Disclosure Information and Background Materials

April 29, 2016

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Introduction

The Florida PACE Funding Agency (the "Agency") presents to general purpose local governments a uniform and scalable statewide platform for the funding and financing of energy conservation, renewable energy and wind resistance improvements repaid through the imposition of voluntary special assessments against the real property benefitted by the improvements. This type of financing program has become known nationally by the acronym PACE which stands for "property assessed clean energy." Unlike legislation authorizing PACE programs in other states, the Florida statute also allows for the financing of wind resistance improvements.

The following materials include a PACE overview and a description of the Florida legislation authorizing PACE, the role of and advantages offered by the Florida PACE Funding Agency to counties and cities, the collection and enforcement mechanism for PACE assessments, current issues facing PACE programs in Florida and elsewhere, and a description of the simplified interlocal subscription available to interested local governments to make available this statutorily authorized funding and financing alternative to private property owners interested in the public purposes and compelling State interests described in Florida's unique legislation and general law.

PACE Overview

PACE programs offer a wide range of benefits, not only for the property owner who obtains financing for qualifying improvements at favorable terms but also for the broader public and the state and local governments involved. PACE programs can play an important role in hardening Florida buildings against hurricane events, reducing local greenhouse gas emissions, promoting energy efficiency improvements in its buildings, making the shift to renewable sources of energy more affordable, reducing energy costs for residents and businesses, and, perhaps most notably, encouraging local private sector economic activity and job creation.

Since development and attempted implementation of early PACE programs prior to 2011 by the City of Berkeley, California, Sonoma County, California and Boulder County, Colorado, the concept gained widespread attention and has been accepted at all levels of government with at least 31 states, including Florida, adopting legislation expressly authorizing PACE financing. However, programs have not been robust for many reasons, as discussed subsequently herein. The primary reason for program stagnation has been a lack of long term funding availability. The Florida PACE Funding Agency has overcome that hurdle.

While each of the PACE programs established to date differ in various respects, the basic premise involves a local government making funding available to commercial and residential property owners as supplemental a means to finance the costs of installing qualifying improvements. In Florida, qualifying improvements include renewable energy, energy efficiency and wind resistance improvements for buildings and improved properties. The funding is repaid in annual installments over a period of years (which should not exceed the useful life of the improvements) through a special assessment collected on the annual property tax bill. The acquisition of the improvements and the financing thereof through a special assessment is completely voluntary and only initiated upon the application and written consent of interested property owners. The yearly savings in utility costs resulting from energy-related improvements can exceed the amount of the annual assessment payment which incentivizes property owners to seek the improvements. Wind resistance improvements may be an attractive means to avoid wind storm repair costs or lower casualty insurance premiums. Rebates and credits may also be available which reduce the overall cost and increase the appeal of making the improvements.

The fact that the amount financed is repaid through a special assessment is fundamental for several reasons. The assessment is secured by the property and is not subject to acceleration upon sale or transfer of the property, which enables the new property owner to merely step into the place of the previous owner and assume responsibility for making the annual payment. This can be a vital consideration since many property owners might not undertake the improvements if the full balance had to

be due upon sale of the property and they did not intend to own the property long enough to recover the capital investment. Special assessments are on parity with property taxes. The lien arising by virtue of the assessment is by general law co-equal with the lien of city and county property taxes and senior to all other liens and titles, including mortgages. This seniority status diminishes the risk of non-payment to the local government involved, and is therefore attractive to the credit markets.

In a typical special assessment financing, the local government charges for interest and costs associated with the amount financed to offset its borrowing costs and expenses incurred in administering the financing. With respect to a PACE assessment, the interest rate may be higher or lower than one otherwise available from a bank or commercial lending institution. More importantly, an interested property owner may simply be unable to find residential or commercial financing at all in a tightened credit market, or the retail rates available may be such that the improvements are not economically feasible.

Florida local governments arguably possess home rule authority to develop and offer PACE programs, in the same way they possess home rule authority to levy and collect any other special assessment (e.g. assessments imposed to fund infrastructure and services related to roads, stormwater, water, sewer, fire protection, etc.). The Florida legislature has nonetheless adopted supplemental enabling legislation which by general law expressly authorizes PACE financing and intentionally addresses and resolves the issues and mechanics which have hampered the success of programs in other states. Nevertheless, adoption of PACE programs has been slow due to the reluctance of capital markets to embrace the credit. This funding hurdle requires careful education of securitization markets that typically do not interface with the municipal bond market local governments are familiar with. In March of 2014, the Florida PACE Funding Agency became the first PACE Program in Florida to actually obtain such financing availability. In April of 2016, the Florida PACE Funding Agency replaced its initial financing and reorganized its origination efforts substantially.

Florida PACE Legislation

In 2010, Florida enacted Section 163.08, Florida Statutes (the "Supplemental Act"), to provide general law authority to use special assessments to finance "qualifying improvements" to real property. The text of the Supplemental Act is included in Appendix A. The Supplemental Act sets forth a number of state policy objectives related to energy efficiency and wind resistance improvements, and provides legislative determinations concerning the burdens relieved or special benefits conveyed to the assessed property by the delivery and financing of qualifying improvements. The act is by its terms "additional and supplemental to county and municipal home rule authority and not in derogation of such authority or a limitation upon such authority." Section 163.08(16), Florida Statutes. The exemplary list of qualifying improvements set forth in the Supplemental Act is extensive (not exhaustive) and includes not only energy efficiency and renewable energy improvements but also wind resistance improvements in recognition of the heightened risk of property damage presented by the state's high wind potential. Section 163.08(2)(b), Florida Statutes. In essence, the Supplemental Act has created and authorized the opportunity for a uniform, scalable and statewide program pursuant to general law which may easily be accessed by cities and counties.

The drafters of the Supplemental Act undertook a careful analysis of PACE programs elsewhere around the country in order to capitalize on successes and avoid missteps in other jurisdictions. The text of the Supplemental Act includes a number of important and unique features and safeguards for the Florida program:

- Provides that special assessments imposed thereunder are by definition "non-ad valorem assessments" which may only be collected on the annual property tax bill in accordance with Section 197.3632, Florida Statutes.
- Provides for the execution of financing agreements with private property owners which evidence due process and provide constructive recorded notice and document both the terms and conditions pursuant to which qualifying improvements are financed and the property owner's consent to the imposition of the assessment.

- Establishes specific eligibility and credit limits and imposes limits for assessment amounts which cannot be exceeded without an energy audit demonstrating energy savings commensurate with the increased assessment amount.
- Renders unenforceable, as a matter of public policy, any provision in any agreement between a mortgagee and a property owner which allows for acceleration of payment of the mortgage or other unilateral modification solely as a result of entering into a financing agreement for a qualifying improvement.
- Provides that the mortgage escrow, if any, can be increased to include the annual assessment as part of the owner's monthly mortgage payment, which effectively converts the annual cost to a monthly cost.
- Property owner eligibility for financing requires (1) a record of on-time payment of property taxes, (2) no involuntary liens, judgments or similar involuntary liens, (3) demonstration that all mortgages have been paid timely and are current, (4) a 30-day prior notice to the mortgage holder (so the mortgage holder could increase the escrow, if applicable), and (5) the execution and recording of a financing agreement which evidences details and the existence of the assessment in the Official Records.
- Authorizes the issuance of bonds or other forms of indebtedness for the purpose of funding qualifying improvements, payable from revenues received from the improved property, or any other available revenue source authorized by law.
- Allows for partnership with one or more local governments for the purpose of providing and financing qualifying improvements.
- Authorizes administration by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.
- Expressly allows for the Florida PACE Funding Agency to act and provide its funding and financing services statewide.

The express authority to collaborate with other local governments and to engage third party administration expertise allows the Florida program to avoid various practical and economic disadvantages experienced by cities and counties around the country which have undertaken individual, localized programs with less than robust success. Even to date, no individualized or local PACE program in Florida has been able to be successfully implemented and attract financing availability with any degree of scalability.

Local Advantages Associated with Uniform and Scalable Approach

To date, throughout the nation, relatively few PACE programs have been implemented. Several have been desired on a local or community-wide basis, but find the means for success elusive. Those programs generally suffer from lack of subject matter expertise, a severe lack of new market originations knowledge and skills, inadequate available funding and a lack of the uniformity demanded by capital markets. The level of commitment and effort needed to succeed is often underestimated. The sheer cost of program development is a significant hurdle because local governments must typically rely on their own resources for startup funding. Notwithstanding a strong desire on the part of local officials to make PACE financing available to constituents, local governments may simply lack all or a combination of adequate funding resources, expertise and focus. An ad hoc, jurisdiction-by-jurisdiction approach has resulted in a lack of uniformity of standards from one local government to another, redundant expenditures of resources for startup and implementation costs and, depending on the size, population and interest level of property owners in a given community, an inability to create sufficient demand to attract significant funding at favorable and cost efficient terms. Accordingly, individual local or small regional PACE programs have experienced very limited success.

