

RESOLUTION NO. 2018-2522

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAMS WITH THE FLORIDA GREEN FINANCE AUTHORITY, THE FLORIDA RESILIENCY AND ENERGY DISTRICT, AND THE FLORIDA PACE FUNDING AGENCY; PROVIDING FOR AUTHORIZATION AND INDEMNIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 163.08, *Florida Statutes* (the "Supplemental Act"), authorizes counties, municipalities and certain separate local government entities to establish and administer financing programs, commonly known as Property Assessed Clean Energy (PACE) Programs ("PACE Programs"), in order to provide the up-front financing for energy conservation and efficiency, renewable energy and wind resistance improvements ("Qualifying Improvements"), and repay such funding through voluntary special assessments, sometimes referred to as non-ad valorem assessments ("Special Assessments"), levied upon the improved property pursuant to financing agreements between the property owner and the local government ("Financing Agreements"); and

WHEREAS, on June 11, 2013, the Town of Surfside ("Town") Commission adopted Resolution No. 13-2170 authorizing the creation of a PACE Program and agreeing to join the Clean Energy Coastal Corridor ("Corridor"); and

WHEREAS, the Florida Green Finance Authority, the Florida Resiliency and Energy District, and the Florida PACE Funding Agency (collectively, the "Agencies") are currently three (3) separate legal entities and units of local government within the State of Florida which were established by separate interlocal agreements for the express purpose of providing PACE Programs in scalable and uniform platforms to facilitate the financing of Qualifying Improvements throughout Florida; and

WHEREAS, the Agencies would like to offer their PACE Programs within the Town; and

WHEREAS, each of the Agencies contracts with a third-party charged with administering their PACE Program. Specifically, the third party administrator for Florida Green Finance Authority is Renew Financial Group, LLC; the third party administrator for Florida PACE Funding Agency is Counterpointe Energy Solutions (FL) LLC; and the third party administrator for Florida Resiliency and Energy District is Florida Development and Finance Corporation (collectively, the "Administrators"); and

WHEREAS, the Administrators have agreed to indemnify the Town for acts during the administration of each of the respective PACE Programs; and

WHEREAS, the Town Commission finds that this Resolution is in the best interest and welfare of the residents of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. Each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. Approval. The Town approves the Agencies to operate PACE Programs within the Town.

Section 3. Authorization. The Town Manager is hereby authorized to negotiate and enter into agreements for participation in the PACE Programs and indemnification from the Administrators with (a) the Florida Green Finance Authority and Renew Financial Group, (b) Florida PACE Funding Agency and Counterpointe Energy Solutions (FL) LLC, and (c) the Florida Resiliency Energy District and Florida Development and Finance Corporation in substantially the forms attached hereto as Exhibits "A," "B," and "C," subject to approval by the Town Attorney as to form, content, and legal sufficiency.

Section 4. Effective Date. That this Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this 10th day of July, 2018.

Motion by Commissioner Karukin.
Second by Commissioner Paul.

FINAL VOTE ON ADOPTION

Commissioner Barry Cohen	Absent
Commissioner Michael Karukin	yes
Commissioner Tina Paul	yes
Vice Mayor Daniel Gielchinsky	yes
Mayor Daniel Dietch	Absent



Daniel Dietch, Mayor

ATTEST:



Sandra Novoa, MMC,
Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE TOWN OF SURFSIDE ONLY:**



Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

**Party Membership Agreement
To The Florida Green Finance Authority**

WHEREAS, Section 163.01, F.S., the “Florida Interlocal Cooperation Act of 1969,” authorizes local government units to enter into interlocal agreements for their mutual benefit; and

WHEREAS, the Town of Lantana, Florida, a Florida municipal corporation (“Lantana”) and the Town of Mangonia Park, Florida, a Florida municipal corporation, (“Mangonia Park”) entered into an Interlocal Agreement, dated June 11, 2012, first amended on August 11, 2014 and second amended on April 7, 2016 with document execution May 9, 2016 (“Interlocal Agreement”), establishing the Florida Green Finance Authority (“Authority”) as a means of implementing and financing a qualifying improvements program for energy and water conservation and efficiency, renewable energy and wind-resistance improvements, and to provide additional services consistent with law (“Program”); and

WHEREAS, the Town of Surfside (“Surfside”) desires to become a member of the Authority in order for the Authority to provide its non-exclusive Program for properties located within Surfside.

NOW, THEREFORE, it is agreed as follows:

1. The Interlocal Agreement between the Florida Green Finance Authority, the Town of Lantana and the Town of Mangonia Park, entered into on June 11, 2012 and as amended on August 11, 2014 and April 7, 2016 with document execution May 9, 2016 (the “Interlocal Agreement”), for the purpose of facilitating the financing of qualifying improvements for properties located within the Authority’s jurisdiction via the levy and collection of voluntary non-ad valorem assessments on improved property, is hereby supplemented and amended on the date last signed below by this Party Membership Agreement, which is hereby fully incorporated into the Interlocal Agreement, to include the Town of Surfside.
2. The Florida Green Finance Authority, together with its member Parties, and Town of Surfside, with the intent to be bound thereto, hereby agree that the Town of Surfside shall become a Party to the Interlocal Agreement together with all of the rights and obligations of Parties to the Interlocal Agreement.
3. The Service Area of the Florida Green Finance Authority shall include the legal boundaries of the Town of Surfside, as the same may be more specifically designated by the Town of Surfside or amended from time to time.
4. The Authority recognizes that some lenders may require full repayment of the Program’s special assessments upon resale or refinancing of a property subject to the Program’s special assessments. The Authority agrees to provide written disclosure of this matter to all Town property owners that may utilize the Program.
5. The Authority may not allow or charge residential prepayment penalties.

6. The Town of Surfside designates the following as the respective place for any notices to be given pursuant to the Interlocal Agreement Section 27:

Town of Surfside: Attn: Guillermo Olmedillo, Town Manager
9293 Harding Avenue
Surfside, FL 33254

With a copy to: Town Attorney
Weiss Serota Helfman Cole & Bierman, P.L.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134

7. This Party Membership Agreement shall be recorded by the Authority with the Clerk of the Court in the Public Records of Palm Beach County as an amendment to the Interlocal Agreement and recorded in the public records of the Town of Surfside, in accordance with Section 163.01(11), Florida Statutes.

