure requirements for PACE programs that provide financing  
21 for qualifying improvements in accordance with Section 163.08, Florida Statutes, and  
22 provisions of this Ordinance; and

1           **WHEREAS**, it is the intent of the County to enter into interlocal agreements with  
2 multiple PACE agencies/authorities/districts to encourage competition and provide more  
3 choices for property owners; and

4           **WHEREAS**, the Board of County Commissioners acknowledges the Florida  
5 Legislature's finding that there is a compelling state interest in enabling property owners who  
6 wish to undertake such improvements and to enable property owners to voluntarily finance  
7 such improvements with local government assistance and finds that creation of a PACE  
8 program will serve the public health and welfare of the citizens of Palm Beach County; and

9           **WHEREAS**, the Board of County Commissioners has conducted a duly noticed public  
10 hearing to consider this Ordinance in accordance with Section 125.66, Florida Statutes; and

11           **WHEREAS**, the Board of County Commissioners of Palm Beach County, pursuant to  
12 its authority under the Florida Constitution, Article VIII, Section 1(g), Section 125.01, Florida  
13 Statutes, and the Palm Beach County Charter, hereby adopts the Palm Beach County Property  
14 Assessed Clean Energy (PACE) Ordinance.

15

16           **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**  
17 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

18   **Section 1. TITLE:**

19           This Ordinance shall be titled the "Palm Beach County Property Assessed Clean  
20 Energy (PACE) Ordinance."

21   **Section 2. AUTHORITY:**

22           This article is adopted pursuant to the authority granted to charter counties under Article  
23 VIII, Section 1(g) of the Florida Constitution, Chapter 125, Florida Statutes and Article 1 of the  
24 Palm Beach County Home Rule Charter.

25   **Section 3. APPLICABILITY:**

26           This Ordinance shall be applicable within the unincorporated areas of Palm Beach County,  
27 and in all municipalities that have not adopted an ordinance governing any or all of the subject  
28 matter of this Ordinance, regardless of the time of passage of the municipal ordinance.

29   **Section 4. DEFINITIONS:**

30           For purposes of this Ordinance, the following words and phrases shall have the  
31 following meanings:

32   (1) *Board or County* is the Palm Beach County Board of County Commissioners.

- 1 (2) *Financing Agreement* shall mean the financing agreement or the summary memorandum  
2 of such agreement the property owner signs establishing terms and conditions for the  
3 financing of qualified improvements which is required to be recorded in the public  
4 records pursuant to the PACE Statute.
- 5 (3) *Qualifying Improvements* includes energy conservation and efficiency, renewable energy,  
6 and wind resistance improvements as defined by Section 163.08, Florida Statutes, as may  
7 be amended by law.
- 8 (4) *PACE assessment* shall mean the non-ad valorem assessment placed on a property  
9 owner's tax bill as a result of financing obtained pursuant to this Ordinance.
- 10 (5) *PACE agencies/authorities/districts* shall mean one or more local governments defined in  
11 Section 163.08(2)(a), Florida Statutes, authorized by Palm Beach County to offer PACE  
12 financing for qualifying improvements.
- 13 (6) *PACE Program* shall mean the County's provision through interlocal agreements with  
14 PACE agencies/authorities/districts offering financing for qualifying improvements as  
15 approved by the State of Florida pursuant to Section 163.08, Florida Statutes, further  
16 refined in this Ordinance, as may be amended by law.
- 17 (7) *PACE Statute* shall mean Section 163.08, Florida Statutes and all future amendments  
18 thereto.
- 19 (8) *Residential Property* shall mean a residential property consisting of four (4) or less  
20 residential units.
- 21 (9) *Non-Residential Property* shall mean commercial, industrial, agricultural and residential  
22 properties consisting of five (5) or more residential dwelling units.

23 **Section 5. PACE PROGRAM AUTHORIZATION:**

- 24 (1) PACE agencies/authorities/districts offering financing for Qualifying Improvements  
25 pursuant to this Ordinance shall be approved by the County and authorized through  
26 interlocal agreements to provide financing subject to the requirements of this Ordinance  
27 and the PACE Statute. A resolution indicating the County's desire to join a PACE  
28 agency/authority/district shall be prepared by County staff and presented to the Board for  
29 consideration with each interlocal agreement. The interlocal agreements shall include  
30 specific terms and conditions for PACE agencies/authorities/districts to operate within  
31 Palm Beach County.

1 (2) PACE agencies/authorities/districts desiring to provide financing pursuant to this  
2 Ordinance shall provide sufficient documentation as requested by the County to provide  
3 reasonable assurance that the requirements of this Ordinance and the PACE Statute can be  
4 met by the PACE agency/authority/district.

5 **Section 6. DISCLOSURE REQUIREMENTS:**

6 (1) In addition to any disclosure requirements in the PACE Statute, PACE  
7 agencies/authorities/districts that extend financing pursuant to the PACE Statute and levy  
8 non-ad valorem assessments to fund the qualifying improvements shall present to the  
9 property owner a separate, written notice disclosing the following ("Notice"):

10 (a) The estimated total amount of the debt, including amount financed, fees, fixed interest  
11 rate, capitalized interest and the effective rate of the interest charged ("Annual  
12 Percentage Rate" or "APR");

13 (b) That PACE agencies/authorities/districts may only offer fixed simple interest rates and  
14 payments that fully amortize the obligation. Variable or negative amortization  
15 financing terms are not permitted. Capitalized interest included in the original balance  
16 of a PACE financing does not constitute negative amortization.

17 (c) The repayment process and terms, amounts and a schedule that fully amortizes the  
18 amount financed including the estimated annual PACE assessment;

19 (d) That the PACE assessment will appear on the property owner's tax bill;

20 (e) That there is no discount for paying the PACE assessment early;

21 (f) The nature of the lien recorded and that the PACE assessment will be collected in the  
22 same manner as real estate taxes. That failure to pay the PACE assessment may cause  
23 a tax certificate to be issued against the property, and that failure of payment thereof  
24 may result in the loss of property subject to the PACE assessment, including homestead  
25 property, in the same manner as failure to pay property taxes;

26 (g) The specific improvements to be financed and installed and that such improvements  
27 and PACE assessment may or may not affect the overall value of the property;

28 (h) A PACE assessment payment term that does not exceed the useful life of the  
29 improvements;

30 (i) The right of pre-payment without penalty;

31 (j) Notice that the property owner may be required to pay any PACE assessment in full at  
32 the time of refinance or sale of the property; and

- 1 (k) The 3-day right to cancel the financing.
- 2 (2) The Notice must be delivered to the property owner by the PACE agency/authority/district
- 3 and must be signed and dated by the property owner prior to or contemporaneously with
- 4 the property owner's signing of any legally enforceable documents under the PACE
- 5 program. The property owner and the PACE agency/authority/district must keep the
- 6 signed Notice with the property owner's executed financing agreement.
- 7 (3) The PACE agency/authority/district shall record, or cause to be recorded, the financing
- 8 agreement or a summary memorandum of the financing agreement, in accordance with
- 9 Section 163.08(8), Florida Statutes.

10 **Section 7. ELIGIBLE PROPERTIES/PROGRAM REQUIREMENTS:**

- 11 (1) As defined in the PACE Statute, PACE agencies/authorities/districts that extend financing
- 12 pursuant to the PACE Statute and levy non-ad valorem assessments to fund the qualifying
- 13 improvements shall comply with the following:
- 14 (2) Residential Property. PACE agencies/authorities/districts may finance qualifying
- 15 improvements on Residential Properties provided they comply with the following criteria
- 16 inclusive of all eligibility criteria listed in the PACE Statute and all future amendments
- 17 thereto, along with additional consumer protections.
- 18 (a) Without the consent of the holders or loan servicers of any mortgage encumbering or
- 19 otherwise secured by the property, the total amount of any non-ad valorem assessment
- 20 for a property under the PACE Statute may not exceed twenty percent (20%) of the
- 21 just/fair market value of the property as determined by the county property appraiser,
- 22 excepted as otherwise provided by statute; and
- 23 (b) All property taxes and other assessments levied on the property tax bill have been paid
- 24 and have not been delinquent for the preceding three years, or the property owner's
- 25 period of ownership, whichever is less; and
- 26 (c) There are no involuntary liens, including but not limited to construction liens on the
- 27 property; and
- 28 (d) No notices of default or other evidence of property-based debt delinquency have been
- 29 recorded during the preceding three years, or the property owner's period of ownership,
- 30 whichever is less; and, additionally
- 31 (e) All mortgage debt on the property is current and not delinquent; and

- 1 (f) All mortgage-related debt on the underlying property may not exceed 90% of the  
2 property's fair market value; and
- 3 (g) The total mortgage-related debt on the underlying property plus the PACE program  
4 financing may not exceed the fair market value of the property.
- 5 (3) Non-Residential Properties. PACE agencies/authorities/districts may finance Qualifying  
6 Improvements on Non-Residential Properties provided they comply with the requirements  
7 set forth in the PACE Statute and all future amendments thereto and inclusive of those  
8 listed under Section 7(2)(a-d) of this Ordinance.
- 9 (4) Qualifying Improvements. The PACE agency/authority/district will finance energy  
10 efficiency, renewable energy and wind resistant improvements that are permanently affixed  
11 to the property as more specifically described in the PACE Statute. All improvements and  
12 products should identify efficiency standards established by the U.S. Department of  
13 Energy, the U.S. Environmental Protection Agency, or Florida state agencies as applicable.  
14 All qualifying improvements must comply with the PACE Statute for energy efficiency,  
15 renewable energy and wind resistance or other improvements as permissible by law. PACE  
16 agencies/authorities/districts shall establish procedures confirming that the property owner  
17 applying for financing through the PACE agency/authority/district intends to install  
18 eligible products, and that at the time of funding such improvements have been installed.
- 19 (5) Inquiries and Complaints.
- 20 (a) The PACE agency/authority/district shall be required to receive, manage, track, timely  
21 resolve and report on complaints from property owners regarding the funded work  
22 performed by the contractors. The PACE agency/authority/district shall investigate  
23 and mediate disputes between property owners and contractors in a timely manner.
- 24 (b) Payment inquiries. The PACE agency/authority/district shall be required to respond to  
25 inquiries and resolve any issues in a timely manner, related to payments, including but  
26 not limited to prepayments and payment reconciliation.
- 27 (c) Review. In the event that ten percent or more of a PACE agency's/authority's/district's  
28 projects result in complaints or disputes, or such complaints or disputes remain  
29 unresolved six months after completion of a project, the County may review the PACE  
30 agency's/authority's/district's handling of complaints and may request corrective  
31 actions or initiate suspension proceedings pursuant to Section 7(13).
- 32 (6) Data Security. The PACE agency/authority/district is responsible for taking security



1 measures that protect the security and confidentiality of consumer records and information  
2 in proportion to the sensitivity of the information, and as required by state and federal law.

3 (7) Consumer Privacy. The PACE agency/authority/district must develop and maintain a  
4 privacy policy that complies with state and federal law and, in particular, shall provide a  
5 property owner the ability to opt-out of having the property owner's information shared  
6 with third parties, except where expressly permitted by state and federal law.

7 (8) Marketing and Communications. Marketing practices for a PACE agency/authority/district  
8 that are or could appear to be unfair, deceptive, abusive, or misleading, or that violate  
9 applicable laws or regulations, that are inappropriate, incomplete or are inconsistent with  
10 the PACE agency's/authority's/district's purpose are prohibited.

11 (9) Protected Classes. The PACE agency/authority/district shall not discriminate against  
12 individuals on the basis of race, color, ancestry, disability, national origin, religion, age,  
13 familial status, marital status, sex, gender, sexual orientation, gender identity and  
14 expression, or genetic information.

15 (10) Contractor Management.

16 (a) Any work under a PACE agency/authority/district requiring a license under any  
17 applicable law to make a qualifying improvement shall be performed by a contractor  
18 properly licensed, certified or registered pursuant to state or local law.

19 (b) Contractors performing work under a PACE agency/authority/district shall comply  
20 with each of the following conditions: (i) Be licensed and insured pursuant to the  
21 applicable statutory requirements; (ii) Agree to comply with all program requirements  
22 and marketing guidelines; (iii) Act in good faith to timely resolve property owner  
23 complaints.

24 (c) PACE programs shall have and shall strictly enforce anti-kickback policies and  
25 procedures that prohibit direct financial or other monetary incentives to contractors in  
26 exchange for or related to such contractor being awarded work under a PACE program,  
27 excepting payment for the contractor's installation of eligible improvements.

28 (11) Financing. The PACE agency/authority/district will establish pricing rules and  
29 enforcement mechanisms to ensure property owners are protected from excessive or  
30 unjustified prices and charges. In addition, the PACE agency/authority/district shall  
31 require compliance with each of the following conditions prior to the issuance of any  
32 funding to the contractor:

- 1 (a) Contractors have certified that any necessary permits have been obtained;
- 2 (b) Verification that the qualifying improvements have been installed;
- 3 (c) The property owner and the contractor have signed a final inspection and/or certificate
- 4 of completion that all improvements have been installed to the property owner's
- 5 satisfaction.

6 (12) Reporting. Each PACE agency/authority/district shall provide a report to the County  
7 on a quarterly calendar basis, which shall include, at a minimum, the following  
8 information:

- 9 (a) Dates of the reporting period;
- 10 (b) List of PACE projects (including addresses including municipal jurisdiction, financed
- 11 amount, interest rate, assessment duration, and project description) started during the
- 12 reporting period, separated by building type (e.g., single family, multifamily, retail,
- 13 office, industrial, etc.);
- 14 (c) List of PACE projects (including addresses including municipal jurisdiction)
- 15 completed during the reporting period, separated by building type project (e.g., single
- 16 family, multifamily, retail, office, industrial, etc.), specify; (1) the qualifying
- 17 improvements made; (2) project start date and completion date; (3) the projected energy
- 18 savings and/or amount of potential renewable energy to be generated; (4) financial
- 19 information such as cost per kilowatt hour saved/generated; (5) other resource savings
- 20 if data is available; and (6) audits performed detailing the audit results, if applicable to
- 21 the project;
- 22 (d) Number of actual or estimated jobs created during the reporting period, including local
- 23 versus non-local jobs and permanent versus temporary jobs;
- 24 (e) Number of applications declined during the reporting period;
- 25 (f) Unresolved complaints and/or contractor issues and status; and
- 26 (g) Description of the standardized third-party methodologies and supporting assumptions
- 27 used to verify data, and any changes in the methodologies and assumptions from the
- 28 previous reporting period.

29 (13) Suspension or Termination of PACE agency/authority/district. In the event any PACE  
30 agency/authority/district fails to incorporate and continually provide for all of the foregoing  
31 service components or to otherwise abide by the provisions of this Ordinance and/or the  
32 interlocal agreement the County, in its sole discretion, may suspend or terminate the

1 interlocal agreement and support of the County at any time upon written notice to that  
2 PACE agency/authority/district. Any project that has been initiated as of the time of  
3 suspension or termination shall be permitted to be completed.

4 **Section 8. REPEAL OF LAWS IN CONFLICT:**

5 All local laws and ordinances in conflict with any provisions of this Ordinance are  
6 hereby repealed to the extent of such conflict.

7 **Section 9. SEVERABILITY:**

8 If any section, paragraph, sentence, clause, phrase or word of this Ordinance is for any  
9 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void,  
10 such holding shall not affect the remainder of this Ordinance.

11 **Section 10. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

12 The provisions of this Ordinance shall become and be made a part of the Palm Beach  
13 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish  
14 such, and the word Ordinance may be changed to section, article, or other appropriate word.

15 **Section 11. ENFORCEMENT:**

16 This Ordinance is enforceable by all means provided by law. Additionally, the County  
17 may choose to enforce this Ordinance by seeking injunctive relief in the Circuit Court of Palm  
18 Beach County.

19 **Section 12. PENALTY:**

20 Any violation of any portion of this Ordinance shall be punishable as provided by law.

21 **Section 13. CAPTIONS:**

22 The captions, section headings and section designations used in this Ordinance are for  
23 convenience only and shall have no effect on the interpretation of the provisions of this  
24 Ordinance.

25 **Section 14. EFFECTIVE DATE:**

26 The provisions of this Ordinance shall become effective upon filing with the  
27 Department of State.

28 **APPROVED and ADOPTED** by the Board of County Commissioners of Palm  
29 Beach County, Florida, on this the 4th day of April, 2017.

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32

1 SHARON R. BOCK, CLERK

PALM BEACH COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS

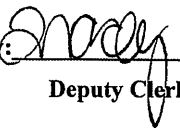

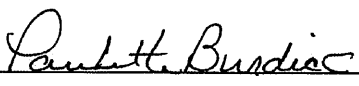
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By:   By: 

Deputy Clerk

Paulette Burdick, Mayor

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9 APPROVED AS TO FORM AND

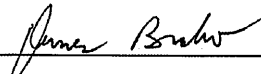
10 LEGAL SUFFICIENCY

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By:   
County Attorney

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EFFECTIVE DATE: Filed with the Department of State on the 7<sup>th</sup> day of

April, 20 17.



## FLORIDA DEPARTMENT of STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

April 7, 2017

Honorable Sharon R. Bock  
Clerk and Comptroller  
Palm Beach County  
301 North Olive Avenue  
West Palm Beach, Florida 33401

Attention: Timothy Montiglio, Administrative Specialist II

Dear Ms. Bock:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Palm Beach County Ordinance No. 2017-012, which was filed in this office on April 7, 2017.

Sincerely,

Ernest L. Reddick  
Program Administrator

ELR/lb

RESOLUTION NO. 2017- 1104

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND FLORIDA PACE FUNDING AGENCY FOR A PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM; APPROVING AN INDEMNIFICATION AGREEMENT BETWEEN PALM BEACH COUNTY AND COUNTERPOINTE ENERGY SOLUTIONS (FL) LLC FOR THE BENEFIT OF PALM BEACH COUNTY; AND AUTHORIZING THE COUNTY ADMINISTRATOR OR DESIGNEE TO EXECUTE THESE AND SUBSEQUENT AGREEMENTS WITH ADMINISTRATORS OF FLORIDA PACE FUNDING AGENCY FOR THE BENEFIT OF PALM BEACH COUNTY, AND EXERCISE CERTAIN PROVISIONS IN THE AGREEMENTS.

**WHEREAS**, on April 4, 2017, the Board of County Commissioners ("BCC") adopted Ordinance 2017-012, known as the Palm Beach County PACE Program Ordinance; and

**WHEREAS**, the attached interlocal agreement between Palm Beach County ("County") and Florida PACE Funding Agency ("FPFA") and the Indemnification Agreement with CounterPointe Energy Solutions (FL), LLC, as the administrator for FPFA, are being recommended for approval by the BCC.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, THAT:**

**Section 1.** This Board hereby approves the interlocal agreement between the County and FPFA (Exhibit 1) and the indemnification agreement between the County and CounterPointe Energy Solutions (FL), LLC, as the administrator of FPFA (Exhibit 2), and this Board authorizes the County Administrator or designee to execute the above-mentioned agreements, in substantially the form attached.

**Section 2.** This Board authorizes the County Administrator or designee to execute indemnification agreements with subsequent administrators of FPFA, in a form approved by the County Attorney's Office, to provide that such subsequent administrator of FPFA shall indemnify and hold harmless the County.

**Section 3.** This Board authorizes the County Administrator or designee to exercise the provisions in the above-mentioned agreements including, but not limited to, audits, enforcement, revisions, notifications, and termination.

The foregoing resolution was offered by Commissioner Abrams, who moved its adoption. The motion was seconded by Commissioner Kerner, and upon being put to a vote, the vote was as follows:

COMM. PAULETTE BURDICK, Mayor	<u>Aye</u>
COMM. MELISSA MCKINLAY, Vice Mayor	<u>Aye</u>
COMM. HAL R. VALECHE	<u>Aye</u>
COMM. DAVID KERNER	<u>Aye</u>
COMM. STEVEN L. ABRAMS	<u>Aye</u>
COMM. MARY LOU BERGER	<u>Aye</u>
COMM. MACK BERNARD	<u>Nay</u>

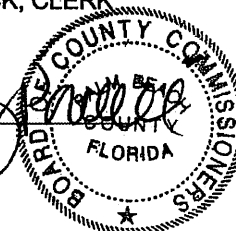
The Mayor thereupon declared the resolution duly passed and adopted this 15th day of August, 2017.