An entity with authority to operate throughout the state allows for establishment of uniform standards and procedures and offers unique advantages with respect to attracting substantial and immediate financial resources to adequately fund growing demand. However, the key is understanding the intense and careful origination process. A centralized administration provides opportunity for efficiencies, economies of scale and resulting cost savings. As a single entity with statewide authority, the Florida

PACE Funding Agency is better positioned to address concerns in the residential mortgage market and to limit liability exposure for local government participants. The Florida PACE Funding Agency has learned that the use of a redundant investor servicer analysis presents a means to not only protect interested capital, but is advantageous in protecting the property owner, contractors, the subscribing local government, and the Agency from inappropriate program use, fraud or abuse of the advantages of the PACE program. This advantage is simply not available on a small scale basis, and has proven fundamental to attracting capital.

A statewide program is more advantageous for and attractive to potential vendor participants because it offers a uniform set of standards with respect to construction of the improvements and program administration. The breadth and scope of a statewide program can more effectively attract capital markets and large scale private sector administration, foster origination partnerships among commercial and industrial groups, educators, energy auditors, contractors, suppliers and installers – and naturally facilitate the creation of local private sector jobs and economic activity. The origination process is complex and requires marketing and consumer protection considerations not well suited to local government skills and budgets.

Even where a local government believes that subsidizing a program or its costs is advisable for policy reasons, a program like the Florida PACE Funding Agency provides a means to better assist and more economically achieve the local government's objectives. In such instance, instead of subsidizing the stand-up and implementation of a singular local program, the local government can subscribe to the uniform and scalable Agency program, and directly use and better leverage any subsidy monies it desires to contribute to locally incentivize or encourage participation by local property owners (which both lowers cost to the property owners and advances the energy and wind-resistance policies innate in the PACE concept). In other words, all local resources can be targeted to advancing the PACE program locally, or for other local purposes. Most local governments who have endeavored to begin a local PACE program have faced taxpayer costs and lost opportunity to address other local problems with little positive result.

Recognizing these advantages, the Florida PACE Funding Agency was specifically structured to take advantage of general law provisions to remove liability from local governments for implementation, provide uniform program parameters which are designed to be attractive to national credit markets and improvement vendors alike, develop economies of scale and scalable program attributes that allow for easy subscription by local governments so that property owners desiring to avail themselves of PACE programs efficiently underwrite the entire cost of those programs as opposed to the general taxpayers. The Agency also provides an avenue to carefully implement the Supplemental Act and advance the 'compelling state interests' and statewide policy objectives set forth therein. Of more important note, the Agency has learned that available funding must be matched by contractor education and focused outreach to achieve its service mission.

Florida PACE Funding Agency

The Florida PACE Funding Agency was created in June 2011 through an interlocal agreement between Flagler County and the City of Kissimmee (the "Charter Agreement") for purposes of capitalizing on the advantages of a statewide approach to PACE financing. The Agency and its statewide platform is the result of the effort by local governments with the needs of local governments in mind. A copy of the Charter Agreement is included in Appendix B. Flagler County and the City of Kissimmee effectively acted as 'incorporators' of a separate and focused legal entity. Creation of an entity of this nature is expressly authorized by Section 163.01, Florida Statutes, the Florida Interlocal Cooperation Act. The Agency's mission is to facilitate the implementation, planning, development, funding, financing, marketing and management of a uniform statewide platform so that counties and cities can easily and economically take advantage of a scalable program for their residential and commercial property-owning constituents. The Agency is authorized to and has entered into an indenture allowing for up to $800 million in issuance of bonds to provide funds with which to finance qualifying improvements and to make available its funding program throughout Florida. The Agency is ready to provide this funding and financing service to property owners within the bounds of interested general purpose local government participants (cities and counties) as program 'subscribers'.

The Agency has been designed to encourage local governments to individually subscribe to its immediately available, uniform program which can provide immediate positive local impact without cost or liability to the taxpayer base. The intended constituency of the Agency, in many respects, is local government. The subscription approach is attractive to similarly create local markets with little or no cost to local government treasuries. This unique platform allows local governments to participate in the advantages of a PACE program and access capital markets without having to assemble extensive subject matter expertise, implement or deploy individual programs or individually seek or back-stop capital for their constituents. The charter of the Agency voluntarily respects the autonomy of general purpose local governments, and requests those local governments to cooperatively enter into a short standard interlocal subscription agreement before making the program available in those areas. As well, the Agency embraces an open or non-exclusive approach, and will provide its services and functions along with one or several other PACE programs in any jurisdiction. The objective is to be the best and lowest cost PACE program available. The use, form and purpose of the subscription agreement approach by the Agency have been judicially validated and approved.

One of the most important advantages of the program offered by the Agency is limited liability for the local governments subscribing to the program. No other program in Florida can boast of the same protections provided by the Agency in this regard. Both the Charter Agreement of the Agency and any subscription agreement make it clear that any subscribing local government is not responsible for actions or liabilities incurred by the Florida PACE Funding Agency or any other local government. As well, the insulation of liability is provided pursuant to general law, and any subscribing local government and the Florida PACE Funding Agency both also possess sovereign immunity. All parties dealing with the Florida PACE Funding Agency will be notified in writing that the actions, debts, obligations and responsibilities of the Florida PACE Funding Agency are those of the Agency and no other local government. This limitation of liability has also been expressly judicially validated and confirmed.

The Agency has been established by a charter, adopted a master bond resolution and successfully validated its ability to issue bonds to fund the various

voluntary financing agreements entered into pursuant to the general law authority of the Supplemental Act, together with a litany of matters and issues associated with the statutorily authorized non-ad valorem assessments which will comprise all or substantially all of the revenues to repay any bonds issued by the Agency.

The Florida PACE Funding Agency continues to have commitments up to $200 million available to fund improvements in Florida communities. Even though the Agency represents a national break-through in stable long term funding for programs of this nature, the Agency has revamped its approach to focus on the origination process and connecting local contractors with qualified property owners. The Agency continues to separate administration and funding to achieve better and more transparent funding availability and financing for property owners.

Implementation

Implementation of the Agency's program necessarily requires the appointment and selection of officials and consultants with a wide range of professional backgrounds.

Board of Directors: On November 7, 2011, the incorporators of the Agency appointed Cheryl Grieb, Barbara Revels, and Edward Marquez to serve on the Board of Directors for the Agency, each of whom possessed a wealth of local government, real estate and financial experience. Mr. Marquez, the Deputy Mayor of Miami-Dade County, has since resigned to avoid any conflict in that the County is considering enabling the PACE funding and financing concept, and the Agency is currently undergoing a search for a third board member.

Cheryl L. Grieb then served as Vice Mayor and Commissioner of the City of Kissimmee City Commission, and was subsequently elected to the Osceola County Commission. Concurrently since 2000, Ms. Grieb has been the Owner/Manager of Olde Kissimmee Investments, Inc., specializing in commercial and residential real estate.

Barbara S. Revels also currently serves as a Commissioner on the Flagler County Board of County Commissioners. She is a general contractor who serves as the

president and owner of Coquina Real Estate & Construction, Inc., a full service real estate company and general contracting firm. Ms. Revels has previously served as the President of the Florida Homebuilders Association.

Executive Director and General Counsel: Mike Steigerwald serves as Executive Director and Don Smallwood serves as General Counsel and Assistant Secretary to the Agency. Mike Steigerwald is the City Manager of the City of Kissimmee, and Don Smallwood is the City Attorney for the City of Kissimmee.

Special Counsel: The Agency has engaged Mark G. Lawson, P.A., to provide special or program counsel services to the Agency, and Akerman LLP to provide bond counsel services to the Agency.

Financial Advisors: The Agency, through a public procurement process, has selected Public Financial Management, Inc. (PFM), FirstSouthwest, a Division of Hilltop Securities Inc., and Southeastern Investments & Securities, LLC to serve as co-financial advisors to the Agency.

Third Party Administrator and Financial Services Provider: Pursuant to an RFP process, the Agency selected the entity now known as Leidos Engineering, LLC (Leidos), to provide third party administration services. Pursuant to the operation of that contract, and the Agency's 2014 Bond Indenture, Leidos now provides support services to Counterpointe Energy Solutions (FL), LLC, which serves as the third-party administrator of the program.