8. Termination of this Agreement may occur with thirty (30) days written notice, and at the end of the 30-day period, this Agreement shall be automatically terminated and the Authority will not accept any new applications. Any projects related to applications received before the end of the 30-day period shall be permitted to be completed.

IN WITNESS WHEREOF, the Parties hereto subscribe their names to this Agreement by their duly authorized officers.

ATTEST: **The Florida Green Finance Authority**, a separate legal entity established pursuant to Section 163.01(7), Florida Statutes

By: _____
Secretary of the Authority

By: _____
Chair of the Authority

Approved by Authority Attorney
as to form and legal sufficiency

Authority Attorney

ATTEST:

Town of Surfside, through its
Town Commission

Sandra Novoa, MMC
Town Clerk

By: _____
Guillermo Olmedillo
Town Manager

**INDEMNIFICATION AGREEMENT
BETWEEN
RENEW FINANCIAL GROUP, LLC,
ADMINISTRATOR FOR THE FLORIDA GREEN FINANCE AUTHORITY,
AND THE TOWN OF SURFSIDE, FLORIDA**

This Agreement (the "Agreement") is entered into this 10th day of July, 2018 by and between Renew Financial Group, LLC ("Renew Financial"), the administrator of the Florida Green Finance Authority (the "Authority"), and the Town of Surfside, a municipal corporation of the State of Florida (the "Town") (collectively, the "Parties").

WHEREAS, the Town and the Authority have proposed to enter into an agreement to authorize the Authority to operate within the boundaries of the Town for the purposes of providing a Property Assessed Clean Energy (PACE) program; and

WHEREAS, Renew Financial is the Authority's administrator and will be operating on behalf of the Agency within the Town; and

WHEREAS, the Authority is a separate legal entity and public body and unit of local government, established pursuant to Section 163.01(7)(g), Florida Statutes; and

WHEREAS, Renew Financial has agreed to provide the Town with a separate indemnification agreement for the benefit of the Town.

NOW, THEREFORE, the Town and Renew Financial, hereby enter into the following Agreement:

1. The foregoing recitals are incorporated into this Agreement and approved.
2. To the extent applicable by law, Renew Financial shall indemnify and hold harmless the Town and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Town or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement and Renew Financial's administration of the Authority's PACE Program by Renew Financial or its employees, agents, servants, partners, principals, administrators, subcontractors, or agents. Renew Financial shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Town, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Renew Financial expressly understands and agrees that any insurance protection shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Town or its officers, employees, agents and

instrumentalities as herein provided.

3. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, the United States District Court for the Southern District of Florida or United States Bankruptcy Court for the Southern District of Florida, as appropriate.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

RENEW FINANCIAL GROUP, LLC

Attest:

By: _____

By: _____

Approved as to form and legality:

By: _____

THE TOWN OF SURFSIDE, FLORIDA

Attest:

Sandra Novoa, MMC
Town Clerk

Guillermo Olmedillo
Town Manager

Approved as to form and legality:



Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorneys

This instrument was prepared by or under the supervision of (and after recording should be returned to):

Joseph P. Stanton
Broad & Cassel
Bank of America Center
390 North Orange Avenue
Suite 1400
Orlando, FL 32801-4961

(SPACE reserved for Clerk of Court)

**LIMITED PURPOSE PARTY MEMBERSHIP AGREEMENT
BETWEEN THE FLORIDA RESILIENCY AND ENERGY DISTRICT
AND
THE TOWN OF SURFSIDE**

This Limited Purpose Party Membership Agreement (the "Agreement") is entered into this 10th day of July, 2018 by and between the **FLORIDA RESILIENCY AND ENERGY DISTRICT ("FRED")**, a public body corporate and politic created as a separate legal entity pursuant to Section 163.01(7), Florida Statutes, and **TOWN OF SURFSIDE (the "TOWN")**, a political subdivision of the State of Florida (collectively, the "Parties") for the purpose of providing a Property Assessed Clean Energy ("PACE") program within the legal boundaries of the TOWN.

W I T N E S S E T H

WHEREAS, pursuant to Section 163.08(1), Florida Statutes, the legislature determined that access to financing for certain renewable energy, energy efficiency and conservation and wind resistance improvements ("Qualifying Improvements") through voluntary assessment programs such as the PACE program provides a special benefit to real property by alleviating the property's burden from energy consumption and/or reducing the property's burden from potential wind damage; and

WHEREAS, in order to make such Qualifying Improvements more affordable and assist property owners who wish to undertake such improvements, the legislature also determined that there is a compelling state interest in enabling property owners to voluntarily finance such Qualifying Improvements with the assistance of local governments, through the execution of financing agreements and the related imposition of voluntary, non-ad valorem special assessments; and

WHEREAS, an Interlocal Agreement, dated September 6, 2016, as amended and supplemented from time to time (the "Interlocal Agreement") was entered into between the Town of Lake Clarke Shores, the City of Fernandina Beach, and any subsequent parties thereto (the "Public Agencies") and, in the limited capacity described therein, the Florida Development Finance Corporation ("FDFC" and, together with the Public Agencies, the "Parties"), for the purpose of facilitating the financing of Qualifying Improvements for

properties located within FRED's aggregate legal boundaries via the levy and collection of voluntary non-ad valorem special assessments on improved property; and

WHEREAS, the TOWN agrees with such legislative determinations and finds that the financing of Qualifying Improvements through the PACE program provides a special benefit to participating real property within its legal boundaries; and

WHEREAS, the Parties to this Agreement desire to supplement the Interlocal Agreement to include the TOWN as a Limited Member, as such term is defined in the Interlocal Agreement, on the date last signed below.

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

SECTION 1. DEFINITIONS. Any capitalized terms used in this Agreement, but not otherwise defined herein, shall have the meaning specified for such term in the Interlocal Agreement.

SECTION 2. PURPOSE. The purpose of this Agreement is to facilitate the financing of Qualifying Improvements through a PACE program, in accordance with Section 163.08, Florida Statutes, and provide an efficient process for real property owners within the legal boundaries of the TOWN to access the PACE program and permit FRED to administer the PACE program within such legal boundaries.

