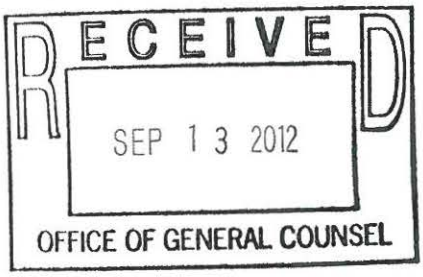
FLORIDA PACE FUNDING AGENCY
Submitted: September 12, 2012



VIA UPS OVERNIGHT DELIVERY

Alfred M. Pollard, General Counsel
Attn: Comments/RIN 2590-AA53
Federal Housing Finance Agency
Eighth Floor
400 Seventh Street S.W.
Washington, DC 20024

Re: RIN 2590-AA53 Notice of Proposed Rulemaking Underwriting Standards Relating to Mortgage Assets Affected by Property Assessed Clean Energy ("PACE") Programs

Dear Mr. Pollard:

On behalf of the Florida PACE Funding Agency ("Agency"), the undersigned submits the Agency's comments on the Notice of Proposed Rulemaking ("Proposed Rulemaking") or "NPR") issued by the Federal Housing Finance Agency ("FHFA") in the June 15, 2012 Federal Register (77 Fed. Reg. 36,086). FHFA is the exclusive supervisory regulator of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)(together, the "Enterprises"). The Agency is a governmental body created in Florida to implement the Florida PACE Program created by Fla. Stat. §163.08 (2011) and statutorily authorized to be implemented by interlocal agreement among local governments in Florida.

The Agency previously submitted comments to FHFA in response to the Advanced Notice of Proposed Rulemaking ("ANPR") submitted March 26, 2012 arguing that the elimination of restrictions and conditions established by FHFA, at least with respect to the Florida PACE program administered by the Agency, is warranted because the Florida PACE Program does not in any way reduce the value of the Enterprises' assets.

To facilitate incorporation of its previous comments into this response, the Agency is attaching its comments to the ANPR as Exhibit A to this letter. The Agency's March 26, 2012 submittal has been numbered FPA001-[page number] to facilitate cross referencing.

I. General Comments

The Agency is perplexed that FHFA remains generally hostile toward PACE programs in spite of roughly 400 substantive comments on the ANPR where FHFA itself states that "most but not all" comments expressed support for PACE programs. 77 Fed. Reg. 36,089. These supportive comments, including the Agency's comments, come from a variety of sources across the political spectrum and the nation in response to the ANPR. 77 Fed. Reg. 36,088-098. The FHFA's attitude toward outside input can be gleaned most pointedly from its statement in the preamble of the Proposed Rulemaking:

> FHFA will withdraw this NPR should FHFA prevail on its appeal (of the California District Court Order) and will, in that situation, continue to address the financial risks FHFA believes PACE programs pose to safety and soundness as it deems appropriate. (emphasis added.) 77 Fed. Reg. 36, 087.

So the Agency concludes that the California District Court and a majority of 400 commenters apparently have little influence on the FHFA's viewpoint or its attitude toward the broad based support for PACE demonstrated by the comments to the ANPR. The Agency believes that the anti-PACE attitude of the FHFA that is reflected in the prior quote permeates the Proposed Rulemaking and renders the FHFA rulemaking arbitrary and capricious because it impinges on the Agency's ability to undertake fair, reasoned and unbiased decision making on issues of critical importance – energy efficiency and job creation - to the Agency and the State of Florida.

This attitude is also illustrated by three themes of the Proposed Rulemaking: (1) persistence in the FHFA's apparently deliberate use of incorrect and biased terminology that was shown to be erroneous by the Agency's (and others') comments on the ANPR; (2) failure to discuss the specifics of the Florida PACE Program in the FHFA's review of comments to ANPR; and (3) failure by FHFA to acknowledge the uniqueness of the Florida PACE Program and provide in its rulemaking an option for the Agency to implement its PACE program within its borders unfettered by any applicable limitations of the Proposed Rule.

The following are examples of FHFA's repetition of incorrect and erroneous terminology used in the ANPR. These terms were discussed and corrected by the Agency (and other commenters) in comments to the ANPR, but which nonetheless consistently reappear in the Proposed Rule drafted by FHFA:

- Referring pejoratively to PACE investments as "home improvement projects", as if the project was the equivalent of installing new flooring or light fixtures – 77 Fed. Reg. 36,088 – corrected by the Agency at FPA00-38.
- Referring to PACE's "lien priming feature" – 77 Fed. Reg. 36,038 – corrected by the Agency at FPA00-24-31 (Agency's Response to Questions No. 3 and No. 4)[1].
- Referring to PACE investments as "loans," not land secured assessments under Florida law – FPA00-18 (Agency's Response to General Comment No. 4 and the responses of Leon County, FL (77 Fed. Reg. 36,097)

But most importantly, the Agency was disappointed that FHFA chose not to discuss the unique attributes and structure of the Florida PACE Program nor did it comment upon how the enabling legislation of the Florida PACE Program and the creation of the Agency addresses many, if not all of the concerns raised generally by FHFA to PACE programs. FHFA fundamentally ignored the Agency's comments to the ANPR[2] and never specifically discussed the unique and significant advantages Florida law provided that eliminates many, if not most, of FHFA's concerns that are at the root of FHFA's anti-PACE attitude.

II. The Agency's Specific Comments on the Proposed Rule and Risk Mitigation Alternatives

A. Comments on Proposed Rule

The Proposed Rule starts with same premise expressed by FHFA in the July 6, 2010 Statement concerning PACE Programs (the "Statement") and the February 28, 2011 Directive (the "Directive") that in effect ordered the Enterprises not to purchase mortgages affected by PACE Obligations. The Proposed Rule, however, goes one step beyond those severe decrees by mandating that the Enterprises take steps to interpret or amend the Enterprises' Uniform

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[1] The Agency again asserts that the predicate for the question is erroneous, arbitrary and capricious, as it assumes the 'lien priming feature of the first lien PACE obligations' are somehow distinguishable from all other governmental assessments. Just the contrary, in Florida, PACE assessments are indistinguishable from and fully equivalent to all other non-ad valorem assessments. See Paragraph Twelfth in the Final Judgment. (Exhibit C to the Agency's Response) The term 'lien priming' occurs in a bankruptcy setting where cash injections during reorganization are given priority or parity with prior secured lenders. The use of the term by FHFA in this context is pejorative, misleading and improper. In a bankruptcy circumstance there can be a priority struggle between contract lenders where debtor in possession financing is necessary. In a contest between a contract lender and a property tax or non-ad valorem or special assessment outside of the very narrow circumstance where 'lien priming' might occur, every mortgagor knows that its mortgage, regardless of first in time considerations, is simply not on par with the tax or assessment.

[2] Florida PACE Program was mentioned implicitly by the following statement: "Such [state] legislation generally leaves most program implementation and standards to local governmental bodies and, but for a few instances, [i.e., Florida PACE program] provide no uniform requirements, standards or enforcement mechanisms." 77 Fed. Reg. 36, 088.

Security Instruments to preclude the property owner from even incurring PACE obligations. FHFA's weapon of choice in this assault on PACE Programs is what the Agency has titled the Immediate Full Amount Due Initiative.

The Immediate Full Amount Due Initiative would require the Enterprises to immediately secure and or preserve any right to make immediately due the full amount of any obligation secured by a mortgage that becomes, without the consent of the mortgage holder, subject to a PACE obligation.

Agency Response: Please be advised, in no uncertain terms, that any attempt by the Enterprises under this rule to secure or preserve rights to essentially call in the mortgage on real property the moment it incurs a PACE obligation will not be enforceable under Florida law. See FPFA000-21 and Exhibit C to the Response for an in-depth discussion of the Florida PACE Program and the impact of the bond validation provision in the Florida PACE law.

The inability of the Enterprises to enforce the Full Amount Due Initiative is the direct result of both Section 163.08(13), Fla. Stat. and the Florida Circuit Court's Final Judgment in Florida PACE Funding Agency v. State of Florida, Case No. 20110CA-1824 (August 25, 2011) which became final and non-appealable on September 27, 2011. The decision addressed the very proposal being contemplated by FHFA in the Proposed Rulemaking. The findings of fact and law in the court's decision have been deemed to be binding on all participants in the Agency's program, including most importantly, mortgage lenders who hold a mortgage on property subject to, or which may become subject to, the non-ad valorem assessment levied pursuant to the Agency's Florida PACE Program. (*emphasis added*) The Final Judgment confirmed the validity of the law creating the Florida PACE Program and by its terms the Final Judgment rendered 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 the property owner entering into a financing agreement pursuant to the Agency's PACE program.

Fla. Stat. §163.08 (13) states in relevant part:

> 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 in not enforceable. (*emphasis added*)

Florida's Legislature clearly anticipated FHFA or any other mortgagee or mortgage holder or guarantor could, consistent with FHFA's Directive and the Statement, attempt to undermine PACE. As a result, the Florida Legislature has decreed that neither existing nor future mortgages can be effectively "called" when a PACE obligation is incurred.

The second element of the Proposed Rule is the requirement that the Enterprises are forbidden from buying mortgages where the real property has incurred a PACE Program assessment.

Agency's Response: If finalized, this provision means that FHFA will be removing itself from the secondary residential mortgage market in Florida as the Florida PACE Program continues to grow through subscriptions of additional local governments, and Florida's property owners enter into financing agreements under the auspices of the Agency and its management team[3]. See FPFA00-42 - FPFA00-44 (Agency's Response to Question No. 17).

The Florida PACE Program is a single uniform program that is reaching across Florida[4] and provides underwriting certainty and consistency to the lending or mortgage investing entity. This certainty will bring investing entities regardless of FHFA's prohibition. The Agency and the Florida PACE Program stakeholders believe that this market has the potential to develop in such a way as to leave the Enterprises on the sidelines in Florida. Reasonable flexibility in the rulemaking process, while not seen to date, could negate that unwanted effect of removing the Enterprises from one of the largest housing markets in the United States. Indeed, since special assessments levied under the Agency's PACE Program are not distinguishable from any other governmental assessments in Florida, the FHFA will need to determine what statutory authority it may have under its enabling legislation and that of the Enterprises to completely ignore and refuse to serve the country's fourth largest state. Such arbitrary and capricious actions cannot be justified under existing law.

This is ultimately a business decision by FHFA, but is one that can only be made in the legal framework under which the FHFA and the Enterprises operate. In other words, do the

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[3] The Agency has chosen Science Applications International Corporation (SAIC) [NYSE: SAI] as its program administrator in a competitive bidding procedure. SAIC is one of the largest administrators of government programs in the country. Services will be delivered through SAIC's wholly owned subsidiary, SAIC Energy, Environment & Infrastructure, LLC.

[4] The Agency maintains that its unique platform will allow local governments in Florida of varying size and resources to access capital markets without having to implement or deploy individual programs or individually seek capital for their constituents. Through the delivery of a single, statewide, uniform program, certainty is provided to local governments, property owners, vendors and mortgage lenders. In addition, the statewide platform the Agency offers is designed to take advantage of efficiencies and economies of scale in order to deliver the most cost effective program possible. The Agency also believes that its centralized administration provides efficiencies and cost savings, while fostering partnerships with commercial and industrial groups, educators, energy auditors, contractors, suppliers and installers. In a nutshell, the Agency's implementation of the Florida PACE Program facilitates the creation of local, private sector job engines while at the same time providing a uniform approach to financing that will address any concerns voiced by the Enterprises about adverse impact on mortgage assets as well as the concerns of the Legislature articulated in the Florida PACE Act.

Enterprises have the legal authority to not operate in one or more states under uniform guidelines?

The third element of the Proposed Rule puts the proverbial nails in the coffins of non-Florida PACE Programs where mortgages are owned by the Enterprises. Under this element, the Proposed Rule mandates that the Enterprises shall not consent to the imposition of a first-lien PACE obligation on any mortgage owned by them. So PACE Programs which require lender consent will be not be able to proceed with PACE assessments under this Proposed Rule.

Agency's Response: In contrast to this element, Florida's PACE Program does not require the holder of the mortgage to consent to the financing agreement because Florida recognizes that the mortgage holder is often very difficult to locate or determine. In contrast to consent of mortgage holder, Fla. Stat. §163.08(13) requires 30 day notice to the holders or loan servicers of existing mortgages when a property owner enters into a financing agreement. Consent is only required from the holders or the loan servicers when the total amount of the assessment exceeds twenty (20%) of the "just value" of the property as determined by the county property appraiser within the strictures of applicable Florida law. Fla. Stat. §163.08(12)(a).

The Agency finds the three major elements in the Proposed Rulemaking, when taken as a whole, reflect exactly the same position by FHFA that was expressed in the Directive, in the Statement and in the ANPR. So as far as the fundamental structure of the Proposed Rule is concerned, comments from stakeholders fell on deaf ears at FHFA. The Agency's view is confirmed by its strident conclusion of the Proposed Rule whereby FHFA states:

> In light of the comments received in response to the ANPR and FHFA's responses to those comments, FHFA believes that the Proposed Rule is reasonable and necessary to limit, in the interest of safety and soundness, the financial risks that first-lien PACE programs would otherwise cause the Enterprise to bear. 77 Fed.Reg. 36, 107.

The Florida Mortgage Bankers Association and other market stakeholders participated in the passage of the Florida PACE legislation (§163.08, Fla. Stat.). Contrary to FHFA, these experienced and knowledgeable entities felt very strongly that the statutory underwriting guidelines, in particular the thirty (30) day prior written notice to loan servicers, the ability to adjust the required mortgage escrow deposit amounts to reflect PACE assessments, the requirement that the only means to collect the assessment was on the annual tax bill, and that, in order to be valid, the financing agreement evidencing the assessment must be recorded to provide uniformly located and constructive notice to all stakeholders, gave them the protection they needed to support and encourage the development of PACE in Florida.