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS  
SHARON R. BOCK, CLERK

By: [Signature]  
County Attorney

By: [Signature]  
Deputy Clerk



STATE OF FLORIDA, COUNTY OF PALM BEACH  
I, SHARON R. BOCK, Clerk and Comptroller,  
certify this to be a true and correct copy of the original  
filed in my office on AUG 15 2017  
dated at West Palm Beach, Florida 8-21-17  
By: [Signature]  
Deputy Clerk

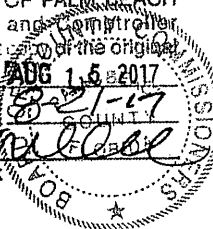


EXHIBIT 1

R 2017-1105

**NON-EXCLUSIVE INTERLOCAL AGREEMENT  
RELATING TO THE FUNDING AND FINANCING  
OF QUALIFYING IMPROVEMENTS BY THE  
FLORIDA PACE FUNDING AGENCY**

AUG 15 2017

This non-exclusive Interlocal Agreement is made and entered into as of August 15, 2017, 2017 ("Interlocal Agreement"), by and between Palm Beach County, Florida, ("County"), and the Florida PACE Funding Agency, a separate legal entity and public body and unit of local government, established pursuant to Section 163.01(7), Florida Statutes, ("Agency"), by and through their respective governing bodies. The purpose of this Agreement is to better secure, in an efficient and uniform manner, for local property owners (as hereinafter defined) the privileges and benefits provided for herein and by law, and particularly by Section 163.08, Florida Statutes, as amended ("PACE Statute"), relating to the voluntary determination by affected property owners to obtain and finance certain improvements to property for energy efficiency, renewable energy or wind resistance.

**RECITALS**

**WHEREAS**, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969" authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

**WHEREAS**, Part I of Chapter 163, Florida Statutes, permits public agencies as defined therein to enter into interlocal agreements with each other to jointly exercise any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

**WHEREAS**, Section 163.08, Florida Statutes, ("PACE Statute") authorizes financing of qualifying improvements through agreements for property to be subject to a voluntary, non-ad valorem special assessment process as the repayment mechanism, commonly known as Property Assessed Clean Energy ("PACE"); and

**WHEREAS**, on April 4, 2017, the Palm Beach County Board of County Commissioners adopted Ordinance No. 2017-012, entitled the Palm Beach County Property Assessed Clean Energy Ordinance (PACE) ("Ordinance"), and provided for certain consumer protections and requirements for PACE Providers; and

**WHEREAS**, the County is concurrently adopting a Resolution authorizing the Agency to provide PACE financing and funding with property owners for qualifying improvements within the County, in accordance with the PACE Statute and the Ordinance; and

**WHEREAS**, the Parties have determined that entering into this Interlocal Agreement is in the best interest and welfare of the property owners within the County.

**NOW, THEREFORE**, in consideration of the terms and conditions, promises and covenants hereinafter set forth, the Parties agree as follows:



**NOW, THEREFORE**, in consideration of the terms and conditions, promises and covenants hereinafter set forth, the Parties agree as follows:

## **ARTICLE I**

### **DEFINITIONS AND CONSTRUCTION**

**SECTION 1.01. DEFINITIONS.** As used in this Agreement, the following terms shall have the meanings as defined unless the context requires otherwise:

**“Agency”** shall mean the Florida PACE Funding Agency, a separate legal entity and public body and unit of local government, and also characterized as a special purpose local government.

**“Agency Charter Agreement”** or **“Charter”** shall mean, unless the context otherwise requires, the separate interlocal agreement which created and established the Agency, including any amendments, supplements or restatements thereto executed and delivered in accordance with the terms thereof.

**“Agency’s Program”** shall mean the activities of the Agency to provide financing for qualifying improvements undertaken within this State.

**“Board of Directors”** shall mean the governing body of the Agency.

**“County”** shall mean Palm Beach County, a political subdivision of the State of Florida.

**“Financing Agreement”** shall mean the financing agreement or the summary memorandum of such agreement the property owner signs establishing terms and conditions for the financing of qualifying improvements which is required to be recorded in the public records pursuant to the PACE Statute.

**“Financing Documents”** shall mean the resolution or resolutions duly adopted by the Agency, as well as any indenture of trust, trust agreement, interlocal agreement or other instrument relating to the issuance or security of any bond or obligations of the Agency and any agreement, pursuant to which the property owners obtain access to funds provided by the Agency.

**“Interlocal Agreement”** shall mean this interlocal agreement executed under the auspices of Section 163.01, Florida Statutes, known as the “Florida Interlocal Cooperation Act of 1969”, or if the context requires, a similar interlocal agreement between the Agency and any municipality, county or other government or separate legal entity permitted by the PACE Statute to enter into financing agreements as provided for therein. This Agreement simply presents a means of coordination and communication among local governments as the Agency serves and makes available, in a non-exclusive manner, funding and financing of qualifying improvements by the Agency to interested private property owners in the manner provided by law.

**“Obligations”** shall mean a series of bonds, obligations or other evidence of indebtedness, including, but not limited to, notes, commercial paper, certificates or any other obligations of the Agency issued pursuant hereto, or under any general law provisions, and pursuant to the financing documents. The term shall also include any lawful obligation committed to by the Agency or pursuant to an interlocal agreement with another governmental body or agency and/or warrants issued for services rendered or administrative expenses.

**“Ordinance”** shall mean Ordinance No. 2017-012, entitled the Palm Beach County Property Assessed Clean Energy (PACE) Ordinance, and as codified.

**“PACE”** is an acronym for the colloquial financing concept commonly referred to as ‘property assessed clean energy’; in Florida, the name or acronym PACE is derived from the provisions of general law related to financing energy efficiency, renewable energy and wind resistance improvements addressed by the Ordinance, and encouraged by the Legislature in Section 163.08, Florida Statutes, which is entitled “supplemental authority for improvements to real property.”

**“PACE Statute”** sometimes called the “Supplemental Act”, shall mean the defined terms, general law provisions, and additional and supplemental authority described in Section 163.08, Florida Statutes, as amended.

**“Participating Municipalities”** shall mean all municipalities that have not adopted an ordinance governing any or all of the subject matter of the Ordinance, regardless of the time of passage of the municipal ordinance.

**“Pledged Funds”** shall mean (A) the revenues derived from special assessments and other moneys received by the Agency or its designee relating to some portion thereof, (B) until applied in accordance with the terms of the financing documents, all moneys in the funds, accounts and sub-accounts established thereby, including investments therein, and (C) such other property, assets and moneys of the Agency as shall be pledged pursuant to the financing documents; in each case to the extent provided by the Board of Directors pursuant to the financing documents. The Pledged funds pledged to one series of obligations may be different than the Pledged funds pledged to other series of obligations. Pledged funds shall not include any general or performance assurance fund or account of the Agency.

**“Property Owner”** shall mean, singularly or collectively as the context requires, all of the record owners of real property subject to a financing agreement with the Agency.

**“Qualifying Improvements”** includes energy conservation and efficiency, renewable energy, and wind resistance improvements as defined by the PACE Statute, as may be amended by law.

**“Special Assessments”** shall mean the non-ad valorem assessments authorized by the PACE Statute and levied by the Agency on property owned by a property owner to fund the costs of qualifying improvements.

## **SECTION 1.02      CONSTRUCTION.**

(A) Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms and corporations. The terms "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms, shall refer to this Agreement; the term "heretofore" shall mean before the date this Agreement is executed; and the term "hereafter" shall mean after the date this Agreement is executed.

(B) Each recital, covenant, agreement, representation and warranty made by a party herein shall be fairly deemed to be material and to have been relied on by the other party to this Agreement. Both parties have independently reviewed this Agreement with their own counsel and covenant that the provisions hereof shall not be construed for or against either the County or the Agency by reason of authorship.

**SECTION 1.03. SECTION HEADINGS.** Any headings preceding the texts of the several articles and sections of this Interlocal Agreement and any table of contents or marginal notes appended to copies hereof shall be solely for convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

**SECTION 1.04. FINDINGS.** It is hereby ascertained, determined and declared that:

(A) The State Legislature has determined there is a compelling state interest in enabling private property owners to voluntarily finance qualifying improvements with local government assistance. The actions authorized by the PACE Statute, including the financing of qualifying improvements through the execution of financing agreements and the related imposition of a special assessment, have been determined by the Legislature as reasonable and necessary for the prosperity and welfare of the State, and its property owners and inhabitants.

(B) The Agency has provided to the County a binding Final Judgment and its governance Charter which both expressly evidence the Agency is distinct from the County and that the County shall not in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of the Agency or its agents, and the Agency has no independent power to obligate the County or any municipality within the County served by the Agency.

(C) Nothing in this Agreement does, nor shall be construed to empower the Agency to obligate or foist any liability upon the County, in any manner, without the express written permission of both parties; and no such permission is included in this Agreement.

(D) The availability of the non-exclusive financing program offered by the Agency (without cost to, assumption of liability by or demand upon the credit of the County or any participating municipality) and the voluntary participation in the Agency's financing program by property owners provides an alternative financing option to private property owners who choose to finance and repay the costs to provide and install qualifying improvements.

(E) The Agency is authorized by law and pursuant to the provisions of the PACE Statute to undertake this financing service and associated activities to interested property owners.

(F) This Agreement provides a cooperative, interlocal, alternative, supplemental and non-exclusive means to encourage and achieve, *inter alia*, immediate local economic development in a manner provided by the Legislature, provide for local commerce and job creation, as well as achieving the compelling State interest and public purposes described in the PACE Statute.

NOT A CERTIFIED COPY

## ARTICLE II

### IMPLEMENTATION OF A COMPELLING STATE AND LOCAL INTEREST

#### SECTION 2.01. AUTHORITY; AND, PURPOSE.

(A) The execution hereof has been duly authorized by the resolution of the governing bodies of each party hereto.

(B) The Agency by this Agreement is approved to serve, to provide its lawful services, and lawfully conduct its affairs within the County in accord with applicable general law and local legislation.

**SECTION 2.02. CREATION OF STATE, COUNTY OR MUNICIPAL DEBTS PROHIBITED.** The Agency shall not be empowered or authorized in any manner to create a debt against the County or any participating municipality and may not pledge the full faith and credit of the County or any participating municipality. All revenue bonds or debt obligations of the Agency shall contain on the face thereof a statement to the effect that the State, County, or any participating municipality, shall not be obligated to pay the same or the interest and that they are only payable from Agency revenues or the portion thereof for which they are issued and that neither the full faith and credit nor the taxing power of the County, or any participating municipality, is pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue or refunding bonds under the provisions of law, the Charter Agreement, or any other agreement shall not directly or indirectly or contingently obligate the County, or any participating municipality, to levy or to pledge any form of ad valorem taxation or other County, or any participating municipality, revenues or to make any appropriation for their payment.

#### SECTION 2.03. ADOPTION OF RATES, FEES AND CHARGES.

(A) The Board of Directors necessarily must adopt or authorize from time to time by resolution such rates, fees or other charges for the provision of the services of the Agency to be paid by the property owner pursuant to a financing agreement described in the PACE Statute.

(B) Such rates, fees and charges shall be adopted and revised so as to provide moneys, which, with other funds available for such purposes, shall be at least sufficient at all times to pay the expenses of administering, managing, and providing for the services and administration of the activities of the Agency, to pay costs and expenses provided for by law or the Charter Agreement and the financing documents, and to pay the principal and interest on the obligations as the same shall become due and reserves therefore, and to provide for necessary administration and reasonable margin of safety over and above the total amount of such payments. Notwithstanding any other provision in the Charter Agreement or this Agreement, such rates, fees and charges shall not exceed a rate of interest greater than the equivalent of 18 percent per annum simple interest either directly or indirectly, and always be sufficient to comply fully with any covenants contained in the financing documents.

(C) Such rates, fees and charges may vary from jurisdiction to jurisdiction, but shall be just and equitable and uniform at the time of imposition for the Property Owners within the

same class, or within each subscribing local governmental jurisdiction, and may be based upon or computed upon any factor (including, by way of example and not limitation, competitive or market conditions, distinguishing between residential and non-residential properties or uses, distinguishing between variable costs of administrative services and local government cooperation over time) or combination of factors affecting the demand or cost of the services furnished or provided to administer the services and affairs of the Agency as may be determined by the Board of Directors from time to time.

**SECTION 2.04. FINANCING OF IMPROVEMENTS TO REAL PROPERTY; COLLECTION OF ASSESSMENTS.**

(A) Program Guidelines: The Agency's Program to be offered in the County and participating municipalities will comply with program guidelines and consumer protections set forth in the Ordinance, as may be amended from time to time. The parties concur that at the time of execution of this Agreement, the Agency's program guidelines and consumer protections are consistent with the Ordinance. However, if there is a conflict between the Agency's Program and the Ordinance, the Agency shall notify the County in writing.

(B) Any financing assistance for qualifying improvements pursuant to the PACE Statute shall be conducted solely between the Agency and an interested private property owner, done pursuant to general law and the Ordinance, and shall not be construed to be the legal, financial or administrative responsibility of the County or participating municipalities in any manner whatsoever.

(C) This Agreement provides for accomplishment of a compelling state interest, recognizes and carefully encourages uniform and scalable processes statewide to finance energy conservation and efficient, renewable energy, and wind resistance improvements to real property, and is intended to create local economic development and local employment. Even though this Agreement affords service to interested private property owners who voluntarily desire to take advantage of and use the financing and supplemental authority for improvements to real property described in the PACE Statute, all such activities must be independently accomplished without cost, liability, or any demand upon the County's and participating municipalities credit or use of significant staff time or resources.

(D) In no event shall the County and participating municipalities served by the Agency be held individually or jointly liable for the torts of the officers or employees of the Agency, or any other tort attributable to the Agency, and the Agency shall be solely liable for any torts attributable to it or for torts of its officers, employees or agents, to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes. Nothing in this Agreement shall be construed to inure to the benefit of any third-party or for allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

(E) By law the Agency shall at all times be a qualified, distinct and separate special purpose local government funding and financing instrumentality separate and apart from the County and participating municipalities and separate from their treasuries; and, neither the County nor participating municipalities, nor the local governments who are either incorporators

or members of, or have joined, or are served by the Agency, or any subsequently served or participating local government in the affairs of the Agency, shall be liable for the actions of or in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of the Agency, or its successor in function, and neither the Agency nor any agent, employee, officer or official of same shall have any authority or power to otherwise represent or obligate the County or participating municipalities in any manner as a result of this Agreement.

(F) The County and participating municipalities shall not incur nor ever be requested to authorize any obligations secured by special assessments associated with qualifying improvements imposed by the Agency pursuant to the PACE Statute. No special purpose local government acting pursuant to the PACE Statute, the Ordinance, or this Agreement shall be empowered or authorized in any manner to create a debt against the state, the County, or participating municipalities, and shall not pledge the full faith and credit of the state, or the County, or participating municipalities, in any manner whatsoever. No revenue bonds or debt obligations of any special purpose local government acting pursuant to the PACE Statute, shall ever pledge or imply any pledge that the County, or participating municipalities, shall be obligated to pay the same or the interest thereon, nor state or imply that such obligations payable from the full faith and credit or the taxing power of the state, the County, or participating municipalities, as a result the Ordinance or this Agreement. The issuance of revenue or refunding bonds by the Agency under the provisions of law, the Agency's charter or governance documents, or any other agreement or resolution shall not as the result of the Ordinance or this Agreement be deemed in any manner, directly or indirectly or contingently, to obligate the County or participating municipalities to levy or to pledge any form of ad valorem taxation or other county or municipal revenues or to make any appropriation for their payment whatsoever.

(G) Upon execution by the respective property owners and the Agency, the statutorily required financing agreement or a summary governmental notice or memorandum thereof shall be recorded by the Agency in the Official Records within five (5) days after execution of the agreement, as required by general law which provides constructive notice that the non-ad valorem assessment to be levied on the subject property constitutes a lien of equal dignity to ad valorem taxes and assessments from the date of recordation.

(H) In a reasonably cooperative and uniform manner, the Agency must timely provide to the property appraiser and tax collector a digital copy of the recorded financing agreement or other digital summary thereof, the most recent property identification number and annual amount of the non-ad valorem assessment along with such other efficient and reasonable information and test-rolls necessary for the tax collector to collect such amounts as a non-ad valorem assessment on behalf of the Agency pursuant to Sections 163.01, 163.08, 197.3632, and 197.3635, Florida Statutes, or their successors in function.

(I) The Agency will inform every property owner that by law these non-ad valorem assessments must be collected only pursuant to Sections 163.01, 163.08, 197.3632, and 197.3635, Florida Statutes; and, are not imposed by the County, any participating municipality, the property appraiser, nor the tax collector, and that they are levied and imposed solely by the Agency, and only then upon voluntary application of the private property owner as expressly enabled, authorized and encouraged by the PACE Statute, as well as the Ordinance, to accomplish a compelling state interest with the Agency's local government assistance.

(J) The Agency must at all times acknowledge that the statutory duties of the property appraiser and the tax collector in each county, under Section 197.3632, Florida Statutes, are ministerial and the property appraiser and tax collector are by law without discretion with regard to the imposition of non-ad valorem assessments and collection on the tax notice once the affected private property owner has voluntarily entered into the statutorily required financing agreement and evidence of the non-ad valorem assessment through the required notice is recorded; and, the Agency is solely responsible for the local government role in such circumstance for complying with the requirements of Sections 197.3632 and 163.08, Florida Statutes.

(K) The Agency must comply with the statutory responsibility to enter into a separate written agreement required by Section 197.3632(2), Florida Statutes, accept the terms specified by Sections 197.3632(2) and 192.091(2)(b)2., Florida Statutes, for reimbursement and compensation of tax collectors and property appraisers, and allow for payment of such amounts by deduction as the non-ad valorem assessments are collected. The Agency, as a duly authorized special purpose local government shall be solely responsible for timely and professionally coordinating all interface with the tax collector or property appraiser, and minimize to the greatest extent reasonably possible the time, effort and attention of these public officials and offices.

(L) The Agency, as a duly authorized special purpose local government, is the local government imposing the subject non-ad valorem assessments, not the County nor participating municipalities and shall be solely responsible for compliance with all applicable law and all matters associated with origination, funding, financing, administration, and collection (in concert with the uniform method of collection) of each of the resulting non-ad valorem assessments.

#### **SECTION 2.05. COORDINATION IN COLLECTION ACTIVITIES.**

The Agency as a local government created and authorized by general law to impose the special assessments, is also required by general law to use the uniform method of collecting such special assessments, and shall be solely responsible for professionally coordinating all interface with the tax collector and property appraiser, and minimize to the greatest extent reasonably possible, the time, effort and attention of these public officials to accomplish the public purposes and direction of the PACE Statute.

#### **SECTION 2.06. PLEDGE OF PROCEEDS FROM NON-AD VALOREM ASSESSMENTS.**

(A) The Agency will take such actions as are necessary for the lawful levy of the Special Assessments against all lands and properties specially benefitted by the acquisition, construction and financing of qualifying improvements. If any assessment made with respect to any property shall be either in whole or in part annulled, vacated or set aside by the judgment of any court, or if the Agency shall be satisfied that any such assessment is so irregular or defective that the same cannot be enforced or collected, the Agency will take all necessary steps to cause a new assessment to be made for the whole or any part of any qualifying improvements or against any property specially benefitted by such improvement, to the extent and in the manner provided by law.



(B) Pursuant to the financing documents, this Agreement, and the Ordinance the Agency shall irrevocably pledge and, to the fullest extent permitted by law, pledge and assign any and all revenues derived from special assessments to the repayment of any debt obligation issued by the Agency pursuant to the financing documents.

(C) The County and participating municipalities shall not incur or ever be requested to authorize any obligations secured by special assessments associated with qualifying improvements imposed by the Agency.