Third Party Administrator: As of April 2016 CounterPointe Entergy Solutions (FL), LLC (CES(FL)) became the successor third party program administrator to Leidos Engineering LLC (Leidos), by contractual event, acceptance and approval of the parties and the Agency. Leidos, based in Orlando with offices throughout Florida, continues to play an important role from the energy and technical standpoint in the Program. CES (FL) is an affiliate of CounterPointe Energy Solutions LLC (CES), and both are Florida based in Boca Raton.

Financial Services Provider*:* From December 2011 through most of 2013, the Agency and its financial advisors investigated, solicited, considered and received numerous

financing and funding proposals and options from every reasonably imaginable source. After an initial funding partnership with Partner Reinsurance Company and its investor servicer (CES) to provide the initial funding services to the Agency to fund its Program, funding is now being provided directly through CES. The strong PACE program put in place by the Agency, coupled with the funding and better origination solution provided by CES and its affiliates, promises to open an exciting new market that will carefully spur local economic activity in each subscribing community. The currently operative bond indenture and overall financing closed on April 26, 2016.

With the careful reset of program administration consultants and professionals essentially complete, the Agency is in a better position to share and engage in standard and brief subscription agreements with interested local governments and commence a much more focused outreach to local contractors immediately. Bringing the Agency to any city or county is done by simple resolution of the governing body of any local government.

Validation

The Agency, as one of its initial fundamental actions, filed its Validation Complaint in July 2011 seeking judicial approval to issue as much as 2 billion dollars in bonds to be issued from time to time as funds are needed. The dollar amount was premised upon a conservative economic analysis that there are at least 3,132,600 buildings which are over twenty (20) years old in Florida and likely candidates for retrofit or energy-related or wind resistant improvements. The economic analysis was performed by Real Estate Research Consultants, Inc., of Orlando, Florida, and was based on the assumption that if only five percent (5%) of the owners of such estimated number of buildings voluntarily apply for such retrofit improvements over the next several years, the necessity for potential aggregate of bonds issued in several series on an as needed basis could easily equal or exceed 2.35 billion dollars.

At the conclusion of the bond validation proceeding on August 25, 2011, the Circuit Court in and for Leon County, Florida, issued its Final Judgment validating and confirming the authority of the Agency to issue the bonds, the Charter Agreement creating the Agency, the validity of the financing agreements entered into with property

owners, the Supplemental Act and the non-ad valorem assessments imposed thereunder, the execution and validity of the contemplated subscription agreements with local governments throughout Florida and all matters connected therewith. A copy of the Final Judgment is included in Appendix C. The validation process has resolved with finality the Agency's authority to administer its statewide program and clarified the unique prerequisites and provisions in the Supplemental Act that more closely follow guidelines then provided by the Office of the Controller of the Currency, which had suggested pragmatic guidance to its regulated banks for PACE related programs nationwide. The validation was not appealed and is final. Its effect is statewide.

Subsequently other groups or organizations have attempted to emulate the validation process in Florida. All five were validated, but four exhibited flaws that have resulted in taxpayers filing several appeals related to the statute under which the Agency's program is authorized. The Florida Supreme Court issued a series of rulings in late 2015 that approved the use of PACE financing generally, while recognizing and defining limits as to what programs could accomplish outside of the statute. The Supreme Court recognized and corrected several errors with individual PACE programs, such as the unlawful use of foreclosure to enforce assessments, but none of those individual errors affected the Agency, which has stayed within the statutory scheme for imposition and enforcement of assessments.

Enforcement and Collection of Assessments

The following material provides a detailed description of the enforcement mechanism for special assessments (including those levied under the authority of the Supplemental Act) which are collected pursuant to the uniform method set forth in Section 197.3632, Florida Statutes. Assessments collected thereunder are not enforced through foreclosure or similar courtroom proceedings, but rather through the statutory tax certificate/tax deed process administered by the county tax collector on behalf of the local government (in this case, the Agency) imposing the assessment.

The Supplemental Act provides that special assessments imposed thereunder shall be collected by the uniform method set forth in Section 197.3632, Florida Statutes, which provides that the assessments must be collected in the same manner and at the

same time as county and municipal ad valorem taxes.[1] The statutes in Chapter 197 relating to enforcement of property taxes provide that such taxes become due and payable on November 1 of the year when assessed and constitute a lien upon the land from the previous January 1 of such year. The county tax collector is to bill such taxes together with all other ad valorem taxes and non-ad valorem assessments and landowners are required to pay all such taxes without preference in payment of any particular increment of the tax bill, such as the increment owing for the special assessments. Upon receipt of moneys from the tax collector, such moneys are typically deposited into whatever account or fund has been established to ensure timely repayment of any bonds or loans secured by the special assessments.

All county, municipal, school and special district taxes, assessments and voter-approved ad valorem taxes levied to pay principal of and interest on bonds, including any PACE-related special assessments, are payable at one time. If a taxpayer does not make complete payment, he cannot designate specific line items on his tax bill as deemed paid in full. In such cases, the tax collector cannot by law accept such partial payment and the partial payment is returned to the taxpayer. Accordingly, in order to pay the property taxes when due, a property owner must by law also pay all non-ad valorem assessments due. This feature is obviously attractive to credit markets who seek pledged revenues in the form of non-ad valorem assessments.

If the tax bill is paid during November when due or during the following three months, the taxpayer is granted a variable discount equal to 4% in November and decreasing 1% per month to 1% in February. All unpaid taxes become delinquent on April 1 of the year following assessment, and the tax collector is required to collect taxes prior to April 1 and after that date to institute statutory procedures upon delinquency to collect assessed taxes. Delay in the mailing of tax notices to taxpayers may result in a delay throughout this process. It is important to note that assessments imposed

[1] While some Tax Collectors and Property Appraisers in the various counties have suggested that they may disagree with the PACE concept on a policy basis, the validity of a non-ad valorem assessment is exclusively the responsibility of the local government imposing the assessment. Local Tax Collectors and Property Appraisers have a ministerial duty to collect the assessment, regardless of their individual view on the policy behind the assessment. *Escambia Cnty. v. Bell,* 717 So. 2d 85 (Fla. 1st DCA 1998). The Florida Department of Revenue has also confirmed this axiom in informal advisories.

pursuant to the Supplemental Act are not subject to the early payment discount. See Section 163.08(4), Florida Statutes.

Collection of delinquent taxes is, in essence, based upon the sale by the tax collector of "tax certificates" and remittance of the proceeds of such sale to the local government for payment of the amounts due. In the event of a delinquency in the payment of taxes, the landowner may, prior to the sale of tax certificates, pay delinquent taxes plus an interest charge of 18% per annum on the amount of delinquent taxes. If the landowner does not act, the tax collector is to sell tax certificates to the person who pays the taxes owing and interest thereon and certain costs, and who accepts the lowest interest rate to be borne by the certificates (but not more than 18%). If there are no bidders, the county is to hold, but not pay for, tax certificates with respect to the property, bearing interest at the maximum legal rate of interest. The county may sell such certificates to the public at any time at the principal amount thereof plus interest at the rate of not more than 18% per annum and a fee. The demand for such certificates is dependent upon various factors which include the rate of interest which can be earned by ownership of such certificates and the value of the land which is the subject of such certificates and which may be subject to sale at the demand of the certificate holder.

Any tax certificate in the hands of a person other than the county may be redeemed and canceled by the person owning or claiming an interest in the underlying land, or a creditor thereof, so long as such redemption occurs prior to the time a tax deed is issued. The person effecting such redemption must pay the face amount of the certificate and interest at the rate borne by the certificate plus costs and other charges. Regardless of the interest rate actually borne by the certificates, persons redeeming tax certificates must pay a minimum interest rate of 5%, unless the rate borne by the certificates is zero percent. The proceeds of such redemption are paid to the tax collector who transmits to the holder of the tax sale certificate such proceeds less services charges, and the certificate is canceled. Redemption of tax sales certificates held by the county is effectuated by purchase of such certificates from the county, as described in the preceding paragraph.

The private holder of a tax sale certificate which has not been redeemed has seven years from the date of issuance in which to act against the property. After an initial period of two years has passed, during which time action against the land is held in abeyance to allow for sales and redemptions of tax sale certificates, such holders may apply for a tax deed. The applicant is required to pay to the tax collector all amounts required to redeem outstanding tax certificates covering the land not held by him, and any omitted taxes or delinquent taxes, plus interest. If the county holds a tax certificate and has not succeeded in selling it, the county must apply for a tax deed after the county's ownership of such certificate for two years. The county pays costs and fees to the tax collector but not any amount to redeem other outstanding certificates covering the land. Thereafter, the property is advertised for public sale.