SECTION 3. RIGHTS OF PARTIES. FRED, together with its member Parties, and the TOWN, with the intent to be bound thereto, hereby agree that the TOWN shall become a Party to the Interlocal Agreement together with only those rights and obligations of Parties to the Interlocal Agreement as are necessary to fulfill the purposes described in this Agreement, including access to financing and processing of non-ad valorem special assessments by FRED, within the legal boundaries of the TOWN, as more specifically described below, and in accordance with federal, state, and local laws, rules, regulations, ordinances, and all operational program standards of the TOWN.

SECTION 4. INCORPORATION OF RECITALS AND LEVY OF SPECIAL ASSESSMENTS. The Parties hereby acknowledge and agree with each recital to this Agreement and incorporate such findings herein as their own. The non-ad valorem special assessments arising from a property owner's voluntary participation in the PACE program shall be levied by FRED on properties within the legal boundaries the TOWN and the receipt and distribution of any non-ad valorem special assessments imposed by FRED are purely ministerial acts.

SECTION 5. QUALIFYING IMPROVEMENTS. FRED may provide access to financing for Qualifying Improvements to real property within the legal

boundaries of the TOWN, in accordance with Section 163.08, Florida Statutes, and subject to the terms of this Agreement, as well as applicable federal, state, and TOWN law.

SECTION 6. FINANCING AGREEMENT. Before extending any financing or subjecting any participating real property within the legal boundaries of the TOWN to the non-ad valorem special assessment authorized therein, FRED and FDFC, through their designees, shall, on a non-exclusive basis pursuant to the Section 163.08, Florida Statutes and this Agreement, enter into a financing agreement (the "Financing Agreement") with property owner(s) within the legal boundaries of the TOWN who qualify for financing through FRED. The Financing Agreement shall include a thorough explanation of the PACE financing process and specify at what point in the process the special assessment will be added to the real property's owner's property tax bills (after completion of the project(s), permit approval, and approval by the property owner).

SECTION 7. BOUNDARIES OF THE PACE PROGRAM. For the limited purposes of administering the PACE program and imposing non-ad valorem special assessments as described in this Agreement, the legal boundaries of FRED shall include the legal boundaries of the TOWN, which legal boundaries may be limited, expanded to reflect annexation, or more specifically designated from time to time by the TOWN by providing written notice to FRED. Upon execution of this Agreement and written request thereafter, the TOWN agrees to provide FRED the current legal description of the legal boundaries of the TOWN.

SECTION 8. ELIGIBLE PROPERTIES. Within the legal boundaries of the TOWN, improved real property, including any residential, commercial, agricultural and industrial use may be eligible for participation in the PACE program within the limits otherwise prescribed in Section 163.08, Florida Statutes.

SECTION 9. SURVIVAL OF SPECIAL ASSESSMENTS. During the term of this Agreement, FRED may levy voluntary non-ad valorem special assessments on participating properties within the legal boundaries of the TOWN to help secure the financing of costs of Qualifying Improvements constructed or acquired on such properties based on the finding of special benefit by the TOWN incorporated into Section 3 hereof. Those properties receiving financing for Qualifying Improvements shall be assessed by FRED until such time as the financing for such Qualified Improvement is repaid in full, in accordance with Section 163.08, Florida Statutes, and other applicable law. Notwithstanding termination of this Agreement or notice of a change in the legal boundaries of the TOWN as provided for herein, those properties that have received financing for Qualifying Improvements shall continue to be a part of FRED, until such time that all outstanding debt has been satisfied.

SECTION 10. TERM. This Agreement shall remain in full force and effect from the date of its execution by both Parties. Any Party may terminate this Agreement for convenience upon ninety (90) days' prior written notice ("Termination Notice") in

accordance with the terms of the Interlocal Agreement. Beginning on the date FRED receives a Termination Notice from the TOWN ("Termination Date"), FRED shall not approve any new applications affecting property within the legal boundaries of the TOWN referenced in the Termination Notice. Notwithstanding termination of this Agreement, however, property owners whose applications were approved prior to the Termination Date, and who received funding through the PACE program, shall continue to be a part of FRED, for the sole purpose of FRED imposing assessments for the repayment of such property's outstanding debt, until such time that all outstanding debt has been satisfied.

SECTION 11. CONSENT. This Agreement, together with the resolution by the governing board of the TOWN approving this Agreement, shall be considered the Parties' consent to authorize FRED to administer the PACE program within the legal boundaries of the TOWN, as required by Section 163.08, Florida Statutes.

SECTION 12. TOWN COORDINATOR. The Office of the Town Manager shall serve as the TOWN's primary point of contact and coordinator. The TOWN will advise FRED of any changes to the TOWN's primary contact and coordinator within thirty (30) days of such changes.

SECTION 13. CARBON OR SIMILAR CREDITS. To the extent permitted by law, in the event that the Financing Agreement or any other PACE agreement with the property owner provides for the transfer of any carbon or similar mitigation credits derived from Qualifying Improvements to FRED, any such carbon or similar mitigation credits derived from properties within the legal boundaries of the TOWN, shall be shared in equal parts between FRED and the TOWN.

SECTION 14. RESALE OR REFINANCING OF A PROPERTY. FRED recognizes that some lenders may require full repayment of the PACE program's special assessments upon resale or refinancing of a property subject to the PACE program's special assessments. FRED agrees to provide written disclosure of this matter to all Town property owners that may utilize the PACE program.

SECTION 15. PREPAYMENT PENALTIES. FRED may not allow or charge residential prepayment penalties.

SECTION 16. LIMITED OBLIGATIONS. Neither FRED nor FDFC is authorized to issue bonds, or any other form of debt, on behalf of the TOWN without a separate interlocal agreement or other authority provided by State law. To the extent that FRED or FDFC issues PACE-related bonds under its own authority in connection with this Agreement, the security for such bonds may be secured by non-ad valorem special assessments imposed by FRED on participating properties within the legal boundaries of the TOWN. The issuance of such bonds shall not directly or indirectly or contingently obligate the TOWN to levy or to pledge any form of taxation whatever, or to levy ad valorem taxes on any property within their territorial limits to pay the bonds, and the bonds

shall not constitute a lien upon any property owned by the TOWN. For any such bonds, the bond disclosure document, if any, shall include references to the fact that the TOWN is not an obligated party, and also adequately disclose material attendant risks with PACE programs.