(D) Each series of financing documents shall be secured forthwith equally and ratably by a pledge of and lien upon the special assessments. The obligations of the Agency under and pursuant to the financing documents shall not be or constitute general obligations or an indebtedness of the County, or participating municipalities, as "bonds" within the meaning of the Constitution of Florida, but shall be payable from and secured solely by a lien upon and pledge of the special assessments as provided herein. Neither the Agency nor any holder of any debt obligation issued by the Agency pursuant to the financing documents shall ever have the right to compel the exercise of the ad valorem taxing power of the County, or participating municipalities, or other taxation in any form, of property therein to pay any amount due under any financing documents or any special assessment. The financing documents shall not constitute a lien upon any property of or in the County's, or participating municipalities' jurisdiction except as to the respective special assessments in the manner provided herein and by law.

[Remainder of page intentionally left blank.]

### ARTICLE III

#### GENERAL PROVISIONS

**SECTION 3.01. INTERLOCAL AGREEMENT PROVISIONS.** This Agreement is deemed to be an "interlocal agreement" within the meaning of the Florida Interlocal Cooperation Act of 1969, as amended. The Agency shall file this Interlocal Agreement with the Clerk of the Circuit Court of Palm Beach County, Florida.

**SECTION 3.02. DISCLOSURE; NONDISCRIMINATION; COVENANT TO COOPERATE.**

A) The Agency has provided a copy of (1) the PACE Statute, (2) the Agency's Charter Agreement, (3) the Final Judgment in *Fla. PACE Funding Agency v. State*, No. 2011-CA-1824 (Fla. 2d Cir. Ct. 2011), and (4) other relevant disclosure information and background materials to the County prior to execution hereof. County, through its own staff and advisors, has independently reviewed and considered the foregoing and other relevant information of its choosing.

(B) The Agency and the County agree that no person shall practice discrimination on the basis of race, age, color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, gender, sexual orientation, gender identity and expression, or genetic information.

(B) The objective of the Agency's mission is to offer a uniform, standardized and scalable approach that provides efficiencies and economies of scale intended to attract voluntary financing of qualifying improvements by private property owners desirous of also achieving, a compelling state interest and stimulate a substantial and meaningful flow of private sector economic activity and new job creation. In doing so under this Interlocal Agreement, the County recognizes the non-exclusive availability of the Agency's funding and financing program to constituent property owners and the County and Agency covenant to cooperate, coordinate and communicate on an interlocal basis.

**SECTION 3.03. TERM OF AGREEMENT; DURATION OF AGREEMENT; NO EXCLUSIVITY.**

(A) The term of this Interlocal Agreement shall commence as of the date first above written.

(B) The term shall continue so long as the Agency has obligations outstanding which are secured by Pledged Revenues derived from financing agreements relating to any properties within the boundaries of the County and participating municipalities or the Agency has projects for qualified improvements underway therein; the applicable provisions, authority and responsibility under this Agreement reasonably necessary to carry out the remaining aspects of the Agency's Program and responsibilities of Agency then underway, shall remain in effect and survive any termination until such time as those obligations and all associated remaining Agency responsibilities are fulfilled (including, but not limited to, the collection of assessments in due course). Provided, however, the Agency's powers employed and exercised shall be non-

exclusive, and the County and participating municipalities are free to and reserve the right to enter into or otherwise encourage or commence any other program for financing qualified improvements using non-ad valorem assessments.

(C) Notwithstanding subsection (B), either party may at any time terminate this Interlocal Agreement upon sixty (60) days written notice provided as required by Section 3.05. Provided, however, no termination of this Interlocal Agreement shall preclude the Agency from exercising any of its power or authority after any termination, including without limiting the generality of the foregoing, that specifically associated with its mission or collection of any of its obligations outstanding which are secured by pledged revenues derived from financing agreements. In the event the Agency's rights under this Interlocal Agreement to impose new non-ad valorem assessments shall ever end, then as of the effective date of the termination, all rights and obligations of the parties shall continue as specified in subsection (B) until such time as all Agency's obligations, and all associated remaining responsibilities under the Agency's Program are fulfilled (including, but not limited to, the collection of assessments in due course).

**SECTION 3.04. AMENDMENTS AND WAIVERS.** Except as otherwise provided herein, no amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the County and Agency.

**SECTION 3.05. NOTICES.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered (or confirmed electronic facsimile transmission) or mailed by registered or certified mail, postage prepaid, or sent by nationally recognized overnight courier (with delivery instructions for "next business day" service) to the parties at the following addresses:

County: Palm Beach County  
ATTN: County Administrator  
301 North Olive Avenue, Suite 1101  
West Palm Beach, Florida 33401

With a copy to: Palm Beach County  
ATTN: County Attorney  
301 North Olive Avenue, Suite 601  
West Palm Beach, Florida 33401

Agency: Executive Director  
Florida PACE Funding Agency  
c/o City of Kissimmee  
101 North Church Street, Fifth Floor  
Kissimmee, Florida 34741

With a copy to: Program Counsel for the Florida PACE Funding Agency  
P.O. Box 14043  
Tallahassee, Florida 32317-4043

Any of the parties may, by notice in writing given to the other, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand (or confirmed electronic facsimile transmission) or three days after the date mailed.

**SECTION 3.06. QUALITY CONTROL AND COMMUNICATION.** For quality control purposes, the Agency and County desire, and the Agency covenants to continually develop, implement and employ policies, systems and procedures which set or reflect industry standards; with such standards being reasonably expected to change and evolve over time. This Agreement serves to establish an ongoing positive and professional line of communication between staff and agents for the parties and is encouraged. At any time, notwithstanding lack of default or lack of material breach hereunder, each party is encouraged to objectively and specifically communicate to the other in writing as provided for herein any concerns, suggestions or disapproval with performance, policies, systems or procedures being employed by each party concerning the funding and financing of qualified improvements. The Agency through its administrator, Executive Director, or a duly authorized designee, will promptly respond in writing to all such communications (reasonably within fifteen (15) days of receipt of any such written communication, but sooner if necessary) from the County and follow-up accordingly; and, also promptly communicate any such response, follow-up, and all related communication to the Board of Directors for review. This paragraph shall not be construed as containing any obligation for the County to receive complaints or concerns about the Agency's performance, policies, systems, or procedures, and the County is requested to and specifically authorized to refer all such complaints or concerns directly to the Agency for a response.

**SECTION 3.07. IMMUNITY; LIMITED LIABILITY.**

(A) All of the privileges and immunities from liability and exemptions from laws, ordinances and rules which apply to the activity of officials, officers, agents or employees of the parties shall apply to the officials, officers, agents or employees thereof when performing their respective functions and duties under the provisions of this Agreement.

(B) The County and Agency are and shall be subject to Sections 768.28 and 163.01(9)(c), Florida Statutes, and any other provisions of Florida law governing sovereign immunity. Pursuant to Section 163.01(5)(o), Florida Statutes, that certain final judgment in *Fla. PACE Funding Agency v. State*, No. 2011-CA-1824 (Fla. 2d Cir. Ct. 2011), and this covenant of the parties hereto, the local governments who are either the incorporators, or members of the Agency, or any subsequently served or participating local government shall not be held jointly liable for the torts of the officers or employees of the Agency, or any other tort attributable to the Agency, and that the Agency alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes. The County and Agency acknowledge and agree that the Agency shall have all of the applicable privileges and immunities from liability and exemptions from laws, ordinances, rules and common law which apply to the municipalities and counties of the State.

(C) To the extent provided by law, the Agency agrees to protect, defend, reimburse, indemnify and hold the County and participating municipalities served by the Agency, its agents,

employees and elected officers (Indemnified Parties), and each of them free and harmless at all times from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature (collectively, a "Claim") whether arising in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any act, omission or fault whether active or passive of the County and participating municipalities of anyone acting under its direction or control, or on its behalf in connection with or incident to the performance of this Agreement. Agency's aforesaid indemnity and hold harmless obligations, or portions or applications thereof, shall apply to the fullest extent permitted by law but in no event shall they apply to liability caused by the negligence or willful misconduct of the County or participating municipalities their respective agents, servants, employees or officers, nor shall the liability limits set forth in 768.28, Florida Statutes, be waived. Nothing in this Agreement is intended to inure to the benefit of any third-party or for the purpose of allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. In the event any Claim is brought against an Indemnified Party, the Agency, shall upon written notice from an Indemnified Party, defend each Indemnified Party against each such Claim by counsel satisfactory to the Indemnified Party or, at the Indemnified Party's option, it may elect to provide its own defense. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

(D) The Agency is an independent local government funding and financing instrumentality. Neither the County nor any participating municipality served by the Agency, shall in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of the Agency, its Board of Directors or any other agents, employees, officers or officials of the Agency, except to the extent otherwise mutually and expressly agreed upon in writing. In addition, the Agency, its Board of Directors or any other agents, employees, officers or officials of the Agency shall have no authority or power to otherwise obligate either the County or any participating municipality served by the Agency.

(E) Notwithstanding anything to the contrary herein, neither the County nor the Agency waive any sovereign immunity as a result of this or any other agreement resulting from the subject matter hereof; and, nothing herein shall be construed to usurp or contract away any immunity, or the duty or authority of either party to exercise any general law or police powers as defined by law.

**SECTION 3.08. BINDING EFFECT.** This Agreement shall be binding upon the parties, their respective successors and assigns and shall inure to the benefit of the parties, their respective successors and assigns.

**SECTION 3.09. SEVERABILITY.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**SECTION 3.10. ADMINISTRATION INDEMNIFICATION; ADDITIONAL INSURED.**

(A) The Agency will promptly request and obtain from its administrator, CounterPointe Energy Solutions (FL), LLC, and any subsequent administrator, a separate indemnification agreement as to its actions and activities on behalf of the Agency concerning all of the subject matter of this Agreement for the benefit of the County and participating municipalities. The form of the indemnification agreement shall be approved by the County Attorney's Office, prior to the administrator assuming responsibilities for the Agency.

(B) The Agency will promptly request and obtain from its administrator, CounterPointe Energy Solutions (FL), LLC, and any subsequent administrator, and provide the County a certificate showing the County as an additional insured for the coverages the Agency requires of its administrator, which are currently:

Worker's Compensation	Statutory
Employer's Liability	\$1,000,000
Commercial General Liability	\$1,000,000 per occurrence
	\$1,000,000 aggregate
Commercial Auto Liability	\$1,000,000 combined single limit
Professional Liability (E&O)	\$1,000,000 per occurrence
	\$2,000,000 aggregate

The statement or certificate evidencing the County is named as an additional insured will include a standard insurance industry statement prohibiting cancellation, termination, or modification of the policy or a reduction of coverage without first giving the County (as an additional insured) at least ten (10) days prior written notice of such proposed action.

**SECTION 3.11. INSURANCE BY THE AGENCY:** Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statute, the Agency acknowledges to be self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$200,000 Per Person and \$300,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. In the event the Agency maintains third-party Commercial General Liability and Commercial Auto Liability in lieu of exclusive reliance of self-insurance under Section 768.28 Florida Statute, the Agency shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage. The Agency agrees to maintain or to be self-insured for Workers' Compensation & Employer's Liability insurance in accordance with Section 440, Florida Statutes. When requested, the Agency shall agree to provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which County agrees to recognize as acceptable for the above mentioned coverage. Compliance with the foregoing requirements shall not relieve the Agency of its liability and obligations under this Interlocal Agreement.

**SECTION 3.12. EXECUTION IN COUNTERPARTS.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 3.13. APPLICABLE LAW; ENFORCEMENT; DELEGATION.** A breach of this Agreement shall mean a material failure to comply with the PACE Statute or any

covenants or provisions of this Agreement. If any party breaches any obligation herein, then, upon receipt of written notice by the non-breaching party, the breaching party shall proceed diligently and in good faith to take all reasonable actions to cure such breach, and shall continue to take all such actions until such breach is cured, or be subject to termination for cause.

(A) The parties agree time is of the essence in all performance hereunder. At all times the parties may proceed at law or in equity to enforce their rights under this Agreement using all available remedies.

(B) The venue of any legal or equitable action that arises out of or relates to this Agreement shall be in the appropriate state court in Palm Beach County, Florida. In any such action, Florida law shall apply and the parties waive any right to jury trial.

(C) Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and/or conditions of this Agreement shall be borne by the respective parties, provided; however, BY ENTERING INTO THIS AGREEMENT, THE AGENCY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF THE AGENCY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE COUNTY OF VIOLATION OF THIS SECTION, THE AGENCY SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE COUNTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

(D) Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, county, or municipal officers.

**SECTION 3.14. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements among the parties in connection with the subject matter hereof, except as specifically set forth herein.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have caused this Non-Exclusive Interlocal Agreement to be duly executed and entered into as of the date first above written.

R2017-1105  
BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY  
AUG 15 2017

(SEAL)

By: Paulette Burdick  
Paulette Burdick, Mayor

Attest:

Approved as to form:

Sharon R. Bock  
Sharon R. Bock, Clerk and Comptroller  
Deputy Clerk

James Brako  
James Brako, Assistant County Attorney

Approved as to terms and conditions

By: Natalie Belia



IN WITNESS WHEREOF, the undersigned have caused this Non-Exclusive Interlocal Agreement to be duly executed and entered into as of the date first above written.

**THE FLORIDA PACE FUNDING AGENCY**

(SEAL)



By: \_\_\_\_\_

Michael H. Steigerwald, Executive Director

ATTEST:

\_\_\_\_\_  
*Donald T. Smallwood*

Donald T. Smallwood, Assistant Secretary

ORDINANCE NO. 20 22 - 030

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING PALM BEACH COUNTY CODE, CHAPTER 17, ARTICLE XVII, (ORDINANCE 2017-012), SECTION 17-504 THROUGH SECTION 17-507, REGARDING THE PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

1       **WHEREAS**, Property Assessed Clean Energy (PACE) programs for Residential and  
2 Non-Residential Properties have been established across the country to provide mechanisms  
3 for funding energy efficiency, renewable energy, and other types of improvements to  
4 residential and commercial properties; and

5       **WHEREAS**, PACE Programs for Residential and Non-Residential Properties are  
6 typically established by local governments, as defined by Section 163.08, Florida Statutes, and  
7 are administered by the local government or by for-profit or not-for-profit entities; and

8       **WHEREAS**, PACE financing for Residential and Non-Residential Properties is repaid  
9 as an assessment on the property's regular tax bill; and

10       **WHEREAS**, Section 163.08, Florida Statutes, authorizes programs, typically referred  
11 to as PACE Programs, that levy non-ad valorem assessments allowing property owners to  
12 apply to local governments for financing certain energy efficiency, renewable energy, and  
13 wind resistant improvements; and

14       **WHEREAS**, Section 163.08, Florida Statutes, provides that properties retrofitted with  
15 energy-related Qualifying Improvements benefit from reduced energy consumption, reduced  
16 potential for wind damage, and assist in the fulfillment of the state's energy and hurricane  
17 mitigation policies; and

18       **WHEREAS**, the PACE assessment is collected pursuant to Florida's uniform  
19 method for the levy, collection, and enforcement of non-ad valorem assessments, Section  
20 197.3632, Florida Statutes; and

1           **WHEREAS**, the County has entered into interlocal agreements with multiple PACE  
2 Agencies/Authorities/Districts to encourage competition and provide more choices for  
3 property owners; and

4           **WHEREAS**, the Board of County Commissioners intends to clarify and strengthen  
5 qualifications and consumer protection disclosure requirements for PACE Programs for  
6 Residential and Non-Residential Properties that provide financing for Qualifying  
7 Improvements in accordance with Section 163.08, Florida Statutes, and provisions of this  
8 Ordinance; and

9           **WHEREAS**, the Board of County Commissioners of Palm Beach County, pursuant to  
10 its authority under the Florida Constitution, Article VIII, Section 1(g), Section 125.01, Florida  
11 Statutes, and the Palm Beach County Charter, hereby adopts the following amendments to the  
12 Palm Beach County Property Assessed Clean Energy (PACE) Ordinance (Ordinance 2017-  
13 012).

14  
15           **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**  
16 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

17       **Section 1. Chapter 17, Article XVII, Section 17-504, entitled "DEFINITIONS" is hereby**  
18 **amended as follows:**

19           For purposes of this Ordinance, the following words and phrases shall have the  
20 following meanings:

21       (1) *Board or County* is the Palm Beach County Board of County Commissioners.

22       (2) *Fair Market Value* shall mean the value of the property as determined by a reputable valuation  
23 service, the method of which shall be reported to the County quarterly.

24       ~~(2)(3)~~ *Financing Agreement* shall mean the financing agreement or the summary memorandum of  
25 such agreement the property owner signs establishing terms and conditions for the financing  
26 of ~~qualifying improvements~~ Qualifying Improvements which is required to be recorded in  
27 the public records pursuant to the PACE Statute.

28       (4) *PACE Assessment* shall mean the non-ad valorem assessment placed on a property owner's tax  
29 bill as a result of financing obtained pursuant to this Ordinance for Qualifying Improvements.

30       ~~(3)(5)~~ *Qualifying Improvements* ~~includes—shall mean~~ energy conservation and efficiency,  
31 renewable energy, and wind resistance improvements as defined by F.S. § 163.08, as may be  
32 amended by law.

Coding: Words in strike through type are deletions from existing text. Words in underscored type are additions.

1 (6) PACE Third-Party Administrator shall mean the entity administering the PACE Program  
2 and operating on behalf of the PACE Agency/Authority/District. The Third-Party  
3 Administrator is an entity contracted with a PACE Agency/Authority/District to perform  
4 administrative functions, including, but not limited to, processing PACE financing  
5 applications and determining eligibility.

6 ~~(5)(7) PACE agencies/authorities/districts~~ Agencies/Authorities/Districts shall mean one or  
7 more local governments defined in F.S. § 163.08 (2)(a), authorized by Palm Beach County  
8 to offer PACE financing for ~~qualifying improvements~~ Qualifying Improvements.

9 ~~(6)(8) PACE Program~~ shall mean the County's provision through interlocal agreements with  
10 PACE ~~agencies/authorities/districts~~ Agencies/Authorities/Districts offering financing for  
11 ~~qualifying improvements~~ Qualifying Improvements as approved by the State of Florida  
12 pursuant to F.S. § 163.08, further ~~defined~~ in this Ordinance, as may be amended by law.

13 ~~(7)(9) PACE Statute~~ shall mean F.S. § 163.08 and all future amendments thereto.

14 ~~(8)(10) Residential Property~~ shall mean a residential property consisting of four (4) or ~~less~~ fewer  
15 residential dwelling units.

16 ~~(9)(11) Non-Residential Property~~ shall mean commercial, industrial, agricultural, mixed use  
17 and residential properties consisting of five (5) or more residential dwelling units.

18 **Section 2. Chapter 17, Article XVII, Section 17-505, entitled "PACE PROGRAM**  
19 **AUTHORIZATION" is hereby amended as follows:**

20 (1) PACE agencies/authorities/districts Agencies/Authorities/Districts and Third-Party  
21 Administrators offering financing for ~~qualifying improvements~~ Qualifying Improvements  
22 on Residential and Non-Residential Properties pursuant to this Ordinance shall be approved  
23 by the County and authorized through interlocal agreements to provide financing subject  
24 to the requirements of this Ordinance and the PACE Statute. A resolution indicating the  
25 County's desire to join a PACE ~~agency/authority/district~~ Agency/Authority/District shall  
26 be prepared by County staff and presented to the Board for consideration with each  
27 interlocal agreement. The interlocal agreements shall include specific terms and conditions  
28 for PACE ~~agencies/authorities/districts~~ Agencies/Authorities/Districts and Third-Party  
29 Administrators to operate within Palm Beach County.

30 (2) PACE agencies/authorities/districts Agencies/Authorities/Districts and Third-Party  
31 Administrators desiring to provide financing pursuant to this Ordinance shall provide  
32 sufficient documentation as requested by the County to provide reasonable assurance that

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1 the requirements of this Ordinance and the PACE Statute can be met by the PACE  
2 ~~agency/authority/district.~~Agency/Authority/District and/or Third-Party Administrator.  
3 Document requests shall include but are not limited to a list of Qualifying Improvements,  
4 standard financing agreements, consumer protection provisions, and certificates of  
5 insurance. PACE Agencies/Authorities/Districts and Third-Party Administrators shall  
6 comply with reasonable requests for data and business practices within 90 days, consistent  
7 with state and federal law.

