

**RESOLUTION No. 17-126**

**A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING THE LIMITED PURPOSE PARTY MEMBERSHIP AGREEMENT BETWEEN THE FLORIDA RESILIENCY AND ENERGY DISTRICT AND THE CITY OF DORAL; AUTHORIZING THE FLORIDA RESILIENCY AND ENERGY DISTRICT TO ACCEPT APPLICATIONS FROM AND FINANCE QUALIFYING IMPROVEMENTS FOR PROPERTIES IN THE CITY AS PART OF THE PROPERTY ASSESSED CLEAN ENERGY PROGRAM, IN ACCORDANCE WITH SECTION 163.01, FLORIDA STATUTES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE MEMBERSHIP AGREEMENT AND ENROLL THE CITY IN FURTHERANCE HEREOF; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, in 2016, the City of Doral (the “City”) via 2016-170 created an open-market model property assessed clean energy (“PACE”) program in furtherance of in furtherance of Section 163.08, Florida Statutes; and

**WHEREAS**, Section 163.08, Florida Statutes, authorized local governments in Florida to provide programs either individually, or by a separate legal entity formed by a partnership of local governments, that allow property owners to voluntarily finance energy efficiency, renewable energy, or wind resistance improvements (“Qualifying Improvements”); and,

**WHEREAS**, to execute the PACE Program, districts were created by and among counties and municipalities throughout the State and operated by third party administrators, which municipalities could join by membership, participation, and/or interlocal agreements; and

**WHEREAS**, the City is currently and nonexclusively participating in the Clean Energy Green Corridor Program and Florida Green Finance Authority Program, allowing

properties owners two options for the accomplishment of Qualifying Improvements through separate districts; and

**WHEREAS**, the Florida Resiliency and Energy District (the “FRE District”) is a separate legal entity of local governments, pursuant to Section 163.01(7), Florida Statutes, authorized to offer Qualifying Improvements; and,

**WHEREAS**, the City desires to facilitate competition and increase improvement opportunities for properties in the City, and, to do so, desire to join the FRE District on a nonexclusive basis; and,

**WHEREAS**, a proposed Limited Purpose Party Membership Agreement with the FRE District is attached as Exhibit “A”; and,

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The above recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

**Section 2. Approval.** The Limited Purpose Party Membership Agreement by and between the Florida Resiliency and Energy District and the City, attached hereto as Exhibit “A” (the “Membership Agreement”), which is incorporated herein and made part hereof by this reference, is hereby approved, along with such non-material changes recommended by the City Attorney for legal sufficiency.

**Section 3. Authorization.** The City Manager is authorized to execute the Membership Agreement, subject to approval as to form and legal sufficiency by the City Attorney, and, thereafter, to take action to enroll the City in the FRE District.

**Section 4. Implementation.** The City Manager and the City Attorney are hereby authorized to take such further action as may be necessary to implement the purpose and provisions of this Resolution.

**Section 5. Effective Date.** This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution was offered by Councilmember Rodriguez who moved its adoption. The motion was seconded by Councilmember Mariaca and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Pete Cabrera	Yes
Councilwoman Christi Fraga	Yes
Councilwoman Claudia Mariaca	Yes
Councilwoman Ana Maria Rodriguez	Yes

PASSED AND ADOPTED this 9 day of August, 2017.

  
\_\_\_\_\_  
JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:

  
\_\_\_\_\_  
CONNIE DIAZ, CMC  
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFIENCY  
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:

  
\_\_\_\_\_  
WEISS, SEROTA, HELFMAN, COLE & BIERMAN, P.L.  
CITY ATTORNEY

# EXHIBIT “A”

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

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

(SPACE reserved for Clerk of Court)

**LIMITED PURPOSE PARTY MEMBERSHIP AGREEMENT BETWEEN THE FLORIDA RESILIENCY AND ENERGY DISTRICT AND [NAME OF LOCALITY]**

This Limited Purpose Party Membership Agreement (the "Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the **FLORIDA RESILIENCY AND ENERGY DISTRICT ("FRED")**, a public body corporate and politic created as a separate legal entity pursuant to Section 163.01(7), Florida Statutes, and [NAME OF LOCALITY], a political subdivision of the State of Florida (the "[TOWN/CITY/COUNTY]") (collectively, the "Parties") for the purpose of providing a Property Assessed Clean Energy ("PACE") program within the legal boundaries of the [TOWN/CITY/COUNTY].