SECTION 17. LIABILITY, INDEMNIFICATION AND SOVEREIGN IMMUNITY.

(A) TOWN and FRED 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)(0), Florida Statutes, and this covenant of the parties hereto, the local governments who are either or both the founders or members of FRED shall not be held jointly liable for the torts of the officers or employees of the FRED, or any other tort attributable to FRED, and that FRED 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. TOWN and FRED acknowledge and agree that FRED shall have all of the applicable privileges and immunities from liability and exemptions from laws, ordinances, rules and common law which apply to the municipalities and counties of the State. TOWN is completely independent of FRED. To the extent provided by law, FRED shall indemnify, defend and hold harmless TOWN from any and all damages, claims, and liability arising from the negligence or intentional misconduct of FRED relating to operation of the PACE program. Nothing in this 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.

(B) Neither TOWN, nor the local governments who are either or both the founders or members of the Agency, nor any subsequently joining or participating local government as members of FRED shall in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of FRED, the governing board of FRED or any other agents, employees, officers or officials of FRED, except to the extent otherwise mutually and expressly agreed upon, and neither FRED, the governing board of FRED or any other agents, employees, officers or officials of FRED have any authority or power to otherwise obligate either TOWN, the local governments who are either or both the founders or members of FRED, nor any subsequently subscribing or participating local government in the business of FRED in any manner.

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

SECTION 18. AGREEMENTS WITH TAX COLLECTOR AND PROPERTY APPRAISER. This Agreement shall be subject to the express condition

precedent that FRED enter into separate agreement(s) with the tax collector and the property appraiser having jurisdiction over the legal boundaries of the TOWN, which shall provide for the collection of any non-ad valorem special assessments imposed by FRED within the legal boundaries of the TOWN. If required by the tax collector and property appraiser, the TOWN agrees to enter into those agreements as a third-party to facilitate the collection of the non-ad valorem special assessments imposed by FRED.

SECTION 19. OPINION OF BOND COUNSEL. FRED warrants, based on counsel's review of the bond validation judgment and the underlying bond documents that the FDFC PACE program's structure complies with the bond validation judgment and the underlying bond documents.

SECTION 20. AGENTS OF FRED. FRED shall ensure that its agents, administrators, subcontractors, successors and assigns are, at all times, in compliance with the terms of this Agreement and applicable TOWN, state and federal laws.

SECTION 21. NOTICES. Any notices to be given hereunder shall be in writing and shall be deemed to have been given if sent by hand delivery, recognized overnight courier (such as Federal Express), or by written certified U.S. mail, with return receipt requested, or by electronic mail, addressed to the Party for whom it is intended, at the place specified. For the present, the Parties designate the following as the respective places for notice purposes:

If to FRED:

The Florida Resiliency and Energy District
c/o Florida Development Finance Corporation
William "Bill" F. Spivey, Jr.
Executive Director
156 Tuskawilla Road, Suite 2340
Winter Springs, FL 32708
bspivey@fdcbonds.com

and Issuer's Counsel with Broad and Cassel
Joseph Stanton, Esq.
Bank of America Center
390 North Orange Avenue
Suite 1400
Orlando, FL 32801-4961
407.839.4200 (t)
jstanton@broadandcassel.com

If to Town of Surfside:

The Town of Surfside
Guillermo Olmedillo,
Office of the Town Manager
9293 Harding Avenue
Surfside, Florida 33154

Town Attorney
Weiss Serota Helfman Cole & Bierman, P.L.
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, Florida 33134

SECTION 22. AMENDMENTS. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this agreement and executed by the TOWN and FRED or other delegated authority authorized to execute same on their behalf.

SECTION 23. JOINT EFFORT. The preparation of this Agreement has been a joint effort of the Parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

SECTION 24. MERGER. This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations, correspondence, agreements, or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

SECTION 25. ASSIGNMENT. The respective obligations of the Parties set forth in this Agreement shall not be assigned, in whole or in part, without the written consent of the other Party hereto.

SECTION 26. THIRD PARTY BENEFICIARIES. None of the Parties intend to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement; provided, however, that counsel to the Parties may rely on this Agreement for purposes of providing any legal opinions required by the issuance of debt to finance the Qualifying Improvements.

SECTION 27. RECORDS. The Parties shall each maintain their own respective records and documents associated with this Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.

SECTION 28. RECORDING. This Limited Purpose Party Membership Agreement shall be filed by FRED with the Clerk of the Circuit Court in the Public Records of MIAMI-DADE COUNTY and recorded in the public records of the TOWN as an interlocal agreement, in accordance with Section 163.01(11), Florida Statutes.

SECTION 29. SEVERABILITY. In the event a portion of this Agreement is found to be unenforceable by a court of competent jurisdiction, that part shall be deemed severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

SECTION 30. EFFECTIVE DATE. This Agreement shall become effective upon the execution by both Parties hereto.

SECTION 31. LAW, JURISDICTION, AND VENUE. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Eleventh Judicial Circuit in and for MIAMI-DADE COUNTY, Florida, the United States District Court for the SOUTHERN District of Florida or United States Bankruptcy Court for the SOUTHERN District of Florida, as appropriate.

[SIGNATURE PAGES FOLLOW]

[SIGNATURE PAGE TO LIMITED PURPOSE PARTY MEMBERSHIP AGREEMENT]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on this 10th day of July, 2018.

TOWN OF SURFSIDE, FLORIDA

By: _____
Guillermo Olmedillo
Town Manager

For the Town of Surfside, Florida

Attest:

By: _____ Date _____
Sandra Novoa, MMC
Town Clerk

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____, _____ of the Town of Surfside, Florida, who is personally known to me/has produced _____ as identification.