8 **Section 3. Chapter 17, Article XVII, Section 17-506, entitled "DISCLOSURE**  
9 **REQUIREMENTS" is hereby amended as follows:**

10 ~~(a)~~(1) ~~For Residential Properties, In~~ in addition to any disclosure requirements in the PACE  
11 Statute, PACE ~~agencies/authorities/districts~~Agencies/Authorities/Districts and Third-Party  
12 Administrators that extend financing pursuant to the PACE Statute and levy non-ad  
13 valorem assessments to fund ~~the qualifying improvements shall present to~~ Qualifying  
14 Improvements must have the property owner sign a separate, written notice disclosing,  
15 PACE Agencies/Authorities/Districts and Third-Party Administrators must disclose to  
16 property owners essential terms in a "Residential Consumer Disclosure Notice" that must  
17 be pre-approved by the County. The County will not unreasonably withhold approval. The  
18 Residential Consumer Disclosure Notice must be a consolidated summary of the following  
19 ("Notice")information:

20 ~~(1)~~(a) The estimated total amount of the debt, including amount financed, fees, fixed  
21 interest rate, capitalized interest and the effective rate of the interest charged ("Annual  
22 Percentage Rate" or "APR");

23 ~~(2)~~(b) That PACE ~~agencies/authorities/districts~~Agencies/Authorities/Districts and Third-  
24 Party Administrators may only offer fixed simple interest rates and payments that fully  
25 amortize the obligation. Variable or negative amortization financing terms are not  
26 permitted. Capitalized interest included in the original balance of a PACE financing  
27 agreement does not constitute negative amortization-;

28 ~~(3)~~(c) The repayment process and terms, amounts and a schedule that fully amortizes the  
29 amount financed including the estimated annual PACE assessment;

30 ~~(4)~~(d) That the PACE assessment will appear on the property owner's tax bill;

31 ~~(5)~~(e) That there is no discount for paying the PACE assessment early;

32 ~~(6)~~(f) The nature of the lien recorded and that the PACE assessment will be collected in

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- 1 the same manner as real estate taxes. That failure to pay the PACE assessment may  
2 cause a tax certificate to be issued against the property, and that failure of payment  
3 thereof may result in the loss of property subject to the PACE assessment, including  
4 homestead property, in the same manner as failure to pay property taxes;
- 5 ~~(7)~~(g) The specific improvements to be financed and installed and that such improvements  
6 and PACE assessment may or may not affect the overall value of the property;
- 7 ~~(8)~~(h) A PACE assessment payment term that does not exceed the useful life of the  
8 improvements, as determined by reputable third-party sources, including, but not  
9 limited to, the U.S. Department of Energy;
- 10 ~~(9)~~(i) The right of pre-payment without penalty;
- 11 ~~(10)~~(j) Notice that the property owner may be required to pay any PACE assessment in full  
12 at the time of refinance or sale of the property; and
- 13 ~~(11)~~(k) The three-day right to cancel the financing. The property owner has at least a three-day  
14 right to cancel the financing. PACE Agencies/Authorities/Districts and Third-Party  
15 Administrators must furnish to the property owner a notice of the right to rescind the  
16 PACE financing agreement. The property owner may exercise the right to rescind until  
17 midnight of the third business day following the execution of the agreement by giving  
18 notice to the other party by either certified or registered mail, electronic mail, fax  
19 machine, phone call, or any other method approved by the PACE  
20 Agencies/Authorities/Districts and Third-Party Administrators;
- 21 (l) The property owner has a three-day right to cancel a home improvement contract per  
22 F.S. § 520.72;
- 23 (m) In the event of an emergency, property owners may waive their right to the PACE  
24 financing agreement three-day right to cancel to allow PACE contractors to begin the  
25 project. For the purposes of this section, an emergency is defined as a situation that  
26 poses an immediate threat to the health, safety, or well-being of the property owner and  
27 requires immediate abatement by the installation of a Qualifying Improvement. The  
28 property owner may waive their right to the three-day right to cancel for emergencies  
29 either through the Consumer Disclosure Notice or by giving notice by either certified  
30 or registered mail, or electronic mail, fax machine, phone call, or any other method  
31 approved by the PACE Agencies/Authorities/Districts and Third-Party Administrators;
- 32 (n) An emergency waiver option for the three-day right to cancel;

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- 1 (o) Except as required by law, PACE Agencies/Authorities/Districts and Third-Party  
2 Administrators may not disclose or permit disclosure to a PACE contractor or third-party  
3 engaged in soliciting financing agreements of the maximum amount of the PACE  
4 financing for which a property owner is eligible;
- 5 (p) That the County has programs that property owners may qualify for to fund  
6 improvements, such as the Weatherization Assistance Programs. The County retains  
7 the right to provide information about County programs within and/or in addition to  
8 the Residential Consumer Disclosure Notice, which the PACE  
9 Agencies/Authorities/District and Third-Party Administrator must provide to the  
10 homeowner; and
- 11 (q) That before the PACE three-day right to cancel ends, the PACE  
12 Agencies/Authorities/Districts or Third-Party Administrators will speak with the  
13 property owner or authorized representative to review the terms of the PACE financing  
14 agreement and confirm that the property owner understands the financial implications  
15 and communicate all essential terms including what the Consumer Disclosure Notice  
16 requires. The PACE Agencies/Authorities/Districts or Third-Party Administrators will  
17 conduct the conversation in the property owner's preferred language. The PACE  
18 Agencies/Authorities/Districts or Third-Party Administrators will record the "confirm  
19 terms" call, unless the property owner declines to be recorded. If the property owner  
20 declines to be recorded, the PACE entity must take detailed notes of the conversation  
21 to demonstrate compliance with the "confirm terms" requirement; and
- 22 (r) Contact information for the PACE Agency/Authority/District or Third-Party  
23 Administrator, including the name, phone number, and email (if applicable).
- 24 ~~(b) The Notice must be delivered to the property owner by the PACE agency/authority/district~~  
25 ~~and must be signed and dated by the property owner prior to or contemporaneously with~~  
26 ~~the property owner's signing of any legally enforceable documents under the PACE~~  
27 ~~program. The property owner and the PACE agency/authority/district must keep the signed~~  
28 ~~Notice with the property owner's executed financing agreement.~~
- 29 ~~(e) The PACE agency/authority/district shall record, or cause to be recorded, the financing~~  
30 ~~agreement or a summary memorandum of the financing agreement, in accordance with F.S.~~  
31 ~~§ 163.08(8).~~

1 (2) For Non-Residential Properties under \$250,000 for a PACE assessment, in addition to any  
2 disclosure requirements in the PACE Statute, PACE Agencies/Authorities/Districts and  
3 Third-Party Administrators that extend financing pursuant to the PACE Statute and levy  
4 non-ad valorem assessments to fund the Qualifying Improvements shall have the property  
5 owner sign a separate, written notice. PACE Agencies/Authorities/Districts and Third-  
6 Party Administrators must disclose to property owners essential terms in a "Non-  
7 Residential Consumer Disclosure Notice" that must be pre-approved by the County. The  
8 County will not unreasonably withhold approval. The Non-Residential Consumer  
9 Disclosure Notice must be a consolidated summary of the following information:  
10 (a) The estimated total amount of the debt, including amount financed, fees, fixed or  
11 variable interest rate, capitalized interest and the effective rate of the interest charged  
12 (APR);  
13 (b) That PACE Agencies/Authorities/Districts and Third-Party Administrators may only  
14 offer payments that fully amortize the obligation. Negative amortization financing  
15 terms are not permitted. Capitalized interest included in the original balance of a PACE  
16 financing does not constitute negative amortization;  
17 (c) The repayment process and terms, amounts and a schedule that fully amortizes the  
18 amount financed including the estimated annual PACE assessment;  
19 (d) That the PACE assessment will appear on the property owner's tax bill;  
20 (e) That there is no discount for paying the PACE assessment early;  
21 (f) The nature of the lien recorded and that the PACE assessment will be collected in the  
22 same manner as real estate taxes. That failure to pay the PACE assessment may cause  
23 a tax certificate to be issued against the property, and that failure of payment thereof  
24 may result in the loss of property subject to the PACE assessment in the same manner  
25 as failure to pay property taxes;  
26 (g) The specific improvements to be financed and installed and that such improvements  
27 and PACE assessment may or may not affect the overall value of the property;  
28 (h) A PACE assessment payment term that does not exceed the useful life of the  
29 improvements, as determined by reputable third-party sources, including, but not  
30 limited to, the U.S. Department of Energy;  
31 (i) Notice that the property owner may be required to pay any PACE assessment in full at  
32 the time of refinance or sale of the property;

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1 (j) The 3-day right to cancel the financing. PACE Agencies/Authorities/Districts and  
2 Third-Party Administrators must furnish to the property owner a notice of the right to  
3 rescind the PACE financing agreement. The property owner may exercise the right to  
4 rescind until midnight of the third business day following the execution of the  
5 agreement by giving notice to the other party by either certified or registered mail,  
6 electronic mail, fax machine, or a recorded phone call;

7 (k) In the event of an emergency, property owners may waive their right to the PACE  
8 financing agreement three-day right to cancel to allow PACE contractors to begin the  
9 project. For the purposes of this section, an emergency is defined as a situation that  
10 poses an immediate threat to the health, safety or well-being of the property owner and  
11 requires immediate abatement by the installation of a Qualifying Improvement. The  
12 property owner may waive their right to the three-day right to cancel for emergencies  
13 either through the Consumer Disclosure Notice or by giving notice by either certified  
14 or registered mail, or electronic mail, fax machine, phone call, or any other method  
15 approved by the PACE Agencies/Authorities/Districts and Third-Party Administrators;

16 (l) An emergency waiver option for the three-day right to cancel; and

17 (m) Contact information for the PACE Agency/Authority/District or Third-Party  
18 Administrator, including the name, phone number, and email (if applicable).

19 (3) Non-Residential PACE Agencies/Authorities/Districts and Third-Party Administrators  
20 providing PACE financing in the amount of \$250,000 or greater are not required to provide  
21 a Consumer Disclosure Notice. However, they are required to conform to the following  
22 obligations:

23 (a) That PACE Agencies/Authorities/Districts and Third-Party Administrators may only  
24 offer payments that fully amortize the obligation. Negative amortization financing  
25 terms are not permitted. Capitalized interest included in the original balance of a PACE  
26 financing does not constitute negative amortization; and

27 (b) That PACE Agencies/Authorities/Districts and Third-Party Administrators may only  
28 provide a PACE assessment payment term that does not exceed the useful life of the  
29 improvements, as determined by reputable third-party sources, including, but not  
30 limited, to the U.S. Department of Energy.

31 (4) For both Residential and Non-Residential where applicable, PACE  
32 Agency/Authority/District or Third Party-Administrators must submit updated Consumer

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1 Disclosure Notices that incorporate the updated Palm Beach County-approved consumer  
2 protection language. Once approved by the County, PACE Agency/Authority/District or  
3 Third Party-Administrators must fully implement and utilize the approved Palm Beach  
4 County-approved Consumer Disclosure Notice within one hundred and eighty (180) days  
5 of notice of approval.

6 (5) A copy of the Consumer Disclosure Notices must be provided to the property owner either  
7 by electronic mail or hard copy by the PACE Agency/Authority/District or Third Party  
8 Administrator within the 3-day right to cancel period and must be signed and dated by the  
9 property owner prior to or contemporaneously with the property owner's signing of any  
10 legally enforceable documents under the PACE Program. Upon the property owner's  
11 request, the PACE Agency/Authority/District or Third-Party Administrator must provide  
12 the property owner with a hardcopy of the Consumer Disclosure Notice within the three-  
13 day right to cancel. The property owner and the PACE Agency/Authority/District or Third-  
14 Party Administrator must keep the signed Consumer Disclosure Notice with the property  
15 owner's executed financing agreement.

16 (6) The PACE Agency/Authority/District or Third-Party Administrator shall provide the  
17 signed Consumer Disclosure Notice to the Palm Beach County Office of Resilience and  
18 the Palm Beach County Tax Collector in electronic format within five (5) business days  
19 after execution of the PACE financing agreement.

20 (7) The PACE Agency/Authority/District and Third-Party Administrator shall record, or cause  
21 to be recorded, the financing agreement or a summary memorandum of the financing  
22 agreement, in accordance with F.S. § 163.08 (8).

23 **Section 4. Chapter 17, Article XVII, Section 17-507, entitled "ELIGIBLE**  
24 **PROPERTIES/PROGRAM REQUIREMENTS" is hereby amended as follows:**

25 (a) As defined in the PACE Statute, PACE  
26 ~~agencies/authorities/districts~~ Agencies/Authorities/Districts and Third-Party  
27 Administrators that extend financing pursuant to the PACE Statute and levy non-ad  
28 valorem assessments to fund the ~~qualifying improvements~~ Qualifying Improvements shall  
29 comply with the following: terms in the subsections below. Subsections apply to both  
30 Residential and Non-Residential Properties except where the subsection specifically refers  
31 to Residential or Non-Residential.

1 (1) *Residential Property.* PACE ~~agencies/authorities/districts~~

2 Agencies/Authorities/Districts and Third-Party Administrators may finance ~~qualifying~~  
3 ~~improvements~~ Qualifying Improvements on Residential Properties provided they comply  
4 with the following criteria inclusive of all eligibility criteria listed in the PACE Statute and  
5 all future amendments thereto, along with additional consumer protections-;

6 (a) Without the consent of the holders or loan servicers of any mortgage encumbering or  
7 otherwise secured by the property, the total amount of any non-ad valorem assessment  
8 for a property under the PACE Statute may not exceed twenty (20) percent of the  
9 ~~just/fair market~~ value of the property as determined by the county property appraiser,  
10 excepted as otherwise provided by statute; ~~and~~

11 (b) All property taxes and other assessments levied on the property tax bill have been paid  
12 and have not been delinquent for the preceding three years, or the property owner's  
13 period of ownership, whichever is less; ~~and~~

14 (c) There are no involuntary liens, including but not limited to construction liens on the  
15 property; ~~and~~

16 (d) No notices of default or other evidence of property-based debt delinquency have been  
17 recorded during the preceding three (3) years, or the property owner's period of  
18 ownership, whichever is less; ~~and, additionally~~

19 (e) All mortgage debt on the property is current and not delinquent; ~~and~~

20 (f) All mortgage-related debt on the underlying property may not exceed ninety (90)  
21 percent of the property's Fair Market Value ~~fair market value~~; ~~and~~

22 (g) The total mortgage-related debt on the underlying property plus the PACE ~~p~~Program  
23 financing may not exceed the ~~fair market value~~ Fair Market Value of the property-;

24 (h) The total estimated annual payment amount for the PACE assessment does not exceed  
25 10 percent of the property owner's annual household income determined using  
26 sufficient and credible documentation, for example using adjusted gross income from  
27 a recent tax return; and

28 (i) That the property owner is not currently in bankruptcy proceedings.

29 (2) *Non-Residential Properties.* PACE

30 ~~agencies/authorities/districts~~ Agencies/Authorities/Districts and Third-Party

31 Administrators may finance Qualifying Improvements on Non-Residential Properties

32 provided they comply with the ~~requirements set forth~~ eligibility criteria listed in the PACE

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1 Statute and all future amendments thereto ~~and inclusive of those listed under Section 17-~~  
2 ~~507(a)(1)(a—d.) of this article., along with the following consumer protections:~~

3 (a) Without the consent of the holders or loan servicers of any mortgage encumbering or  
4 otherwise secured by the property, the total amount of any non-ad valorem assessment  
5 for a property under the PACE Statute may not exceed twenty percent (20%) of the just  
6 value of the property as determined by the county property appraiser, excepted as  
7 otherwise provided by statute;

8 (b) All property taxes and other assessments levied on the property tax bill have been paid  
9 and have not been delinquent for the preceding three years, or the property owner's  
10 period of ownership, whichever is less;

11 (c) There are no involuntary liens, including but not limited to construction liens on the  
12 property;

13 (d) No notices of default or other evidence of property-based debt delinquency have been  
14 recorded during the preceding three years, or the property owner's period of ownership,  
15 whichever is less;

16 (e) All mortgage debt on the property is current and not delinquent; and  
17 (f) That the property owner is not currently in bankruptcy proceedings.

18 (3) *Qualifying Improvements.* The PACE ~~agency/authority/district~~Agency/Authority/District  
19 and Third-Party Administrator will finance energy efficiency, renewable energy and wind  
20 resistant improvements that are permanently affixed to the property as more specifically  
21 described in the PACE Statute. All improvements and products should identify efficiency  
22 standards established by the U.S. Department of Energy, the U.S. Environmental Protection  
23 Agency, or Florida state agencies as applicable. All ~~qualifying improvements~~Qualifying  
24 Improvements must comply with the PACE Statute for energy efficiency, renewable energy,  
25 and wind resistance or other improvements as permissible by law. PACE  
26 ~~agencies/authorities/districts~~Agencies/Authorities/Districts and Third-Party Administrators  
27 shall establish procedures confirming that the property owner applying for financing through  
28 the PACE ~~agency/authority/district~~Agencies/Authorities/Districts and Third-Party  
29 Administrators intends to install ~~eligible products~~Qualifying Improvements, and that at the  
30 time of funding such improvements have been installed.

31 (4) *Inquiries and Complaints.*

32 a. *Complaints.* PACE ~~agency/authority/district shall be~~Agencies/Authorities/Districts and  
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1 Third-Party Administrators are required to receive, manage, track, timely resolve, and report  
2 on complaints from property owners regarding the funded work performed by the contractors.  
3 ~~The PACE agency/authority/district shall~~PACE Agencies/Authorities/Districts and Third-  
4 Party Administrators must investigate and mediate disputes between property owners and  
5 contractors in a timely manner.

6 b. *Payment inquiries.* ~~The PACE agency/authority/district shall be~~PACE  
7 Agencies/Authorities/Districts and Third-Party Administrators are required to respond to  
8 inquiries and resolve any issues in a timely manner, related to payments, including but not  
9 limited to prepayments and payment reconciliation.

10 c. *Review.* In the event that ten percent or more of a PACE ~~agency's/authority's/district's~~  
11 Agency's/Authority's/District's and Third-Party Administrator's projects result in complaints  
12 or disputes, or such complaints or disputes remain unresolved six (6) months after completion  
13 of a project, the County may review the PACE  
14 ~~agency's/authority's/district's~~Agency's/Authority's/District's and Third-Party  
15 Administrator's handling of complaints and may request corrective actions or initiate  
16 suspension proceedings pursuant to Section ~~17-507(a)(12)~~17-508(1).

17 (5) *Data Security.* ~~The PACE agency/authority/district is~~Agencies/Authorities/Districts and  
18 Third-Party Administrators are responsible for taking security measures that protect the  
19 security and confidentiality of consumer records and information in proportion to the  
20 sensitivity of the information, and as required by state and federal law.

21 (6) *Consumer Privacy.* ~~The PACE agency/authority/district~~Agencies/Authorities/Districts and  
22 Third-Party Administrators must develop and maintain a privacy policy that complies with local,  
23 state, and federal law and, in particular, shall provide a property owner the ability to opt-out of  
24 having the property owner's information shared with third-parties, except where expressly  
25 permitted by local, state, and federal law.

26 (7) *Marketing and Communications.* ~~Marketing~~

27 (a) A person or entity may not engage in PACE marketing practices for a PACE  
28 agency/authority/district that are or could appear to be unfair, deceptive, abusive, or misleading,  
29 or that violate applicable laws or regulations, that are inappropriate, incomplete or are inconsistent  
30 with the PACE agency's/authority's/district's purpose are prohibited ordinance. Violations are  
31 subject to code enforcement proceedings.