In addition, the underwriting criteria of the Agency under its Florida PACE Program, namely a determination that all property taxes and any other assessments levied on the tax bill

are paid and have not been delinquent for the preceding three (3) years or the property owner's period of ownership, whichever is less, a determination that that there are no involuntary liens on the property including construction liens, no notices of default or other property-based delinquency have been recorded during the preceding three (3) years or the property owners' period of ownership, whichever is less and that the property owner is current on all mortgage debt, provide additional security to the mortgage lender.

B. Discussion of Risk Mitigation Alternatives to the Proposed Rule

In an attempt to throw a rare bone to the proponents of PACE, FHFA says it is considering three alternatives to the Proposed Rule, each of which must provide mortgage holders with "equivalent protection from financial risk as the Proposed Rule and could be implemented as readily and enforced as reliably as the Proposed Rule." 77 Fed. Reg. 36,107. Upon closer scrutiny, however, these alternatives provide very little room for PACE programs to grow or flourish because the alternatives are built upon the same flawed foundation as the Proposed Rule.

1. First Risk-Mitigation Alternative

This First Risk Alternative ("First Alternative") incorporates, as its foundation, the requirement of the Proposed Rule that the Enterprises immediately secure and/or preserve rights to make outstanding mortgages immediately due when the real property becomes subject to a PACE obligation without holder consent. The Agency's comments above in Subsection A apply equally to this flawed foundation.

The First Alternative does make a meager attempt to mitigate the absolute prohibition on the Enterprises' purchase of mortgages subject to PACE obligations by crafting a procedure for the Enterprises to consent to PACE obligations. The three alternative conditions for approval, however, are individually too speculative and onerous to realistically allow PACE obligations on real property. And for Florida, the First Alternative could not apply as a matter of state law because consent by the mortgage holder is not required.

For example, pursuant to the first of the three methods within the First Alternative for the Enterprises to consent to a PACE obligation, the repayment of the PACE obligation must be "irrevocably guaranteed" by a qualified insurer, whose qualifications are to be determined solely by the Enterprises. In a similar vein, under the second mechanism for consent, the PACE obligation would be required to be insured by a qualified insurer for 100% of the risk. Finally, the third method is the establishment by the PACE program of a reserve fund that is at least equivalent to a qualified insurer.

FHFA's own comments discussing the First Alternative speak for themselves about the lack of feasibility of these methods because even FHFA is uncertain whether these guarantees or insurance alternatives are available in the marketplace. That statement alone guarantees that

these methods could not be enacted as a valid rule because the methods are speculative and lack sufficient evidence in the record to support them. And even if the insurance option was available, FHFA is still worried that the insurance provider may fail even despite the fact that the Enterprises would be setting the criteria to determine if the insurer would be a "qualified insurer!" In the absence of a guarantee, insurer market or a viable way to establish and maintain a reserve fund, First Alternative is clearly not a workable alternative to the Proposed Rule's blanket prohibitions.

2. Second Risk Mitigation Alternative – Protective Standards

This Second Risk Alternative ("Second Alternative"), like the First Alternative, incorporates as its foundation the requirement of the Proposed Rule that the Enterprises immediately secure and/or preserve rights to make outstanding mortgages immediately due when the real property becomes subject to a PACE obligation without holder consent. The Agency's comments above in Subsection A apply equally to this flawed foundation.

Like the First Alternative, the Second Alternative delineates a method for the Enterprises to consent to PACE obligation, in this case when five stringent underwriting conditions are met. Two of the five conditions look to the property holder's credit rating and the documented back-end debt-to-income ratio. These conditions are based on FHFA's erroneous belief that PACE assessments are really bank loans, a position which is clearly contradicted by the Final Judgment in the Florida bond validation case which held that the PACE assessments are constitutionally indistinguishable from other non-ad valorem assessments that operate independently from the creditworthiness of the property owner. See Exhibit C to the Agency's Comments and the discussion in the Agency's Response to General Comment No. 4 commencing on page FPA00-18. In other words, mortgage loans represent personal obligations of the debtor, while PACE assessments are obligations which run with the land like all other governmental assessments, making property holders credit scores and debt-to-income ratios irrelevant.

To the contrary, the severe underwriting guidelines proposed by FHFA will, in the Agency's view, doom PACE programs to failure by severely limiting the applicant pool and restricting the scope of many projects that could be undertaken pursuant to PACE programs, thereby reducing the energy (and cost) benefits to the real property owner. For example, Criteria (c)(i) that limits the PACE obligation to a maximum of $25,000 can reduce or eliminate the large square foot or high value properties ($1 million+) from undertaking comprehensive PACE improvements that are more likely to exceed $25,000. Likewise, the credit score requirements of not lower than 720 eliminate an estimated fifty-one percent (51%) of consumers

(not all of which may be homeowners)[5]. A far better underwriting approach is incorporated into the Florida PACE Program and discussed in the Agency's Response commencing on Page FPA00-5.

3. Third Risk Mitigation Alternative – H.R. 2599

The Third Risk Alternative ("Third Alternative") once again incorporates, as its foundation, the requirement that the Enterprises immediately secure and/or preserve rights to make outstanding mortgages immediately due when the real property becomes subject to a PACE obligation without holder consent. The Agency's comments above in Subsection A apply equally to this flawed foundation.

Like the First and Second Alternatives, the Third Alternative also proposes underwriting standards, but here those standards are taken from proposed Congressional Legislation relating to PACE contained in H.R. 2599. This Alternative has a number of elements in common with the Agency's Florida PACE Program, but contains a number of significant differences as well. The clearest way to compare the two is the following table:

THIRD ALTERNATIVE		FLORIDA PACE PROGRAM
(i)	**Written Agreement**	YES
(ii)	**Written Notice of Satisfaction**	YES. Release of Lien will be recorded.
(iii)	**Property Taxes Current and Current for three (3) years**	YES
(iv)	**No involuntary liens in excess of $1000**	YES. However, Florida law says no involuntary liens of any amount.
(v)	**No default and only one instance of property based debt delinquency for last three years**	No default and no debt delinquency required.
(vi)	**No bankruptcy for 7 years**	Not a statutory requirement, but under consideration to add.
(vii)	**Current on mortgage debt**	YES
(viii)	**Property owners are holders of record**	YES. All property owners must agree.
(ix)	**Unencumbered title**	YES. Property owners must have ability to agree to lien.
(x)	**Geographic Eligibility Requirements**	YES
(xi)	**Audit or Feasibility Study**	Not required, but is encouraged.
(xii)	**Local government approval based on DOE approved clean energy measures**	NO, but state law restricts to certain improvements
(xiii)	**Qualified Contractors**	YES

[5] 40% of FICO Scores are above 750. 18% of FICO Scores are between 700 and 749. www.creditscoring.com. If one assumes an even distribution across the 700-749 category, then approximately 9% of FICO Scores are 724 or below. Based on those figures and assumptions, approximately 49% of FICO scores are above 724 and 51% are below.

THIRD ALTERNATIVE		FLORIDA PACE PROGRAM
(xiv)	**Criteria for disbursement of funds**	YES
(xv)	**Energy savings must exceed the cost of the assessment during the useful life of the improvement**	NO. Cost savings is not required as a condition to improvement, especially for wind resistance improvements.
(xvi)	**Improvement cannot exceed 10% of current appraisal**	MAYBE. Florida uses 'just value" determined under statutory process by Property Appraiser (elected constitutional officer) which is a lower value than FMU appraisals, and is not subject to manipulation by property owner.
(xvii)	**Owner has 15% equity before PACE improvements**	No. Not a relevant concept.
(xviii)	**20 year term or weighted average expected life consistent with DOE approved measures**	NO. State law limit, but as a matter of practice, longest assessment will be twenty (20) years or average economic life of improvements, whichever is less.

It is clear that many of the differences between the Florida PACE Program and the Third Alternative are explained by the difference between FHFA's misconception that PACE assessments are personal obligations of the debtor (i.e., 15% owner equity) as opposed to both the Agency's view and the Florida law that the assessment is a governmental obligation that runs with the land, like all taxes and assessments. Notwithstanding the differences, the Agency believes that the Third Alternative concept, once adapted to conform to Florida law and the Agency's Program, will not only foster the PACE Program, but result in concrete and valuable improvements to Enterprise financed properties.

Continued Invitation to FHFA from the Florida PACE Funding Agency to Establish an Immediate and Meaningful Dialogue – The Agency has not sought to engage in the various on-going federal legislation aimed at changing the business or policy decisions in the Statement or Directive. The Agency also recognizes that FHFA likely would not be involved in rulemaking but for directions to do so from a federal court. Nevertheless these comments are made in good faith.

The Agency and the local government community in Florida have developed in good faith one of the most, if not the most, thoughtful real-life and comprehensive approach to implementation. The Agency's approach is not a replication of other programs, but structured by a Legislature, public finance and local government administrators and professionals that well understand Florida. The Agency is poised to begin the process of funding, financing and delivery of qualified improvements. At stake is the ability to immediately unleash billions of dollars in economic activity in Florida alone, the achievement of many laudable environmental activities, the careful protection of owners and mortgage lenders within a long accepted framework of governmental liens and lien law and an enormous number of private sector jobs potentially attributable to this endeavor.

The Agency is not a concept. The Agency has worked hard to create a real and discernable implementation program that is uniform, scalable and statewide in scope. Its participants and advisors are not dealing in the theoretical - the Florida PACE Funding Agency is real; its authority to enter the financing market and stature have been judicially validated; it has engaged counsel, financial advisory professionals, and importantly has a clear mission that is authorized and well controlled by general law in Florida.

Mr. Pollard, as a specific alternative to FHFA's existing Statement and Directive, the Agency respectfully invites you to engage in earnest and meaningful informal dialogue with representatives of the Agency. This dialogue will allow you to better evaluate the Agency's approach, and for Agency representatives to listen to you and FHFA's concerns, with a mutual objective of creating a workable business and policy approach with the Agency in Florida under the Florida PACE Program. The Agency's preparation and research have been extensive, and the Agency's objective is to keep the process simple, advance the Agency's Florida PACE Program on a uniform basis, and to do so in a manner that reasonably protects ALL mortgage lenders and servicers. Our constituency is local governments in Florida, and the positive results of a series of discussions as it relates to the Enterprises as an alternative the FHFA current Statement and Directive should not be underestimated. We ask for your thoughtful and positive response separate and apart from this rulemaking exercise; and, a commitment to promptly set an initial meeting to consider fashioning a mutually agreeable alternative in Florida.

Thank you for the opportunity to submit comments on the FHFA's Notice of Proposed Rulemaking. Please do not hesitate to contact me, Messrs. Steigerwald, Reid or Lawson if you have further questions or comments.

Sincerely,

Barbara S. Revels

Barbara S. Revels, Chair
Florida PACE Funding Agency
c/o Michael H. Steigerwald, Executive Director
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SAIC Energy, Environment & Infrastructure, LLC

Senator Bill Nelson
Senator Marco Rubio
Representative Jeff Miller
Representative Steve Southerland
Representative Corrine Brown
Representative Ander Crenshaw
Representative Richard Nugent
Representative Cliff Stearns
Representative John L. Mica
Representative Daniel Webster
Representative Gus M. Bilirakis
Representative C. W. (Bill) Young
Representative Kathy Castor
Representative Dennis Ross
Representative Vern Buchanan
Representative Connie Mack
Representative Bill Posey
Representative Thomas J. Rooney
Representative Frederica Wilson
Representative Ileana Ros-Lehtinen
Representative Ted Deutch
Representative Debbie Wasserman Schultz
Representative Mario Diaz-Balart
Representative Allen West
Representative Alcee L. Hastings
Representative Sandy Adams
Representative David Rivera
Governor Scott – Chief of Staff – Steve MacNamara
Florida Department of Agriculture and Consumer Services, Commissioner Adam H. Putnam
Florida Senator Mike Haridopolos, Senate President
Florida Representative, Dean Cannon, Speaker of the House
Florida Association of Counties, Christopher L. Holley, Executive Director
Florida League of Cities, Michael Sittig, Executive Director

FLORIDA PACE FUNDING AGENCY

Submitted: March 26, 2012

BY FEDERAL eRULEMAKING and EMAIL

Alfred M. Pollard, General Counsel
ATTN: Comments/RIN 2590-AA53
Federal Housing Finance Agency
Eighth Floor
400 Seventh Street SW
Washington, DC 20024

Re: RIN 2590-AA53
Advanced Notice of Proposed Rulemaking ("ANPR") Concerning Mortgage Assets Affected by PACE Programs

Dear Mr. Pollard:

On behalf of the Florida PACE Funding Agency ("Agency"), the undersigned submits the Agency's comments on whether the restrictions and conditions set forth in the July 6, 2010 statement ("Statement") issued by the Federal Housing Finance Agency ("FHFA") and the letter directive issued by FHFA on February 28, 2011 ("Directive") should be maintained, changed or eliminated, and whether other restrictions or conditions should be imposed.

The Agency asserts that the restrictions and conditions in the Directive and the Statements should be completely eliminated with respect to the Property Assessed Clean Energy Program in Florida ("Florida PACE Program") that has been established under Florida law by statute and statutorily authorized to be implemented by interlocal agreement among local governments in Florida. Elimination of the restrictions and conditions is warranted

because the operation of the Florida PACE Program does not in any way reduce the value of Fannie Mae and Freddie Mac (collectively the "Enterprises") assets that are being regulated by FHFA or in any way interfere with FHFA's mandate to preserve and conserve the assets of the Enterprises. Furthermore, the Florida PACE Program, as discussed in subsequent sections, does not "present significant risk[s] to certain assets and property of the Enterprises – mortgages and mortgage related assets"; nor does the Florida PACE Program "pose unusual and difficult risk management challenges" as asserted by FHFA in its Directive.