(SEAL)

Printed/Typed Name: _____
Notary Public-State of Florida
Commission Number:

[SIGNATURE PAGE TO LIMITED PURPOSE PARTY MEMBERSHIP AGREEMENT]

WITNESS:

FLORIDA DEVELOPMENT FINANCE
CORPORATION on behalf of FLORIDA
RESILIENCY AND ENERGY DISTRICT

By:

WITNESS:

William "Bill" F. Spivey, Jr.
Executive Director

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by William "Bill" F. Spivey, Jr., Executive Director of the Florida Development Finance Corporation, who is personally known to me/has produced _____ as identification.

(SEAL)

Printed/Typed Name: _____
Notary Public-State of Florida
Commission Number:

**INDEMNIFICATION AGREEMENT
BETWEEN
FLORIDA DEVELOPMENT AND FINANCE CORPORATION,
ADMINISTRATOR FOR THE FLORIDA RESILIENCY AND ENERGY DISTRICT,
AND THE TOWN OF SURFSIDE, FLORIDA**

This Agreement (the "Agreement") is entered into this 10th day of July, 2018 by and between The Florida Development and Finance Corporation ("FDFC"), the administrator of the Florida Resiliency and Energy District ("FRED"), and the Town of Surfside, a municipal corporation of the State of Florida (the "Town") (collectively, the "Parties").

WHEREAS, the Town and FDFC/FRED have proposed to enter into an agreement to authorize FDFC/FRED to operate within the boundaries of the Town for the purposes of providing a Property Assessed Clean Energy (PACE) program; and

WHEREAS, FDFC is the administrator for FRED and the FDFC Pace Program will be operating on behalf of FRED within the Town; and

WHEREAS, FDFC is a Florida public body, corporate and politic, authorized by Chapter 288, Part X, Florida Statutes; and

WHEREAS, FDFC has agreed to provide the Town with a separate indemnification agreement for the benefit of the Town.

NOW, THEREFORE, the Town and FDFC, hereby enter into the following Agreement:

1. The foregoing recitals are incorporated into this Agreement and approved.
2. To the extent applicable by law, FDFC shall indemnify and hold harmless the Town and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Town or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement and FDFC's administration of FRED's PACE Program by FDFC or its employees, agents, servants, partners, principals, administrators, subcontractors, or agents. FDFC shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Town, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. FDFC expressly understands and agrees that any insurance protection shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Town or its officers, employees, agents and instrumentalities as herein provided.
3. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, the United States District Court for the

Southern District of Florida or United States Bankruptcy Court for the Southern District of Florida, as appropriate.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

THE FLORIDA DEVELOPMENT AND
FINANCE CORPORATION

Attest:

By: _____

By: _____

Approved as to form and legality:

By: _____

THE TOWN OF SURFSIDE, FLORIDA

Attest:

Sandra Novoa, MMC
Town Clerk

Guillermo Olmedillo
Town Manager

Approved as to form and legality:



Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorneys

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

THIS NON-EXCLUSIVE INTERLOCAL SUBSCRIPTION AGREEMENT is made and entered into as of July 10, 2018 (this "Subscription Agreement"), by and between the Town of Surfside, Florida (the "Subscriber"), and the Florida PACE Funding Agency, a separate legal entity and public body and unit of local government, established pursuant to Section 163.01(7)(g), Florida Statutes, (the "Agency"), by and through their respective governing bodies. The purpose of the Subscription Agreement is to secure, in an efficient and uniform manner, for the Property Owners (as hereinafter defined) within the jurisdiction and boundaries of the Subscriber the privileges, benefits, powers and terms provided for herein and by law, and particularly by Section 163.08, Florida Statutes, as amended (the "Supplemental Act"), relating to the voluntary determination by affected property owners to obtain and finance certain improvements to property for energy efficiency, renewable energy or wind resistance.

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration each to the other, receipt of which is hereby acknowledged by each party, the Subscriber and the Agency hereby agree, stipulate and covenant as follows:

**ARTICLE I
DEFINITIONS AND CONSTRUCTION**

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

"Board of Directors" means the governing body of the Agency.

"Agency Charter Agreement" or **"Charter"** means, unless the context otherwise requires, the separate interlocal agreement which created and established the Agency, including any amendments and supplements hereto executed and delivered in accordance with the terms thereof.

"Financing Agreement" means the agreement authorized hereunder and by the Act (specifically including section 163.08(4) thereof) between the Agency and a Property Owner providing for the funding to finance Qualifying Improvements and the imposition of a non-ad valorem Special Assessment against the Property Owner's assessed property.

"Financing Documents" shall mean the resolution or resolutions duly adopted by the Agency, as well as any indenture of trust, trust agreement, interlocal agreement or other instrument relating to the issuance or security of any bond or Obligations of the Agency and any

agreement between the Agency and the Subscriber, pursuant to which the Subscriber and Property Owners obtain access to funds provided by the Agency.

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

"Program" means the program operated by the Agency to provide financing for Qualifying Improvements undertaken within the jurisdiction of the Subscriber. Unless determined otherwise by the Subscriber, the Agency's Program will be non-exclusive; and, the Subscriber may embrace or authorize any similar program under the Act as the Subscriber sees fit and in the interest of the public.

"Property Owner" means, collectively, all of the record owners of real property subject to a Financing Agreement.

"Qualifying Improvements" means those improvements for energy efficiency, renewable energy, or wind resistance described in the Supplemental Act authorized to be affixed and/or installed by the record owner of an affected property. The term does not include similar improvements underwritten or financed by local, state or federal programs including, but not limited to State Housing Initiatives Partnership or SHIP Program, which are not secured by a special or non-ad valorem assessment.

"Special Assessments" means the non-ad valorem assessments authorized by the Supplemental Act and levied by the Agency on property owned by participating property owner who has entered into a Financing Agreement with the Agency to fund the costs of Qualifying Improvements.

SECTION 1.02 CONSTRUCTION.

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

(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 Subscription Agreement. Both parties have independently reviewed this Subscription Agreement with their own counsel and covenant that the provisions hereof shall not be construed for or against either the Subscriber or the Agency by reason of authorship.

SECTION 1.03. SECTION HEADINGS. Any headings preceding the texts of the several Articles and Sections of this Subscription 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 Subscription Agreement nor affect its meaning, construction or effect.