32 (b) A person or entity may not create, use, or distribute PACE marketing material that conveys

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1 the following messages: that PACE financing is a free form of public assistance, that PACE  
2 financing is a Palm Beach County government program, that PACE financing will be repaid by  
3 the subsequent owner of the qualifying residential property, that the improvements will pay for  
4 themselves, or that the property owner will receive tax benefits from the program. Violations are  
5 subject to code enforcement proceedings.

6 (8) ~~Protected Classes. The PACE agency/authority/district~~PACE Agencies/Authorities/Districts  
7 and Third-Party Administrators shall not discriminate against individuals on the basis of race,  
8 color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, gender,  
9 sexual orientation, gender identity and expression, or genetic information.

10 (9) *Contractor Management.*

11 (a) ~~Any work under a PACE agency/authority/district requiring a license under any~~  
12 ~~applicable law to make a qualifying improvement shall be performed by a contractor~~  
13 ~~properly licensed, certified or registered pursuant to state or local law. No contractor~~  
14 ~~shall contract for or install any Qualifying Improvement pursuant to the PACE program~~  
15 ~~unless the contractor is properly licensed, registered, certified, or otherwise legally~~  
16 ~~authorized to perform such work. A PACE Agency/Authority/District or Third-Party~~  
17 ~~Administrator may not finance Qualifying Improvements that are installed by~~  
18 ~~contractors that a PACE Agency/Authority/District or Third-Party Administrator~~  
19 ~~knows, or should know, are not properly licensed, registered, certified, or otherwise~~  
20 ~~legally authorized to perform such work. PACE Agencies/Authorities/Districts and~~  
21 ~~Third-Party Administrators must obtain the contractor's written agreement that the~~  
22 ~~contractor shall comply with each of the following conditions:~~

- 23 1. Be licensed and insured pursuant to the applicable state and local requirements;  
24 2. Agree to comply with all program requirements and marketing guidelines; and  
25 3. Act in good faith to timely resolve property owner complaints.

26 (b) ~~Contractors performing work under a PACE agency/authority/district shall comply with~~  
27 ~~each of the following conditions: (i) Be licensed and insured pursuant to the applicable~~  
28 ~~statutory requirements; (ii) Agree to comply with all program requirements and marketing~~  
29 ~~guidelines; (iii) Act in good faith to timely resolve property owner complaints.~~PACE  
30 Agencies/Authorities/Districts and Third-Party Administrators for Residential Properties  
31 must execute a contractor agreement with all contractors for which they intend to use to

1 complete Residential PACE projects. The contractor agreement must address at a  
2 minimum the following:

3 1. Agree to not present a higher price for a Qualifying Improvement on financed by  
4 a PACE financing agreement than the contractor would otherwise reasonably  
5 present if the Qualifying Improvement were not being financed through a PACE  
6 financing agreement;

7 2. Branding and/or marketing guidelines, including imposing enhanced monitoring  
8 at a minimum for contractors found to have violated the marketing and  
9 communications provisions;

10 3. Consumer protection code of conduct for the contractor;

11 4. PACE training for contractors that the contractor must attend in order to become  
12 an eligible contractor; and

13 5. Suspension and termination provisions.

14 (c) Kickbacks. PACE programs Agencies/Authorities/Districts and Third-Party  
15 Administrators shall have and shall strictly enforce anti-kickback policies and  
16 procedures that prohibit direct financial or other monetary incentives to contractors in  
17 exchange for or related to such contractor being awarded work under a PACE  
18 pProgram, excepting payment for the contractor's installation of eligible  
19 improvements. Qualifying Improvements.

20 1. Any person or entity who accepts, provides or facilitates kickback payments  
21 or incentives in exchange for work being awarded under a PACE program  
22 commits a violation of this ordinance.

23 (d) For Residential and Non-Residential Projects Less than \$250,000, before disbursing  
24 funds to a PACE contractor, PACE Agencies/Authorities/Districts or Third-Party  
25 Administrators must first confirm the applicable work or service has been completed,  
26 either through written certification from the property owner, a recorded telephone call  
27 with the property owner, time-stamped and geo-tagged photos, or a site inspection  
28 through third-party means. For Non-Residential Projects equal to or larger than  
29 \$250,000, PACE Agencies/Authorities/Districts and Third-Party Administrators shall  
30 disburse funds in accordance with the terms of their finance agreement.

31 10. Financing. The PACE agency/authority/district PACE Agencies/Authorities/Districts and  
32 Third-Party Administrators will must establish pricing rules and enforcement mechanisms to ensure

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1 property owners are protected from excessive or unjustified prices and charges. In addition, the  
2 PACE ~~agency/authority/district shall~~ Agencies/Authorities/Districts and Third-Party  
3 Administrators must require compliance with each of the following conditions prior to the issuance  
4 of any ~~funding~~ final disbursement to the contractor:

- 5 (a) Contractors have certified that any necessary permits have been obtained;
- 6 (b) Verification that the ~~qualifying improvements~~ Qualifying Improvements have been  
7 installed; and
- 8 (c) The property owner and the contractor have signed a final inspection and/or certificate  
9 of completion that all improvements have been installed to the property owner's  
10 satisfaction.

11 (11) *Reporting.* Each PACE ~~agency/authority/district shall~~ Agency/Authority/District and  
12 Third-Party Administrator must provide a report to the County on a quarterly calendar basis,  
13 which due 30 days following the close of the quarter. Each PACE Agency/Authority/District and  
14 Third-Party Administrator shall utilize the County-supplied spreadsheet for the report. This  
15 spreadsheet shall not be modified, though additional information may be supplied in a separate  
16 spreadsheet. The quarterly reports shall include, at a minimum, the following information:

- 17 (a) Dates of the reporting period;
- 18 (b) List of PACE projects (including addresses including municipal jurisdiction, parcel  
19 control numbers, financed amount, annual estimated payments, interest rate,  
20 assessment duration, and project description) started during the reporting period,  
21 separated by building type (e.g., single family, multifamily, retail, office, industrial,  
22 etc.);
- 23 (c) List of PACE projects (including addresses including municipal jurisdiction and parcel  
24 control numbers) completed during the reporting period, separated by building type  
25 project (e.g., single family, multifamily, retail, office, industrial, etc.), For each project,  
26 specify:
  - 27 1. The ~~q~~ Qualifying i ~~m~~ Improvements made;
  - 28 2. Project start date and completion date;
  - 29 3. The projected energy savings and/or amount of potential renewable energy to be  
30 generated;
  - 31 4. Financial information such as projected cost per kilowatt hour saved/generated or  
32 estimated utility bill savings;

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- 1           5. Other resource savings if data is available;
- 2           6. Audits performed detailing the audit results, if applicable to the project;
- 3           7. Total amount financed, including total amount (in dollars) of financing spent on
- 4           each improvement, if multiple; and
- 5           8. Annual estimated payments.
- 6       (d) Number of actual or estimated jobs created during the reporting period, including local
- 7           versus non-local jobs and permanent versus temporary jobs;
- 8       (e) Number of applications declined during the reporting period;
- 9       (f) ~~Unresolved~~Resolved and unresolved complaints and/or contractor issues and status; ~~and~~
- 10           Description, including category of each complaint and/ or issue, when the standardized
- 11           third-party methodologies and supporting assumptions used to verify data, and any
- 12           changes in the methodologies and assumptions from the previous reporting
- 13           period, complaint/issue was filed, and when the complaint/issue was resolved;
- 14       (g) Assumptions and methodologies used for energy savings, renewable energy, cost per
- 15           kilowatt hour saved/generated, other resource savings, audits, and jobs calculations
- 16           under this subsection, including third-party sources and methodologies. Describe any
- 17           changes in the methodologies and assumptions from the previous reporting period. If
- 18           available, PACE Agencies/Authorities/Districts and Third-Party Administrators shall
- 19           use nationally accepted standardized assumptions and methodologies so that reporting
- 20           is consistent. If no national standards are available, PACE
- 21           Agencies/Authorities/Districts and Third-Party Administrators shall work with the
- 22           County to agree upon and use the same assumptions and methodologies so that the
- 23           County has a consistent data. If the PACE Agencies/Authorities/Districts and Third-
- 24           Party Administrators are unable to agree on uniform assumptions and methodologies,
- 25           the County reserves the right to cite reputable, nationally recognized standard
- 26           assumption and methodology sources for these calculations that the PACE
- 27           Agencies/Authorities/Districts and Third-Party Administrators must use within 90 days
- 28           of receipt, going forward with data collection;
- 29       (h) Just value of property as determined by the county property appraiser for the most
- 30           recent calendar year;
- 31       (i) Fair Market Value used during underwriting;
- 32       (j) Method for determining the Fair Market Value used during underwriting and proof of

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1 that determination available upon request; and

2 (k) Date of Confirmed Terms Call.

3 ~~(12) Suspension or Termination of PACE agency/authority/district. In the event any PACE~~  
4 ~~agency/authority/district fails to incorporate and continually provide for all of the foregoing~~  
5 ~~service components or to otherwise abide by the provisions of this article and/or the~~  
6 ~~interlocal agreement the County, in its sole discretion, may suspend or terminate the~~  
7 ~~interlocal agreement and support of the County at any time upon written notice to that PACE~~  
8 ~~agency/authority/district. Any project that has been initiated as of the time of suspension or~~  
9 ~~termination shall be permitted to be completed. *Data and Document Requests.* Each PACE~~  
10 ~~Agency/Authority/District and Third-Party Administrator must comply with reasonable~~  
11 ~~requests for additional data or documents from the County and provide such data within 60~~  
12 ~~days of the request, consistent with federal and state law.~~

13 (13) *Incomplete Data or Late Reporting.* In the event any PACE Agency/Authority/District  
14 or Third-Party Administrator fails to provide complete data or provide reports by the stated  
15 due dates, they will be given 60 days to cure the defect, after which written notice will be  
16 given prior to any administrative act to suspend. The suspension will take place 30 days  
17 after this notice is given. After such defect, any new project starts from the PACE  
18 Agency/Authority/District or Third-Party Administrator of which the reports are  
19 incomplete will be suspended until the complete data is provided. The right to cure is an  
20 option before suspension or termination will occur. Suspension will be done by the County  
21 Administrator or designee.

22 (14) *Administrative Fees.* PACE Agencies/Authorities/Districts and Third-Party  
23 Administrators will be responsible for paying administrative fees to the County on an  
24 annual basis. The Board will establish fees for administrative tasks carried out by County  
25 staff, including interlocal agreements, indemnification agreement for new PACE  
26 Agencies/Authorities/Districts and Third-Party Administrators, Residential projects  
27 funded during the year, and Non-Residential projects funded during the year. PACE  
28 Agencies/Authorities/Districts and Third-Party Administrators shall send an annual  
29 summary of all projects completed within that year and provide a payment per project to  
30 the County.

31 **Section 5. Chapter 17, Article XVII, Section 17-508, entitled “ENFORCEMENT” is**  
32 **hereby created as follows:**

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- 1 (1) Suspension or Termination of PACE Agency/Authority/District and Third-Party  
2 Administrators. In the event any PACE Agency/Authority/District or Third-Party  
3 Administrator fails to incorporate and continually provide for all of the foregoing service  
4 components or to otherwise abide by the provisions of this Ordinance and/or the interlocal  
5 agreement the County, in its sole discretion, may suspend or terminate the interlocal  
6 agreement or by other means prohibit a PACE Agency/Authority/District or Third-Party  
7 Administrator from operating in the County's jurisdiction and support of the County at any  
8 time upon written notice to that PACE Agency/Authority/District or Third-Party  
9 Administrators. Suspension, termination or prohibition will be done by the County  
10 Administrator or designee. Any project that has been initiated or received PACE financing  
11 as of the time of suspension or termination shall be permitted to be completed, and continue  
12 until such time that all outstanding debt has been satisfied.
- 13 (2) Code Enforcement Officers and any other enforcement personnel as authorized by the  
14 County Administrator are authorized to enforce Section 17-507(a)(7), Marketing and  
15 Communications, and Section 17-507(a)(9)(c), Kickbacks, of this Ordinance.
- 16 (3) Code Enforcement Officers and other authorized enforcement personnel do not have to  
17 provide a reasonable time period to correct the violation prior to issuing a citation or notice  
18 of violation and may immediately issue a citation or notice of violation if a repeat violation  
19 is found or if the code enforcement officer has reason to believe that the violation presents  
20 a serious threat to the public health, safety, or welfare, or if the violation is irreparable or  
21 irreversible.
- 22 (4) A violation of Section 17-507(a)(7), Marketing and Communications, or Section 17-  
23 507(a)(9)(c), Kickbacks, of this Ordinance may be enforced pursuant to terms and  
24 procedures in Chapter 162, F.S., Local Government Code Enforcement Boards Act, and  
25 Article 10 of the Palm Beach County Unified Land Development Code, all as may be  
26 amended or recodified from time to time. Pursuant to Section 162.09(2)(d), F.S., the Palm  
27 Beach County Special Master may impose fines that shall not exceed one thousand dollars  
28 (\$1,000.00) per day per violation for a first violation, five thousand dollars (\$5,000.00) per  
29 day per violation for a repeat violation, and up to fifteen thousand dollars (\$15,000.00) per  
30 violation if the Palm Beach County Special Master finds the violation to be irreparable or  
31 irreversible in nature. In determining the amount of the fine, the Palm Beach County  
32 Special Master shall consider:

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- 1     (a) The gravity of the violation;  
2     (b) Any actions taken by the violator to correct the violation; and  
3     (c) Any previous violations committed by the violator.
- 4     (5) A violation of Section 17-507(a)(7), *Marketing and Communications*, or Section 17-  
5     507(a)(9)(c), *Kickbacks*, of this Ordinance may also be enforced pursuant to the procedures  
6     and penalties of Chapter 162, F.S., Supplemental County or Municipal Code or Ordinance  
7     Enforcement Procedures as may be amended or recodified from time to time, as follows:
- 8     (a) The County court shall have jurisdiction over all civil citations issued pursuant to this  
9     Ordinance.
- 10    (b) The County shall maintain a system by which violators are given written notice of all  
11    violations.
- 12    (c) Code Enforcement Officers and other authorized enforcement personnel who have  
13    reasonable cause to believe that a person has committed an act in violation of this  
14    Ordinance shall issue a civil citation. If the person who has committed the violation does  
15    not contest the citation, the fines shall be \$400.00 but may be increased to \$500 if the  
16    fine is contested in county court.
- 17    (d) Payment shall be made, either by mail or in person, to the location and within the time  
18    specified upon the citation. If such person follows this procedure, the person shall be  
19    deemed to have admitted to the infraction and to have waived the right to a hearing on  
20    the issue of the commission of the infraction.
- 21    (e) Any person who fails to make payment within the time period specified on the citation  
22    shall be deemed to have waived the right to pay the civil penalty as set forth in the  
23    citation and shall appear before the county court.
- 24    (f) Any person who elects to appear before the court to contest the citation shall be deemed  
25    to waive the right to pay the civil penalty. The court, after a hearing, shall make a finding  
26    as to whether a violation has occurred and may impose a civil penalty not to exceed five  
27    hundred dollars (\$500.00) plus court costs.
- 28    (g) If a person fails to pay the civil penalty or fails to appear in court to contest the citation,  
29    he shall be deemed to have waived his right to contest the citation and, in such case, a  
30    default judgment shall be entered and the judge may impose a penalty up to the maximum  
31    civil penalty of five hundred dollars (\$500.00) plus court costs.

1 (h) Any person who refuses to sign and accept a citation issued pursuant to this Section shall  
2 be guilty of a misdemeanor of the second degree, punishable as provided by Sections  
3 775.082 or 775.083, F.S.

4 (6) In addition to the sanctions contained herein, the County may take any other appropriate legal  
5 action to enforce the provisions of this Ordinance, including, but not limited to, cease and  
6 desist orders, instituting civil action, and requesting temporary and permanent injunctions.

7 (7) It is the purpose of this Ordinance to provide additional cumulative remedies.

8 (8) Each day in violation of the provisions of this Ordinance shall constitute a separate violation  
9 or offense and be punishable as such.

10 **Section 6. REPEAL OF LAWS IN CONFLICT:**

11 All local laws and ordinances in conflict with any provisions of this Ordinance are  
12 hereby repealed to the extent of such conflict.

13 **Section 7. SAVINGS CLAUSE:**

14 Notwithstanding the section of this ordinance regarding repeal of laws in conflict, all  
15 administrative and court orders, fines, and pending enforcement issued pursuant to this  
16 authority and procedures established by Chapter 17, Article XVII, of the Palm Beach County  
17 Code shall remain in full force and effect.

18 **Section 8. SEVERABILITY:**

19 If any section, paragraph, sentence, clause, phrase or word of this Ordinance is for any  
20 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void,  
21 such holding shall not affect the remainder of this Ordinance.

22 **Section 9. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

23 The provisions of this Ordinance shall become and be made a part of the Palm Beach  
24 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish  
25 such, and the word Ordinance may be changed to section, article, or other appropriate word.

26 **Section 11. PENALTY:**

27 Any violation of any portion of this Ordinance shall be punishable as provided by law.

28 **Section 12. CAPTIONS:**

29 The captions, section headings and section designations used in this Ordinance are for  
30 convenience only and shall have no effect on the interpretation of the provisions of this  
31 Ordinance.

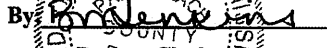
1 **Section 13. EFFECTIVE DATE:**

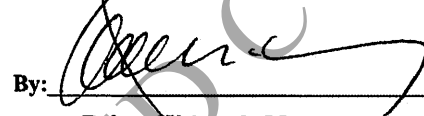
2 The provisions of this Ordinance shall become effective one hundred and eighty days  
3 (180) after ~~upon~~ filing with the Department of State.

4  
5 **APPROVED and ADOPTED** by the Board of County Commissioners of Palm  
6 Beach County, Florida, on this the 15<sup>th</sup> day of November, 2022.

7  
8 **JOSEPH ABRUZZO, CLERK**

**PALM BEACH COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS**

9  
10  
11  
12  
13 By:   
14 **Deputy Clerk**

15  
16  
17  
18  
19 By:   
20 **Robert Weinroth, Mayor**

21  
22  
23  
24  
25 **APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

26  
27 By:   
28 **County Attorney**

**EFFECTIVE DATE:** Filed with the Department of State on the 16<sup>th</sup> day of  
November, 2022.



**FLORIDA DEPARTMENT of STATE**

**RON DESANTIS**  
Governor

**CORD BYRD**  
Secretary of State

November 16, 2022

Honorable Joseph Abruzzo  
Clerk of the Circuit Court and Comptroller  
Palm Beach County  
301 North Olive Avenue  
West Palm Beach, Florida 33401

Attn: Biaggia Jenkins

Dear Honorable Joseph Abruzzo:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Palm Beach County Ordinance No. 2022-030, which was filed in this office on November 16, 2022.

Sincerely,

Anya Owens  
Program Administrator

ACO/rra

**R. A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250**  
**Telephone: (850) 245-6270**



VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

January 3, 2023

Dear County Attorney:

I'm writing to share some promising changes in the Florida PACE Funding Agency's operations that will have a positive impact on property owners in your county.

Since its inception in 2011, the Florida PACE Funding Agency and its partners have been working diligently to provide all eligible property owners with an affordable and accessible financing option to make needed property improvements to resist the impacts of hurricanes and tropical storms, reduce energy usage, and improve access to renewable energy. As we have seen just this year, natural disasters are affecting all of Florida's property owners, and low-to-moderate income homeowners often lack access to the ability to secure their homes against these natural disasters.

There is no single solution to solve the challenges facing Florida's property owners during these trying times. Limited, and frequently expensive, property insurance availability and the need to continually make investments to harden properties against weather-related disasters will continue to disadvantage the State financially, particularly as higher proportions of losses are borne by Citizens Property Insurance.

This is the reason that the Legislature adopted section 163.08 of the Florida Statutes, commonly referred to as the Property-Assessed Clean Energy, or PACE, program. Though PACE is not the only financing option for these qualifying improvements, it is a necessary and extremely useful tool in helping homeowners to affordably manage property maintenance and economic uncertainty.