In any such public sale, the private holder of the tax certificate who is seeking a tax deed for non-homestead property is deemed to submit a minimum bid equal to the amount required to redeem the tax certificate, and charges for cost of sale, redemption or other tax certificates on the land, and the amounts paid by such holder in applying for the tax deed, plus interest thereon. In the case of homestead property, the minimum bid must include, in addition to the amount of money required for the opening bid on non-homestead property, an amount equal to one-half of the assessed value of the homestead. If there are no other bidders, the holder receives title to the land, and the amounts paid for the certificate and in applying for a tax deed are credited toward the purchase price. If there are other bidders, the holder may enter the bidding. The highest bidder is awarded title to the land. If there are no bidders, the county may purchase the land within ninety (90) days of the offering for public sale for the minimum bid. After ninety (90) days have passed, any person may purchase the land by paying the minimum bid to the county. Taxes and assessments accruing after the date of public sale do not require repetition of this process but are added to the minimum bid. The portion of proceeds of such sale needed to redeem the tax sale certificate (and all other amounts paid by such person in applying for a tax deed) are forwarded to the holder thereof or credited to such holder if he is the successful bidder. Excess proceeds are distributed first to satisfy governmental liens against the property and then to the former titleholder of the property (less service charges). Seven (7) years after the

date of public sale of the tax certificate, unsold lands escheat to the county in which they are located and all tax certificates and liens against the property are canceled and a deed is executed vesting title in the county commissioners.

The Agency does not give any assurance to the holders of the bonds (1) that past experience in a particular county with regard to tax and special assessment delinquencies is applicable in any way to special assessments levied pursuant to financing agreements, (2) that landowners who have executed financing agreements will pay or timely pay the special assessments, (3) that a market may exist in the future for the aforementioned tax certificates in the event of sale of such certificates, and (4) that eventual sale of tax certificates for real property subject to a financing agreement will be for an amount sufficient to pay amounts due under the financing agreement to discharge the lien of special assessments and all other liens that are coequal therewith. However, because of the nature of qualifying improvements (substantial improvements to existing improved properties, likely wide dispersal of participating properties, statutory underwriting guidelines, and required constructive notice), the uniform collection process should be quite attractive to mortgage and credit markets alike.

Current Issues Affecting PACE

In late 2009, with traditional lending for energy related improvements at a standstill, the concept of property assessed clean energy gained substantial national attention. As the concept gained in popularity, Fannie Mae and Freddie Mac and ultimately their conservator, the Federal Housing Finance Authority (collectively, "FHFA" hereafter), became concerned about the impact of diverse and non-uniform PACE programs on the security of mortgage loans they either owned or guaranteed.

In late spring of 2010, FHFA and the Office of the Comptroller of the Currency (which oversees banking institutions) issued statements of concern about PACE programs. Guidance from the Office of the Comptroller of the Currency was pragmatic, essentially reminding regulated banks that PACE assessments may require additional underwriting guidelines and urged, among other things, inclusion of such assessments within the monthly escrow for payment of all taxes. On July 6, 2010, FHFA issued a "Statement on Certain Energy Retrofit Loan Programs." In this statement, FHFA sought

to characterize PACE "loans" as fundamentally different from customary governmental assessments and taxes, and directed Fannie Mae and Freddie Mac to: (1) adjust loan-to-value ratios to reflect the maximum permissible PACE loan amount available to homeowners in PACE jurisdictions; (2) ensure loan covenants require approval/consent for any PACE loan; (3) tighten borrower debt-to-income ratios to account for additional obligations that could be associated with possible future PACE loans; and (4) ensure that mortgages on properties in a jurisdiction offering PACE-like programs satisfy all applicable federal and state lending regulations and guidance. On August 31, 2010, Freddie Mac and Fannie Mae issued letters to lenders stating that they would cease purchasing mortgage loans secured by property with an outstanding PACE loan originating on or after July 6, 2010. Each enterprise further indicated that in order to refinance a PACE encumbered property, the owner must generally pay off the entire outstanding PACE assessment. In response to these statements, the State of California and several local governments proceeded to challenge such pronouncements by FHFA in federal courts (hereinafter the "federal lawsuits"). The actions by FHFA served to chill the development of residential PACE funding programs and the federal lawsuits in response to these actions became protracted.

All of the federal lawsuits were substantially similar in theme in that they generally alleged that (1) the positions or directives of FHFA unfairly, improperly or unlawfully attempt to secure an unlawful lien priority over special assessments, (2) FHFA has unlawfully or improperly implemented rulemaking in violation of federal administrative procedures and national environmental policy, (3) FHFA has engaged in unfair business practices, (4) FHFA has violated the Tenth Amendment of the Federal Constitution by interfering with the power of the several states to regulate and define local taxation and assessment matters, and/or (5) FHFA has violated the commerce clause of the Federal Constitution. Each of the actions generally sought, in some form or another, a declaration as to the status of PACE assessments vis-à-vis residential mortgages owned, held or guaranteed by FHFA generally. FHFA responded in kind by seeking dismissals of each of these federal lawsuits. All of the federal lawsuits exhibited a general theme of asking the federal court system to somehow force FHFA to change its business or underwriting position.

Ultimately, both the Second Circuit in *Town of Babylon v. FHFA* and the Eleventh Circuit in *Leon County, Florida v. FHFA* held that the federal courts did not have jurisdiction to review the actions of the FHFA under applicable federal law. On March 19, 2013, the Ninth Circuit, in the only remaining pending federal lawsuit, *People v. State of California v. FHFA, et al.*, joined the Second Circuit and the Eleventh Circuit in dismissing and vacating the prior District Court order for lack of jurisdiction. In none of these cases were the underlying merits of the actions of the FHFA resolved or addressed. Pursuant to the now vacated District Court order in *People v. State of California v. FHFA, et al.* FHFA had been required to implement a formal rulemaking procedure. Initially FHFA issued a Notice of Advance Rulemaking, soliciting responses to the FHFA position on PACE assessments. Numerous responses were filed, mostly in support of PACE assessments and against the FHFA position. In June, 2012, FHFA issued a Notice of Rulemaking proposing alternatively a ban on purchasing mortgages with a PACE assessment on the property and three alternate approaches which allowed for a PACE assessment program. The FHFA received thousands of responses, and a new set of targeted studies clearly undermined the FHFA position. As a part of the federal rulemaking process, FHFA is obligated to address all of these concerns and comments in issuing new regulations or the regulations can be challenged. The FHFA had previously filed a notice with the federal court in California stating that due to the volume of responses and new information, FHFA would not make their April, 2013 rulemaking deadline and would be asking for an extension of time (but at this point, FHFA does not know how much additional time they will need). The order, as modified on March 5, 2013, directed FHFA to complete the process by September 16, 2013. This order was vacated by the Eleventh Circuit, and FHFA has not continued with the rulemaking process; no new action has been taken since the 2013 ruling. However, a bipartisan group of members of Congress introduced a bill on March 24, 2014, that seeks to legislatively deprive FHFA of the authority to impose restrictions on mortgages based on PACE assessments. The bill was never brought to the floor for debate. To date, the FHFA has not exercised the inherent threat of “red-lining”, which would entail the refusal to purchase any mortgages in a PACE jurisdiction, in any community—

despite millions of dollars of outstanding PACE assessments in California and other jurisdictions, in addition to the Florida assessments.

The Florida PACE Funding Agency, instead of pursuing its own federal lawsuit in light of the federal law which created the FHFA and deprived federal courts of jurisdiction to review the actions of FHFA as conservator, sought judicial validation of its actions and authority under Florida law. The validation proceeding addressed the core aspects of the issues raised by FHFA, and resulted in a final judgment declaring that the non-ad valorem assessments levied in Florida by the Agency meet all state law and judicial precedence to qualify as "special assessments" within the meaning of the Florida Constitution, and as such must be construed as indistinguishable and fully equivalent to all other non-ad valorem assessments for capital projects, improvements, and/or essential services (e.g. infrastructure and services related to roads, stormwater, water, sewer, fire protection, etc.).

The Florida PACE Funding Agency's validation of its program also secured a state law determination on a statewide basis as to the effectiveness of Florida's Legislation which prohibits acceleration of a mortgage merely because a property owner chooses to enter into a financing agreement for energy efficiency, renewable energy and/or wind resistant improvements which results in a non-ad valorem assessment. This judgment, now final, is binding on all interested parties in Florida wherever the Florida PACE Funding Agency operates pursuant to a subscription agreement with a local government, including mortgage lenders.