Consequently, the Directive's present admonition to the Enterprises to "continue to refrain from purchasing mortgage loans secured by properties with outstanding first-lien PACE obligations" is unnecessary and unwarranted for Florida mortgages where the underlying real property is subject to non-ad valorem assessments imposed by or on behalf of a local government pursuant to the Florida PACE Program.

The Agency's position will be discussed in three sections: (1) Introduction to Florida PACE and the Florida PACE Funding Agency; (2) General Comments and (3) Agency's Responses to Specific Questions posed by FHFA in its January 26, 2012 Advance Notice of Proposed Rulemaking ("ANPR") and Notice of Intent to prepare an environmental impact statement ("NOI"). Please note an invitation to begin an informal dialogue with the Agency is provided at the conclusion of the third section.

I. Introduction to Florida PACE and the Florida PACE Funding Agency

A. Florida PACE Program - The Florida PACE Program was created by the Florida Legislature in 2010 by the enactment of section 163.08, Florida Statutes (sometimes referred to as the "Florida PACE Program" or the "Florida PACE Act"). Section 163.08 provided express general law authority and subsumed effective, existing, well settled, and well known constitutional, statutory and case law authorizing local governments to use special or non-ad valorem assessments to fund and finance qualifying improvements to real property. Section 163.08 provided and clarified a thoughtful and well-reasoned grant of supplemental legal

authority encouraging cities and counties to make available the levy of special or non-ad valorem assessments to finance these needed and defined "qualifying improvements."[1] Other provisions of section 163.08 articulate the public purpose and compelling need for qualifying improvements, impose obligations on property owners seeking financing, provide carefully crafted minimum statutory underwriting requirements for property owners who find the Florida PACE Program attractive, and provide the narrow legal framework for local governments to impose assessments and enter into agreements to create a statewide agency to administer Florida PACE.

1. Legislative Findings - Section 163.08 sets out the following legislative findings that directly support Florida PACE Program, namely:

- All energy-consuming-improved properties that are not using energy conservation strategies contribute to the burden affect 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.
- 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 mitigation policies.
- There is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance.

[1] Qualifying improvements defined in section 163.08 are limited and include (i) energy conservation and efficiency improvements, (ii) renewable energy improvements, and (iii) wind resistance qualifying improvements that are designed to mitigate against hurricane damage, which is an annual treat in Florida. The authority for wind resistance qualifying improvements is notable in that the primary insurer of property in coastal areas of Florida is Citizens Property Insurance Corporation, which has recently imposed inspection and improvement requirements as a condition to obtaining insurance.

- The Legislature determines that the actions authorized under section 163.08, including but not limited to the financing of qualifying improvements through 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.

A copy of section 163.08, Florida Statutes (2011), is included as Exhibit A to the Agency's comments.

These findings justify the legislative grant of power to local governments (defined as a county, a municipality or a dependent special district under Florida law) to levy non-ad valorem assessments[2] to fund and finance defined "qualified improvements." What these findings do not say expressly, but clearly recognize by implication, is that the mortgage marketplace – including the Enterprises – is ineffective, unable and really not interested in addressing the environmental and other concerns of the compelling state interests addressed in the Florida PACE Act.

2. Qualified Improvements – Florida PACE legislation defines three categories of improvements: (1) Energy Conservation and Efficiency Improvements; (2) Renewable Energy Improvements; and (3) Wind Resistance Improvements. Each of these categories is illustrated by examples without limiting the definition to the listed examples.

The first category, Energy Conservation and Efficiency Improvements, is defined as measures to "reduce consumption through conservation or a more efficient use of electricity, natural gas, propane or to other forms of energy on the property" including but not limited to:

[2] Non-ad valorem assessments are special assessments and are defined in section 197.3632(1)(d), Florida Statutes, and constitute a lien against affected property, including homestead property, as permitted by Article X, Section 4, of the Florida Constitution. The only means of collection is on the same bill as for property taxes.

- Air sealing;
- Installation of insulation;
- Installation of energy efficient heating cooling or ventilation systems;
- Building modification 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.

The second category, Renewable Energy Improvements, is defined as the installation of any system in which the electrical, mechanical or thermal energy is produced from a method using one or more of the following fuels or energy sources:

- Hydrogen
- Solar Energy
- Geothermal Energy
- Bioenergy and
- Wind Energy.

The third category, Wind Resistance Improvements, includes, but is not limited to, the following:

- Improving the strength of the roof deck attachment;
- Creating a secondary water barrier to prevent water intrusion;
- Installing wind resistant shingle;
- Installing gable-end bracing;
- Reinforcing roof-to-wall connections;
- Installing storm shutters; or
- Installing opening protections.

Section 163.08 (2)(b), Florida Statutes (2011).

3. Financing Agreements Between Real Property Owner and Local Government – The documentational core of the Florida PACE Program and the source of the protections it provides lenders like the Enterprises is the recorded financing agreement between the local government and the real property owner. This agreement cannot be executed until the following prequalification steps required by Florida statutory law[3] have been taken. First, the local government must reasonably determine that all property taxes and any other assessments

[3] These criteria are statewide criteria for all real property owners in Florida. This statewide applicability, *inter alia*, ensures uniformity among all financing agreements and dictates recording in the land records as a condition of validity.

levied on the tax bill as property taxes are paid and have not been delinquent for the preceding three (3) years or the property owner's period of ownership, whichever is less. The local government must also reasonably determine that there are no involuntary liens on the property, including, but not limited to, construction liens. There must be no notices of default or other evidence of property-based debt delinquency recorded during the preceding three (3) years or the property owner's period of ownership, whichever is less. Finally, the property owner who wants to participate under the Florida PACE Program must be current on all mortgage debt on the property. Section 163.08(9), Florida Statutes.

In addition to these prequalification requirements, Florida law places an aggregate cap on the amount of available Florida PACE Program funding for qualified improvements. The total amount of the assessment may not exceed 20% of the just value of the property as determined by the county property appraiser, unless another amount is consented to by the holders or loan services of the mortgage secured by the property. Section 163.08(12), Florida Statutes. This cap may be adjusted without the consent of holders or loan servicers if an energy audit demonstrates that the annual energy savings from the qualified improvements equals or exceeds the annual repayment amount of the non-ad valorem assessment.

4. Mortgage Holder or Loan Servicer Notice – Florida law requires that the property owner give not less than 30 days prior written notification to the holders or loan servicers of any existing mortgages about the owner's intent to enter into a financing agreement. This notice must disclose the maximum principal amount to be financed and the maximum annual assessment necessary to repay the amount. As a prerequisite to valid assessments, proof that this notice has been given must be provided to the local government. Section 163.08(14), Florida Statutes. It should be noted that the Florida PACE Act was passed virtually unanimously and the Florida Mortgage Bankers Association along with other market stakeholders participated substantively as the bill worked its way through the Legislature. The lenders group felt very strongly that they were fully protected by the new law through the imposition of statutory underwriting guidelines (discussed elsewhere in this response), particularly the 30 day prior

written notice provision, the concurrent ability to adjust the required mortgage escrow deposit amounts to reflect the new PACE assessment amounts, the requirement that the only means to collect the assessment was on the annual property tax bill, and that, in order to be valid, the financing agreement evidencing the assessment must be recorded in the local land records (thus providing uniformly located and constructive notice to all stakeholders).

5. Repayment of Assessment - Each financing of improvements by the local government is repaid by the property owner through assessment payments that are by law made part of the annual property tax bill. Also, by law, the property owner's mortgage escrow can be increased to include the annual assessment as part of the real property owner's monthly mortgage payment, which effectively converts the annual cost to a monthly cost. Indeed, the requirement for the prior 30 day notice to the mortgage holder or loan servicer was specifically required in order to facilitate and document any desired escrow payment amount.

6. Effect of Notice to Mortgage Holder or Loan Servicer – Section 163.08 states that any acceleration clause in an agreement binding upon the property owner is not enforceable if the acceleration is demanded solely as a result of the real property owner entering into a PACE financing agreement. The holder or loan servicer is, however, permitted by law to increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.

7. Mandatory Notice to Prospective Purchaser – The seller of real property subject to the PACE assessment with an unpaid balance due shall provide the prospective purchaser with a written disclosure statement in the following form which is set out in section 163.08(14).

> 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 §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 the 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.

This disclosure statement puts the purchaser on notice that there is an assessment on the Property for qualifying improvements and encourages the prospective purchaser to contact the county property appraiser's office to learn more about the assessment. This is in addition to the requirement that the financing agreement itself must be recorded in the county where the property is located within five (5) days after the execution of the financing agreement. Section 163.08 (8). The recorded financing agreement is deemed by statute to provide constructive notice that there is an assessment on the property and that the assessment constitutes a lien of equal dignity to county taxes and assessments from the date the agreement is recorded. *Id.*

B. Florida PACE Funding Agency – One of the features of Florida PACE legislation, which the Agency believes is only found in the Florida PACE Program, is that the legislation confirms Florida local government's ability to enter into a partnership with one or more local governments "for the purpose of providing and financing qualifying improvements." Section 163.08(5), Florida Statutes. Furthermore, this partnership of cooperating local governments is authorized to be administered by a for-profit entity or a not-for-profit entity. Section 163.08(6), Florida Statutes. As a result, Florida statutory law paves the way for creating a clearinghouse or consortium of local governments whose PACE assessments can be enveloped into a uniform and scalable program efficiently administered by a focused third party.

As a direct result of this enabling legislation, the Florida PACE Funding Agency was created in June 2011 through an interlocal agreement or partnership between Flagler County and the City of Kissimmee. Once the Agency was established, it can now operate anywhere in Florida where a local government decides to join the Agency through a process known as subscription. The interlocal agreement between Flagler County and City of Kissimmee creating the charter for Florida PACE Funding Agency is expressly authorized under Florida law[4] and is

[4] Section 163.01(7)(g), Florida Statutes.

attached to the Agency's comments as Exhibit B. This subscription methodology is a mechanism to create markets for the qualified improvements with little or no cost to local government treasuries, while at the same time assuring the transparency and accountability required of a local governmental entity in Florida. These two incorporating local governments seek no profit or ongoing recompense in their role as incorporators.

The Agency was created with the goal of establishing and using statewide standards and procedures to implement the framework in section 163.08 for the benefit of both property owners and vendors. The Agency is fully aware that its constituency is local governments. According to the interlocal agreement forming the Agency, the Agency's specific 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 uniform and scalable program for their constituents.

How Does the Agency Work? As a duly formed separate legal entity under Florida law, the Agency is empowered to issue bonds to raise revenue. The Agency's bonds are issued on an as-needed basis to underwrite the qualified improvements. The bonds are sold in the market like any other municipal bond, thereby generating revenue that the Agency uses to pay for the qualified improvements on its subscribers' property owners improved property that enter into financing agreements described above. The bond proceeds are repaid by the property owners over time through the statutorily authorized non-ad valorem assessments on property tax bills.

The Circuit Court, in Florida PACE Funding Agency vs. State of Florida, et. al., Case No. 2011-CA-1824, issued a Final Judgment on August 25, 2011 which became final and non-appealable on September 27, 2011, in which the Court validated the issuance of up to $2,000,000,000 in debt obligations by the Florida PACE Funding Agency (the "Agency") and made various findings of fact and law (the "Final Judgment"). These findings of fact and law are now binding on all participants in the Agency's program, including subscribing local governments, participating property owners, holders of any Agency debt obligations and mortgage lenders who hold a mortgage on property subject to, or which may become subject to,

a non-ad valorem assessment levied pursuant to the Agency's program. Some of the significant points of the Final Judgment are discussed below.

a. The Agency is an independent unit of government and separate legal entity with authority to operate in either a county or city in Florida where the Agency and the local government have entered into a Subscription Agreement.

b. A subscribing local government has no liability for any actions or debt obligations undertaken by the Agency, and the sole source of payment for any liabilities or debt obligations of the Agency are non-ad valorem special assessments imposed by or on behalf of subscribing local governments pursuant to the Agency's program.

c. The Final Judgment has statewide application and enforceability, and is binding on all parties with an interest in the Agency's program wherever the Agency's program operates, including all mortgage lenders. The benefits of the Final Judgment inure solely to the Agency, its subscribers, and participants in its program and not to other similar programs.

d. The Final Judgment recognizes that the special assessments levied pursuant to the Agency's program are of equal dignity with all other non-ad valorem special assessments levied by local governments as envisioned by the Florida Constitution, and as such 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.

e. The Final Judgment also expressly recognizes that each of the assessments levied pursuant to the Agency's program and evidenced by a recorded financing agreement are duly authorized and constitute valid and enforceable governmental assessments on the subject property.

f. The Final Judgment also confirmed the validity of the state law which 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 the property owner entering into a financing agreement pursuant to the Agency's program which establishes a non-ad valorem assessment. As a result, these provisions in any mortgage or related document may not be used by the mortgage lender as the basis to declare a default or acceleration of the mortgage lien should the mortgagor elect to participate in the Agency's energy conservation, renewable energy or wind resistance improvements program and have a non-ad valorem assessment imposed on the mortgaged property.

g. Provisions in a franchise agreement between a subscribing local government and a public or private electric utility provider which seek to limit the local government's ability to encourage or participate in energy conservation programs or alternative energy programs were also confirmed as not enforceable to prevent the local government from subscribing to the Agency's program.