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

(A) The State has declared it the public policy of the State to develop energy management programs aimed at promoting energy conservation and wind resistance or 'hardening' programs achieving hurricane and wind damage mitigation.

(B) The State Legislature has determined there is a compelling state interest in enabling property owners to voluntarily finance Qualifying Improvements with local government assistance. The actions authorized by the Supplemental Act, including the financing of Qualifying Improvements through the execution of Financing Agreements and the related imposition of a Special Assessment, are reasonable and are necessary for the prosperity and welfare of the State, the Subscriber and its property owners and inhabitants.

(C) The Agency has secured a binding final judgment, binding and only advantageous to the Agency, which has statewide effect. Such judgment carefully relieves the Subscriber from cost and liability associated with implementation of the Agency's Program.

(D) The Agency has provided evidence to the Subscriber that: (1) the Agency's Program has assembled, at the Agency's sole cost and expense, open public governance and oversight, staffing in the form of qualified third-party administration, active funding provider servicing oversight, dedicated Program counsel, and an independent institutional trustee, (2) that the Agency is immediately ready to commence origination of Special Assessments for Qualifying Improvements, and (3) that the Agency presently has large scale funding in place and available under an executed bond purchase agreement and trust indenture.

(E) The availability of the non-exclusive Program offered by the Agency (without cost to, assumption of liability by or demand upon the credit of the Subscriber) and the voluntary participation in the Program by Property Owners will provide an alternative financing option to finance and repay the costs to provide and install Qualifying Improvements.

(F) This Agreement provides an alternative, supplemental and non-exclusive means to achieve, *inter alia*, immediate and careful local economic development, commerce and job creation, as well as the compelling State interests and public purposes described in the Supplemental Act.

ARTICLE II SUBSCRIPTION

SECTION 2.01. AUTHORITY.

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

(B) The Agency by this Subscription Agreement is hereby authorized to act to provide its services, and conduct its affairs, within the boundaries of the Subscriber's jurisdiction.

(C) The execution of this Subscription Agreement evidences the express authority and concurrent transfer of all necessary powers to the Agency, and the covenant to reasonably cooperate by the Subscriber, so that the Agency may facilitate, administer, implement and provide 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 as the same may be amended from time to time.

(D) By resolution of the governing bodies of each of the parties and as implemented pursuant by this Subscription Agreement, all power and authority available to the Agency under its Charter and general law, including without limitation, Chapters 163, 189 and 197, Florida Statutes, shall be deemed to be authorized and may be implemented by the Agency within the boundaries of the Subscriber.

(E) This Subscription Agreement may be amended only by written amendment hereto.

SECTION 2.02. CREATION OF STATE, COUNTY OR MUNICIPAL DEBTS PROHIBITED. The Agency shall not be empowered or authorized in any manner to create a debt as against the State, 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 of the Agency 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 the interest and that they are only payable from Agency revenues or the portion thereof for which they are issued and that neither the full faith and credit nor the taxing power of the 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, the Charter Agreement, or this Subscription Agreement shall not directly or indirectly or contingently obligate the State, or any county or municipality to levy or to pledge any form of ad valorem taxation whatever therefore or to make any appropriation for their payment.

SECTION 2.03. 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, with other funds available for such purposes, shall be at least sufficient at all times to pay the expenses of administering, managing, and providing for the services and administration of the activities of the Agency, to pay costs and expenses provided for by law or the Charter Agreement and the Financing Documents, and to pay the principal and interest on the Obligations as the same shall become due and reserves therefore, and to provide for necessary administration and reasonable margin of safety over and above the total amount of such payments. Notwithstanding any other provision in the Charter Agreement or this Subscription Agreement, such rates, fees and charges shall always be sufficient to comply fully with any covenants contained in the Financing Documents.

(C) Such rates, fees and charges may vary from jurisdiction to jurisdiction, but shall be just and equitable and uniform at the time of imposition for the record owners in the same class of or within each subscribing local governmental jurisdiction electing to enter into any Financing Agreement described in the Supplemental Act and may be based upon or computed upon any factor (including, by way of example and not limitation, competitive or market conditions, distinguishing between residential and non-residential properties or uses, distinguishing between variable costs of administrative services 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 Subscription 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 upon the Special Assessments imposed, pledged to or collected by the Agency. Any moneys deposited to such general fund account from such a surcharge 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, energy audits, administration, quality control, vendor procurement, and any other purpose associated with the purpose or mission of the Agency approved by the Board of Directors.

SECTION 2.04. FINANCING AGREEMENTS.

(A) The Agency shall prepare and provide to each participating property owner the form of the Financing Agreement which complies with the Supplemental Act and is in accordance with the Financing Documents as designated by the Board of Directors from time to time.

(B) The Agency, not the Subscriber, shall be solely responsible for all matters associated with origination, funding, financing, collection and administration of each of the Agency's authorized non-ad valorem assessments.

SECTION 2.05. IMPOSITION OF SPECIAL ASSESSMENTS PURSUANT TO FINANCING AGREEMENTS.

(A) Upon execution by the record owners and the Agency, the Financing Agreement or a summary or memorandum thereof shall be recorded by the Agency within five (5) days of execution as required by Section 163.08(8), Florida Statutes. The recorded Financing Agreement, or summary or memorandum thereof, provides constructive notice that the non-ad valorem assessment to be levied on the subject property constitutes a lien of equal dignity to ad valorem taxes and assessments from the date of recordation.

(B) In a reasonably cooperative and uniform manner the Agency is authorized to and shall provide a digital copy to the property appraiser or tax collector of the recorded Financing Agreement or summary thereof, the most recent property identification number and annual amount of the non-ad valorem assessment along with such other efficient and reasonable information necessary for the tax collector to collect such amounts on behalf of the Agency pursuant to Sections 197.3632 and 163.08, Florida Statutes, as a non-ad valorem assessment.

SECTION 2.06. COLLECTION OF SPECIAL ASSESSMENTS.

(A) The Agency shall be solely responsible for professionally coordinating all interface with the tax collector or property appraiser, and minimize to the greatest extent reasonably possible the time, effort and attention of these public officials to accomplish the public purposes and direction of the Supplemental Act subscribed to by the Subscriber. Subscriber hereby respectfully requests and encourages the tax collector or property appraiser to only impose, charge, or deduct the minimum amount allowed by general law for the collection or handling of the Special Assessments which are the subject of this Subscription Agreement.