The approach undertaken by the Florida PACE Funding Agency was focused on the Agency's activities as a statewide platform and as a statewide program deprives the FHFA of its apparent position of market control so that it will not as easily be able to intimidate any one local jurisdiction. Dealing with the Florida PACE Funding Agency is equivalent to having the FHFA deal with the State of Florida in its entirety rather than isolated local governments. This approach takes advantage of the careful requirements set forth in the Supplemental Act which follow more closely the pragmatic guidance from the Office of Comptroller of the Currency, to wit (1) a record of on-time payment of property taxes, (2) no involuntary liens, judgments or similar involuntary liens, (3)

demonstration that all mortgages have been paid timely and are current, (4) that the amount of the PACE assessment not exceed twenty percent (20%) of the just value of the property (as determined by the local property appraiser pursuant to general law) or that an energy audit has been provided which demonstrates that the annual energy savings from the improvement would equal or exceed the annual repayment amount for the assessment, (5) notice to the mortgage holder (so the mortgage holder could increase the escrow, if applicable), (6) the execution and recording of a financing agreement which evidences details of the existence of the non-ad valorem assessment in the Official Records, and (7) required collection as a non-ad valorem assessment on the same bill as for property taxes.

During the process of crafting and adopting the PACE Act, due consideration was given the stated concerns of the Florida Bankers Association (FBA). Unlike the recalcitrance of the federal bureaucracy (who want to generally argue nationally that property assessed clean energy is NOT on parity with taxes, but rather on par with a mortgage), the FBA representatives understood the desire of Florida's legislature to carefully unleash the economic power of this concept in Florida. They, in turn, were instrumental in receiving advance notice provisions written into the Florida general law legislation so they could properly increase escrows, and were satisfied that the 'sole' collection method being on the tax bill made the impacts of this type of concept more tolerable. Such provisions assures a mortgagee that it can increase the monthly escrow provision to make sure adequate funds are collected to pay the PACE assessment along with property taxes, and, that if for some reason the taxes were not paid, they will have absolute confidence that by stepping in and paying the taxes (which cannot by law be paid without also paying the PACE assessment) they can control and protect both the amount and priority of their lien.

Each state will likely have differing processes and procedures to implement PACE programs. However, the Florida PACE Funding Agency program was designed to create a comprehensive, uniform and scalable approach throughout the entire State of Florida designed to serve local governments and which is acceptable both to credit markets and the mortgage lending industry. Whether or not FHFA and the enterprises for which it acts as a conservator decide they will continue to operate in Florida or limit

operations as they relate to properties subject to PACE assessments will ultimately be a business decision. Florida is a significant part of the national real estate market, and as more lenders become cognizant of and comfortable with the uniform statewide approach of the Florida PACE Funding Agency, it is believed that mortgage lenders generally will see property owners who can qualify for PACE assessments as conscientious property owners with a demonstrated on time payment history. Accordingly, the Florida PACE Funding Agency's approach is to communicate with lenders, first to meet the statutory notice provisions, and then, additionally to provide exact information as each financing agreement is recorded and funded. The ultimate goal is to make limited credit available to achieve a public purpose that mortgagees might not, and help mortgagees better understand that PACE assessments in Florida are not a threat to the mortgage industry, but rather generally represent a credit enhancement to properties owned by conscientious property owners.

Fannie Mae and Freddie Mac do not buy or originate commercial loans.

Subscription

Any local government (city or county) desiring to make available a PACE funding program to properties within its boundaries can easily subscribe to the uniform program offered by the Florida PACE Funding Agency by interlocal agreement. This subscription is necessarily in the form of an interlocal agreement which sets forth the details involved. The Agency is authorized by general law to levy the assessments directly and enter into the financing agreements with participating property owners. The very limited role for the subscribing local government is to adopt a resolution authorizing the execution of a standardized subscription agreement. Both of which can be prepared and shared with any interested community by contacting the Agency. All the other ministerial actions and activities and documentation (e.g. interface between interested property owners and qualified vendors, determining compliance with all legal requirements for a valid financing agreement, recording, assessment roll extension, etc.) will be independently handled by the Agency as a distinct local government through its third party administrator. A subscribing local government may choose to

provide additional marketing, public relations, or even seek to buy down or to fund assessments or program aspects within their communities, but is not required to do so.

This approach is designed to allow general purpose local governments (cities and counties) to participate in the advantages of PACE programs locally and access capital markets for private property owners, without having to assemble subject matter expertise, open themselves to liability, and expend resources to implement or deploy individual programs or individually seek capital for their constituents. It is the Agency that receives applications and works with each voluntary private property owner to levy and impose the assessments, not the subscriber. The Agency's redundant investor servicer feature provides additional comfort to local communities in that it avoids program misuse, fraud, or program abuse many local governments are and should be concerned about.

Subscription agreements confirm or provide for (a) the interlocal approval for the Agency to act, provide its funding and associated financing services, and conduct its affairs within the Subscriber's boundaries; (b) work with interested property owners and vendors; (c) execute financing agreements which impose and provide for the collection of non-ad valorem assessments pursuant to general law; (d) the issuance of bonds of the Agency (not any other local government) to fund and finance qualifying improvements; (e) the proceeds of such non-ad valorem assessments and collection of the non-ad valorem assessments to be handled by the Agency's Trustee (an independent banking institution with trust powers and duties); (f) 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 bonds of the Agency or inconsistent with any financing documents related to such bonds; (g) such disclosures, consents or waivers reasonably necessary to use or employ the services and activities of the Agency; and (h) such other covenants or provisions deemed necessary and mutually agreed to by the parties to carry out the purpose and mission of the Agency.

Important features of the subscription approach are summarized as follows:

- The Agency seeks cooperation with local governments prior to operating within the boundary of a county or city local government.
- The Agency's program approach is 'open' or 'non-exclusive'. That means a subscribing local government can bring in another PACE funding provider, or start their own local program at any time. The Agency embraces competition, seeks to be the best program and best cost alternative for the local constituents, and is simply a transparent and accountable alternative available to a community to spur economic development, jobs, provide expertise in achieving the funding and financing of energy savings and wind resistant improvements for those private property owners who choose to do so.
- This unique platform allows for county or city local governments to participate in the scalable and uniform advantages of the Agency's PACE program and attract the attention of capital markets, without having to implement or deploy individual programs or individually seek or pay for capital for their constituents.
- A subscribing local government can take advantage of the Agency's subject matter expertise and program platform designed for local governments by local governments, giving any county or city local government the opportunity to best leverage any desired contribution by incentivizing program participation rather than fund start-up costs.
- The Agency program immediately shares subject matter expertise and leverages the Agency's skill, innovation, and uniformity to the advantage of all Florida counties or city local governments in a collective fashion.
- The Charter Agreement and any subscription agreements with local governments make it clear that no local government is responsible for the actions or liabilities incurred by the Agency, thus providing and confirming the insulation of liability pursuant to general law to any participating or subscribing local government.
- The Agency has a strong partner for both third-party administration and organization of financing in Counterpointe Energy Solutions. CES coordinates with large, well-funded entities to provide program resources and capital in a transparent and service-oriented manner. CES also has developed an

extraordinary “pipeline” approach to engaging and educating local contractors. No other program in Florida has accomplished what CES provides with regard to origination activity.

- The Florida PACE Funding Agency is ready to begin funding and has financing – right now. Upon adoption of a simple resolution authorizing execution of the Interlocal Agreement and recording, qualifying projects can begin immediately.

The validation expressly considered the form, purpose and context of the subscription agreement contemplated. A uniform draft (or specimen version for a specific local government) subscription resolution and agreement are included as Appendix D and Appendix E, respectively. Please understand the final language may change as program implementation occurs.

Appendix A – Section 163.08, Florida Statutes

163.08 Supplemental authority for improvements to real property.—

(1)(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. 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. In addition to establishing policies to promote the use of renewable energy, the Legislature provided for a schedule of increases in energy performance of buildings subject to the Florida Energy Efficiency Code for Building Construction. In chapter 2008-191, Laws of Florida, the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments. In the 2008 general election, the voters of this state approved a constitutional amendment authorizing the Legislature, by general law, to prohibit consideration of any change or improvement made for the purpose of improving a property's resistance to wind damage or the installation of a renewable energy source device in the determination of the assessed value of residential real property.

(b) 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. Improved property that has been retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption. 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. 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. Further, 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. In order to make qualifying improvements more affordable and assist property owners who wish to undertake such improvements, the Legislature finds that there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance.