What is the effect of a Bond Validation Judgment in Florida? Section 75.06(1), Florida Statutes, requires the clerk of court to publish a copy of the order to show cause at least once each week for two consecutive weeks in a newspaper published in the territory affected by the issuance of the bonds. With respect to the Florida PACE Funding Agency, noticed was duly published in four counties – Flagler County, Leon County, Osceola County and Pinellas County, Florida. "By this publication *all* property owners, taxpayers, citizens, *and others having or claiming any right, title or interest in the county, municipality or district, or the taxable property therein*, are made parties defendant to the action and the court has jurisdiction of them to the same extent as if named as defendants in the complaint and personally served with process." § 75.06(1), Fla. Stat. (2010) (emphasis added). The final judgment validating the bonds is "forever conclusive as to all matters adjudicated against . . . *all parties affected thereby, including all property*

owners, taxpayers and citizens of the plaintiff, and all others having or claiming any right, title or interest in property to be affected by the issuance of said bonds . . . or to be affected in any way thereby . . . ." § 75.09, Fla. Stat. (2010) (emphasis added).

Are Procedural Due Process issues associated with a Florida bond validation? The Florida Supreme Court has expressly held that the constructive service of process by publication established by Chapter 75, Florida Statutes, satisfies the due process requirements of the Florida and United States Constitutions. *See Keys Citizens for Responsible Gov't, Inc. v. Fla. Keys Aqueduct Auth.*, 795 So. 2d 940 (Fla. 2001). *See also Jackson v. Waller Independent Sch. Dist.*, 625 F. Supp. 2d 357 (9th Cir. 2008) (describes in-depth the importance of the preclusive effects of bond validation judgments). The purpose of constructive service statutes is to give a nonresident an opportunity to come into court and defend the suit against him or her within the time specified in the order to appear. *Seiton v. Miami Roofing & Sheet Metal*, 10 So. 2d 428 (Fla. 1942). Statutes authorizing service by publication must provide for sufficient notice of the action to be fair to the defendants and to satisfy the due process requirements of the state and federal constitutions. *Gribbel v. Henderson*, 10 So. 2d 734 (Fla. 1942).

As the Florida Supreme Court in *Keys Citizens for Responsible Government* explained, procedural due process requires both notice and an opportunity to be heard. *Keys Citizens for Responsible Gov't*, 795 So. 2d at 948. The notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). The Florida Supreme Court has concluded that the constructive service of process by publication for a bond validation satisfied the requirements of due process of law. *Keys Citizens for Responsible Gov't*, 795 So. 2d at 948.

Who are Interested Parties? An interested person, for purposes of chapter 75, Florida Statutes, "is anyone who has a justiciable interest in a bond validation proceeding because he or she stands to gain or lose something as a direct result of the bond issuance." *Rich v. State*, 663 So. 2d 1321, 1324 (Fla. 1995).

In *Rich*, a group of residents of a nearby village filed a motion to intervene in a bond validation proceeding. *Id.* at 1323. The group of residents did not own property within the district, but only paid contractual fees for use of the facilities being purchased by the bonds. *Id.* These fees will be used to repay the bonds. *Id.* The Florida Supreme Court held this group of residents was not an interested person capable of intervening in a bond validation. *Id.* at 1324. While the group of residents may be "affected" by the issuance of the bonds, they are not "adversely" affected because they will be in the same position after the issuance as before the issuance. *Id.* The group of resident's only interest extends from the contractual rights, which are not changed by the validation of the bonds. *Id.*

The Agency recognized that some mortgage lenders making or holding loans on Florida property may have viewed themselves as potentially adversely affected by the issuance of the bonds; notwithstanding that, it is and has been for over a century, well settled law that the priority of a security interest in a mortgage and other contractual rights are subordinate to the levy of special assessments and the subsequent issuance of the bonds. The unmistakable purpose of the Florida PACE Act is to encourage the careful use of assessments that will have priority to those of mortgage holder's interests in a manner indistinguishable from all other governmental assessments. Moreover, a mortgage lender probably did not have to use section 75.07, Florida Statutes, to intervene in the bond validation. They are probably party defendants under section 75.06, as they claim a right, title and interest in the property, much the same way a citizen and taxpayer does. However, the Florida Supreme Court has interpreted the terms "taxpayer" and "citizen" to require a similar adversely affected or justiciable interest requirement. No party chose intervene in the proceeding.

Federal Constitutional Issues: Once it becomes final, a decree validating a proposed bond issue puts at rest all questions which were raised in the validation as well as questions which could have been raised. *Lipford v. Harris*, 212 So. 2d 766 (Fla. 1968). Chapter 75, Florida Statutes, provides that a final judgment in bond validation proceeding is conclusive as to all matters adjudicated, if judgment validates bonds and no appeal is taken within time limits, precludes re-litigation only on narrow issues appropriate to a bond validation proceeding and had no bearing on issues ruled to have been collateral and not heard at bond validation proceeding. *Warner Cable Commn'c, Inc. v. City of Niceville*, 581 So. 2d 1352 (Fla. 1st DCA 1991). However, if resolution or proceedings on which municipal bonds are based conflicts with organic law, rule of repose, based on decree validating them, does not apply. *City of Ft. Myers v. State*, 117 So. 97 (Fla. 1928). Judicial decree of validation of town's bonds before their sale estopped town, its taxpayers and citizens from ever attacking their validity, except perhaps on constitutional grounds. *U.S. ex rel. Horigan v. Heyward*, 98 F.2d 433 (5th Cir. 1938); *see also Wright v. City of Anna Maria*, 34 So. 2d 737 (Fla. 1948) (this statute conclusively adjudicates the validity of duly authorized bonds and certificates as issued, unless it appears by statute, by bonds or certificates, by record of validating proceedings, or by proceedings required for issuance of bonds, that some expressed or implied command, prohibition or limitation of Constitution was violated in validating or issuing the bonds); *State v. Town of Belleair*, 170 So. 434 (Fla. 1936) (where questions of constitutional validity of municipal bonds are not raised and settled in validation proceeding, questions may be later availed of as a defense).

However, a federal court in Texas has recently held that taxpayers were barred by res judicata from challenging the validity of bonds in federal court where the state court issued a final judgment arising out of the same subject matter and involving the same parties where the taxpayers could have brought the federal constitutional claims in state court, but chose not to do so. *Jackson v. Waller Independent Sch. Dist.*, 625 F. Supp. 2d 357 (S.D. Texas 2008). In this case, the court held that a federal court must give a state-court judgment the same preclusive effect as that judgment would have under the law of the state in which the judgment was rendered. *Id.*

at 364. The court in *Jackson* suggests that even if the federal constitutional issues are not heard, a validation judgment may preclude those issues being raised in a subsequent proceeding if the court did not refuse to hear those issues. *Id.* at 367. In other words, if the issues were raised, but the court refused to hear them as collateral issues, they could be raised in a subsequent proceeding. However, if the issues were not raised, they could be treated as being waived by the parties and the validation judgment would be conclusive as to those issues. So, if federal constitutional issues are able to be raised in a Florida bond validation proceeding and are voluntarily not raised, a mortgage lender or guarantor would be unable to raise those issues in a subsequent federal proceeding.

What Are the Advantages of the Agency? The Agency maintains that its unique platform will allow local governments in Florida of varying size and resources to access capital markets without having to implement or deploy individual programs or individually seek capital for their constituents. Through the delivery of a single, statewide, uniform program, certainty is provided to local governments, property owners, vendors and mortgage lenders. In addition, the statewide platform the Agency offers is designed to take advantage of efficiencies and economies of scale in order to deliver the most cost effective program possible.

The Agency also believes that its centralized administration provides efficiencies and cost savings, while fostering partnerships with commercial and industrial groups, educators, energy auditors, contractors, suppliers and installers. In a nutshell, the Agency's implementation of the Florida PACE Program facilitates the creation of local, private sector job engines while at the same time providing a uniform approach to financing that will address any concerns voiced by the Enterprises about adverse impact on mortgage assets as well as the concerns of the Legislature articulated in the Florida PACE Act.

Mr. Pollard, beyond these comments and separate and apart from the process in which they are submitted, the Agency seeks a direct dialogue with you as it relates to the Agency's implementation of the Florida PACE Program (emphasis supplied). Please see, in particular, Section III hereof, Agency's Response to Specific Questions Posed by FHFA, item F, Invitation

to FHFA from the Florida PACE Funding Agency to Establish an Immediate and Meaningful Dialogue at the end of the body of this correspondence.

II. General Comments

The following comments from the Agency address general points made by the FHFA in the preamble to the ANPR and NOI.

General Comment No. 1 - Part C of the ANPR states that according to FHFA, "such legislation [PACE] leaves most program implementation and standards to local government bodies and provides no uniform requirements or enforcement mechanisms."

Florida PACE Funding Agency's to General Comment No. 1 – The Florida PACE Program as administered by the Florida PACE Agency provides program implementation and standards that are uniform by general law and will apply requirements and enforcement mechanisms on a statewide platform. While the Agency does not dispute that PACE legislation in other states might be correctly characterized by this statement, it is not a correct characterization of the Florida PACE Program and cannot be used as a basis to apply the restrictions of the Statement and the Directive to the Enterprises' purchase of mortgage assets in Florida.

General Comment No. 2 – Part C of the ANPR states that according to FHFA, "[t]he mortgage holder is also at risk in the event of a foreclosure for any diminution in the value of the property caused by the outstanding lien or the retrofit project, which may or may not be attractive to potential purchasers."

Florida PACE Funding Agency's to General Comment No. 2 – FHFA's statement regarding the possibility of diminution in value of property is purely speculative and not supported by any evidence in the ANPR. To the contrary, university level studies have clearly demonstrated that the types of improvements offered through a PACE program result in noticeable increases in a property fair market value or fair rental value. See: University of

California Energy Institute, *Doing Well by Doing Good? Green Office Buildings*, by Piet Eichholtz, Nils Kok and John M. Quigly, December 2010 [copy attached as Exhibit D hereto], and *Certified Home Performance: Assessing the Market Impacts of Third Party Certification on Residential Properties*, by Ann Griffin, Earth Advantage Institute, May, 2009 [copy attached as Exhibit E hereto]. See also: *Evidence of Rational Market Valuations for Home Energy Efficiency*, by Rick Nevin and Gregory Watson, October 1998 [copy attached as Exhibit F hereto].

General Comment No. 3 – Part C of the ANPR states that according to FHFA, "...the homeowner's assumption of this new obligation may itself increase the risk that the homeowner will become delinquent or default on the other financial obligations, including any mortgage obligations."

Florida PACE Funding Agency's to General Comment No. 3 – FHFA's statement regarding the possibility that PACE assessments may increase the risk of delinquency and default is purely speculative and not supported by any evidence in the ANPR. There is no increased risk in Florida that the assumption of the PACE assessment will increase delinquency or default because Florida general law, *inter alia*, requires the following safeguards on property owners entering into a financing agreement with the Agency or local governments in Florida: All property taxes must be paid and have not been delinquent for the preceding 3 years or property owner's period of ownership, whichever is shorter, there are no involuntary liens like construction liens, no notices of default or other evidence of property-based debt delinquency have been recorded during the preceding 3 years or period of ownership whichever is shorter; the property owner must be current on all mortgage debt on the property and the total amount of any non-ad valorem assessment may not exceed 20% of the clearly defined (and conservatively determined) "just value" of the property as shown by law on the local property appraiser's records.

In addition, many of the improvements will likely result from a need to cure deferred maintenance issues or to address the need to replace worn out equipment such as heat pumps and water heaters. Many other improvements may be necessitated by the need to obtain or

maintain property insurance on the improved property. As mentioned herein, Citizens Property Insurance Corporation, often the sole insurer for coastal property in Florida, has implemented a requirement of inspection and mandating improvements or repairs to property as a condition to obtaining property insurance (a requirement of all mortgage lenders). As a result, many of the improvements that would be financed through the levy of an assessment would need to be financed under alternative lending opportunities, or simply continue to be deferred. Most, if not all, of the alternative lending options could adversely impact the property owner, such as acceleration of repayment provisions. It is clearly in the paramount interest of the mortgage lender to insure that such deferred maintenance items or improvements to enable the property to be insured be completed in a manner least likely to cause a financial detriment to the property owner/mortgagor. Properly established PACE assessments offer the property owner and mortgagee the highest level of avoidance of delinquency and default protection over alternative financing arrangements.

General Comment No. 4 – Part C of the ANPR states that according to FHFA, "[p]roponents of PACE programs have analogized the obligations to repay PACE loans to traditional tax assessments." FHFA then concludes that the so-called "loans" are not traditional tax assessments because PACE assessments are voluntary, participating property owners control use of funds, select contractors, own the fixtures and must repair the fixtures.

Florida PACE Funding Agency's to General Comment No. 4 – Pursuant to the terms of the final judgment in the Florida PACE Agency bond validation case [*See* Paragraph Twelfth – Final Judgment - Exhibit C attached hereto], PACE assessments for qualified improvements are deemed to be traditional tax assessments under Florida law, on a Florida Constitutional par with all other government assessments and taxes levied on property. Indeed, "voluntary" assessments are fairly common in Florida. A significant number of assessments in Florida arise from communities or large landowners/developers approaching their local government and requesting that an assessment be imposed to pay for various improvements or essential services such as drainage, road extensions and beautification, extension of water and sewer lines,

burying utility lines, fire protection, garbage collection or landfill operations, or localized stormwater management. These types of improvements or essential services are often indirect, cosmetic in nature, and do not significantly increase the market value of assessed property as much as the direct improvement funded by the Florida PACE Program. To the contrary, PACE assessments provide a direct and verifiable benefit to the assessed property and have a direct impact on the market value of the assessed property. However, no issue has ever been raised by either Fannie Mae or Freddie Mac about these other "traditional" voluntary assessments.