(B) To advance Program acceptance and to minimize Program participation costs, and because each Property Owner is voluntarily undertaking to achieve and underwrite the unique and compelling State interests described in the Supplemental Act, the Subscriber urges either the waiver of such fees by the tax collector and property appraiser or a flat five dollar (\$5) fee per year per tax parcel for such purposes which shall be paid by the Agency via deduction, by the institutional trustee required by the Financing Documents, or as otherwise reasonably agreed to by the Agency and these parties.

SECTION 2.07. PLEDGE OF PROCEEDS FROM NON AD VALOREM ASSESSMENTS.

(A) The Agency will take such actions as are necessary for the lawful levy of the Special Assessments against all lands and properties specially benefitted by the acquisition, construction and financing of Qualifying Improvements. If any assessment made with respect to any property shall be either in whole or in part annulled, vacated or set aside by the judgment of any court, or if the Agency or Subscriber shall be satisfied that any such assessment is so irregular or defective

that the same cannot be enforced or collected, the Agency is authorized to take all necessary steps to cause a new assessment to be made for the whole or any part of any Qualifying Improvements or against any property specially benefitted by such improvement, to the extent and in the manner provided by law.

(B) Pursuant to the Financing Documents and this Subscription Agreement, the Agency shall irrevocably pledge and, to the fullest extent permitted by law, pledge and assign any and all revenues derived from Special Assessments to the repayment of any debt obligation issued by the Agency pursuant to the Financing Documents.

(C) The Subscriber shall not incur or ever be requested to authorize any obligations secured by Special Assessments associated with Qualifying Improvements imposed by the Agency.

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

SECTION 2.08. CARBON OR SIMILAR CREDITS. The form of Financing Agreement in each instance shall provide for the transfer of any carbon or similar mitigation credits derived from Qualifying Improvements to the Agency, with such revenues therefrom, if any ever materialize, to be used by the Agency to underwrite generally its operation, mission and purpose. By execution hereof any such interest in mitigation credits shall be assigned by the Subscriber to the Agency without any future action by the parties. Provided, however, the Subscriber shall upon request from time to time execute and deliver all such documents as may be reasonably required to further evidence the assignment and transfer of such interests to the Agency. Such credits expressly exclude investment tax credits available under the Internal Revenue Code or monetary rebates available to the Property Owner.

SECTION 2.09 RESALE OR REFINANCING OF A PROPERTY. The Agency recognizes that some lenders may require full repayment of the Program's special assessments upon resale or refinancing of a property subject to the Program's special assessments. The Agency agrees to provide written disclosure of this matter to all Town property owners that may utilize the Program.

SECTION 2.10 PREPAYMENT PENALTIES. The Agency may not allow or charge residential prepayment penalties.

**ARTICLE III
GENERAL PROVISIONS**

SECTION 3.01. INTERLOCAL AGREEMENT PROVISIONS. This Subscription Agreement constitutes a joint exercise of power, privilege or authority by and between the Subscriber and the Agency and shall be deemed to be an “interlocal agreement” within the meaning of the Florida Interlocal Cooperation Act of 1969, as amended. This Subscription Agreement shall be filed by the Agency with the Clerk of the Circuit Court of the county in which the Subscriber is located.

SECTION 3.02. DISCLOSURE.

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

(B) The objective of the Agency’s mission is to offer a uniform, standardized and scalable approach that provides efficiencies and economies of scale intended to attract voluntary financing of Qualifying Improvements and stimulate a substantial and meaningful flow of private sector economic activity and new job creation. In doing so, each subscribing local government by entering into a subscription agreement of this nature authorizes the availability of the Agency’s uniform program to property owners in the subscribing jurisdiction. Accordingly, the Agency has engaged, and may engage in the future, various advisors, consultants, attorneys or other professionals or firms with recognized expertise necessary to accomplish the Agency’s mission.

(C) Each of the various advisors, consultants, attorneys or other professionals engaged by the Agency has been, and shall in the future be, disclosed to the Subscriber. The Subscriber and Agency recognize, consider and acknowledge the fact or possibility that one or more of the various professionals or firms may serve as the advisor to the Agency in its mission, and to the Subscriber or another client in providing other similar professional services, outside of the provision, funding and financing of Qualifying Improvements. Such circumstance is acceptable and will not be construed as a conflict, be objected to unreasonably, nor be used as the basis for its disqualification of such professionals or firms from any continued or future representation of either party hereto which can otherwise be resolved by a reasonable waiver.

SECTION 3.03. TERM OF AGREEMENT; DURATION OF AGREEMENT; EXCLUSIVITY.

(A) This Subscription Agreement shall commence as of the date first above written, and shall remain in effect until terminated as herein provided. Either party (the “non-breaching

party") may terminate this Subscription Agreement by providing the other party (the "breaching party") 10 days prior written notice ("Termination Notice") in the event the breaching party breaches this Subscription Agreement and such breach is not cured to the reasonable satisfaction of the non-breaching party within a reasonable period of time following notice of such breach. Beginning on the date the Agency receives from, or gives to, the Subscriber a Termination Notice ("Termination Date"), the Agency shall not approve any new applications affecting property within the legal boundaries of the Subscriber. Provided, however either party may unilaterally terminate this Agreement prior to any Financing Agreements being executed or, if earlier, the issuance of any Obligations of the Agency secured by pledged revenues derived from within the jurisdiction or boundaries of the Subscriber.

(B) In the event of any termination hereunder, and so long as the Agency has Obligations outstanding which are secured by pledged revenues derived from Financing Agreements relating to any properties within the jurisdiction or boundaries of the Subscriber, or the Agency has projects for Qualified Improvements underway therein, the applicable provisions, authority and responsibility under this Agreement reasonably necessary to carry out the remaining aspects of the Program and responsibilities of Agency then underway, shall remain in effect and survive such termination until such time as those obligations and all associated remaining Program responsibilities are fulfilled (including, but not limited to the collection of assessments in due course).

SECTION 3.04. AMENDMENTS AND WAIVERS.