**WITNESSETH**

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

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

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

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

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

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

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

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

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

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

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

**SECTION 5. QUALIFYING IMPROVEMENTS.** FRED may provide access to financing for Qualifying Improvements to real property within the legal boundaries of the [TOWN/CITY/COUNTY], in accordance with Section 163.08, Florida Statutes, and subject to the terms of this Agreement, as well as applicable federal, state, and [TOWN/CITY/COUNTY] law.

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

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

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

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



financing for Qualifying Improvements shall continue to be a part of FRED, until such time that all outstanding debt has been satisfied.

**SECTION 10. TERM.** This Agreement shall remain in full force and effect from the date of its execution by both Parties. Any Party may terminate this Agreement for convenience upon ninety (90) days' prior written notice ("Termination Notice") in accordance with the terms of the Interlocal Agreement. Beginning on the date FRED receives a Termination Notice from the [TOWN/CITY/COUNTY] ("Termination Date"), FRED shall not approve any new applications affecting property within the legal boundaries of the [TOWN/CITY/COUNTY] referenced in the Termination Notice. Notwithstanding termination of this Agreement, however, property owners whose applications were approved prior to the Termination Date, and who received funding through the PACE program, shall continue to be a part of FRED, for the sole purpose of FRED imposing assessments for the repayment of such property's outstanding debt, until such time that all outstanding debt has been satisfied.

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

**SECTION 12. [TOWN/CITY/COUNTY] COORDINATOR.** The [DEPARTMENT/OFFICE] within the [TOWN/CITY/COUNTY] shall serve as the [TOWN/CITY/COUNTY]'s primary point of contact and coordinator. The [TOWN/CITY/COUNTY] will advise FRED of any changes to the [TOWN/CITY/COUNTY]'s primary contact and coordinator within 30 days of such changes.

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

**SECTION 14. LIMITED OBLIGATIONS.** Neither FRED nor FDFC is authorized to issue bonds, or any other form of debt, on behalf of the [TOWN/CITY/COUNTY] without a separate interlocal agreement or other authority provided by State law. To the extent that FRED or FDFC issues PACE-related bonds under its own authority in connection with this Agreement, the security for such bonds may be secured by non-ad valorem special assessments imposed by FRED on participating properties within the legal boundaries of the [TOWN/CITY/COUNTY].

The issuance of such bonds shall not directly or indirectly or contingently obligate the [TOWN/CITY/COUNTY] to levy or to pledge any form of taxation whatever, or to levy ad valorem taxes on any property within their territorial limits to pay the bonds, and the bonds shall not constitute a lien upon any property owned by the [TOWN/CITY/COUNTY]. For any such bonds, the bond disclosure document, if any, shall include references to the fact that the [TOWN/CITY/COUNTY] is not an obligated party, and also adequately disclose material attendant risks with PACE programs.

**SECTION 15. LIABILITY, INDEMNIFICATION AND SOVEREIGN IMMUNITY.**

(A) [TOWN/CITY/COUNTY] and FRED are and shall be subject to Sections 768.28 and 163.01(9)(c), Florida Statutes, and any other provisions of Florida law governing sovereign immunity. Pursuant to Section 163.01(5)(0), Florida Statutes, and this covenant of the parties hereto, the local governments who are either or both the founders or members of FRED shall not be held jointly liable for the torts of the officers or employees of the FRED, or any other tort attributable to FRED, and that FRED alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes. [TOWN/CITY/COUNTY] and FRED acknowledge and agree that FRED shall have all of the applicable privileges and immunities from liability and exemptions from laws, ordinances, rules and common law which apply to the municipalities and counties of the State. [TOWN/CITY/COUNTY] is completely independent of FRED. To the extent provided by law, FRED shall indemnify, defend and hold harmless [TOWN/CITY/COUNTY] from any and all damages, claims, and liability arising from the negligence or intentional misconduct of FRED relating to operation of the PACE program. Nothing in this Agreement is intended to inure to the benefit of any third-party for the purpose of allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

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

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

**SECTION 16. AGREEMENTS WITH TAX COLLECTOR AND PROPERTY APPRAISER.** This Agreement shall be subject to the express condition precedent that FRED enter into separate agreement(s) with the tax collector and the property appraiser having jurisdiction over the legal boundaries of the [TOWN/CITY/COUNTY], which shall provide for the collection of any non-ad valorem special assessments imposed by FRED within the legal boundaries of the [TOWN/CITY/COUNTY]. If required by the tax collector and property appraiser, the [TOWN/CITY/COUNTY] agrees to enter into those agreements as a third-party to facilitate the collection of the non-ad valorem special assessments imposed by FRED.