General Comment No. 5 - Part C of the ANPR states that according to FHFA, "[n]othing in PACE requires that local governments adopt and implement nationally uniform financial underwriting standards such as minimum total loan to value ratios that take into account either: (i) total debt or other liens on the property; or (ii) the possibility of subsequent declines in the value of the property.

Florida PACE Funding Agency's to General Comment No. 5 – The Florida enabling legislation provides a thoughtful minimum set of guidelines which are required to be met before a property owner and the assessing local government can enter into a financing agreement to evidence the levy of the assessment which includes satisfaction of any due process concerns. [*See* Paragraph Eighteenth – Final Judgment – Exhibit C hereto]

The Florida PACE Act, unlike the enabling legislation in most (if not all) of the other states which authorize PACE type programs, deliberately undertook the adoption of a statutory regimen designed to protect property owners, local governments and mortgage lenders. As mentioned earlier, the legislation was passed with the participation and support of the Florida Mortgage Bankers Association and many other stakeholders scrutinizing the legislation. In addition, the Florida legislation was designed to create transparencies and mechanisms to prevent the occurrence of fraud under the program. For example, Florida law requires that all owners of an assessed property consent in writing to the levy of the assessment on the property. In addition, the law limits the amount of the assessment to 20% of the "just value" of the property, unless the mortgage holder has consented to a higher amount or an energy audit

demonstrates that the annual energy savings will equal or exceed the annual assessment amount. The use of "just value" rather than "fair market value" was a deliberate decision of the Legislature to avoid the use of inflated market value appraisals. In Florida, "just value" (a statutory concept embedded in the State's property tax laws) of property is determined by the local property appraiser each year using a statutory methodology. The property appraiser is an elected official serving as an independent Constitutional officer in each community. "Just value" is a statutory term. It is significantly lower than market value, and is the basis for determining "assessed value", the value against which property taxes are assessed. In most every case, 20% of "just value" of a property will be a fraction of similar percentage of "fair market value".

In fact, the Florida PACE Act, was drafted taking into account the guidelines of the White House Whitepaper on PACE from October, 2009, the then promulgated guidance provided by the Office of the Comptroller of the Currency, and difficulties encountered in other jurisdictions which did not provide such sound statutory guidance for PACE programs.

General Comment No. 6 – Part C of the ANPR states that according to FHFA, "[m]any PACE programs also do not employ standard personal creditworthiness requirements... although some include narrower requirements, such as that the homeowner-borrower be current on the mortgage and property taxes and do not have a recent bankruptcy history."

Florida PACE Funding Agency's to General Comment No. 6 – Florida's PACE legislation has significant personal creditworthiness requirements that go beyond "standard." These requirements include that (1) all property taxes must be paid and have not been delinquent for the preceding 3 years or property owner's period of ownership, whichever is shorter, (2) there are no involuntary liens like construction liens, (3) no notices of default or other evidence of property-based debt delinquency have been recorded during the preceding 3 years or period of ownership whichever is shorter; and (4) the property owner must be current on all mortgage debt on the property. In any event, PACE assessments should not be considered under the same guidelines one would consider in the context of a conventional

mortgage loan. Conventional mortgage loans represent personal obligations of the debtor while PACE assessments, like all other governmental assessments, are not personal obligations, but rather obligations which run with the land. Customary credit underwriting procedures for personal loans are misplaced when used in conjunction with a PACE assessment.

General Comment No. 7 – Part C of the ANPR states that according to FHFA, "[s]ome local PACE programs communicate to homeowners that incurring a PACE obligation may violate the terms of their mortgage documents."

Florida PACE Funding Agency's to General Comment No. 7 – Florida law provides that properly executed financing agreements for PACE assessments cannot be the sole trigger of an acceleration clause or other unilateral modification of the property owner's mortgage or other lienholder agreement. Section 163.08(13). The power to enact such non-acceleration provisions by general law and the case law in support thereof was verified by the Circuit Court in the Agency's bond validation judgment [*See* Exhibit C]. The Court, in ruling that the state law override of a mortgagee's ability to declare a default and accelerate the mortgage was not an infringement of the contract, determined that the financing agreements were essentially an alternative method of evidencing due process in the levying of the assessment on the affected property. Since the assessment is just like any other governmental assessment under the Florida Constitution, the undertaking of the assessment obligation would not and does not violate an existing mortgage contract under Florida law. However, the carefully crafted provisions of the Florida PACE Act do, in fact, address and protect all mortgages by and through the notice, escrow, and overall assessment cap or limitation provisions of the legislation.

General Comment No. 8 – FHFA's Statement as quoted in the ANPR says: "[f]irst liens established by PACE loans . . . are not essential for successful programs to spur energy conservation."

Florida PACE Funding Agency's to General Comment No. 8 – FHFA's position on the value of PACE programs to energy conservation lacks factual evidence or citation to studies or reports cited in the ANPR. To the contrary, under Florida law, the Florida Legislature has determined in its legislative findings in section 163.08 that there is "a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance." (emphasis added) Furthermore, the Florida Legislature has determined that the actions authorized under section 163.08, including but not limited to the financing of qualifying improvements through 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 (emphasis added). Please carefully review the Florida PACE Act. The Agency submits that FHFA cannot ignore these legislative findings when it seeks to apply its unreasonable and unjustified restrictions and conditions contained in the Statement and the Directive. *See, e.g., Strand v. Escambia County*, 992 So. 2d 150, 156 (Fla. 2008) ("legislative declarations of public purpose are presumed valid and should be considered correct unless patently erroneous") (quoting *Boschen v. City of Clearwater*, 777 So. 2d 958, 966 (Fla. 2001)); *State v. Housing Fin. Auth. of Pinellas County*, 506 So. 2d 397, 399 (Fla. 1987).

III. Agency's Responses to Specific Questions posed by FHFA in its January 26, 2012 Advance Notice of Proposed Rulemaking ("ANPR") and Notice of Intent ("NOI")

A. Conditions and Restrictions Relating to PACE

Question 1 – Are the conditions and restriction relating to FHFA-regulated entities dealing in mortgages on properties participating in PACE programs necessary? If so, what specific conditions and/or restrictions are necessary?

Florida PACE Funding Agency's Response to Question No. 1 - FHFA's Statement and Directive assert that PACE programs that provide for first-lien priority over mortgage loans present significant risks to certain assets and property of the Enterprises, as well as present

unusual and difficult risk management challenges for the Enterprises. Based on these premises, FHFA mandates that the Enterprises must refrain from purchasing mortgage loans secured by property subject to PACE assessments. These restrictions are not justified in general since they are based solely on assumptions which are not derived from fact based research, and in specific, in Florida for properties that secure PACE assessments, for all the clear and convincing evidence set forth in the discussion of the Florida PACE Program in the previous sections and herein. Most importantly, the Agency points out that Florida has adopted a statewide, uniform approach to creditworthiness, underwriting standards, eligible improvements, notice, collection and an escrow procedures, and other provisions that ensure that the assets of the Enterprises will not be at risk.

B. Financial Risk to Enterprises Resulting from Subordination of Mortgage Security Interests to PACE liens

Question No. 2 – How does the lien priming feature of first-lien PACE obligations affect the financial risk that is borne by holders of mortgages affected by PACE obligations or investors in the mortgage backed securities based on such mortgages? How and at what cost could such parties insulate themselves from such increased risk?

Florida PACE Funding Agency's Response to Question No. 2[5] – It is unquestioned that the standard terms of mortgage instruments approved by the Enterprises provide that the

[5] The Agency answer asserts that the predicate for the question is erroneous, arbitrary and capricious, as it assumes the 'lien priming feature of the first lien PACE obligations' are somehow distinguishable from all other governmental assessments. Just the contrary, in Florida, PACE assessments are indistinguishable from and fully equivalent to all other non-ad valorem assessments. See Paragraph Twelfth in the Final Judgment. The term 'lien priming' occurs in a bankruptcy setting where cash injections during reorganization are given priority or parity with prior secured lenders. The use of the term by FHFA in this context is pejorative, misleading and improper. In a bankruptcy circumstance there can be a priority struggle between contract lenders where debtor in possession financing is necessary. In a contest between a contract lender and a property tax or non-ad valorem or special assessment outside of the very narrow circumstance where 'lien priming' might occur, every mortgagor knows that its mortgage, regardless of first in time considerations, is simply not on par with the tax or assessment.

mortgage lien is subordinate to taxes and assessments, and it is undisputed that nationwide, many existing assessments are voluntary. It is important to note that such general taxes and assessments for community improvements like sewers, water, land fill operation and others do not have the same direct benefit to the assessed property that is the hallmark of PACE assessments. PACE assessments generate a direct benefit to assessed property (cost saving associated with energy efficiency, protection of property in storm events, lower insurance costs) that is coupled with a direct increase in fair market value which directly improves the lender's security for the mortgage loan. Consequently, the holders of mortgages that will be affected by PACE assessments in Florida have decreased financial risk that does not require mechanisms and costs to insulate them from risk. The Agency believes that the PACE assessment in Florida will, in and of itself, be an insulation from risk, even in a volatile housing market. FHFA simply cannot justify its restrictions and conditions in Florida on the basis of increased risk and to do so constitutes arbitrary and capricious agency action.

In addition, applicable Florida law and the Agency's form of statutorily required financing agreement will require the property owners participating in a PACE assessment to consent to an immediate adjustment in the monthly deposit to the mortgage escrow for taxes and insurance, or to the imposition of an escrow if one is not currently required, should the mortgage lender request such a change. The monthly funding of the escrow for taxes and insurance is the customary method applied by mortgage lenders, including the Enterprises, to assure that priority lien tax and assessment liens are paid on a timely basis which preserves the lenders security and first lien position under its mortgage.

Question No. 3 (1) – How does the lien priming feature of the first-lien PACE obligations affect any financial risk that is borne by the holders of mortgages affected by PACE obligations or investors in mortgage-backed securities based on such mortgages and relate to any of the following: The total amount of debt secured by the subject property relative to the value of the subject property (Combined Loan to Value Ratio for the property or other measures of leverage).

Florida PACE Funding Agency's Response to Question No. 3 (1)[6] – Under the Florida PACE Program there is an annual assessment for the property each year, without acceleration, which is the same exposure for the mortgage holder as presently exists for property taxes and all other assessments collected over a period of years. Since the PACE assessment runs with the land and is not a personal obligation of the property owner, the analysis of a combined loan to value ratio is at best misplaced, and creates confusion as to the true nature of the assessment liens. Finally, as any debt load is added, the question ignores the fact that qualifying improvements also directly add value to the property. Where the Enterprises are faced with underwriting the mortgage on a property which already has a PACE assessment, that underwriting presently does and/or should consider the annual cost of the PACE assessment in conjunction with the estimated annual taxes.

Question No. 3 (2) – How does the lien priming feature of the first-lien PACE obligations affect any financial risk that is borne by the holders of mortgages affected by PACE obligations or investors in mortgage-backed securities based on such mortgages and relate to any of the following: The amount of funds available to pay for energy-related home-improvement projects after the subtraction of administrative fees or any other program expenses charged or deducted before funds become available to pay for an actual PACE-funded project. (FHFA understands such fees and expenses can consume up to 10% or more of the funds a borrower could be obligated to repay under some PACE programs).

Florida PACE Funding Agency's Response to Question No. 3 (2)[7] – Fees and expenses for the Florida PACE Program will be lower than other programs because its structure enables it to seek the lowest cost program. This is so because as a non-profit governmental agency under Florida law, a local government (or the Agency) cannot legally seek a profit generating special assessment program for itself (or for any subscribing local government). Just as an overpriced mortgage will not attract borrowers, neither will an overpriced PACE program attract

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[6] See footnote [5].

[7] See footnote [5].

participants. The question erroneously, capriciously, and arbitrarily surmises that the market will overpay for qualifying improvements that do not add value and/or create untenable debt load, and/or will render the property less valuable, thus rendering investors in mortgage-backed securities based upon such mortgages at increased risk. The Agency believes that its administrative cost will be far less than the 10% figure cited by FHFA, which citation is made without reference to underlying facts to support its figure. The administrative costs of the Florida PACE Program will be limited by existing constraints on local governments in Florida, market constraints, and priced into every non-ad valorem assessment by the property owner; and, for the foregoing and other reasons articulated herein, will not increase financial risk to the mortgage holder.

Question No. 3 (3) – How does the lien priming feature of the first-lien PACE obligations affect any financial risk that is borne by the holders of mortgages affected by PACE obligations or investors in mortgage-backed securities based on such mortgages and relate to any of the following: The timing and nature of advancements in energy-efficiency technology.

Florida PACE Funding Agency's Response to Question No. 3(3)[8] – The Florida PACE Program will unquestionably advance the development of energy efficiency technologies as it expands the market for the use of these technologies in Florida. The market forces generated by the Florida PACE Program will result in unprecedented savings for the energy efficiency improvements, as well as energy cost savings for the property owner. The Agency does not foresee any financial risk borne by holders of mortgages secured by real property subject to PACE assessments due to the timing and nature of advancements in energy efficiency technology in Florida. While it may be correct that future buyers of improved energy-efficiency technologies over time may see more energy savings than current buyers, any future increase in savings does not negate the benefits of the current savings to current buyers.

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[8] See footnote [5].

Question No. 3 (4) – How does the lien priming feature of the first-lien PACE obligations affect any financial risk that is borne by the holders of mortgages affected by PACE obligations or investors in mortgage-backed securities based on such mortgages and relate to any of the following: The timing and nature of changes in potential homebuyers' preferences regarding particular kinds of energy-efficiency projects.