The Florida PACE Funding Agency has long been a leader in advancing the mission of PACE statewide while championing consumer protection measures. To provide clarity on the respective responsibilities for carrying out the PACE program, the Agency underwent a judicial validation process that concluded this fall. This process finally determined that improvements such as seawalls that harden properties against storm surge qualify for PACE financing, and further clarified that the Agency has independent authority to carry out its mission of offering PACE financing statewide, without requiring additional efforts from individual counties or cities.

Over the past several years, Palm Beach County, seemingly at the behest of the Tax Collector, has worked to impose more stringent restrictions on the local governments operating PACE programs in the County. This culminated with the adoption of Ordinance 2022-030 last November. During your discussions, you were informed that adoption of the then-proposed Ordinance would violate terms of the interlocal agreement, and members of the Board of County Commissioners expressed concerns that overreaching regulation would result in the power to regulate being taken away.

Unfortunately, these fears have come to pass. The Agency finds that the adoption of Ordinance 2022-030 violates the terms of the interlocal agreement, and by this communication we are providing notice of that breach. As the County took this action after being informed it would place them in breach of the Agreement,

**[www.FloridaPace.gov](http://www.FloridaPace.gov)**

Florida PACE Funding Agency c/o Mike Moran 4411 Bee Ridge Rd #134 Sarasota FL 34233





it is not appropriate to provide additional time to cure, and therefore the Agreement is terminated effective immediately. However, should the County decide to repeal its ordinance, this letter also serves as notice of termination for convenience effective sixty (60) days from today. Please note this termination does not affect the Agency's contractual relationships with the Tax Collector, which remain in effect pursuant to the settlement agreement reached in 2017.

Pursuant to general law, the Agency will transition its operations to the independent authority recognized by the court system (for more details, please see the final judgment recorded in the Official Records of Palm Beach County, instrument number 20220465228, which is binding on the County). Our reports to your Office of Resilience will be completed for the quarter ending December 31, 2022, and afterwards will be made available in a general format online. We are happy to continue working with Resilience staff, but will decline to participate in the regulatory structure you have established, including specified forms of disclosure, fees, or specialized reporting.

This means that PACE financing will remain available to property owners in your county, and every county in the state, with industry-standard homeowner protections. The Agency will operate on a uniform statewide basis, and invites participation from counties and cities through a new interlocal agreement that facilitates information sharing and feedback. The interlocal agreement is not necessary to provide PACE in your county, but you will likely find collaboration on helping property owners harden homes and businesses against natural disasters beneficial. Attached, please find the new Interlocal Agreement (ILA).

A brief overview of both the PACE process, from the county's perspective, and an overview of the takeaways from the judicial validation proceeding, are included here. While the ruling only directly impacts the Florida PACE Funding Agency's relationship with counties and cities, other PACE authorities may be treated the same way by Florida law, and dialogue with those entities is encouraged. Florida PACE Funding Agency staff is always available for communication and assistance, so please reach out if necessary to: [Info@FloridaPACE.gov](mailto:Info@FloridaPACE.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "M. Moran".

Michael A. Moran

Executive Director

**[www.FloridaPace.gov](http://www.FloridaPace.gov)**

Florida PACE Funding Agency c/o Mike Moran 4411 Bee Ridge Rd #134 Sarasota FL 34233



## MEMORANDUM REGARDING PACE JUDICIAL VALIDATION

From: Jamy Dinkins, CivForge Law, P.A.

Date: December 1, 2022

The Florida PACE Funding Agency obtained a judgment this fall from the Circuit Court in Leon County validating up to \$5,000,000,000 in PACE bonds and establishing several pertinent legal concepts. Each of those is detailed below.

### **SEAWALLS ARE QUALIFYING IMPROVEMENTS UNDER THE PACE STATUTE**

PACE assessments, or assessments for "Qualifying Improvements" under section 163.08, can be imposed by a local government such as the Florida PACE Funding Agency when they are used to fund and finance improvements to real property that fit into one of three criteria: energy efficiency, renewable energy, and wind-resistance. Previously, there was a question as to whether improvements (such as seawalls) that protect a property against wind-driven water damage (i.e., storm surge during a tropical storm) are wind-resistance improvements for purposes of the state statute. The recent judicial validation determined that they are. Accordingly, a property owner may now use PACE financing to install a seawall on property that is at risk for damage from storm surge.

### **THE COLLECTION OF PACE ASSESSMENTS IS A MINISTERIAL DUTY OF THE TAX COLLECTOR, NOT SUBJECT TO ADDITIONAL CONTRACTUAL DEMANDS OR TIMEFRAMES**

As a method of consumer protection, PACE assessments must be collected using the Uniform Method of Collection, a process by which assessments are collected on the same bill as taxes. The Uniform Method imposes a ministerial duty on each county's tax collector to place assessments on the tax bill without questioning the authority or propriety of the assessments—the Legislature has committed that judgment to the local government imposing the assessments. Unfortunately, some tax collectors in the state have ignored this law, and Florida Department of Revenue direction, and imposed unlawful conditions or timeframes on the collection of PACE assessments.

In addition, the Uniform Method requires reimbursement of actual costs of collection to the tax collectors, with a cap of two percent of the collection. This cost is passed on to property owners. While counties who have calculated actual costs arrive at a number consistently below one percent, some tax collectors do not calculate the costs and instead charge the statutory maximum.

The recent judicial validation directs tax collectors to place the assessments on the same bill as taxes without these conditions and to report, on request, the actual costs of collection so that they may be reimbursed (as opposed to simply charging the statutory cap on expenses).

### **FPFA HAS INDEPENDENT AUTHORITY TO IMPOSE ASSESSMENTS STATEWIDE**

The PACE statute does not grant authority to any entity to impose assessments. Rather, it allows entities who already have such a power to impose the specific type of assessment described, within the limitations of the statute.

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Florida PACE Funding Agency c/o Mike Moran 4411 Bee Ridge Rd #134 Sarasota FL 34233



Some general purpose local governments have attempted to use home-rule power to limit the authority of other local governments to impose PACE assessments. This can come in the form of prohibiting PACE assessments altogether, imposing a fee on assessments, or requiring adherence to particular contracts or extra-statutory conditions. **The recent judicial validation clarifies that such ordinances apply only to those programs administered by the municipality or county adopting the ordinance, but not to those PACE programs administered by other local governments.** The judicial validation further clarifies that, because the Florida PACE Funding Agency derives its authority to impose assessments from state statute, it does not need further authority or permission from a general purpose local government to operate within any particular territory, and no local government has liability, responsibility, or authority relating to PACE programs of another local government.

NOT A CERTIFIED COPY

**[www.FloridaPace.gov](http://www.FloridaPace.gov)**

Florida PACE Funding Agency c/o Mike Moran 4411 Bee Ridge Rd #134 Sarasota FL 34233

**INTERLOCAL AGREEMENT**  
between  
**THE FLORIDA PACE FUNDING AGENCY**  
and  
**[NAME OF COUNTY], FLORIDA**  
relating to

**PROVISION OF FUNDING AND FINANCING FOR QUALIFYING IMPROVEMENTS**

**THIS INTERLOCAL AGREEMENT** is made and entered into as of \_\_\_\_\_ 1, 202\_, ("Agreement"), by and between the Florida PACE Funding Agency, a separate legal entity and unit of local government established pursuant to section 163.01(7), Florida Statutes ("Agency"), and [Name of County], a political subdivision of the State of Florida ("County"), by and through their respective governing bodies, for the purpose of recognizing the authority of the Agency to fund and finance qualifying improvements within the boundaries of the County, assisting the County with coordinating efforts to mitigate the effects of, and adapt to, climate events, and coordinating efforts to reduce energy consumption and mitigate damage from hurricanes and other windstorms.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the Agency and the County hereby agree as follows:

**1. FINDINGS.**

(A) Agency and County have reviewed the provisions of section 163.08(1), Florida Statutes, and find those facts as originally determined by the Legislature to be true in relation to the County and its inhabitants as of the date of this Agreement, and therefore incorporate those recitals as if fully set forth herein.

(B) Agency and County find that County has no liability or obligation relating to the activities of the Agency, and Agency's authority is derived from state statute and governed by Agency's governing board, not ordinance or resolution of County.

(C) County will benefit from the provision of standard periodic reports from Agency to quantify Agency's activity within the boundaries of County for the purpose of environmental and windstorm mitigation calculation, planning, and reporting.

**2. AUTHORITY.** The execution of this Agreement has been duly authorized by Resolution of the governing bodies of each party hereto. Nothing within this Agreement limits the authority of Agency to enter into similar agreements with other local

governments or provide its program outside of the boundaries of County. Nothing within this Agreement limits the authority of County to establish programs of a similar nature, or to contract with or otherwise enable other local governments to provide similar programs within the boundaries of County.

**3. RESPONSIBILITIES OF AGENCY.**

(A) Agency will provide County with access to a report no less frequently than once per calendar quarter that quantifies basic, aggregate information about Agency activities within the boundaries of County. This report will include, for example, number and value of projects completed within the boundaries of Subdivision, both monthly and in aggregate.

(B) Agency will conduct a public meeting in the third quarter of each calendar year at which comments and suggestions may be submitted to the governing body by County, in addition to written or verbal communication between Agency staff and County staff as the need arises.

(C) Agency will promptly respond to specific constituent concerns brought to the attention of Agency by County.

**4. RESPONSIBILITIES OF COUNTY.** County will forward any complaint or other communication from a constituent to Agency promptly for Agency resolution.

**5. ADMINISTRATION.**

(A) Agency and County are both units of local government within the State of Florida, and as such, are subject to the provisions of chapter 119, Florida Statutes. Nothing within this Agreement changes the rights or responsibilities of the parties with respect to public records.

(B) Agency and County are both units of local government within the State of Florida, and as such, are invested with certain privileges and immunities from liability and exemptions from laws, ordinances, and rules which apply to the activity of officials, officers, agents, or employees of public bodies. Nothing within this Agreement disturbs or constitutes a waiver by either party of any such privilege, immunity, or exemption.

(C) The term of this Agreement will begin on the date first written above, and will continue until terminated by either party upon ninety (90) days' written notice delivered to the other. No amendment, supplement, modification, or waiver of this Agreement is binding unless executed in writing by both parties. The parties understand that termination of this agreement does not affect the obligations and authorities of the parties to initiate or collect non-ad valorem assessments under section 163.08, Florida Statutes. If this Agreement is terminated for any reason, the Agency will operate in the County as recognized in *Florida PACE Funding Agency v. State*, No. 2022-CA-1562 (Fla.

2d Cir. Ct. Oct. 6, 2022), which recognized Agency has independent authority to conduct its programs within the boundaries of County without transfer of power from County.

(D) This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes any prior agreements, understandings, negotiations, and discussions of the parties, written or oral, with respect thereto. This Agreement is binding on the parties, their respective successors, and assigns, and inures to the benefit of the parties, their respective successors, and assigns. This Agreement may not be assigned except to the lawful governmental successor of a party.

(E) Should any portion of this Agreement be held to be invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other aspect of this Agreement.

(F) This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which constitute but one and the same document. A true and correct facsimile copy may serve as an original in all respects.

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be duly executed under seal and entered into as of the date first written above.

**FLORIDA PACE FUNDING AGENCY**

**[NAME OF COUNTY]**

By: \_\_\_\_\_

*Mike Moran, Executive Director*

(seal)

Attest: \_\_\_\_\_

*Wendi Leach, Director of Operations*

By: \_\_\_\_\_

*[Name and title]*

(seal)

Attest: \_\_\_\_\_

*[Name and title]*

Filing # 158727093 E-Filed 10/06/2022 03:21:29 PM

FLORIDA PACE FUNDING  
AGENCY, a public body corporate  
and politic,

Plaintiff,

vs.

STATE OF FLORIDA, and the  
taxpayers, property owners and  
citizens of the State of Florida,  
including non-residents owning  
property or subject to taxation  
therein, and others claiming any  
right, title or interest in property to  
be affected by the issuance of the  
Bonds herein described or to be  
affected in any way thereby,

Defendants.

---

IN THE CIRCUIT COURT  
OF THE SECOND JUDICIAL  
CIRCUIT OF THE STATE OF  
FLORIDA, IN AND FOR LEON  
COUNTY, FLORIDA

CIRCUIT CIVIL

CIVIL ACTION NO: 2022-CA-1562

VALIDATION NOT TO EXCEED  
\$5,000,000,000 FLORIDA PACE  
FUNDING AGENCY REVENUE  
BONDS (QUALIFYING  
IMPROVEMENT FINANCE  
PROGRAM), VARIOUS SERIES

**FINAL JUDGMENT**

The above and foregoing cause has come to final hearing on the date  
and at the time and place set forth in the Order to Show Cause heretofore  
issued by this Court on the Complaint for Validation (the "Complaint") filed  
by the Plaintiff, Florida PACE Funding Agency, against the State of Florida  
and all of the property owners, taxpayers and citizens of the entire State of  
Florida, and including non-residents owning property or subject to taxation  
therein and all others having or claiming any right, title, or interest in

property to be affected by the Plaintiff's issuance of not exceeding \$5,000,000,000 in the aggregate principal amount at any one time outstanding of the Florida PACE Funding Agency Revenue Bonds (Qualifying Improvement Finance Program) Various Series (the "Bonds"), hereinafter described, or to be affected in any way thereby, and said cause having duly come on for final hearing, and the Court having considered the same and heard the evidence and being fully advised in the premises, finds as follows:<sup>1</sup>

*The Plaintiff*

FIRST. The Plaintiff is authorized under chapter 75, Florida Statutes, and chapter 163, Part I, Florida Statutes, including section 163.01(7)(g)9., Florida Statutes, to file its Complaint in this Court to determine the validity of the Bonds,<sup>2</sup> the pledge of revenues for the payment thereof, the validity of the non-ad valorem assessments which shall comprise all or in substantial part the revenues pledged, the proceedings relating to the issuance thereof and all matters connected therewith. All actions and proceedings of the Plaintiff in this cause are in

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<sup>1</sup> For convenience, capitalized terms used herein will have the meaning attributed to them in the Complaint and exhibits thereto, unless the context clearly requires otherwise.

<sup>2</sup> The Plaintiff is the sole and only issuer of the Bonds which are the subject of this validation proceeding.



accordance with chapter 75, Florida Statutes, and chapter 163, Part I, Florida Statutes, each as amended.

SECOND. Section 163.01(7)(g), Florida Statutes (hereinafter the "Separate Legal Entity Act"), authorizes by general law the creation of a separate legal entity by interlocal agreement and provides that such separate legal entity possesses express general law powers, as well as the common powers specified in the interlocal agreement, exercisable in the manner or method set forth in such interlocal agreement.

THIRD. The Plaintiff is a separate legal entity duly formed in accord with the Separate Legal Entity Act, is a valid and legally existing independent public body corporate and politic within the State of Florida, created by general law in accordance with Florida Interlocal Cooperation Act of 1969, section 163.01, Part I, Florida Statutes, as amended (the "Interlocal Act") and pursuant to the provisions of a certain adopted and duly filed Amended and Restated Interlocal Agreement Relating to the Establishment of the Florida PACE Funding Agency, effective as of February 20, 2017 (the "Charter Agreement"), initially between Flagler County, Florida, and the City of Kissimmee, Florida<sup>3</sup> (and, subsequently between any additional counties or municipalities joining the

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<sup>3</sup> Currently, the only members of the Plaintiff are Flagler County and the City of Kissimmee.

Plaintiff as a member). As the context requires, the term "Incorporators" as used herein collectively include Flagler County, Florida; the City of Kissimmee, Florida; and, any additional counties or municipalities joining the Plaintiff as a member. By general law the Charter Agreement has been lawfully entered into and executed by the parties thereto, duly evidences the establishment and creation of the Plaintiff pursuant to general law, has been properly recorded as required by the Interlocal Act, and constitutes a legal, valid and binding agreement. A certified copy of the Charter Agreement was received into evidence as Plaintiff's Exhibit 1.

FOURTH. By general law and the Charter Agreement lawfully entered into in accord with general law, the Plaintiff by and through its Board of Directors (the "Board of Directors") as a separate legal entity described in the Separate Legal Entity Act is empowered to act separately and independently as a special purpose local government throughout Florida.

*Express Authority for Plaintiff to Act*

FIFTH. In concert with the Charter Agreement adopted as provided by general law, and by express provisions of general law, all of the privileges, benefits, powers and terms of section 125.01 relating to counties, and section 166.021, relating to municipalities, are also

fully applicable to the Plaintiff in the conduct of its affairs, purpose and mission.

SIXTH. The Florida Legislature (the “Legislature”) has determined that all energy consuming improvements to property that are not using energy conservation strategies contribute to the burden resulting from fossil fuel energy production. See § 163.08(1)(b), Fla. Stat. (2022). This comports with the declared public policy of the State to play a leading role in developing and instituting energy management programs to promote energy conservation, energy security, and the reduction of greenhouse gases, in addition to establishing policies to promote the use of renewable energy. See § 163.08(1)(a), Fla. Stat. (2022).

SEVENTH. In furtherance of its stated policy objectives, the Legislature enacted and has amended section 163.08, Florida Statutes, entitled “Supplemental authority for improvements to real property” (the “Supplemental Act”), which provides the statutory general law framework and supplemental authority for the funding and financing of qualifying improvements for energy efficiency, renewable energy, and wind resistance in order to promote energy conservation and efficiency, the reduction of

greenhouse gases and fulfillment of the goals of the State's energy and hurricane mitigation policies.<sup>4</sup>

EIGHTH. General law expressly provides the Plaintiff with independent and concurrent authority to finance facilities on behalf of any person, relating to a governmental function or purpose, which may serve populations within or outside of the members of the Plaintiff.

NINTH. General law alternatively, concurrently and expressly provides that by the Charter Agreement, the Separate Legal Entity Act, and the Supplemental Act, all power and authority available to the Plaintiff under the Charter Agreement and general law, including without limitation, chapters 163, 189, and 197, Florida Statutes, has been duly authorized by the Legislature and may be implemented by the Plaintiff to serve populations throughout the State, both within and outside of members of the Plaintiff.

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<sup>4</sup> The Supplemental Act, in part, implements the general national concept of "property assessed clean energy" or "property assessed clean environment" or the associated acronym "PACE", but as uniquely applied by the Legislature to the entire State of Florida. The Supplemental Act broadly enlists local governments to enable alternative financing to private property owners who voluntarily determine to accomplish compelling state interests. As the Legislature does not use the foregoing "PACE" terminology in the Florida Statutes, such terminology is not employed herein to avoid confusion.

TENTH. The Supplemental Act enables and authorizes local governments, as defined therein, (1) to finance such energy conservation efficiency and renewable energy and wind resistance improvements, as defined in section 163.08(2)(b), Florida Statutes, by entering into financing agreements with qualified owners of real property evidencing the property owner's consent to imposition of a non-ad valorem assessment against the real property specially benefitted by such improvements (see section 163.08(1)(c), Florida Statutes); and, (2) to incur debt for purposes of funding and financing such qualifying improvements, payable from revenues received from such non-ad valorem assessments or any other available revenue source authorized by law. See § 163.08 (3), (4), and (7), Fla. Stat. (2022).

ELEVENTH. The findings in the Charter Agreement provide examples of benefits to the people of the State for the increase of their commerce and prosperity and the improvement of their health and living conditions.

TWELFTH. The Plaintiff does not employ the use of any State, county or municipal funding or financial support. The Plaintiff and the Plaintiff's records are by general law subject to the "Sunshine Law", section 286.011, Florida Statutes and "Florida's Public Records Law",

chapter 119, Florida Statutes. The Plaintiff's functions and services are paid for by rates, fees and charges from participating private property owners which are disclosed, acknowledged and agreed to in writing in advance of any funding or financing of any qualifying improvement. Stated differently, the Plaintiff is financially self-supporting – it is not funded by the State or any general purpose local government. The foregoing are, among other things, examples of performance and funding of essential governmental functions expressly authorized by the Legislature for the public health, safety and welfare done in accomplishing the Plaintiff's purpose of assisting private property owners in improving Florida's building stock.