(c) The Legislature determines that the actions authorized under this section, including, but not limited to, the financing of qualifying improvements through the execution of financing agreements and the related imposition of voluntary assessments are reasonable and necessary to serve and achieve a compelling state interest and are necessary for the prosperity and welfare of the state and its property owners and inhabitants.

(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).

(b) “Qualifying improvement” includes any:

1. Energy conservation and efficiency improvement, which is a measure to reduce consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; building modifications to increase the use of daylight; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; and installation of efficient lighting equipment.

2. Renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bioenergy, and wind energy.

3. Wind resistance improvement, which includes, but is not limited to:

a. Improving the strength of the roof deck attachment;

b. Creating a secondary water barrier to prevent water intrusion;

c. Installing wind-resistant shingles;

d. Installing gable-end bracing;

e. Reinforcing roof-to-wall connections;

f. Installing storm shutters; or

g. Installing opening protections.

(3) A local government may levy non-ad valorem assessments to fund qualifying improvements.

(4) 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. A non-ad valorem assessment shall be collected pursuant to s. 197.3632 and, notwithstanding s. 197.3632(8)(a), shall not be subject to discount for early payment. However, the notice and adoption requirements of s. 197.3632(4) do not apply if this section is used and complied with, and the intent resolution, publication of notice, and mailed notices to the property appraiser, tax collector, and Department of Revenue required by s.197.3632(3)(a) may be provided on or before August 15 in conjunction with any non-ad valorem assessment authorized by this section, if the property appraiser, tax collector, and local government agree.

(5) Pursuant to this section or as otherwise provided by law or pursuant to a local government’s home rule power, a local government may enter into a partnership with one or more local governments for the purpose of providing and financing qualifying improvements.

(6) A qualifying improvement program may be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.

(7) A local government may incur debt for the purpose of providing such improvements, payable from revenues received from the improved property, or any other available revenue source authorized by law.

(8) A local government may enter into a financing agreement only with the record owner of the affected property. Any financing agreement entered into pursuant to this section or a summary memorandum of such agreement shall be recorded in the public records of the county within which the property is located by the sponsoring unit of local government within 5 days after execution of the agreement. The recorded agreement shall provide constructive notice that the assessment to be levied on the property constitutes a lien of equal dignity to county taxes and assessments from the date of recordation.

(9) Before entering into a financing agreement, the local government shall reasonably determine that all property taxes and any other assessments levied on the same bill as property taxes are paid and have not been delinquent for the preceding 3 years or the property owner's period of ownership, whichever is less; that there are no involuntary liens, including, but not limited to, construction liens on the property; that no notices of default or other evidence of property-based debt delinquency have been recorded during the preceding 3 years or the property owner's period of ownership, whichever is less; and that the property owner is current on all mortgage debt on the property.

(10) A qualifying improvement shall be affixed to a building or facility that is part of the property and shall constitute an improvement to the building or facility or a fixture attached to the building or facility. An agreement between a local government and a qualifying property owner may not cover wind-resistance improvements in buildings or facilities under new construction or construction for which a certificate of occupancy or similar evidence of substantial completion of new construction or improvement has not been issued.

(11) Any work requiring a license under any applicable law to make a qualifying improvement shall be performed by a contractor properly certified or registered pursuant to part I or part II of chapter 489.

(12)(a) Without the consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by the property, the total amount of any non-ad valorem assessment for a property under this section may not exceed 20 percent of the just value of the property as determined by the county property appraiser.

(b) Notwithstanding paragraph (a), a non-ad valorem assessment for a qualifying improvement defined in subparagraph (2)(b)1. or subparagraph (2)(b)2. that is supported by an energy audit is not subject to the limits in this subsection if the audit demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the non-ad valorem assessment.

(13) At least 30 days before entering into a financing agreement, the property owner shall provide to the holders or loan servicers of any existing mortgages encumbering or otherwise secured by the property a notice of the owner's intent to enter into a financing agreement

together with the maximum principal amount to be financed and the maximum annual assessment necessary to repay that amount. A verified copy or other proof of such notice shall be provided to the local government. A provision in any agreement between a mortgagee or other lienholder and a property owner, or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section is not enforceable. This subsection does not limit the authority of the holder or loan servicer to increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.

(14) At or before the time a purchaser executes a contract for the sale and purchase of any property for which a non-ad valorem assessment has been levied under this section and has an unpaid balance due, the seller shall give the prospective purchaser a written disclosure statement in the following form, which shall be set forth in the contract or in a separate writing:

QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE ENERGY, OR WIND RESISTANCE.—The property being purchased is located within the jurisdiction of a local government that has placed an assessment on the property pursuant to s. 163.08, Florida Statutes. The assessment is for a qualifying improvement to the property relating to energy efficiency, renewable energy, or wind resistance, and is not based on the value of property. You are encouraged to contact the county property appraiser's office to learn more about this and other assessments that may be provided by law.

(15) A provision in any agreement between a local government and a public or private power or energy provider or other utility provider is not enforceable to limit or prohibit any local government from exercising its authority under this section.

(16) 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.

History.—s. 1, ch. 2010-139; s. 1, ch. 2012-117; s. 64, ch. 2014-22.

Appendix B – Charter Agreement

Prepared by and return to:
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AGREEMENT
RELATING TO THE ESTABLISHMENT
OF THE
FLORIDA PACE FUNDING AGENCY

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INTERLOCAL AGREEMENT RELATING TO THE ESTABLISHMENT OF THE FLORIDA PACE FUNDING AGENCY

THIS 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. The purpose of this Charter Agreement is 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 herein and by law.

W I T N E S S E T H:

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, hereby 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 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 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 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 obligations of the Agency, and the lending or provision of the proceeds thereof to a Subscribing Local Government.

"Incorporator" and **"Incorporators"** shall mean those local governments executing 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 hereunder, 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 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 by a Subscribing Local Government 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.

"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 the Supplemental Act to enter into financing agreements as provided for therein. At a minimum, such Subscription Agreement shall provide for (1) the authority of the Agency to act, provide its services, and conduct its affairs within the subscribing government's jurisdiction; (2) the Agency to facilitate 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 Subscribing 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) for the proceeds of such non-ad valorem assessments to be timely and faithfully paid to the Agency; (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 any Financing Documents; (7) such disclosures, consents or waivers reasonably necessary to use or employ the services and activities of the Agency; and (8) such other covenants or provisions deemed necessary and mutually agreed to by the parties 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 hereof, 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 local governments to enter into partnerships with one or more local governments for the purpose of providing and financing Qualifying Improvements.

(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. 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 energy efficiency, renewable energy or wind resistant improvements.

(G) Accordingly, a simplified and standardized state-wide program will offer efficiencies, economies of scale, and uniformity that can best 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 similar to that of an incorporator in the corporate sense. Thereafter, any local government in Florida authorized to impose these types of voluntary assessments for energy efficiency, renewable energy or wind resistant Qualifying Improvements could 'subscribe' to the uniform processes and procedures set forth by the separate legal entity created by this Charter Agreement.

(H) Each Subscribing Local Government would simply authorize the availability of the program to property owners in its jurisdiction and agree to use a standardized process for imposing and securing proceeds under the non-ad valorem assessments authorized by the Supplemental Act as property owners work with a third party administrator or other agent of the Agency responsible for bringing owners and contractors together to facilitate the provision, funding, and financing of Qualifying Improvements.

(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. This approach also requires education of qualified labor, tradesman and vendors in how to effectively serve a new market. Facilitation by creating uniform and standardized approaches and developing financing underwritten voluntarily by

individual property owners will not only address 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 will minimize duplication of effort and unnecessary government exposure or involvement, efficiently facilitate administration in only communities that choose to employ or subscribe to the Agency's facilitative services in order to make available uniform and credible funding and financing for individual property owners wishing to participate. In addition, the creation and establishment of the Florida PACE Funding Agency will convert a resource of unused trade and construction skill-sets into productive new private sector job markets, while taking advantage of guidelines, safeguards and implementation authorization provided by the Legislature in the Supplemental Act.

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ARTICLE II
THE AGENCY

SECTION 2.01. ESTABLISHMENT AND CREATION.

(A) There is hereby created and established 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."

(B) Initial membership in and the Incorporators of the Agency shall consist of those local governments executing 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 jurisdiction of the Agency shall embrace and only include the territory within any local government subscribing to and authorizing the Agency by resolution to act, provide its services, and conduct its affairs within such subscribing local government's boundaries and jurisdiction.

(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 to subscribe and authorize the Agency by resolution and Subscription Agreement to act, provide its services, and conduct its affairs within the subscribing local government's boundaries and jurisdiction.

(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 Qualifying Improvements, enter into Subscription Agreements and other agreements with Subscribing Local Governments, 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 as the same may be amended from time to time.