Florida PACE Funding Agency's Response to Question No. 3(4)[9] - The Florida PACE Program could anticipate changes in homebuyers' preferences regarding particular kinds of energy-efficiency projects over the life of the Program in the same way that the Enterprises anticipates changes in consumer preferences for types of kitchens, bathrooms and pool areas for houses secured by properties located in different parts of the country over different periods of time. The Agency does not foresee any financial risk borne by holders of mortgages secured by real property subject to PACE assessments due to those changes in preference for energy efficiency projects any more than the Enterprises have seen increased financial risk due to changes in preferences for other features of the secured property. While it may be correct that future buyers of improved energy-efficiency technologies may see more energy savings than current buyers, any future increase in savings does not negate the benefits of the current savings.

Question No. 3 (5) - How does the lien priming feature of the first-lien PACE obligations affect any financial risk that is borne by the holders of mortgages affected by PACE obligations or investors in mortgage-backed securities based on such mortgages and relate to any of the following: The timing, direction and magnitude of changes in energy prices.

Florida PACE Funding Agency's Response to Question No. 3(5)[10] – The Agency believes that the direction and magnitude of changes in energy prices are not relevant to financial risk that is borne by holders of mortgages subject to PACE assessments. This is so because the key factors in the success of PACE programs are energy cost savings to the property owner and the

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[9] See footnote [5].

[10] See footnote [5].

fact that studies have shown there is an increase in fair market value for property with energy efficiency and alternative energy improvements that is independent from energy prices.

Question No. 3(6) - How does the lien priming feature of the first-lien PACE obligations affect any financial risk that is borne by the holders of mortgages affected by PACE obligations or investors in mortgage-backed securities based on such mortgages and relate to any of the following: The timing, direction, and magnitude of changes of property values, including the possibility of downward adjustments in value

Florida PACE Funding Agency's Response to Question No. 3(6)[11] - The Agency believes that the timing, direction and magnitude of changes in property values, including the possibility of downward adjustments in value, are not relevant to financial risk that is borne by holders of mortgages subject to PACE assessments. This is so because the timing, direction and magnitude of changes of property values is a risk that is always on the holder of mortgages with or without PACE assessments. Additionally, studies have shown that there is an increase in fair market value for property with energy efficiency and alternative energy improvements that is independent from timing, direction and magnitude of changes of property values due to other factors.

Question No. 4(1) – To the extent that the lien priming feature of first lien PACE obligation increases any financial risk that is borne by holders of mortgages affected by PACE obligations or investors in mortgage backed securities based on such mortgages and that relates to any of the following, how and what cost could such parties insulate themselves from that increase in risk: The total amount of debt secured by the subject property relative to the value of the subject property.

Florida PACE Funding Agency's Response to Question No. 4(1)[12, 13] – First and foremost, the Agency does not believe that the PACE assessments in Florida will increase any financial

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[11] See footnote [5].

[12] See footnote [5].

[13] Please also see Agency's Response to Question No. 3(1).

risk to the holder of the mortgage or investors in mortgage backed securities. Notwithstanding this belief, the Agency states that the nature of the qualifying improvements eligible under the PACE program that increase the property's fair market value and/or render the property insurable (especially in coastal areas subject to Citizens Insurance, the state sponsored insurer of last resort) is a no-cost offset to any financial risk. Since the PACE assessments are not subject to acceleration (unlike many loans) the mortgage holder or investors in mortgage backed securities would look at each year's assessment amount, not the total principal of the assessment. Any risk is thus further mitigated through the proper sizing of the monthly tax and insurance escrow required by many mortgage holders (and expressly available under the Florida PACE Act).

Question No. 4(2) – To the extent that the lien priming feature of first lien PACE obligation increases any financial risk that is borne by holders of mortgages affected by PACE obligations or investors in mortgage backed securities based on such mortgages and that relates to any of the following, how and what cost could such parties insulate themselves from that increase in risk: The amount of funds available to pay for energy-related home-improvement projects after the subtraction of administrative fees or any other programs expenses charged deducted before funds become available to pay for PACE funded project (FHFA understands such fees and expenses can consume up to 10% or more of the funds a borrower could be obligated to repay under some PACE programs).

Florida PACE Funding Agency's Response to Question No. 4(2)[14, 15] – First and foremost, the Agency does not believe that the PACE assessments in Florida will increase any financial risk to the holder of the mortgage or investors in mortgage backed securities. It is also important to understand the Agency is an independent unit of government with statewide operational authority, not a private for-profit entity. Florida law does not allow for "profits" to be generated from assessments for local governments and local governments imposing

[14] See footnote [5].

[15] Please also see Agency's Response to Question No. 3(2).

assessments are only authorized to recover costs. Additionally, the assessment can be sized to fully pay the costs of the qualifying improvements and if desired by the property owner, to capitalize the reasonable administrative costs of the assessment over time (a customary governmental practice applicable to all assessments). As a result, there is no greater risk with a PACE assessment than for any other governmental assessment that the property owner will not be able to use the assessment proceeds to pay the legitimate costs of the qualifying improvements in full.

Question No. 4(3) – To the extent that the lien priming feature of first lien PACE obligation increases any financial risk that is borne by holders of mortgages affected by PACE obligations or investors in mortgage backed securities based on such mortgages and that relates to any of the following, how and what cost could such parties insulate themselves from that increase in risk: The timing and nature of advancements in energy-efficiency technology.

Florida PACE Funding Agency's Response to Question No. 4(3)[16, 17]- First and foremost, the Agency does not believe that the PACE assessments in Florida will increase any financial risk to the holder of the mortgage or investors in mortgage backed securities. While technology advances are expected and desired, future advances do not reduce the benefit from the energy related improvements that have been already made.

Question No. 4(4) – To the extent that the lien priming feature of first lien PACE obligation increases any financial risk that is borne by holders of mortgages affected by PACE obligations or investors in mortgage backed securities based on such mortgages and that relates to any of the following, how and what cost could such parties insulate themselves from that increase in risk: The timing and nature of changes in potential homebuyer preferences regarding particular kinds of energy efficiency projects.

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[16] See footnote [5].

[17] Please also see Agency's Response to Question No. 3(3).

Florida PACE Funding Agency's Response to Question No. 4(4)[18, 19]- First and foremost, the Agency does not believe that the PACE assessments in Florida will increase any financial risk to the holder of the mortgage or investors in mortgage backed securities. The Florida PACE Program could anticipate changes in homebuyers' preferences regarding particular kinds of energy-efficiency projects over the life of the Program in the same way that the Enterprises see changes in consumer preferences for types of kitchens, bathrooms and pool areas for houses secured by properties located in different parts of the country over different periods of time. The Agency does not foresee any financial risk borne by holders of mortgages secured by real property subject to PACE assessments due to those changes in preference for energy efficiency projects any more than the Enterprises have seen increased financial risk due to changes in preferences for other features of the secured property. To the contrary, benefits to a new homeowner from prior energy improvements will remain at the property for the life of the improvement and it is difficult to imagine a scenario where a new owner would want the property to be less energy efficient.

Question No. 4(5) – To the extent that the lien priming feature of first lien PACE obligation increases any financial risk that is borne by holders of mortgages affected by PACE obligations or investors in mortgage backed securities based on such mortgages and that relates to any of the following, how and what cost could such parties insulate themselves from that increase in risk: The timing, direction and magnitude of changes in energy prices.

Florida PACE Funding Agency's Response to Question No. 4(5)[20, 21] - First and foremost, the Agency does not believe that the PACE assessments in Florida will increase any financial risk to the holder of the mortgage or investors in mortgage backed securities. And to the extent that energy prices are only expected to increase, that projection supports the likelihood that

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[18] See footnote [5].
[19] Please also see Agency's Response to Question No. 3(4).
[20] See footnote [5].
[21] Please also see Agency Response to Question No. 3(5).

there will be no additional financial risk to the holder of mortgage or investors in mortgage backed securities from improvements to the overall energy efficiency of the assessed property.

Question No. 4(6) – To the extent that the lien priming feature of first lien PACE obligation increases any financial risk that is borne by holders of mortgages affected by PACE obligations or investors in mortgage backed securities based on such mortgages and that relates to any of the following, how and what cost could such parties insulate themselves from that increase in risk: The timing , direction and magnitude of changes of property values, including the possibility of downward adjustments in value.

Florida PACE Funding Agency's Response to Question No. 4(6)[22, 23] - The Agency believes that the timing, direction and magnitude of changes in property values are not relevant to financial risk that is borne by holders of mortgages subject to PACE assessments. This is so because the timing, direction and magnitude of changes of property values is a risk that is always on the holder of mortgages with or without PACE assessments. To the contrary, studies have shown that there is an increase in fair market value for property with energy efficiency and alternative energy improvements that is independent from timing, direction and magnitude of changes of property values due to other factors. Furthermore, all studies show increases in property values resulting from energy efficiency improvements, and given the fact that most improvements done with PACE assessments are improvements to the property or addressing deferred maintenance issues, it is unreasonable to assume a downward pressure on property values and the corresponding requirement to address that increase in risk.

C. PACE and the Market for Home-Improvement Financing

Question No. 5 – What are the alternatives to PACE Loans (e.g., self-financing, bank financing, leasing, contractor financing, utility company "on bill" financing, grants, and other government benefits) are available for financing home-improvements projects relating to energy

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[22] See footnote [5].

[23] Please also see Agency Response to Question No. 3(6).

efficiency? On what terms? Which do or do not share the lien-priming feature of first-lien PACE obligations? What are the relative advantages of each, from the perspective of (i) the current and any future homeowner-borrower, (ii) the holder of an interest in any mortgage on the subject property, and (iii) the environment?

Florida PACE Funding Agency's Response to Question No. 5[24] – The Agency believes that the Florida PACE Program financing, funding and resulting assessments present significant benefits to the borrower that have been discussed in prior sections. Most importantly, PACE non-ad valorem assessments in Florida are not typically "due on sale" and are not personal and by law, like all other capital non-ad valorem assessments imposed by a government, must be paid annually along with property taxes by subsequent property owners since the lien "runs with the land", thereby providing a viable financing mechanism to owners who intend to sell the property prior to the payoff of the assessment. The two largest hurdles to many homeowners choosing to invest in energy conservation improvements, alternative energy improvements and wind resistance improvements (a qualifying improvements category unique to Florida) are (1) the often significant costs of such improvements, and (2) the inability to couple the repayment of the upfront costs to the economic recovery period from the increased value of the property and/or savings generated by such improvements. As a result, the significant undertaking of qualifying improvements using all of the other payment/financing methods in the question simply has not occurred with any great frequency. Since these improvements have a direct and significant benefit to not only the improved properties but the community as a whole and the environment, any effort to delay the rapid implementation of qualifying improvements will only have a detrimental impact on the environment. Since qualifying improvements can reduce residential and commercial energy usage by 50% to 70%, the savings in utility costs and environmental impact alone are significant.

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[24] The question erroneously, capriciously and arbitrarily mischaracterizes the PACE-related non-ad valorem assessments as "loans", thus creating an inaccurate and biased predicate.

The Florida PACE Program addresses both of these initial hurdles to the wide-spread implementation of qualifying improvements by providing a ready source for the funds needed to pay the upfront costs of qualifying improvements and by coupling the repayment of these funds to the economic recovery period for the qualifying improvements, regardless of who owns the assessed property. As well, the Florida PACE assessment program creates direct, immediate and commensurate additional value to the subject property.

If this type of transaction were accomplished under traditional financing (like line of credit or home equity loan), the financing would be required to be paid off at the time of sale or refinancing of the mortgage loan (unless the energy improvement lender would be willing to forgive or subordinate its lien to the new mortgage lien). Since these loans are based on personal credit, they are generally not assumable by a new purchaser of the property. Since they create a significant likelihood of forced early acceleration of these loans, there is a negative credit impact on the property owner which directly and negatively impacts the mortgage lender. The restrictions of traditional financing and the upfront cost exposure without the assurance of economic recovery of the expenditure if the property owner uses cash resources rather than borrowed funds, effectively discourages, if not precludes, property owners not certain of long term residency from undertaking energy efficient upgrades to their property.

As noted in the question, government grants can certainly be a viable way to pay the costs of qualifying improvements. However, to the Agency's knowledge, such government grant programs are simply not available or realistically available on any sustainable basis on the federal, state or local government level.

Question No. 6 – How does the effect on the value of underlying property of an energy-related home-improvement project financed through a first-lien PACE program compare to the effect on the value of the underlying property that would flow from the same project if financed in any other manner?

Florida PACE Funding Agency's Response to Question No. 6 - The Agency believes that the Florida PACE Program financing, funding and resultant assessments present significant

benefits to the value of the property that have been discussed in prior sections. These benefits inure to both existing and future property owners and mortgage lenders. To the extent that PACE assessments enable a property owner to undertake more extensive energy efficient upgrades because of the ability to stretch the payments out over a longer time to coincide with the economic recovery from the improvements and possibly transfer payments to a subsequent owner, the Agency submits that the PACE Program would result in greater energy savings that correlate directly with increased property values. Alternative financing may not be available or only available at rates far in excess of the rate for a PACE assessment. In essence, absent the existence of the PACE program, large scale energy efficiency qualifying improvements will simply not be undertaken. As properties with PACE assessments change hands or are refinanced, the Florida PACE Program carefully and properly facilitates market driven consideration by the seller and buyer, as well as the mortgage lender.

Question No. 7 – How does the effect on the environment of an energy-related home-improvement project financed through a first-lien PACE program compare to the effect on the environment that would flow from the same project if financed in any other manner?