THIRTEENTH. Prior to 2012, the Plaintiff initially validated its authority to issue debt obligations in *Florida PACE Funding Agency v. State*, No. 2011-CA-1824 (Fla. 2nd Cir. Ct., August 25, 2011), recorded in Official Record Book 4279, at page 852, Public Records of Leon County, Florida (the "2011 Final Judgement"). As provided by law the 2011 Final Judgement is incorporated herein by reference and remains in full force and effect. See § 75.11(2), Fla. Stat. With the passage of time and changes in law, the Plaintiff determined to and duly adopted its Resolution No. 2022-0822(1) (the "Second Master Bond Resolution"). A certified copy

of the Second Master Bond Resolution was received into evidence as Plaintiff's Exhibit 2.

FOURTEENTH. The Second Master Bond Resolution authorizes issuance of the Bonds and provides for the adoption of supplemental series resolutions approving the financing terms and conditions applicable to each series of Bonds.

FIFTEENTH. The Plaintiff has properly filed its Complaint in this matter seeking validation of its authority to issue the Bonds and to provide for the repayment thereof through the proceeds of non-ad valorem assessments (sometimes referred to as special assessments) evidenced and imposed pursuant to financing agreements which must be collected pursuant to section 197.3632, Florida Statutes, among other things, all as contemplated by and authorized under the Supplemental Act and the Separate Legal Act, and other provisions of general law.

*The Court's Task in Bond Validation*

SIXTEENTH. The Court's task in bond validation is to determine (1) whether the issuer has legal authority to issue the contemplated indebtedness, (2) whether the purpose of the obligation is legal, and (3) whether the issuance complies with the requirements of law. *Strand v. Escambia County*, 992 So. 2d 150 (Fla. 2008), *reh'g denied* (Fla.

2008); and *Boschen v. City of Clearwater*, 777 So. 2d 958, 962, 966 (Fla. 2001).

SEVENTEENTH. Subsumed within the inquiry as to whether the issuer has the legal authority to issue the contemplated indebtedness are matters which are clearly a basic part of unique financing arrangements. See *Keys Citizens for Responsible Gov't, Inc. v. Florida Keys Aqueduct Authority*, 795 So. 2d 940, 946 (Fla. 2001). The validity of matters tied to and representing a basic part of the financing arrangement are reasonably part of the Court's inquiry into whether the issuer has the authority to issue bonds. *Id.* at 947. The function of a validation proceeding is merely to settle the basic validity of the securities and the power of the issuing agency to act in the premises. *State v. Manatee County Port Auth.*, 171 So. 2d 169, 171 (Fla. 1965). The Court is not called upon to reweigh the evidence or to second-guess the political, financial, or policy considerations underlying the issuance. See, e.g., *Boschen*, 777 So. 2d at 968; *Panama City Beach Cmty. Redevelopment Agency v. State*, 831 So. 2d 662, 667-69 (Fla. 2002). “[I]t is not the function of this Court to decide whether the proposed financing is wise or even fiscally sound.” *State v. Brevard County*, 539 So. 2d 461, 464 (Fla. 1989). The Florida Supreme Court has indicated that trial courts “must maintain a very deferential standard of review when



testing the validity of statutorily authorized revenue bonds.” *Panama City Beach Redevelopment Agency*, 831 So. 2d at 664.

EIGHTEENTH. It is the intent of the law that bond validations be expedited at the earliest time reasonably possible. *Rianhard v. Port of Palm Beach Dist.*, 186 So. 2d 503, 505 (Fla. 1966) (trial court did not abuse its discretion in not setting further hearing for taking of testimony but rather it properly proceeded after considering all that was offered at initial hearing to enter decree of validation). The Legislature's intent for expedited handling is expressly reflected both in the text of chapter 75, Florida Statutes (“...the court shall determine all questions of law and fact and make such orders as will enable it to properly try and determine the action and render a final judgment with the least possible delay”), and the fact that the procedure set forth is summary in nature.

NINETEENTH. The Plaintiff is authorized under chapter 75, Florida Statutes, and chapter 163, Part I, Florida Statutes, including section 163.01(7)(g)9., Florida Statutes, to file its Complaint for Validation in this Court to determine the validity of (i) the Bonds, (ii) the power of Plaintiff by general law to independently act in the premises, (iii) the pledge of revenues for the payment thereof, (iv) the validity of the non-ad valorem assessments which shall comprise all or in substantial part the revenues

pledged, (v) the proceedings relating to the issuance thereof and (vi) all matters connected therewith. All actions and proceedings of the Plaintiff in this cause are in accordance with chapter 75, Florida Statutes, and chapter 163, Part I, Florida Statutes, each as amended.

*Extraordinary General Law Authority and Assignment of Responsibilities  
Conferred Upon the Plaintiff to Accomplish Compelling State Interests*

TWENTIETH. Authority is conferred upon the Plaintiff, under and by virtue of the general law of the State of Florida, particularly the Separate Legal Entity Act, the Charter Agreement, and the Supplemental Act, to independently impose and levy non-ad valorem assessments for public purposes and compelling state interests announced by the Legislature to fund and finance qualifying improvements, through voluntary execution of financing agreements by private property owners with the Plaintiff, as set forth in the Supplemental Act, and to issue its bonds or other debt obligations for the purposes of financing qualifying improvements, all in the manner as described and authorized by the Legislature in general law.

TWENTY-FIRST. The subject matter of general law authority described in the Supplemental Act, the Separate Legal Entity Act, and the Charter Agreement is black-letter law authority expressly provided by the Legislature in the Florida Statutes that separate legal entities, formed in the

same manner as that of the Plaintiff, once constituted and established as provided by general law, are authorized to act alone to assist private property owners who alternatively and voluntarily choose to apply to and consent to such financing directly with the Plaintiff by virtue of execution of a financing agreement as provided for in the Supplemental Act. The Legislature has provided express general law authority to the Plaintiff to independently fund and finance qualifying improvements for interested private property owners throughout the State in a concurrent, alternative, but non-exclusive manner. Such funding and financing of qualifying improvements discretely and uniquely accomplishes specific compelling state interests described in general law.

TWENTY-SECOND. The Supplemental Act (i) defines “local government” and “qualifying improvements”; (ii) authorizes local governments to finance qualifying improvements through the execution of financing agreements and the related imposition of non-ad valorem assessments; (iii) authorizes local governments to incur debt for purposes of funding and financing such qualifying improvements payable from revenues received from such non-ad valorem assessments or any other available revenue source authorized by law; and (iv) provides there is no requirement or necessity for the Plaintiff to enter into any agreement or

partnership, beyond the general law provisions of the Charter Agreement, to serve any property owner.

TWENTY-THIRD. The Bonds, or other debt obligations issued by the Plaintiff, enable the Plaintiff to lawfully fund a qualifying improvement financing program as authorized and encouraged by the Legislature and assist property owners who wish to undertake improvements to their real property for (i) energy conservation and efficiency improvements, (ii) renewable energy improvements, (iii) wind resistance improvements, (iv) or any other qualifying improvements authorized by the Legislature (herein "qualifying improvements"). The Bonds may be solely secured by the proceeds derived from special assessments in the form of non-ad valorem assessments imposed by the Plaintiff as evidenced by the voluntary agreement of the record owners of the affected property as authorized by the Supplemental Act. In order to pay the costs of qualifying improvements, the Supplemental Act expressly authorizes the imposition and collection of "non-ad valorem assessments" as defined in section 197.3632(1)(d), Florida Statutes, which constitute a lien against the affected property, including homestead property, as permitted by article X, section 4 of the Florida Constitution.

TWENTY-FOURTH. In order to make qualifying improvements more affordable and assist property owners who wish to undertake such improvements, the Legislature has found that there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance.

TWENTY-FIFTH. The Legislature has rationally determined the actions authorized under the Supplemental Act, including, but not limited to, the financing of qualifying improvements through the execution of financing agreements between property owners and local governments and the resulting imposition of non-ad valorem assessments are necessary to serve and achieve compelling state interests, and are also necessary for the prosperity and welfare of the State and its property owners and inhabitants. Such determination comports with the performance of a governmental function and purpose described by the Legislature in the Separate Legal Entity Act. The mission, financing and service of the Plaintiff authorized by the Legislature all relate to accomplishing governmental functions and purposes described in section (1)(c) of the Supplemental Act, and sections (7)(g) 1., 7., and 10. of the Separate Legal Entity Act.

*The Use of and Nature of Non-Ad Valorem Assessments  
in Implementing Supplemental Authority to Improve Real Property*

TWENTY-SIXTH. The non-ad valorem assessments imposed pursuant to the Supplemental Act (i) are only imposed with the written consent of the affected property owners, (ii) are evidenced by a financing agreement as provided for in the Supplemental Act which comports with and evidences the provision of due process to every affected property owner, (iii) constitute a valid and enforceable lien permitted by article X, section 4 of the Florida Constitution, of equal dignity to taxes and other non-ad valorem assessments and is paramount to all other titles, liens or mortgages not otherwise on parity with the lien for taxes and non-ad valorem assessments, which lien runs with, touches and concerns the affected property, and (iv) are used to pay the costs of qualifying improvements necessary to achieve the public purposes articulated by the Supplemental Act. As such, the non-ad valorem assessments imposed pursuant to the Supplemental Act are indistinguishable from and fully equivalent to all other non-ad valorem assessments providing for the payment of costs of capital projects, improvements, and/or essential services (e.g., infrastructure and services related to roads, stormwater, water, sewer, garbage removal/disposal, etc.) which benefit property or relieve a burden created by property in furtherance of a public purpose.

TWENTY-SEVENTH. Florida law provides the amount of any given non-ad valorem assessment may not exceed the benefit conferred on the property, nor may it exceed the cost for the improvement and necessary incidental expenses. Non-ad valorem assessments imposed pursuant to the Supplemental Act are no different than any other non-ad valorem assessment imposed by a local government and therefore may not exceed the cost of the improvement and necessary incidental expenses including, but not limited to, costs of financing, collection and enforcement, and the reasonably apportioned annual assessment administration costs by the local government imposing the non-ad valorem assessment.

TWENTY-EIGHTH. Non-ad valorem assessments imposed pursuant to the Supplemental Act, among other things, meet and comply with the well-settled case law requirements of a special benefit and fair apportionment required for a valid special or non-ad valorem assessment.

TWENTY-NINTH. Any non-ad valorem assessments levied and imposed against the affected real property pursuant to the Supplemental Act must be collected pursuant to the uniform collection method set forth in section 197.3632, Florida Statutes, pursuant to which non-ad valorem assessments are collected annually over a period of years on the same bill as property taxes.

THIRTIETH. Non-ad valorem assessments imposed pursuant to the Supplemental Act are not subject to discount for early payment.

THIRTY-FIRST. The Supplemental Act expressly and carefully clarifies and distinguishes the relationship of (i) prior contractual obligations or covenants which allow or are associated with unilateral acceleration of payment of a mortgage note or lien or other unilateral modification, with (ii) the action of a property owner entering into a financing agreement pursuant to the Supplemental Act. The Supplemental Act lawfully recognizes the financing agreement required therein as the means to evidence a non-ad valorem assessment and renders unenforceable any provision in any agreement between a mortgagee or other lienholder and a property owner which allows for the acceleration of payment of a mortgage, note, lien or other unilateral modification solely as a result of entering into a financing agreement pursuant to the Supplemental Act which thereby establishes a non-ad valorem assessment. This provision of the Supplemental Act does not result in a contractual impairment of the mortgage or similar lien which differs from any other lawful non-ad valorem assessment as the value of the prior contract (e.g., mortgagee's interest) is not impaired by the



financing agreement nor is the prior contract impaired by giving priority to a lien for a subsequent non-ad valorem assessment.

THIRTY-SECOND. Even if there were to be an impairment of contract as a result of the Supplemental Act, such impairment is not substantial nor does it constitute an intolerable impairment, and as such does not warrant overturning the Supplemental Act as there is an overriding necessity for the Supplemental Act. Pursuant to the Supplemental Act, any mortgage lien holder on a participating property shall be provided not less than 30 days prior notice of the property owners' intent to enter into a financing agreement together with the maximum principal amount of the non-ad valorem assessment and the maximum annual assessment amount. The Supplemental Act does not limit the authority of the mortgage holder or loan servicer to increase or require monthly escrow payments in an amount necessary to annually pay the qualifying improvement assessment. The Supplemental Act additionally requires as a condition precedent to the effectiveness of a non-ad valorem assessment (i) a reasonable determination of a recent history of timely payment of taxes, (ii) a reasonable determination of the absence of involuntary liens or property-based debt delinquencies, (iii) verification that the property owner is current on all mortgage debt on the property, (iv) that,

without the consent of the mortgage holder or loan servicer, the total amount of any non-ad valorem assessment for qualifying improvements not exceed twenty percent (20%) of the just value of the property, except that energy conservation and efficiency improvements and renewable energy improvements are not subject to the twenty percent (20%) of just value limit if such improvements are supported by an energy audit which demonstrates that annual energy savings from the improvements equal or exceed the annual repayment of the non-ad valorem assessment, and (v) that any work requiring a license under any applicable law to make the qualifying improvement be performed by a properly certified or licensed contractor. Finally, each financing agreement (or a memorandum thereof) must be submitted for recording and constructive notice in the public records of the county where the property is located promptly after the execution thereof.

THIRTY-THIRD. The Supplemental Act (i) was enacted to deal with broad generalized economic or social problems, (ii) is based on historical principles of law in existence before any affected mortgage or other debt instrument was entered into and operates and will be administered in an area of intense governmental regulation and public scrutiny, (iii) has been in place for over a decade and (iv) is, or provides for

conditions which are, temporary in nature and thus tolerable in light of covenants contained in mortgage and other debt instruments which may otherwise allow for unilateral acceleration. See the Florida House of Representatives Staff Analysis (CS/HB 7179) Qualifying Improvements to Real Property (the "2010 House Report") associated with the initial adoption of the Supplemental Act. A certified copy of the 2010 House Report was received into evidence as Plaintiff's Exhibit 3.

THIRTY-FOURTH. The qualifying improvements and all costs associated therewith funded with the proceeds of the non-ad valorem assessments evidenced by any financing agreement pursuant to the Supplemental Act must convey a special benefit to the real property subject to the assessment and the cost of the service or improvement must be fairly and reasonably apportioned to such real property. The special benefit necessary to support the imposition of such a non-ad valorem assessment may wholly or in part consist of the relief or mitigation of a burden created by the affected real property.

THIRTY-FIFTH. Qualifying improvements address the public purpose of reducing, mitigating or alleviating the affected properties' environmental burdens including energy consumption resulting from use of fossil fuel energy and/or reduce burdens or demands of affected properties

that might otherwise result or manifest from potential wind, storm or hurricane events or damage.

THIRTY-SIXTH. The voluntary application for funding to finance a qualifying improvement and entry into a written financing agreement as required by general law pursuant to the Supplemental Act provides direct, competent, and substantial evidence that each affected property owner has determined and acknowledged that the cost of the qualifying improvement is equal to or less than the benefits received or burdens relieved or mitigated as to any affected property and has been provided and received substantive and procedural due process in the imposition of the resulting non-ad valorem assessments.

THIRTY-SEVENTH. The unique and specific procedures required by the Supplemental Act provide written and publicly recorded evidence that no affected property owner will be deprived of due process in the imposition of the non-ad valorem assessments or subsequent constructive notice that the assessment has been imposed.

*Uniform Method of Collection*

THIRTY-EIGHTH. The uniform method of collection as set forth in sections 197.3632 and 197.3635, Florida Statutes, and Rule 12D-18, Florida Administrative Code, provides for collection of non-ad valorem

assessments on the same annual bill as for annual property taxes. Where non-ad valorem assessments are collected using this uniform method, the assessments must be collected as a ministerial act by the tax collector at the same time as payment of other taxes and non-ad valorem assessments (see section 197.374 (7), Florida Statutes, and Rules 12D-13.002 (2) and 12D-18.010, Florida Administrative Code). The fundamental requirement that all non-ad valorem assessments imposed under the Supplemental Act must be collected and enforced using the uniform method of collection evidences a narrowly tailored general law that forms an extraordinary and pervasive means, using a mandatory method of imposition and collection, to attract alternative capital and protect property owners who voluntarily use such capital to accomplish the compelling state interests articulated by the Legislature.

THIRTY-NINTH. The use of the uniform method of collection is by general law a fundamental and uniform collection approach required statewide by the Supplemental Act. Inasmuch as all non-ad valorem assessments in Florida are imposed solely by local governments, the unique and extraordinary means employed by the Legislature to cause financing assistance to property owners to carry out the assorted compelling state interests described in the Supplemental Act necessarily

depends on robust, effective and available qualifying improvement financing programs administered by each of the local governments described and authorized in the Supplemental Act.

FORTIETH. Non-ad valorem assessments are not imposed or levied by any property appraiser or tax collector. Any duties of a property appraiser or tax collector with regard to collection of non-ad valorem assessments under section 197.3632, Florida Statutes, including the duty to collect the assessments and remit payment to the local government and to calculate the actual additional costs associated with the uniform method, are wholly ministerial and the property appraiser and tax collector are without any discretion with regard to the collection of non-ad valorem assessments on the same notice as for taxes or otherwise once the local government elects to use the uniform method and complies with the requirements of section 197.3632, Florida Statutes.

FORTY-FIRST. The Florida Department of Revenue, among other things, is charged with oversight and supervision of non-ad valorem assessment collection and enforcement processes by the State's 67 county tax collectors. The uniform method is of significant statewide import. Statewide the annual gross collection of non-ad valorem assessments imposed by local governments using the uniform method most recently is

approximated at over 4 billion dollars. Evidence substantiating the magnitude of such collections in the form of a certified copy of the most recent statewide tabulation of non-ad valorem assessments imposed, obtained by the Plaintiff from the Florida Department of Revenue ("FDOR"), was received into evidence as Plaintiff's Exhibit 4.

FORTY-SECOND. Regardless of whether the Supplemental Act requires the use of the uniform method of collection, any local government authorized to impose such assessments upon timely providing an initial notice of intent to use the uniform method of collection of a class or genus of non-ad valorem assessments to the property appraiser, the tax collector and the FDOR by United States Mail is entitled to use such uniform method for the next fiscal year and all ensuing years.

FORTY-THIRD. Where a local government sends to a tax collector or property appraiser, a certified letter via the United States Postal Service, including a statement unequivocally agreeing to all the terms and scope of the agreement required by section 197.3632(2), Florida Statutes, and the tax collector and property appraiser receives the same, the requirement of a statutory agreement under section 197.3632(2), Florida Statutes, is met. Such transmittal from the local government, among other things, creates an enforceable contract satisfying the requirements of the

statute of frauds and complies with the local government's obligation to enter into the required limited written agreement in section 197.3632(2), Florida Statutes. Such action and compliance are also consistent with on-point guidance letters from the Florida Department of Revenue. Certified copies of relevant FDOR guidance letters were received into evidence as Plaintiff's Composite Exhibit 5.

NOT A CERTIFIED COPY



*The Legislature's Leading Role in the Supplemental Act*

FORTY-FOURTH. In developing and considering the Second Master Bond Resolution, the Board of Directors of the Plaintiff considered in particular the following determinations of the Legislature:

(A) In chapter 2008-227, Laws of Florida, the Legislature amended the energy goal of the State comprehensive plan to provide, in part, that the State shall reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors and reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources.

(B) That act also declared it the public policy of the State to play a leading role in developing and instituting energy management programs that promote energy conservation, energy security and the reduction of greenhouse gases.

(C) In chapter 2008-191, Laws of Florida, the Legislature adopted energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments.

(D) The Legislature finds that all energy-consuming improved properties that are not using energy conservation strategies contribute to

the burden affecting all improved property resulting from fossil fuel energy production.

**(E)** Improved property that has been retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption.

**(F)** All improved properties not protected from wind damage by wind resistance qualifying improvements contribute to the burden affecting all improved property resulting from potential wind damage.

**(G)** Improved property that has been retrofitted with wind resistance qualifying improvements receives the special benefit of reducing the property's burden from potential wind damage.

**(H)** The installation and operation of qualifying improvements not only benefit the affected properties for which the improvements are made, but also assist in fulfilling the goals of the State's energy and hurricane mitigation policies.