(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 a uniform and efficient local platform capable of securing economies of scale and uniform implementation on a state-wide basis if and

when embraced by individual local governments to facilitate the provision, funding and financing of Qualifying Improvements.

SECTION 2.02. AUTHORITY TO ADMINISTER THE PROVISION, FUNDING AND FINANCING OF QUALIFYING IMPROVEMENTS SUBJECT TO LOCAL GOVERNMENT SUBSCRIPTION AND CONSENT. By resolution of the governing bodies of each local government affected and as implemented pursuant to a Subscription Agreement, all power and authority available to the Agency under this Charter Agreement, 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 within the boundaries of each of the Subscribing Local Governments. The Agency shall not act, provide its services, or conduct its affairs within any local government's jurisdiction without first entering into a Subscription Agreement with such local government.

SECTION 2.03. GOVERNANCE.

(A) The governing body of the Agency shall consist of a number of persons equal to one (1) member appointed by each Incorporator, and in the event of an even number of Incorporators, one (1) member selected jointly by all Incorporators, each of whom shall serve a staggered term of three (3) years commencing on October 1, provided 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 to be appointed by the first Incorporator to execute this Charter Agreement shall serve for an initial term of approximately two (2) years ending on September 30, 2013.

(2) Board Director No. 2 to be appointed by the second Incorporator to execute this Charter Agreement shall serve for an initial term of approximately three (3) years, ending on September 30, 2014.

(3) Board Director No. 3 to be appointed by the third Incorporator to execute this Charter Agreement, or if otherwise necessary, jointly appointed by all Incorporators, shall serve an initial term of approximately four (4) years, ending September 30, 2015.

(4) All members of the Board of Directors shall be qualified electors of the State of Florida.

(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 hold office for the terms for which they were appointed until their successors are chosen and qualified.

(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 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 (1) hereof, a successor shall be appointed

by a majority of a quorum of the remaining Board of Directors at a meeting held for such purposes. 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, which ever first occurs.

(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 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) Prior to the appointment of the entire Board of Directors and the first organizational meeting thereof, the affairs of the Agency shall be governed by joint resolution of

the Incorporators or the then members of the Agency. In such interim period, however long, such acts shall be necessarily made on behalf of and shall be binding upon the Agency by joint resolution of said Incorporators or 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 hereof, 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 are 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 shall 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 189.417, Florida Statutes. Meetings may be conducted in any reasonably noticed and 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 189.415 and 189.418, 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 this Charter Agreement or any Subscription Agreement with a local government as contemplated hereby. 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 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, 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 assist and act on behalf of any local government to assess, levy, impose, collect and enforce non-ad valorem assessments authorized by Section 163.08, Florida Statutes, if expressly authorized to do so by the local government in which the lands assessed are located. Such non-ad valorem assessments may only be as described in the Supplemental Act.

(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, notice thereof shall be provided to each then Incorporator and each Subscribing Local Government then subject to a Subscription Agreement with 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 of each 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 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.

(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 Revenues, but as, if and when other legally available funds become available; or as otherwise authorized under the Financing Documents.

(L) The 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, that the initial series of Obligations issued, together with the validity of this Charter Agreement and all of its terms, provisions and powers, the Pledged Revenues, 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 shall be validated pursuant to Chapter 75, Florida Statutes, as soon as practicable after execution hereof.

(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.

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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) 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 (or executive director prior to the first meeting of Board of Directors), with a separate copy to the legal counsel 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, nor any subsequently Subscribing Local Government in any manner.

SECTION 3.06. BINDING 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 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 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.]

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

(SEAL)

By: _____
Chair

Date: June 20, 2014

ATTEST:

_____
Clerk

Notice Address: County Administrator
Flagler County
1769 E. Moody Blvd., Bldg. 2
Bunnell, Florida 32110

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

(SEAL)

By: _____
Mayor

Date: June 22, 2011

ATTEST:

_____
City Clerk

Approved as to form and legality

_____
City Attorney

6/24/2011
Date

Notice Address: City Manager
City of Kissimmee
101 North Church Street, 5th Floor
Kissimmee, Florida 34741

Appendix C – Final Judgment

20110053089 ELECTRONICALLY RECORDED IN THE PUBLIC RECORDS OF LEON COUNTY, FL
BK: 4279 PG: 852 08/25/2011 at 09:53 AM BOB INZER, CLERK OF COURTS

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

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

Plaintiff,

vs.

THE STATE OF FLORIDA, AND ALL OF THE SEVERAL PROPERTY OWNERS, TAXPAYERS AND CITIZENS OF THE STATE OF FLORIDA, 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 OF THE BONDS HEREIN DESCRIBED, OR TO BE AFFECTED THEREBY, INCLUDING BUT NOT LIMITED TO THOSE OF FLAGLER COUNTY, FLORIDA, PINELLAS COUNTY, FLORIDA, AND THE CITY OF KISSIMMEE, FLORIDA,

Defendants.

CIVIL ACTION NO. 2011-CA-1824

VALIDATION OF NOT TO EXCEED $2,000,000,000 FLORIDA PACE FUNDING AGENCY REVENUE BONDS (ENERGY AND WIND RESISTANCE 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 filed by Plaintiff Florida PACE Funding Agency against the State of Florida and the property owners, taxpayers and citizens thereof, including those of Flagler County, Florida, Pinellas County, Florida and the City of Kissimmee, 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 $2,000,000,000 in aggregate principal amount at any one time outstanding of the Florida PACE Funding Agency Revenue Bonds (Energy and Wind Resistance Improvement Finance Program), in 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:

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

SECOND. The Plaintiff is a valid and legally existing public body corporate and politic within the State of Florida created pursuant to the Florida Interlocal Cooperation Act of 1969, Chapter 163, Part I, Florida Statutes, as amended (the "Interlocal Act") and pursuant to the provisions of a certain duly filed Interlocal Agreement Relating to the

Establishment of the Florida PACE Funding Agency dated as of June 21, 2011 (the "Charter Agreement") initially between Flagler County, Florida and the City of Kissimmee, Florida and subsequently between any additional counties or municipalities joining the Plaintiff as a member. As the context requires, the term "Incorporators" as used herein shall collectively include Flagler County, Florida; the City of Kissimmee, Florida; and any additional counties or municipalities joining the Plaintiff as a member. Such Charter Agreement was received into evidence as Plaintiff's Exhibit "1".

THIRD. Execution of the Charter Agreement was authorized by concurrent resolutions of the Incorporators adopted on June 20, 2011 with respect to Flagler County and June 21, 2011 with respect to the City of Kissimmee (collectively, the "Joint Resolutions"). The Joint Resolutions also provided for and approved Pinellas County, Florida, to subsequently join and become a local government member of the Plaintiff upon adoption by Pinellas County of a resolution substantially similar to and confirming the Joint Resolutions. Copies of the Joint Resolutions were received into evidence as Plaintiff's Exhibit "2".

FOURTH. The Charter Agreement is authorized by the Joint Resolutions, the Interlocal Act and Section 163.08(5), Florida Statutes, has been lawfully entered into and executed by the Incorporators and constitutes a legal, valid and binding agreement of such Incorporators.

FIFTH. The Joint Resolutions lawfully provided for adoption on behalf of the Plaintiff of a Master Bond Resolution setting forth the terms and conditions pursuant to which the Plaintiff shall issue its revenue bonds or other forms of indebtedness. A copy of the Master Bond Resolution was received into evidence as Plaintiff's Exhibit "3".

SIXTH. Authority is conferred upon the Plaintiff, under and by virtue of the laws of the State of Florida, particularly Chapter 166, Part II, Florida Statutes, Chapter 159, Part I, Florida Statutes, Chapter 125, Part I, Florida Statutes, Chapter 163, Part I, Florida Statutes, and other applicable provisions of law to issue its revenue bonds or other debt obligations and advance the proceeds thereof to any Florida "local government" as defined by Section 163.08(2), Florida Statutes, who subscribe to the Plaintiff's programs authorizing the Plaintiff to operate within each such local government's jurisdiction for purposes of financing "qualifying improvements" as defined in section 163.08(2)(b), Florida Statutes.

SEVENTH. The Bonds, or other debt obligations issued by the Plaintiff, enable the Plaintiff, together with subscribing local governments, to lawfully create and administer finance programs related to the provision of (i) energy conservation and efficiency improvements, (ii) renewable energy improvements, and (iii) wind resistance improvements, which are "qualifying improvements" as such defined in Section 163.08(2)(b), Florida Statutes (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 local governments, upon the voluntary agreement of the

record owners of the affected property as authorized by Section 163.08, Florida Statutes (2010) (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.