Florida PACE Funding Agency's Response to Question No. 7 - The Agency believes that the Florida PACE Program financing, funding and resultant assessments present significant benefits to the environment in comparison to projects undertaken under traditional financing. This is so because to the extent that PACE assessments enable a property owner to undertake more extensive energy efficient upgrades because of the ability to stretch the payments out over the reasonable useful life of the improvements, pay for those improvements as a part of the monthly escrow for taxes and transfer payments to a subsequent owner upon a sale of the property, the Agency submits that the PACE Program would result in greater environmental benefits as anticipated by the Florida Legislature through greater energy savings and reduced emissions from electric utilities. The reality is that alternative financing is difficult to obtain, is not available on any significant scale, or only available at rates far in excess of the rates for a PACE assessment.

Question No. 8 – Do first-lien PACE programs cause the completion of energy-related home improvement projects that would not otherwise have been completed, as opposed to changing the method of financing for projects that would have been completed anyway? What, if any, objective evidence exists on this point?

Florida PACE Funding Agency's Response to Question No. 8 - The Agency believes that the Florida PACE Program financing, funding and resultant assessments present a unique opportunity to encourage energy efficiency projects that would not otherwise be undertaken by property owners. This is so because the PACE assessments enable a property owner to undertake energy efficient projects where outstanding financial obligations can be transferred to subsequent owners on a pay-as-you go basis. This advantage is a selling point for homeowners that would otherwise evaluate the project by ability to pay off the loan over their tenure as property owners. Owners who do not intend to own the property for the time necessary to pay off the loan would face a balloon payment at the time of sale and would be likely not to proceed with the energy efficiency project in the first instance. The very existence and structure of the Florida PACE Program is objective evidence that the Florida Legislature has carefully taken action to encourage and facilitate the funding, financing and delivery of qualifying improvements that are not and would not otherwise be undertaken by the marketplace.

D. PACE and Protections for the Homeowner-Borrower

Question No. 9 – What consumer protections and disclosure do first-lien PACE programs mandate for participating homeowners? When and how were those protections put into place? How, if at all, do the consumer protections and disclosures that local first-lien PACE programs provide to participating homeowners differ from the consumer protections and disclosures that non-PACE providers of home-improvement financing provide to borrowers? What consumer protection enforcement mechanisms do first-lien PACE programs have?

Florida PACE Funding Agency's Response to Question No. 9 – The Florida PACE Program has statutory underwriting guidelines as well as mandatory disclosure requirements imposed by Florida law, which are discussed earlier in the comments and herein. In addition, the Agency expects to have additional underwriting and disclosure requirements imposed by financing documents and rating agencies. Since the Agency is a governmental entity, it may not be subject to all private sector consumer lending disclosure requirements, but it must act like any other local government. The Agency, like any responsible local government, is intent on using both existing consumer disclosure requirements imposed in financing transactions as a guide and applying disclosures and protections in implementing its disclosure and protections to participating property owners.

Question No. 10 – What, if any, protections or disclosures do first-lien PACE programs provide to homeowner-borrowers concerning the possibility that a PACE-financed project will cause the value of their home, net of the PACE obligation, to decline? What is the effect on the financial risk borne by the holder of any mortgage interest in a subject property if PACE programs do not provide any such protections or disclosures?

Florida PACE Funding Agency's Response to Question No. 10 – The Florida PACE Program requires disclosure to all property owners as required by statute; and, the Agency will also likely consider and use, for good communication and business reasons, customary disclosures provided by other consumer financing or lending systems. The Agency is not opposed to and anticipates developing a uniform and broad disclosure process. The risk of the subject matter of the first part of the question as posed is suspect, unduly speculative and

unlikely.[25] Even with the minimum statutory disclosure and compliance with the Florida PACE Act, the likelihood of resulting financial risk to any mortgagor is not existent.

Question No. 11 – What, if any, protections or disclosures do first-lien PACE programs provide to homeowner-borrowers concerning the possibility that the utility-cost savings resulting from a PACE-financed project will be less than the cost of servicing the PACE obligation? What is the effect on the financial risk borne by the holder of any mortgage interest in a subject property if first-lien PACE programs do not provide any such protections or disclosures?

Florida PACE Funding Agency's Response to Question No. 11 – Many of the PACE improvements defined by Florida law which constitute qualifying improvements have known energy cost saving associated with them, such as solar water heaters, geothermal heat pumps, high SEER heat pump units, building insulation, to name a few. The expected savings from these units can be readily calculated and disclosed. In other cases, the improvements may have resulted from an energy audit (third party program or local utility program) and once again, the savings can be disclosed to or determined by the property owner. The Florida PACE Program is designed to provide either energy/utility savings or to render the property more cost effectively insurable (wind mitigation improvements). Under these conditions, the Agency does not anticipate that there will be a disassociation between the cost of the assessment and the energy or insurance savings resulting from the assessment. Each owner, as a market participant, will evaluate and determine the value of energy, insurance and other savings and benefits.

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[25] For example, as a matter of well settled law, the amount of the assessment must equal or exceed the benefit or burden received by the property (not to the property owner). This legal concept and determination is expressly addressed by the Florida Legislature in the Florida PACE Act. The question posed by FHFA, *inter alia*, subsumes the property owner involved is irrational and likely to make a market-based decision against the owner's own interest. The Agency would also point out that the possibility that a "PACE-financed" qualifying improvement reducing the value of the home is remote and speculative; and, likely no more than any other governmental assessment. Accordingly, the stated ill in the second or follow-on question is also commensurately highly remote and speculative.

However, several economic studies have shown that when property owners install energy conservation improvements they do not receive the full expected savings not because the savings were not generated, but because the homeowner's personal decisions change. For example, the owners of a home with a low-efficiency heat pump system may set the temperature low in the winter and high in the summer to save on utility bills, but once they install a high efficiency unit to replace the low-efficiency unit, they change the heat and air conditioning settings to a warmer temperature in the winter and a colder setting in the summer, thus partially defeating the benefits of the high efficiency system. Although the Agency intends on counseling prospective property owners on this phenomenon, the value may only inure to an owner or occupant who maximizes available utility cost savings.

Additionally, the statutory cap on the amount of the assessment in the Florida legislation mitigates financial risk which might otherwise emanate from such a circumstances feared in the question posed.

Question No. 12 – What, if any, protections or disclosures do first-lien PACE programs provide to homeowner-borrowers concerning the possibility that over the service life of a PACE-financed project, the homeowner-borrower may face additional costs (such as costs of insuring, maintaining, and repairing equipment) beyond the direct cost of the PACE obligation? What is the effect on the financial risk borne by the holder of any mortgage interest in a subject property if first-lien PACE programs do not provide any such protections or disclosures?

Florida PACE Funding Agency's Response to Question No. 12 – It is anticipated that reasonable underwriting standards for financing will limit the terms of the assessment to the expected economic life of the improvement, which is the period before repairs are customarily required. Product warranties from the manufacturer and/or installer for many of the improvements typically will be available for all or a significant portion of the expected economic life of the improvements. Therefore, in most instances, the property owner will not likely be incurring additional costs to maintain the improvement while paying the assessment in the same year. However, complications with improved property do occur, which are

inherent risks associated with property ownership. This circumstance of insuring, maintaining and repairing improvements and servicing a property is typically priced into every mortgage by every mortgage lender with or without a PACE assessment. The PACE assessment affords a preferred means to pay for the improvement over its economic life; and thus allows for cash flow to address unexpected service costs. As well, the tax bill collection and escrow method alerts the mortgage lender earlier in the process if a mortgagor becomes unable to meet those obligations.

Question No. 13 – What, if any, protections or disclosures do first-lien PACE programs provide to homeowner-borrowers concerning the possibility that subsequent purchasers of the subject property will reduce the amount they would pay to purchase the property by some or all of the amount of any outstanding PACE obligation? What is the effect on the financial risk borne by the holder of any mortgage interest in a subject property if first-lien PACE programs do not provide any such protections or disclosures?

Florida PACE Funding Agency's Response to Question No. 13 - Florida's PACE Program has statutory disclosure requirements discussed in the prior sections, so the buyer will be on notice of the assessment and its terms. The Agency believes that the PACE assessment will be only one of the many negotiated items in any sale of real property, and buyers and sellers will take differing negotiating positions on each of many negotiating points, regardless of whether the property has been improved with qualifying improvements. There is no reason to believe that the existence of a PACE assessment or the qualifying improvements would be determinative on whether or not real property will sell or on the price of the real property any more than the water and sewer rates, property taxes rates and other assessments on properties are the sole determining factor.

E. PACE and Underwriting Standards

Question No. 14 – How do the credit underwriting standards and processes of PACE programs compare to that of other providers of Home-improvement financing, such as banks?

Do they consider, for example: (i) borrower creditworthiness, including an assessment of total indebtedness in relation to borrower income, consistent with national standards: (ii) total loan-to-value ratio of all secured loans on the property combined, consistent with national standards; and (iii) appraisals of property value, consistent with national standards?

Florida PACE Funding Agency's Response to Question No. 14 – FHFA cannot compare personal loan credit underwriting requirements to governmental assessment underwriting because the assessments are not personal in nature. For example, tax levies and other governmental assessments by local governments do not take into account personal credit underwriting as part of the assessment process. Nonetheless the Florida PACE Act does provide specific statutory underwriting guidelines which are effective means to reduce risk that the Florida PACE Program is employed by property owners unable to timely pay their taxes and assessment.

However, more importantly, in Florida and most states, the value of the benefit or relief of a burden derived from the assessed for improvements is required to equal or exceed the amount assessed. This is a decision initially made by the property owner in the context of the financing agreement which evidences the non-ad valorem assessment and that is immediately borne out upon the increased escrow and payment of the assessment along with taxes. Subsequently, the total indebtedness (including taxes and assessments) in relation to "borrower'" income will be borne out as the property is refinanced or sold and subsequently financed. Clearly, the value of the qualifying improvements, although direct and immediate, are initially evaluated by the owner before seeking the assessment, and then subsequently by the market and appraisal process as a refinancing or sale process occurs in the future.

Finally, in Florida, the PACE assessment guidelines are designed to be cost neutral by offsetting the cost of the improvement with the resulting utility or property insurance savings.

Question No. 15 – What factors do first-lien PACE programs consider in determining whether to provide PACE financing to a particular homeowner-borrower seeking funding for a

particular project eligible for PACE financing? What analytic tools presently exist to make that determination? How, if at all, have the methodologies, metrics, and assumptions incorporated into such tools been tested and validated?

Florida PACE Funding Agency's Response to Question No. 15 – The Florida PACE legislation (§163.08, Florida Statutes) imposes specific statutory underwriting guidelines on assessments for qualifying improvements. See Florida PACE Program statutory guidelines discussed in Section I.3 above, and the response to Question 14 above.

Question No. 16 – What factors and information do first-lien PACE programs gather and consider in determining whether a homeowner-borrower will have sufficient income or cash flow to service the PACE obligation in addition to the homeowner-borrower's pre-existing financial obligation? What analytic tools presently exist to make that determination? How, if at all, have the methodologies, metrics, and assumptions incorporated into such tools been tested and validated?

Florida PACE Funding Agency's Response to Question No. 16 – See Florida PACE Program statutory guidelines discussed in Section I.3 above, and the response to Question 14 above.

F. Considerations Relating to FHFA's Intent to Prepare an EIS.

Question No. 17 –What specific alternatives to FHFA's existing statements about PACE should FHFA consider? For each alternative, as compared to the Proposed Action, what positive or negative environmental effects would result and how would the level of financial risk borne by holders of any interest in a mortgage on PACE-affected properties change?

Florida PACE Funding Agency's Response to Question No. 17 – FHFA's stated Proposed Action is not to purchase any mortgage that is subject to a PACE assessment or that could become subject to a PACE assessment without the consent of the mortgage holder. In Florida with the Florida PACE Program applicable statewide, the Proposed Action means that all Florida property owners would be required to obtain advance lender consent to participate

in the Florida PACE Program. This is an extreme position that was not supported by the Florida Mortgage Bankers Association when the Florida PACE Act was almost unanimously passed by the Florida Legislature and signed into law by the Governor. Indeed, in many instances, it is virtually impossible to determine the identity of the actual owner of a residential mortgage.

Such a requirement by the Enterprises or FHFA is an overly broad and a passive, but violent, attempt to eviscerate a real and meaningful opportunity for Florida, and other states, to encourage and facilitate the PACE funding, financing and delivery of energy conservation and efficiency improvements, renewable energy improvements and wind resistance improvements to willing and informed property owners. Requiring consent by a mortgagee to a "PACE-loan" mischaracterizes a governmental special assessment as a "loan" on par or subordinate to a mortgage.

There is no such thing as a "PACE-loan" and it is disingenuous for the Enterprises and FHFA, who are learned, to undertake policy and business position knowing there is well settled legal precedent that is over 100 years old and under which every mortgage ever issued or purchased by the Enterprises it was and is well known that – every mortgage issued is, will and is intended to be subordinate to property taxes and special or non-ad valorem assessments which are imposed during the life of the mortgage. The existing Statement by FHFA that attempts to distinguish or characterize a governmental non-ad valorem assessment as subordinate to a mortgage by requiring consent to a PACE Assessment on its face is an unprecedented intrusion on a grand scale into the superiority of the governmental lien of taxes and assessments.

Such a policy and business position by FHFA is unnecessary and extreme, it beckons to Congress, legislators, municipal bond markets, local governments, businesses and the public that a significant market participant and regulator is willing to abuse its power and position by selectively demanding a mortgagee consent to the nature and type of governmental taxes, liens and actions that it otherwise, by law, has no right to demand.