**SECTION 17. OPINION OF BOND COUNSEL.** FRED warrants, based on counsel's review of the bond validation judgment and the underlying bond documents that the FDFC PACE program's structure complies with the bond validation judgment and the underlying bond documents.

**SECTION 18. AGENTS OF FRED.** FRED shall ensure that its agents, administrators, subcontractors, successors and assigns are, at all times, in compliance with the terms of this Agreement and applicable [TOWN/CITY/COUNTY], state and federal laws.

**SECTION 19. NOTICES.** Any notices to be given hereunder shall be in writing and shall be deemed to have been given if sent by hand delivery, recognized overnight courier (such as Federal Express), or by written certified U.S. mail, with return receipt requested, or by electronic mail, addressed to the Party for whom it is intended, at the place specified. For the present, the Parties designate the following as the respective places for notice purposes:

**If to FRED:**

The Florida Resiliency and Energy District  
c/o Florida Development Finance Corporation  
William "Bill" F. Spivey, Jr.  
Executive Director  
800 N. Magnolia Avenue, Suite 1100  
Orlando, Florida 32803  
407.956.5695 (t)  
[bspivey@fdcbonds.com](mailto:bspivey@fdcbonds.com)

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

**If to [TOWN/CITY/COUNTY]:**  
[TOWN/CITY/COUNTY] Coordinator,  
[INSERT CONTACT INFORMATION]

**SECTION 20. AMENDMENTS.** No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this agreement and executed by the [TOWN/CITY/COUNTY] and FRED or other delegated authority authorized to execute same on their behalf.

**SECTION 21. JOINT EFFORT.** The preparation of this Agreement has been a joint effort of the Parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

**SECTION 22. MERGER.** This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations, correspondence, agreements, or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

**SECTION 23. ASSIGNMENT.** The respective obligations of the Parties set forth in this Agreement shall not be assigned, in whole or in part, without the written consent of the other Party hereto.

**SECTION 24. THIRD PARTY BENEFICIARIES.** None of the Parties intend to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement; provided, however, that counsel to the Parties may rely on this

Agreement for purposes of providing any legal opinions required by the issuance of debt to finance the Qualifying Improvements.

**SECTION 25. RECORDS.** The Parties shall each maintain their own respective records and documents associated with this Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.

**SECTION 26. RECORDING.** This Limited Purpose Party Membership Agreement shall be filed by FRED with the Clerk of the Circuit Court in the Public Records of the [TOWN/CITY/COUNTY] and recorded in the public records of the [TOWN/CITY/COUNTY] as an amendment to the Interlocal Agreement, in accordance with Section 163.01(11), Florida Statutes.

**SECTION 27. SEVERABILITY.** In the event a portion of this Agreement is found to be unenforceable by a court of competent jurisdiction, that part shall be deemed severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

**SECTION 28. EFFECTIVE DATE.** This Agreement shall become effective upon the execution by both Parties hereto.

**SECTION 29. LAW, JURISDICTION, AND VENUE.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the [First...Twentieth] Judicial Circuit in and for [NAME OF COUNTY], Florida, the United States District Court for the [Northern][Middle][Southern] District of Florida or United States Bankruptcy Court for the [Northern][Middle][Southern] District of Florida, as appropriate.

[SIGNATURE PAGES FOLLOW]

[SIGNATURE PAGE TO LIMITED PURPOSE PARTY MEMBERSHIP AGREEMENT]

**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2016.

[NAME OF LOCALITY], FLORIDA

By: \_\_\_\_\_ Date \_\_\_\_\_  
[TOWN/CITY/COUNTY]  
Mayor or Designee

For the [ ] of [TOWN/CITY/COUNTY]  
[NAME OF LOCALITY],

Attest:

By: \_\_\_\_\_  
Deputy Clerk Date

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, \_\_\_\_\_ of the [INSERT PUBLIC AGENCY], Florida, who is personally known to me/has produced \_\_\_\_\_ as identification.

(SEAL)

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

[SIGNATURE PAGE TO LIMITED PURPOSE PARTY MEMBERSHIP AGREEMENT]

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

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

By: \_\_\_\_\_  
William "Bill" F. Spivey, Jr.  
Executive Director

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by William "Bill" F. Spivey, Jr., Executive Director of the Florida Development Finance Corporation, who is personally known to me/has produced \_\_\_\_\_ as identification.

(SEAL)

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