EIGHTH. The Supplemental Act authorizes local governments (a) to finance qualifying improvements through the execution of financing agreements and the related imposition of non-ad valorem assessments, (b) to incur debt for purposes of providing such qualifying improvements, payable from revenues received from such non-ad valorem assessments or any other available revenue source authorized by law, (c) to enter into a partnership with one or more local governments for purposes of providing and financing qualifying improvements, and (d) to administer, or allow for the administration of, a qualifying improvement program by a for-profit entity or a not-for-profit entity. A copy of the Supplemental Act was received into evidence as Plaintiff's Exhibit "4".

NINTH. The Supplemental Act 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.

TENTH. The Supplemental Act includes the following legislative determinations:

(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 new 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. 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.

(G) 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.

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

ELEVENTH. The Legislature determined that 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 reasonable and necessary to serve and achieve a compelling state interest and are necessary for the prosperity and welfare of the state and its property owners and inhabitants.

TWELFTH. The non-ad valorem assessments imposed pursuant to the Supplemental Act (a) are only imposed with the written consent of the affected property owners, (b) 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, (c) constitutes 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 (d) 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.

THIRTEENTH. Florida law provides that the amount of any given non-ad valorem assessment may not exceed the benefit conferred on the land, 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.

FOURTEENTH. 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.

FIFTEENTH. Any non-ad valorem assessments levied and imposed against affected real property 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.

SIXTEENTH. Non-ad valorem assessments imposed pursuant to the Supplemental Act are not subject to discount for early payment. Avoiding discounts for early payment of non-ad valorem assessments actually lowers the costs of annual collection paid by the affected property owners.

SEVENTEENTH. 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 (i) 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 (ii) 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 recognition of the priority of a lien for a subsequent non-ad valorem assessment.

EIGHTEENTH. Even if there is 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 for at least three (3) years, (ii) the absence of any recent involuntary liens or property-based debt delinquencies for at least three (3) years, (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 recorded in the public records of the county where the property is located promptly after the execution thereof. 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, and (iii) is, or provides for conditions which are tolerable in light of covenants contained in mortgage and other debt instruments which may otherwise allow for unilateral acceleration.

NINETEENTH. 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 among such real property. The special benefit necessary to support the imposition of a non-ad valorem assessment may consist of the relief or mitigation of a burden created by the affected real property.

TWENTIETH. Qualifying improvements address the public purpose of reducing, mitigating or alleviating the affected properties' burdens relating to 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.

TWENTY-FIRST. The voluntary application for funding to finance a qualifying improvement and entry into a written financing agreement as required by and pursuant to the Supplemental Act provides direct, competent and substantial evidence that each affected property owner has determined and acknowledged that the cost of qualifying improvements 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.

TWENTY-SECOND. 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.

TWENTY-THIRD. The Master Bond Resolution authorizes Plaintiff's issuance of not exceeding $2,000,000,000 in aggregate principal amount at any one time outstanding of Florida PACE Funding Agency Revenue Bonds (Energy and Wind Resistance Improvement Finance Program), in various series, in order to provide funds with which to administer an energy and wind resistance improvement finance program and thereby advance the Plaintiff's mission to undertake, cause and/or perform all such acts as shall be necessary to provide a uniform and efficient local platform capable of securing economies of scale and implementation on a state-wide basis if and when embraced by individual local governments to facilitate the provision, funding and financing of qualifying improvements.

TWENTY-FOURTH. The 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 to be entered into and by and between the Plaintiff and one or more national banking associations or trust companies authorized to exercise 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").

TWENTY-FIFTH. The Charter Agreement approves the execution of Subscription Agreements by and between the Plaintiff and each of the local governments participating in

the energy and wind resistance improvement finance program (each a "Subscriber"). Subscription Agreements are a lawful means to provide for (a) the authority of the Plaintiff to act, provide its services, and conduct its affairs within the Subscriber's jurisdiction; (b) the Plaintiff to facilitate 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; (c) the Subscriber to levy, impose and collect non-ad valorem assessments pursuant to such financing agreements; (d) the issuance of bonds of the Plaintiff to fund and finance the qualifying improvements; (e) the proceeds of such non-ad valorem assessments to be timely and faithfully paid to the Plaintiff; (f) 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 bonds of the Plaintiff or inconsistent with any financing documents related to such bonds; (g) such disclosures, consents or waivers reasonably necessary to use or employ the services and activities of the Plaintiff; and (h) such other covenants or provisions deemed necessary and mutually agreed to by the parties to carry out the purpose and mission of the Plaintiff. A copy of the form of Subscription Agreement to be adopted by each participating local government is attached as Appendix A to the Master Bond Resolution and was received into evidence as Plaintiff's Exhibit "3".

TWENTY-SIXTH. The Subscription Agreements provide a lawful and enforceable means to evidence the express authority and concurrent transfer of all necessary powers to the Plaintiff, and the covenant to cooperate by the Subscriber, so that the Plaintiff may facilitate, administer, implement and assist in providing qualifying improvements, facilitate financing agreements and non-ad valorem assessments only on properties subjected to same by the record owners thereof, develop markets, structures and procedures to finance same, and to take any actions associated therewith or necessarily resulting there from, as contemplated by the Supplemental Act.

TWENTY-SEVENTH. Neither Plaintiff, nor any local government participating in the Plaintiff's program pursuant to a Subscription Agreement, is 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 the Plaintiff or any Subscriber 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 authority to operate a program under the Supplemental Act.

TWENTY-EIGHTH. The 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 local governments 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 the Subscription Agreements to be executed and delivered by the local governments (the "Pledged Revenues").

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

THIRTIETH. Bonds issued pursuant to the 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.

THIRTY-FIRST. 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.

THIRTY-SECOND. 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.

THIRTY-THIRD. The Master Bond Resolution requires the use of financing agreements in establishing any non-ad valorem assessment in the manner provided for in

the Supplemental Act for each local government participating in the energy and wind resistance improvement finance program.

THIRTY-FOURTH. The Master Bond Resolution provides that the Bonds and the obligations and covenants of the Plaintiff under the Indentures and the Subscription Agreements 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 the local governments to the extent of their respective obligations under their respective Subscription Agreements), 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 Subscription Agreements. 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, the local governments 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, any Subscription Agreements 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 the local governments to the extent otherwise provided in their respective Subscription Agreements) to levy or to pledge any form of taxation or assessments whatsoever therefore.

THIRTY-FIFTH. 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.

THIRTY-SIXTH. 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 subsequently participating or 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 or 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 either of the Incorporators, nor any subsequent member of the Plaintiff, nor any subsequently participating or subscribing local government in any manner.

THIRTY-SEVENTH. 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.

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that the Bonds, the Charter Agreement, the Supplemental Act, the matters set forth in each of the preceding numbered paragraphs including, but not limited to, the proceedings related thereto, the Master Bond Resolution and the adoption thereof, the revenues pledged or covenanted for the repayment of the Bonds, the validity of the financing agreements entered into and the non-ad valorem assessments imposed pursuant to the Supplemental Act which shall evidence and comprise all or in substantial part the revenues pledged, are hereby validated and confirmed, are for proper, legal and paramount public purposes and are fully authorized by law, and that this Final Judgment validates and confirms the authority of the Plaintiff to issue the Bonds and the legality of all proceedings in connection therewith.

There shall be stamped or written on the back of each 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 _____, 2011.

_____

[Officer, Florida PACE Funding Agency]"

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 located in Tallahassee, Florida, this 25th day of August 2011.

Charles A. Francis
Circuit Court Judge

Copies to:

Robert C. Reid, Bryant Miller Olive, Counsel for Plaintiff
Mark G. Lawson, Bryant Miller Olive, Counsel for Plaintiff
Christopher B. Roe, Bryant Miller Olive, Counsel for Plaintiff
Jason M. Breth, Bryant Miller Olive, Counsel for Plaintiff
Georgia Anne Cappleman, Assistant State Attorney, Second Judicial Circuit
Ben Fox, Assistant State Attorney, Seventh Judicial Circuit
Damien Kreabel, Assistant State Attorney, Sixth Judicial Circuit
Steve Foster, Assistant State Attorney, Ninth Judicial Circuit

STATE OF FLORIDA, COUNTY OF LEON

I HEREBY CERTIFY that the above and foregoing is a true and correct copy of an instrument recorded in the official records of Leon County, Florida.
WITNESS my hand and seal of office this 24th day of April, 2013

BOB INZER
Clerk of County Court

By: _____ D.C.

Appendix D – Form of Authorizing Resolution

Appendix E – Form of Subscription Agreement