The implicit threat of 'redlining' whole jurisdictions or even an entire state, or informally discouraging or 'water-marking' financial institutions (literally bursting at the seams with money attracted to the superior and virtually default-free security of non-ad valorem assessments) desirous of immediately participating, but for the lack of inclination or inability by the Enterprises and FHFA to embrace a thoughtful PACE regime, is disappointing to say the least.

FHFA has asked for commenters to identify specific alternatives to the Proposed Action. The Agency recommends that FHFA embrace or, at the least, exempt the Agency's Florida PACE Program from the Proposed Action, and work with the Agency to make its program a standard bearer. This recommendation is based on all the reasons discussed in preceding sections and responses to questions that demonstrate that the viability and thoughtful provisions of the Agency's Florida PACE Program do not pose any risk to the financial viability of the Enterprises or other mortgagees. In the absence of any ability to demonstrate an actual risk to the Enterprises, there is no reason to require mortgage holder approval, which is a difficult, if not practically impossible, hurdle for the property owner to overcome in the age of bundled and repeatedly sold mortgages and separation of mortgage owners from mortgage servicers.

Positive Environmental Effects – Enormous increased energy efficiency and reduced greenhouse gas emissions from utility sources due to property owners' participation in the Florida PACE Program. Enormous reduction in environmental consequences from wind and storm damage which annually threatens Florida improved properties due to property owners' participation in the Florida PACE Program.

Level of Financial Risk Borne by Holder of any interest in PACE properties – None in Florida. In fact, the Florida PACE Program reduces risk to owners and mortgage lenders by increasing the value of property in Florida as discussed in prior sections.

Environmental Impact – The State of Florida has formally determined the following:

(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 chapter 2008-227, Laws of Florida, 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) 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, there is a compelling state interest in

enabling property owners to voluntarily finance such improvements with local government assistance.

In light of the State's determination that the implementation of the Florida PACE Program is of a compelling state interest with significant environmental impacts, any actions which seek to undermine, delay or impede the implementation of a Florida PACE program by requiring mortgagee consent to only PACE related non-ad valorem assessments would have a significant negative environmental impact in Florida and upon its inhabitants.

Invitation to FHFA from the Florida PACE Funding Agency to Establish an Immediate and Meaningful Dialogue – The Agency has not sought to engage in the various on-going federal legislation aimed at changing the business or policy decisions in the Statement or Directive. The Agency also recognizes that FHFA likely would not be involved in rulemaking but for directions to do so from a federal court. Nevertheless these comments are made in good faith.

The Agency and the local government community in Florida have developed in good faith one of the most, if not the most, thoughtful real-life and comprehensive approach to implementation. The Agency's approach is not a replication of other programs, but structured by a Legislature, public finance and local government administrators and professionals that well understand Florida. The Agency is poised to begin the process of funding, financing and delivery of qualified improvements. At stake is the ability to immediately unleash billions of dollars in economic activity in Florida alone, the achievement of many laudable environmental activities, the careful protection of owners and mortgage lenders within a long accepted framework of governmental liens and lien law and an enormous number of private sector jobs potentially attributable to this endeavor.

There is disappointment that FHFA and the Enterprises have not and will not respond to telephone calls, emails or overtures. Because of the policy, business and legal ramifications, as well as drain on resources, the reluctance over the last two years for the Enterprises and

FHFA to do anything but mischaracterize and treat the concept of PACE as a subordinate competitor of some sort may be understandable.

The Agency is not a concept. The Agency has worked hard to create a real and discernable implementation program that is uniform, scalable and statewide in scope. Its participants and advisors are not dealing in the theoretical - the Florida PACE Funding Agency is real; its authority to enter the financing market and stature have been judicially validated; it has engaged counsel, financial advisory professionals, and importantly has a clear mission that is authorized and well controlled by general law in Florida.

Mr. Pollard, as a specific alternative to FHFA's existing Statement and Directive, the Agency respectfully invites you to engage in earnest and meaningful informal dialogue with representatives of the Agency. This dialogue will allow you to better evaluate the Agency's approach, and for Agency representatives to listen to you and FHFA's concerns, with a mutual objective of creating a workable business and policy approach with the Agency in Florida under the Florida PACE Program. The Agency's preparation and research have been extensive, and the Agency's objective is to keep the process simple, advance the Agency's Florida PACE Program on a uniform basis, and to do so in a manner that reasonably protects ALL mortgage lenders and servicers. Our constituency is local governments in Florida, and the positive results of a series of discussions as it relates to the Enterprises as an alternative the FHFA current Statement and Directive should not be underestimated. We ask for your thoughtful and positive response separate and apart from this rulemaking exercise; and, a commitment to promptly set an initial meeting to consider fashioning a mutually agreeable alternative in Florida.

Thank you for the opportunity to submit comments on the FHFA's ANPR. Please do not hesitate to contact me, Messrs. Steigerwald, Reid or Lawson if you have further questions or comments.

Sincerely,

Barbara S. Revels

Barbara S. Revels, Chair
Florida PACE Funding Agency
c/o Michael H. Steigerwald, Executive Director
Florida PACE Funding Agency and
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Senator Bill Nelson
Senator Marco Rubio
Representative Jeff Miller
Representative Steve Southerland
Representative Corrine Brown
Representative Ander Crenshaw
Representative Richard Nugent
Representative Cliff Stearns
Representative John L. Mica
Representative Daniel Webster
Representative Gus M. Bilirakis
Representative C. W. (Bill) Young
Representative Kathy Castor
Representative Dennis Ross
Representative Vern Buchanan

Representative Connie Mack
Representative Bill Posey
Representative Thomas J. Rooney
Representative Frederica Wilson
Representative Ileana Ros-Lehtinen
Representative Ted Deutch
Representative Debbie Wasserman Schultz
Representative Mario Diaz-Balart
Representative Allen West
Representative Alcee L. Hastings
Representative Sandy Adams
Representative David Rivera
Governor Scott – Chief of Staff – Steve MacNamara
Florida Department of Agriculture and Consumer Services, Commissioner Adam H. Putnam
Florida Senator Mike Haridopolos, Senate President
Florida Representative, Dean Cannon, Speaker of the House
Florida Association of Counties, Christopher L. Holley, Executive Director
Florida League of Cities, Michael Sittig, Executive Director

EXHIBIT A

SECTION 163.08, FLORIDA STATUTES (2011)

EXHIBIT B

INTERLOCAL AGREEMENT BETWEEN FLAGLER COUNTY AND CITY OF KISSIMMEE CREATING THE FLORIDA PACE FUNDING AGENCY

EXHIBIT C

FINAL JUDGMENT

EXHIBIT D

University of California Energy Institute, *Doing Well by Doing Good? Green Office Buildings*, by Piet Eichholtz, Nils Kok and John M. Quigly, December 2010

EXHIBIT E

Certified Home Performance: Assessing the Market Impacts of Third Party Certification on Residential Properties, by Ann Griffin, Earth advantage Institute, May, 2009

EXHIBIT F

Evidence of Rational Market Valuations for Home Energy Efficiency, by Rick Nevin and Gregory Watson, October 1998

EXHIBIT A

SECTION 163.08, FLORIDA STATUTES (2011)

environmental, economic, social, recreational, and aesthetic issues. The committee shall monitor the progress on each element of such plan and shall revise the plan regularly.

(b) Prepare an integrated financial plan using the different jurisdictional agencies available for projected financial resources. The committee shall monitor the progress on each element of such plan and revise the plan regularly.

(c) Provide technical assistance and political support as needed to help implement each element of the strategic and financial plans.

(d) Accept any specifically defined coordinating authority or function delegated to the committee by any level of government through a memorandum of understanding or other legal instrument.

(e) Publicize a semiannual report describing accomplishments of the commission and each member agency, as well as the status of each pending task. The committee shall distribute the report to the city and county commissions and mayors, the Governor, chair of the Miami-Dade County delegation, stakeholders, and the local media.

(f) Seek grants from public and private sources and receive grant funds to provide for the enhancement of its coordinating functions and activities and administer contracts that achieve these goals.

(g) Provide a forum for exchange of information and facilitate the resolution of conflicts.

(h) Act as a clearinghouse for public information and conduct public education programs.

(i) Establish the Miami River working group, appoint members to the group, and organize subcommittees, delegate tasks, and seek [1]counsel from members of the working group as necessary to carry out the powers and duties listed in this subsection.

(j) Elect officers and adopt rules of procedure as necessary to carry out the powers and duties listed above and solicit appointing authorities to name replacements for policy committee members who do not participate on a regular basis.

(k) Hire the managing director, who shall be authorized to represent the commission and to implement all policies, plans, and programs of the commission. The committee shall employ any additional staff necessary to assist the managing director.

History.—ss. 5, 7, ch. 98-402; s. 1, ch. 2003-123; s. 26, ch. 2008-4; s. 2, ch. 2011-139.

[1]Note.—The word "counsel" was substituted for the word "council" by the editors to conform to context.

163.061 Miami River Commission; unanimous vote required for certain acts.—

(1) No item, motion, directive, or policy position that would impact or in any way diminish levels of currently permitted commercial activity on the Miami River or riverfront properties shall be adopted by the Miami River Commission unless passed by a unanimous vote of the appointed members of the commission then in office.

(2) No item, motion, directive, or policy position suggesting, proposing, or otherwise promoting additional taxes, fees, charges, or any other financial obligation on owners of riverfront property or shipping companies or operators shall be adopted by the Miami River Commission unless passed by a unanimous vote of all appointed members of the commission then in office.

History.—ss. 6, 7, ch. 98-402; s. 1, ch. 2003-123.

163.065 Miami River Improvement Act.—

(1) SHORT TITLE.—This section may be cited as the "Miami River Improvement Act."

(2) FINDINGS; PURPOSE.—

(a) The Miami River Commission was created by chapter 98-402, Laws of Florida, to be the official coordinating clearinghouse for all public policy and projects related to the Miami River.

(b) The United States Congress has provided funding for an initial federal share of 80 percent for the environmental and navigational improvements to the Miami River. The governments of the City of Miami and Miami-Dade County are coordinating with the Legislature and the Florida Department of Environmental Protection to determine how the 20-percent local share will be provided.

(c) Successful revitalizing and sustaining the urban redevelopment of the areas adjacent to the Miami River is dependent on addressing, through an integrated and coordinated intergovernmental plan, a range of varied components essential to a healthy urban environment, including cultural, recreational, economic, and transportation components.

(d) The purpose of this section is to ensure a coordinated federal, state, regional, and local effort to improve the Miami River and adjacent areas.

(3) AGENCY ASSISTANCE.—All state and regional agencies shall provide all available assistance to the Miami River Commission in the conduct of its activities.

(4) PLAN.—The Miami River Commission, working with the City of Miami and Miami-Dade County, shall consider the merits of the following:

(a) Development and adoption of an urban infill and redevelopment plan, under ss. 163.2511-163.2523, which participating state and regional agencies shall review for the purposes of determining consistency with applicable law.

(b) Development of a greenway/riverwalk and blueway, where appropriate, as authorized in s. 260.011, to provide an attractive and safe connector system of bicycle, pedestrian, and transit routes and water taxis to link jobs, waterfront amenities, and people, and contribute to the comprehensive revitalization of the Miami River.

History.—s. 26, ch. 2000-170; s. 23, ch. 2001-60; s. 185, ch. 2010-102.

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, or a dependent special district as defined in s. 189.403.

(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.

PART II

GROWTH POLICY; COUNTY AND MUNICIPAL PLANNING; LAND DEVELOPMENT REGULATION

EXHIBIT B

INTERLOCAL AGREEMENT BETWEEN FLAGLER COUNTY AND CITY OF KISSIMMEE

CREATING THE FLORIDA PACE FUNDING AGENCY

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GAIL WADSWORTH, FLAGLER Co.

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.

[Remainder of page intentionally left blank.]

ARTICLE III
GENERAL PROVISIONS

SECTION 3.01. INTERLOCAL AGREEMENT PROVISIONS. This Charter Agreement constitutes a joint exercise of power, privilege or authority by and between the Incorporators and shall be deemed to be an "interlocal agreement" within the meaning of the Florida Interlocal Cooperation Act of 1969, as amended. This Charter Agreement shall be filed with the applicable clerk of the circuit court as provided by Section 163.01(11), Florida Statutes.

SECTION 3.02. TERM OF AGREEMENT; DURATION OF AGREEMENT.

(A) The term of this Charter Agreement shall commence as of the date first above written, and shall continue for so long as the Agency shall exist.

(B) The Agency shall continue to exist so long as the Agency has Obligations outstanding. At such time as no Obligations are outstanding, the Agency may dissolve by a majority vote of the Board of Directors in a manner provided for herein.

(C) So long as the Agency has Obligations outstanding, the members of the Agency covenant not to undertake any act or action to withdraw from or otherwise terminate this Charter Agreement; and any such action shall not be effective if such action would leave less than two (2) members.

SECTION 3.03. AMENDMENTS AND WAIVERS.

(A) Except as otherwise provided herein, no amendment, supplement, modification or waiver of this Charter Agreement shall be binding unless executed in writing by the Agency and the local governments which are then members of the Agency pursuant to this Charter Agreement.

(B) To the extent the Agency has no outstanding bonds, Obligations or other evidence of indebtedness, this Charter Agreement may be amended or modified or provisions hereto waived upon the written consent of all the then members of the Agency as more particularly described in Section 2.01(B) hereof.

(C) 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, 2017

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
6/21/2011
Date

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

CIRCUIT COURT SUUM CUIQUE FLAGLER COUNTY, FLORIDA

I HEREBY CERTIFY this to be a true
And correct copy of the original
GAIL WADSWORTH
CLERK OF COURTS
By _____ DC

EXHIBIT C

FINAL JUDGMENT

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 25 day of August 2011.

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