**(I)** In order to assist property owners who wish to undertake qualifying improvements, the Legislature finds there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance.

FORTY-FIFTH. Unique to the Supplemental Act is that the Legislature has acted on a statewide basis to create alternative access to capital markets for private property owners to finance and secure improvements to private property *to fulfill paramount public purposes involved with encouraging qualifying improvements* (e.g., the goals of the State's energy and hurricane policies) announced in general law.

FORTY-SIXTH. In considering the Second Master Bond Resolution, the Board of Directors of the Plaintiff employed the authority in the Charter Agreement, which provides in part:

By this Charter, the provisions of section 163.01(7)(g), Florida Statutes, the Supplemental Act, or by resolution of the governing bodies of a general purpose local government affected and as implemented pursuant to a Subscription Agreement, collectively, alternatively, or supplementally, all power and authority available to the [Plaintiff] under this Charter Agreement, and general law, including without limitation, Chapters 163, 189 and 197, Florida Statutes, shall be deemed to be authorized and may be implemented by the [Plaintiff] to serve populations within and outside of the members of the [Plaintiff].

The Charter Agreement is both formed and implemented by general law.

FORTY-SEVENTH. As expressly granted, authorized and provided by the Legislature in the Separate Legal Entity Act, and by the Charter Agreement duly implemented by general law in the manner provided by the Legislature pursuant to the provisions of the Separate

Legal Entity Act, the Plaintiff has been imbued by the Legislature with express independent authority to act by general law in all respects to independently exercise concurrently and alternatively all power and authority described as available to the Plaintiff under the Charter Agreement and general law, including without limitation, chapters 163, 189 and 197, Florida Statutes. Such express assignment of authority and responsibility to the Plaintiff, and other similarly situated separate legal entities, is duly authorized by general law to accomplish compelling state interests and may, at the sole option of the Plaintiff in this circumstance, be implemented by the Plaintiff to independently, concurrently and non-exclusively serve populations within and outside of the members of the Plaintiff with its qualifying improvement financing program and associated activities in Florida.

FORTY-EIGHTH. The power and authority of the Plaintiff to independently engage and transact with private property owners, enter into financing agreements in the manner provided by the Legislature with private property owners throughout the State to accomplish compelling state interests and impose non-ad valorem assessments, issue its obligations to fund and finance qualifying improvements, all as provided by general law is separate, alternative, concurrent with, and in all respects

independent from any other financing regime or program implemented by any other local government in Florida, unless in all respects voluntarily agreed otherwise by the Plaintiff from time to time.

FORTY-NINTH. The Legislature has announced strong and specific policy reasons in the Supplemental Act to implement the Legislature's pervasive strategy and statewide approach intended to be spread throughout Florida, broadly and non-exclusively motivating local governments to assist private property owners throughout Florida to voluntarily engage in improving the state's building stock as a supplemental means to make alternative capital more available to improve real property for paramount public purposes (e.g., addressing significant and consequential energy and environment challenges facing this State).

FIFTIETH. Expansion of the definition of 'local government' in the Supplemental Act by the Legislature in 2012 broadened the array of local governments directly authorized by the Legislature to provide funding and engaged in the compelling state interest of assisting private property owners with financing authorized by the Supplemental Act.

FIFTY-FIRST. The additional supplemental authority and non-derogation provisions of sections 163.08(1) and (16), Florida Statutes, (2022) relate to the authority and subject matter of the compelling state

interest in enabling property owners to voluntarily finance qualifying improvements with local government assistance, and does not authorize regulation of one local government by another in the financing and non-ad valorem assessment process described by the Legislature, which in the instance of the Supplemental Act and its consensual general law authority providing for voluntary imposition of assessments for qualifying improvements on private property, is within the reserved general law domain of the Legislature.

FIFTY-SECOND. Any local government defined in section 163.08(2)(a), Florida Statutes, is free to govern and regulate its own activities, but cannot frustrate the announced necessity to serve and achieve the compelling state interest, expressly determined by the Legislature in the Supplemental Act as necessary for the welfare of the State and its property owners and inhabitants, by interfering in governance and the scope of general law powers and procedures of an independent special district or special purpose local government exercised independently, concurrently and non-exclusively as expressly authorized by the Legislature. For example, regarding the circumstance of the Supplemental Act, a general purpose local government may establish its own financing program but is not authorized to prohibit associated behavior

and action by the Plaintiff otherwise expressly allowed by general law, require actions of the Plaintiff prohibited by or fundamentally contrary to general law, provide for or require another way to do the same act to the exclusion of an act expressly authorized by general law, impose conditions on or otherwise regulate the authorized exercise of general law powers by the Plaintiff, frustrate the accomplishment of compelling state interests specifically articulated as desirous statewide by general law, or provide for different methods for doing a particular act by the Plaintiff than the methods set forth by authorizing State legislation.

*Considerations by the Plaintiff*

FIFTY-THIRD. On or before August 22, 2022, the Board of Directors of the Plaintiff received and considered an independent and learned review addressing seawalls as a wind resistance improvement from Dr. Frederick Bloetscher (the "Bloetscher Report"). The Bloetscher Report was received into evidence as Plaintiff's Exhibit 6. On or before August 22, 2022, the Board of Directors of the Plaintiff also received and considered an overview and analysis concerning the Plaintiff's qualifying improvement finance program prepared by Dr. Owen Beitsch (the "Beitsch Report"). The Beitsch Report was received into evidence as Plaintiff's Exhibit 7.

FIFTY-FOURTH. Inclusive of the Bloetscher Report and the Beitsch Report, the Board of Directors has considered learned reviews and comment from qualified and knowledgeable community development, economic, and engineering expertise, insight from staff, management, program advisors, counsel, conducted a duly noticed public hearing, and as well considered the individual knowledge and considerations discussed and shared at public meetings by members of the Board of Directors both recently and over a period of years. A certified copy of the transcript of the August 22, 2022 public hearing concerning the Second Master Bond Resolution, including exemplary copies and internet links from the Plaintiff's website given to the court reporter and received into the meeting record, was received into evidence as Plaintiff's Exhibit 8.

*Seawalls Determined to be Wind Resistance Improvements*

FIFTY-FIFTH. The Bloetscher Report was accepted by the Plaintiff's Board of Directors and serves as competent, substantial evidence supporting the Plaintiff's determination that seawalls, coastal armaments and similar infrastructure facilities (collectively herein "seawalls") provide a substantial benefit to the protection of structures and property resulting from wind driven wave action, and are therefore a wind resistance improvement and a measure to offset the effects of wind and storms. In the



context of the Supplemental Act, the proviso using the “*which includes, but is not limited to*” language in section 163.08 (2)(b)3, Florida Statutes, combined with the reasoned nexus supplied by Dr. Bloetscher (that wind driven water and associated wind resistance features of seawalls supports the Plaintiff’s Board of Directors’ determination that financing of qualifying improvements such as seawalls is authorized by the Supplemental Act) is premised fundamentally upon the reasonable implication that such proviso is permissive, rather than exclusionary. The addition of seawalls to the Plaintiff’s qualifying improvement financing program is consistent with the express dictates and implications of the Supplemental Act.

Reasoned Sizing

FIFTY-SIXTH. The not to exceed dollar amount of \$5,000,000,000 provided for in the Second Master Bond Resolution is based upon competent substantial evidence from both the Bloetscher Report and the Beitsch Report considered by the Plaintiff and anticipates a conservative level of interest in the Plaintiff’s qualifying improvement finance program from qualified property owners, though the total principal balance outstanding at any point in time may be considerably lower depending on actual demand.

*The Second Master Bond Resolution*

FIFTY-SEVENTH. The Second Master Bond Resolution authorizes Plaintiff's issuance of not exceeding \$5,000,000,000 in aggregate principal amount at any one time outstanding of Florida PACE Funding Agency Revenue Bonds (Qualifying Improvement Financing Program), in Various Series, in order to provide funds with which to administer an energy, wind resistance or other qualifying improvement finance program expressly authorized by the Legislature and which comports with the Plaintiff's mission, Charter Agreement and express provisions of general law in the Separate Legal Entity Act and Supplemental Act.

FIFTY-EIGHTH. The Second Master Bond Resolution provides that the Bonds will be issued in such amounts, at such time or times, be designated as such series, be dated such date or dates, mature at such time or times, be subject to tender at such times and in such manner, contain such redemption provisions, bear interest at such rates not to exceed the maximum permitted by Florida law, including variable and fixed rates, and be payable on such dates as provided in the various trust indentures, if required by law, to be entered into and by and between the Plaintiff and one or more national banking associations or trust companies

authorized to provide trust services in Florida, to be determined by a resolution of the Plaintiff to be adopted prior to the issuance of the Bonds (the "Indentures").

FIFTY-NINTH. The Plaintiff is not prohibited from enacting, implementing and operating a non-ad valorem assessment program to finance qualifying improvements under the Supplemental Act by any provision of any agreement between any local government and a public or private power or energy provider or other utility provider, since any provision of such agreements are rendered unenforceable if used to limit or prohibit any local government from exercising its general law authority to operate a program under the Supplemental Act.

SIXTIETH. The Second Master Bond Resolution provides that the principal of, premium, if any, and interest on the Bonds shall be payable solely from the proceeds of non-ad valorem assessments imposed by the Plaintiff pursuant to financing agreements with affected property owners as provided for in the Supplemental Act, and the funds and accounts described in and as pledged and as limited under the Indentures and under any applicable or alternative subscription agreements to be executed and delivered by the local governments (the "Pledged Revenues").

SIXTY-FIRST. The Pledged Revenues pledged to one series of Bonds may be different than the Pledged Revenues pledged to other series of Bonds.

SIXTY-SECOND. Bonds issued pursuant to the Second Master Bond Resolution to redeem and/or refund any bonds or other indebtedness of the Plaintiff shall be deemed to be a continuation of the debt refunded or redeemed and shall not be considered to be an issuance of an additional principal amount of debt chargeable against the amount originally validated in this proceeding and authorized to be issued.

SIXTY-THIRD. The Bonds and any series thereof may be issued such that the interest thereon shall not be excluded from gross income of the holders thereof for purposes of federal income taxation or may be issued such that the interest thereon shall be excluded from gross income of the holders thereof for purposes of federal income taxation.

SIXTY-FOURTH. The Bonds and any series thereof may be issued such that the Bonds are or are not further secured by one or more bond insurance policies, letters of credit, surety bonds or other form of credit support.

SIXTY-FIFTH. The Second Master Bond Resolution provides that the Bonds and the obligations and covenants of the Plaintiff under the

Indentures, and other documents (collectively, the "Program Documents") shall not be or constitute a debt, liability, or general obligation of the Plaintiff, the Incorporators, the State of Florida, or any political subdivision or municipality thereof (excluding any local governments to the extent of their respective obligations under any respective subscription or other agreement in the event of a written and express guarantee), nor a pledge of the full faith and credit or any taxing power of the Plaintiff, the Incorporators, the State or any political subdivision or municipality thereof, but shall constitute special obligations payable solely from the non-ad valorem assessments as evidenced by the financing agreements and secured under the Indenture, in the manner provided therein (and in any other applicable Program Documents, only if expressly applicable). The holders of the Bonds shall not have the right to require or compel any exercise of the taxing power of the Plaintiff, the Incorporators, or any local government entering into any financing agreement with an affected property owner, the State of Florida or of any political subdivision thereof to pay the principal of, premium, if any, or interest on the Bonds or to make any other payments provided for under the Indentures, or the Program Documents. The issuance of the Bonds shall not directly, indirectly, or contingently obligate the Plaintiff, the Incorporators, the State of Florida or

any political subdivision or municipality thereof (excluding any local governments to the extent otherwise expressly provided in writing in any respective Program Documents) to levy or to pledge any form of taxation or assessments whatsoever therefore.

*Sovereign Immunity and Comprehensive Limitation of Liability*

SIXTY-SIXTH. Plaintiff and the general purpose local governments incorporating or acting as members of the Plaintiff are and shall be subject to sections 768.28 and 163.01(9)(c), Florida Statutes, and any other provisions of Florida law governing sovereign immunity. Pursuant to section 163.01(5)(o), Florida Statutes, such local governments may not be held jointly liable for the torts of the officers or employees of the Plaintiff, or any other tort attributable to the Plaintiff or another member of the Plaintiff, and the Plaintiff alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the extent of the waiver of sovereign immunity or limitation of liability as specified in section 768.28, Florida Statutes.

SIXTY-SEVENTH. Plaintiff is a legal entity separate and distinct from the Incorporators, and neither of the Incorporators, nor any subsequent local government member of the Plaintiff, nor any local government within which the Plaintiff serves and provides financing to a

property owner therein in which a non-ad valorem assessment is imposed, nor any subsequently subscribing local government shall in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of the Plaintiff, its Board of Directors nor any other agents, employees, officers or officials of the Plaintiff, except to the extent otherwise mutually and expressly agreed upon, and neither the Plaintiff, its Board of Directors or any other agents, employees, officers or officials of the Plaintiff have any authority or power to otherwise obligate any county, municipality nor any other local government, nor any subsequently participating member or subscribing local government, in any manner.

*Determinations Concerning Validation Proceeding*

SIXTY-EIGHTH. All requirements of the Constitution and laws of the State of Florida pertaining to the issuance of the Bonds and the adoption of the proceedings of the Plaintiff have been complied with.

SIXTY-NINTH. By general law pursuant to the Charter Agreement and (applicable provisions of general law) and by virtue of the authority thereof, the Plaintiff's Board of Directors, on August 22, 2022, properly and lawfully adopted the Second Master Bond Resolution. The Second Master Bond Resolution properly and lawfully authorized the issuance of the Florida PACE Funding Agency Revenue Bonds (Quality

Improvement Finance Program), Various Series not to exceed \$5,000,000,000, to fund the acquisition and/or construction of facilities and improvements including, without limitation, the construction of seawalls and other qualifying improvements as designated by the Supplemental Act or the Legislature as may be defined therein in any series as the "Project."

SEVENTIETH. Authority is conferred upon the Plaintiff, under and by virtue of the laws of the State of Florida, particularly the Constitution of the State of Florida, sections 163.01(7)(g), 163.08, 197.3632, and 197.3635, Florida Statutes, the Agency Charter, and other applicable provisions of general law, and the Second Master Bond Resolution, to issue the Bonds for the purpose of providing funds to pay the costs of the Project and paying the costs of issuing the Bonds. The legislative findings and determinations of the Board of Directors as set forth in the Second Master Bond Resolution, are lawful, valid, not arbitrary, and based upon competent substantial evidence, and consistent with overriding general law.

SEVENTY-FIRST. The character of the Bonds and the nature of the Plaintiff entitle the Plaintiff to proceed in accordance with general law and the provisions of chapter 75, Florida Statutes, including the filing of the Complaint in this Court, for the purpose of obtaining the Court's determination of the power and authority of the Agency to issue the Bonds,



the validity of the Bonds, the power and authority of the Plaintiff to independently and concurrently transact with property owners without interference or regulation from any other local government concerning the funding and financing of qualifying improvements, the imposition, collection and use of non-ad valorem assessments originated by the Plaintiff throughout the State as Pledged Revenues to repay the Bonds, and all matters in connection therewith.

SEVENTY-SECOND. Due and proper notice addressed to the State of Florida, and the taxpayers, property owners and citizens of this State, including non-residents owning property or subject to taxation therein, and all others having or claiming any right, title, or interest in property to be affected by the issuance by the Plaintiff of the Bonds and the related imposition of non-ad valorem assessments, all as directed and authorized by the Supplemental Act and the Separate Legal Entity Act, or to be affected in any way thereby, was duly published in (i) *The Tallahassee Democrat*, a newspaper published and of general circulation in Leon County, Florida, (ii) *The Daytona Beach News-Journal*, a newspaper published and of general circulation in Flagler County, Florida, and (iii) *The Orlando Sentinel*, a newspaper published and of general circulation in Osceola County, Florida, each week for two consecutive weeks, the first

such publication being not less than twenty (20) days prior to the date of said hearing, as required by law.

SEVENTY-THIRD. The Answers of the State Attorneys for and on behalf of the State of Florida, and any parties intervening, if any, have been carefully considered by this Court. Such Answers, or appearances if any, show no cause why the prayers of the Agency should not be granted and discloses no irregularity or illegality in the proceedings set forth in the Complaint.

SEVENTY-FOURTH. This Court has found that all requirements of the Constitution and laws of the State of Florida pertaining to the applicable law and proceedings in the above entitled matter have been followed.

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that the issuance by the Plaintiff of its not to exceed \$5,000,000,000 Florida PACE Funding Agency Revenue Bonds (Qualifying Improvement Finance Program), Various Series, bearing interest payable in such manner and on such dates, at interest rates not exceeding the maximum rate permitted by law, all as provided by resolution of the Plaintiff, is for proper, legal and paramount public purposes and is fully authorized by law, and that this Final Judgment validates and confirms the authority of the Plaintiff to issue the Bonds; the legality and validity of the Second Master Bond Resolution

and the independent and concurrent imposition and means of collection of non-ad valorem assessments to annually fund the agreed upon debt service to repay the cost of funding and financing the assessments; the special benefit conveyed to real property or the relief of burden caused by real property as agreed to by each property upon consenting to the assessments which run with, touch and concern the affected real property; the method of determining and apportioning the assessments among real property subject thereto; the rates, fees, and charges comprising the assessment along with the apportioned costs of administration; the lien of assessments being equal in rank and dignity with the lien of all state, county and municipal taxes; the power and method of collection provided in the Supplemental Act; the pledge of the assessments to the payment of the Bonds; and, the legality of all proceedings and matters in connection therewith.


There shall be stamped or written on the back of the Bonds a statement in substantially the following form:

"This Bond was validated by judgment of the Circuit Court for Leon County, Florida rendered on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Chair"

provided that such statement or certificate shall not be affixed within thirty (30) days after the date of this judgment and unless no appeal be filed in this cause.

DONE AND ORDERED at the Leon County Courthouse in Tallahassee, Florida this Thursday, October 6, 2022.

2022-CA-001562-10/06/2022 03:21:07 PM  
  
Lee Marsh, Circuit Judge

37-2022-CA-001562 10/06/2022 03:21:07 PM

NOT A CERTIFIED COPY

Conformed copies by email to:

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**Palm Beach County  
Board of County  
Commissioners**

Gregg K. Weiss, Mayor

Maria Sachs, Vice Mayor

Maria G. Marino

Michael A. Barnett

Marci Woodward

Sara Baxter

Mack Bernard

**County Administrator**

Verdenia C. Baker

*"An Equal Opportunity  
Affirmative Action Employer"*

Official Electronic Letterhead

March 7, 2023

Florida Pace Funding Agency (FPFA)  
c/o Mike Moran  
4411 Bee Ridge Ed. #134  
Sarasota, FL 34233

Dear Mr. Moran,

Palm Beach County Attorney's Office is in receipt of your January 3, 2023 Letter.

We acknowledge the termination of FPFA's Interlocal Agreement with the County (ILA). However, it is the County's position that FPFA does not have the legal authority to continue operating in Palm Beach County without an executed ILA and outside of the amended PACE Ordinance No. 2022-030.

The bond validation judgment rendered in Case No. 2022-CA-1562, by a Circuit Court in Leon County, is not binding on Palm Beach County. The court's conclusion that FPFA may operate independent of local government regulation on a statewide basis is beyond the statutory scope of bond validation proceedings, and infringes upon the County's constitutional authority.

We are also troubled that though Palm Beach County was member of FPFA at the time that judgment was issued, and had interest in properties affected by the judgment, FPFA never published notice in Palm Beach County, nor did it notify the County that the bond validation proceeding was pending. This is a clear violation of the County's constitutional and statutory procedural due process rights because the County was deprived of a real opportunity to be heard on a matter that ultimately infringed upon the County's substantive rights.

In conclusion, we demand that you immediately cease and desist your operations in Palm Beach County, and immediately stop executing new financing agreements with property owners in Palm Beach County.

Best regards,

Marianna Sarkisyan, Esq.  
Assistant County Attorney  
Palm Beach County Attorney's Office

ec: David Ottey, Chief Assistant County Attorney  
Scott Holtz, Assistant County Attorney