(A) Except as otherwise provided herein, no amendment, supplement, modification or waiver of this Subscription Agreement shall be binding unless executed in writing by the Subscriber and Agency.

(B) To the extent the Agency has no outstanding bonds, Obligations or other evidence of indebtedness, this Subscription Agreement may be amended or modified or provisions hereto waived upon the written consent of all parties hereto.

(C) To the extent the Agency has outstanding bonds, Obligations or other evidence of indebtedness arising from Financing Agreements relating to properties within the jurisdiction or boundaries of the Subscriber, this Subscription Agreement may not be amended or modified in any way that is materially adverse to holders of such bonds, 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 bonds, Obligations or other evidence of indebtedness (exclusive of any warrants issued by the Agency) then outstanding, or any insurer duly authorized to provide such consent on behalf of such holders.

SECTION 3.05. 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 parties at the following addresses:

Subscriber: The Town of Surfside
Guillermo Olmedillo,
Office of the Town Manager
9293 Harding Avenue
Surfside, Florida 33154

With a copy to: Town Attorney
Weiss Serota Helfman Cole & Bierman, P.L.
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, Florida 33134

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

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

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

SECTION 3.06. QUALITY CONTROL AND COMMUNICATION. For quality control purposes the Agency and Subscriber desire, and the Agency covenants to develop, implement and employ policies, systems and procedures which are within industry standards; with such standards being reasonably expected to change and evolve over time. An ongoing positive and informal line of communication between staff and agents for the parties is encouraged. At any time, notwithstanding lack of default or lack of material breach hereunder, the Subscriber is encouraged to objectively and specifically communicate to the Agency in writing as provided for herein any concerns, suggestions or disapproval with performance, policies, systems or procedures being employed by the Agency. The Agency through its administrator, Executive Director, or a duly authorized designee, will promptly respond in writing to all such communications (reasonably within fifteen (15) days of receipt of any such written communication, but sooner if necessary) and follow-up accordingly; and, also promptly communicate any such response, follow-up, and all related communication to the Board of Directors for review.

SECTION 3.07. IMMUNITY; LIMITED LIABILITY.

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

(B) The Subscriber and Agency are and shall be subject to Sections 768.28 and 163.01(9)(c), Florida Statutes, and any other provisions of Florida law governing sovereign immunity. Pursuant to Section 163.01(5)(o), Florida Statutes, and this covenant of the parties hereto, the local governments who are either or both the incorporators or members of the Agency shall not be held jointly liable for the torts of the officers or employees of the Agency, or any other tort attributable to the Agency, and that the Agency alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes. The Subscriber and Agency acknowledge and agree 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 Subscription 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 the Subscriber, nor the local governments who are either or both the incorporators or members of the Agency, nor any subsequently subscribing or participating local government in the affairs of the Agency shall in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of the Agency, 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 or any other agents, employees, officers or officials of the Agency have any authority or power to otherwise obligate either the Subscriber, the local governments who are either or both the incorporators or members of the Agency, nor any subsequently subscribing or participating local government in the affairs of the Agency in any manner.

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

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

SECTION 3.10. EXECUTION IN COUNTERPARTS. This Subscription 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 3.11. APPLICABLE LAW. The exclusive venue of any legal or equitable action that arises out of or relates to this Subscription Agreement shall be the

appropriate state court in Miami-Dade County. In any such action, Florida law shall apply and the parties waive any right to jury trial.

SECTION 3.12. ENTIRE AGREEMENT. This Subscription Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements among the parties in connection with the subject matter hereof, except as specifically set forth herein.

[Remainder of page intentionally left blank.]

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

THE TOWN OF SURFSIDE

(SEAL)

By: _____
Guillermo Olmedillo, Town Manager

Attest:

Approved as to form:

Sandra Novoa, MMC, Town Clerk

Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

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

THE FLORIDA PACE FUNDING AGENCY

(SEAL)

By: _____
Michael H. Steigerwald, Executive Director

ATTEST:

Donald T. Smallwood, Assistant Secretary

**INDEMNIFICATION AGREEMENT
BETWEEN
COUNTERPOINTE ENERGY SOLUTIONS (FL) LLC,
ADMINISTRATOR FOR THE FLORIDA PACE FUNDING AGENCY,
AND THE TOWN OF SURFSIDE, FLORIDA**

This Agreement (the "Agreement") is entered into this 10th day of July, 2018 by and between Counterpointe Energy Solutions (FL) LLC ("Counterpointe"), the administrator of the Florida PACE Funding Agency (the "Agency"), and the Town of Surfside, a municipal corporation of the State of Florida (the "Town") (collectively, the "Parties").

WHEREAS, the Town and the Agency have proposed to enter into an agreement to authorize the Agency to operate within the boundaries of the Town for the purposes of providing a Property Assessed Clean Energy (PACE) program; and

WHEREAS, Counterpointe is the Agency's administrator and will be operating on behalf of the Agency within the Town; and

WHEREAS, the Agency is a separate legal entity and public body and unit of local government, established pursuant to Section 163.01(7)(g), Florida Statutes; and

WHEREAS, Counterpointe has agreed to provide the Town with a separate indemnification agreement for the benefit of the Town.

NOW, THEREFORE, the Town and Counterpointe, hereby enter into the following Agreement:

1. The foregoing recitals are incorporated into this Agreement and approved.
2. To the extent applicable by law, Counterpointe shall indemnify and hold harmless the Town and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Town or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement and Counterpointe's administration of the Agency's PACE Program by Counterpointe or its employees, agents, servants, partners, principals, administrators, subcontractors, or agents. Counterpointe shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Town, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Counterpointe expressly understands and agrees that any insurance protection shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Town or its officers, employees, agents and instrumentalities as herein provided.

3. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, the United States District Court for the Southern District of Florida or United States Bankruptcy Court for the Southern District of Florida, as appropriate.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**COUNTERPOINTE ENERGY
SOLUTIONS (FL) LLC**

Attest:

By: _____

By: _____

THE TOWN OF SURFSIDE, FLORIDA

Attest:

Sandra Novoa, MMC
Town Clerk

Guillermo Olmedillo
Town Manager

Approved as to form and legality:

Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorneys